Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:
Video conference via Zoom
Meeting date: 17 September 2020
Meeting time: 13.00

For further information contact:
Alun Davidson
Committee Clerk
0300 200 6565
SeneddEAAL@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health.

This meeting will be broadcast live on senedd.tv.

Registration period
(13.00–13.30)

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 Scrutiny session with the Counsel General and Minister for European Transition

(13.30–14.30) (Pages 1 – 94)

Jeremy Miles MS, Counsel General and Minister for European Transition
Chris Warner – Welsh Government
Ed Sherriff – Welsh Government

3 Papers to note

(14.30–14.35)

Senedd Cymru
Welsh Parliament

3.8 Paper to note 8: Correspondence from the Counsel General and Minister for European Transition to the Chair and the Chair of the Legislation, Justice and Constitution Committee regarding UK Government's White Paper on the UK Internal Market - 14 August 2020

(Pages 116 - 126)

3.9 Paper to note 9: Correspondence from the Minister for International Relations and the Welsh Language to the Chair and the Chair of the Legislation, Justice and Constitution Committee regarding Ministerial Forum for Trade - 14 August 2020

(Pages 127 - 128)

3.10 Paper to note 10: Correspondence from the First Minister to the Chair regarding UK-Poland Agreement - 24 August 2020

(Pages 129 - 130)

3.11 Paper to note 11: Correspondence from the Counsel General and Minister for European Transition to the Chair regarding citizen's rights and common frameworks - 25 August 2020

(Pages 131 - 136)

3.12 Paper to note 12: Correspondence from the Counsel General and Minister for European Transition to the Chair of the Legislation, Justice and Constitution Committee regarding Joint Ministerial Committee (EU Negotiations) meeting - 27 August 2020

(Page 137)

3.13 Paper to note 13: Correspondence from the Minister for International Relations and the Welsh Language to the Chair regarding separation arrangements between the UK, and Iceland, Liechtenstein and Norway - 28 August 2020

(Pages 138 - 139)

3.14 Paper to note 14: The EU Single Market - a paper from Dr Kathryn Wright - 28 August 2020

(Pages 140 - 159)

3.15 Paper to note 15: Correspondence from the Counsel General and Minister for European Transition to the Chair regarding Inter-institutional Agreement - Intergovernmental Relations Review Ministerial Meetings - 4 September 2020 (Pages 160 - 161)

4 Motion under Standing Order 17.42(vi) and (ix) to resolve to exclude the public from the remainder of the meeting
(14.35)

5 Scrutiny session with the Counsel General and Minister for European Transition - consideration of evidence
(14.35-14.50)

6 Consideration of international agreements
(14.50-14.55) (Pages 162 - 164)

7 Forward work programme
(14.55-15.10) (Pages 165 - 171)

Agenda Item 2

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Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-2248-20

Mike Hedges MS
Chair
Climate Change, Energy and Rural Affairs Committee

15 July 2020

Dear Mike

In my Written Statement of 1 June, I committed to update Senedd committees on the progress made on the future of carbon pricing in the UK after EU Exit and the joint policy position negotiated between the Governments of the four UK nations. I will explain the process of policy development, provide an overview of the policy design including the underpinning legislation and governance structures and finally suggest how my officials and I might assist Senedd committees in their scrutiny of this policy.

Environmental protection, including emissions reduction and climate change, are devolved matters. As a result of the UK's withdrawal from the European Union, it was necessary to ensure we continue to incentivise industrial decarbonisation. I have been working with my counterparts across the UK to develop a Common Framework to replace the EU Emissions Trading System (EU ETS). The European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 do not provide sufficient powers to establish a new legislative regime. Therefore, the four Governments decided to jointly establish a UK Emissions Trading Scheme (UK ETS) using existing powers under Part 3 of the Climate Change Act 2008.

A joint public consultation exercise in 2019 sought views on proposals for a UK ETS to apply after the transition period, with the first ten year phase commencing on 1 January 2021. It would closely mirror the design of the EU ETS, to provide a smooth transition for businesses and facilitate a link to the EU ETS as soon as agreement was reached in the UK-EU negotiations. The stakeholder response to the consultation was supportive of a UK ETS, in particular one linked to the EU ETS. The UK Committee on Climate Change was also supportive of establishing a linked trading scheme.

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Since the consultation, the four Governments have continued to develop the technical aspects of the UK ETS policy design, which is described in the joint Government Response issued on 1 June. The policy design balances the challenges of ensuring environmental integrity while managing business competitiveness issues. This is critically important in Wales, as the traded sector accounts for around 46% of our emissions and includes some of our largest employers. The document can be accessed here: https://gov.wales/future-uk-carbon-pricing.

The UK ETS will be closely aligned to the EU ETS in the first instance. It applies to the same traded sectors and has the same obligations on participants to monitor and report emissions and surrender an equivalent number of allowances. The scheme provides for free allocation which follows EU method and eligibility criteria, and a continuation of a regulatory compliance and enforcement role for Natural Resources Wales.

There are, however, some differences between the UK ETS and the EU system. The initial UK ETS cap will be set at 5% less than the UK's notional share of the EU ETS cap, and will be reviewed following receipt of further advice on the pathway to 2050, to ensure alignment with our shared goal of net zero emissions across the UK by 2050. There will also be mechanisms to manage extremely high and low prices, including an auction reserve price (ARP) set at £15 per allowance.

The Greenhouse Gas Emissions Trading Scheme Order 2020, which establishes the UK ETS and contains provisions for key elements of the policy, is being laid before the Senedd today and will be scrutinised by each of the four legislatures within the same timescale. The Order must be approved by the Senedd, and a debate will be scheduled for the first week of November. A further Order using the negative procedure, which addresses some of the technical detail of the scheme, will be brought forward towards the end of 2020.

The Senedd recently gave its consent to powers enabling the auctioning of emissions allowances contained in the UK Government's Finance Bill[1]. The UK Government will be bringing secondary legislation forward in due course, to establish the detailed arrangements for auctioning.

The UK ETS is part of the Common Framework Programme overseen by the Joint Ministerial Committee on EU Negotiations (JMC(EN)) and has been developed using principles it set out in October 2017. A Framework Outline Agreement will set out the rationale for establishing the framework, the decision-making and governance arrangements. This will be accompanied by a concordat between the Ministers from all four governments. I will share these documents with the Committee for scrutiny as they are finalised and before they are presented to the JMC(EN).

I am keen to support the scrutiny of the legislation and wider framework, and I will be happy to give evidence. My officials are also available to provide a technical overview of the framework and details of the legislation if that would be helpful.

I am aware a number of other committees will have an interest in this framework. Consequently, I suggest my officials liaise with you to make arrangements for an efficient scrutiny process.

[1] When the Bill was introduced into the House of Commons on 18 March 2020, the relevant provision was clause 93 (Charge for allocating allowances under emissions reduction trading scheme). The Bill was amended by the Public Bill Committee, and clause 93 became clause 94. The Bill was introduced into the House of Lords on 2 July 2020, and clause 94 became clause 96. Although the numbering of the clause has changed, no amendments have been made to its substance since introduction. A record of the Bill can be found here: https://services.parliament.uk/Bills/2019-21/finance/documents.html.

The UK ETS is a technically complex policy, but it has important ramifications to our climate policy and our industrial base. I look forward to engaging with you during the scrutiny of the UK ETS.

I am copying this letter to the Chairs of the Economy, Infrastructure and Skills Committee, External Affairs and Additional Legislation Committee, Legislation, Justice and Constitution Committee and Business Committee.

Regards

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Department for Business, Energy & Industrial Strategy

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Russell George MS
Chair
Economy, Infrastructure and Skills Committee
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16 July 2020

Dear Russell,

Launch of the UK internal market White Paper and consultation

The White Paper on the *UK Internal Market* was published today (https://www.gov.uk/government/publications/uk-internal-market).

Today, the UK Internal Market supports jobs and livelihoods across our country. 75% of Welsh exports of final goods and services are consumed in the rest of the UK, three times as much as Wales exports internationally. In some parts of Wales, a quarter of workers commute in from England on a daily basis.

The Internal Market is just as vital for the rest of the UK. Northern Ireland sells more to the rest of the UK than to all EU member states combined. Scotland sells more to the rest of the UK than to the rest of the world put together.

Following the end of the Transition Period, the way we regulate labour, capital, goods and services in the UK will no longer be decided by the EU. Hundreds of powers previously exercised at EU level will flow directly to the devolved administrations in Edinburgh, Cardiff, and Belfast. The UK will be able to regulate our trade in goods and services in a tailored manner, specifically designed to benefit our businesses, workers and consumers while maintaining our high regulatory standards.

At this historic time, it is important that we provide businesses with certainty about how seamless internal trade will be upheld in the future.

Under the plans in this White Paper, the UK will continue to operate as a coherent internal market. A Market Access Commitment will guarantee UK companies can trade unhindered in every part of the United Kingdom, whilst maintaining our commitment to high regulatory standards.

It is the Government's firm belief that without this legislation, trade from one part of the Union to another could be disrupted through regulatory differences. This could put jobs at risk across the country and leave Welsh businesses potentially unable to sell their goods and services in other home nations.

The proposals in the White Paper will protect the UK internal market for the long-term, including:

- The principle of **mutual recognition –** goods and services from one part of the UK will be recognised across the country to ensure the devolved administrations can set their own rules and standards in areas of their competence, but still welcome the trade of businesses based anywhere in the UK.

- The principle of **non-discrimination –** so that there is equal opportunity for companies trading in the UK regardless of where in the UK the business is based.

These principles will prevent any part of the UK from blocking products or services from another part while protecting devolved powers, such as introducing plastic bag minimum pricing or introducing smoking bans.

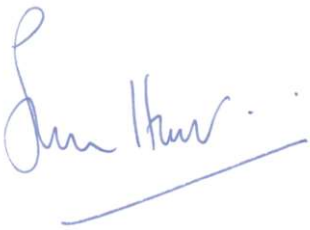
The consultation launched at the same time as the White Paper will enable businesses, academics, consumer groups and trade unions to input their views of the proposals and consultation questions.

We have welcomed the engagement we have already had with Welsh Government officials and would like to build on this to make sure we fully discuss all the issues raised in the White Paper and consultation. We would value you and your Committee's input in this process.

If you have additional questions or would like further information, our ministerial colleagues and officials would welcome the opportunity to assist you.

Yours sincerely,

THE RT HON ALOK SHARMA MP
Secretary of State for Business, Energy & Industrial Strategy



THE RT HON SIMON HART MP
Secretary of State for Wales

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

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19 July 2020

Dear Chairs,

I am writing under the inter-institutional relations agreement to inform you that a meeting of the Ministerial Forum for Trade will take place on Tuesday 21 July.

The meeting will discuss the latest from the FTA negotiations and the Continuity Programme as well as an update on the UK Trade Bill.

I will be reiterating the Welsh Government's position that the Devolved Administrations views must be taken into account when developing negotiating positions. I will write you again following the meeting.

Yours sincerely,

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

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Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

David Rees MS
Chair, External Affairs and Additional
Legislation Committee

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20 July 2020

Dear David,

Thank you for your letter of 25 June requesting an update to the Committee on the current EU funding programmes in Wales and the future of regional investment funding in Wales.

Please see below the further information you have requested.

Current EU funding programmes (2014-2020)
WEFO has committed 100% of the EU Structural Funds allocation for 2014-2020, investing over £2 billion, driving a total investment of over £3.9 billion (end of June figures) which also includes the repurposing of EU structural funds to support the COVID-19 response in Wales.

The European Union's Coronavirus Response Investment Initiative (CRII) has provided a package of flexibilities for the use of European Structural and Investment (ESI) Funds in response to the economic impacts of Covid-19. Measures to vary ESI Funds intervention rates, spending levels in Priority Axes and other flexibilities, provide a range of opportunities to address the different circumstances experienced by the UK and other EU Member States.

The new flexibility applies to what is eligible for EU support, to transfers between funds, to permitted intervention rates and to the timing of the approval process. There has been no significant change to the financial governance regime, so the usual requirements for clear objectives, measurable outputs and audit trails still apply.

WEFO is maximising the opportunities provided by CRII, earmarking up to £245m of EU funds to support the second wave of the Economic Resilience Fund, including investment loans made by the Development Bank of Wales, and health service costs connected to Covid-19, in particular to support the recruitment of additional medical staff and purchases of PPE.

It is also supporting the temporary redeployment of project staff to Covid-19 activity where appropriate and a specific Covid-19 call for proposals under the Welsh Council for Voluntary Action's Active Inclusion scheme.

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With regards to the current European Regional Development Fund (ERDF) programme, most projects are running well despite the disruption of the COVID-19 pandemic and subsequent lockdown measures. However, there are some concerns in respect of a number of strategic infrastructure projects that may not complete activity or spend before the summer of 2023. WEFO is liaising with appropriate project leads to work towards potential improved timetables and alternative delivery models.

In contrast to the ERDF, the current Covid-19 lockdown restrictions have had an impact on the delivery of most European Social Fund (ESF) operations as many activities supporting participants have been curtailed, and the recruitment of new participants and employers to projects is much reduced. Some projects are continuing to provide distance learning or other support for participants remotely, where the nature of the project allows for this. WEFO is allowing EU-funded projects which provide training to businesses to relax rules on co-investment, as a way of helping companies to access training from these EU-funded schemes during the recovery from Covid-19.

The programme commitment for the Ireland-Wales Cooperation Programme stands at €75.2m – 95% of ERDF allocation. WEFO and its delivery partners in Ireland are discussing the most effective means of utilising the remaining programme funding. Consideration will be given to potential Covid-19 recovery measures as part of this exercise including any new activities that could be more relevant to a post crisis situation.

In terms of the Rural Development Programme (RDP), as at February 2020, the project level commitment is £689.5m, representing 82.6% commitment in funds (the total value of the programme is £834,816,280). Officials are currently assessing the impact of Covid-19 on individual RDP projects, as a number of activities planned during March and July are known to have been cancelled or postponed. A re-planning exercise is being undertaken to fully commit the RDP, taking advantage of the opportunity provided to continue to commit to projects after the end of the year, providing those projects are delivered by June 2023.

Please see **Annex A** for a further breakdown for the 2014-20 programme period.

Despite the pandemic, WEFO has continued to maintain all key functions working remotely, re-allocating resources to ensure the top priority of processing claims and making payments to beneficiaries continues to be delivered effectively. This has also ensured that WEFO's own cash management function, including drawing down cash from the EC, has been maintained throughout the pandemic.

Due to the COVID-19 lockdown across Wales and the UK, some on-the-spot expenditure verifications have been deferred, causing an inevitable backlog. However, as this is a UK-wide issue, the UK Managing Authorities are writing a joint letter to the EC to consider ways of managing this issue.

European Investment Bank

The European Investment Bank (EIB) has played a key role supporting long-term investment to improve social housing, education, energy infrastructure, transport, and water infrastructure across Wales.

This includes support for the second Severn Crossing and the A55 dual carriage way from Chester to Holyhead, as well as new roads in South and West Glamorgan, Dyfed and Gwent. Key investments by Ford at Bridgend, Norgine at Hengoed and by Welsh Water across the country have been supported, including at Stebonheath Primary School in Llanelli where the Rainscape project is helping to reduce sewage overflow into the Bristol Channel.

Recent EIB lending has supported education investment in Wales, including backing the new Swansea University Bay campus and cutting heating costs at Bangor University.

In terms of any impact to funded projects due to Brexit, the EIB Group made a public commitment on 31st January to honour the existing finance it has within the UK. Loans will continue to be governed by their respective finance contracts.

There have been additional benefits to being a subscribing partner of the EIB for Wales, through access to significant commercial expertise and best practice. The South Wales Metro project, for example, benefitted from the EIB's commercial expertise informing the procurement process.

Therefore in our White Paper, *Securing Wales' Future*, we argued that the UK should remain a subscribing partner as it brings direct benefits to our economy as well as improving economic capacity elsewhere, thus helping the global trading environment, which we support.

In 2018, we provided written evidence to the House of Lords Inquiry into the relationship between the UK and the EU following Brexit. We also wrote to UK Treasury Ministers, setting out concerns about the apparent lack of progress in developing policy options for our relationship with the EIB.

In February 2019 the House of Lords adopted a report where it noted that the UK's infrastructure had been the beneficiary of more than €118 billion of lending from the EIB. It noted the marked decline in funding from the EIB since the referendum and triggering of Article 50, and the fact that, despite our losing access to the EIB after Brexit, the Conservative Government had said little about any future relationship with the EIB or possible domestic alternatives.

We would have preferred the UK to remain a subscribing partner in the Bank. However, as that did not happen, we are seeking a mandate in place for continued EIB lending in the UK as soon as possible.

Future of regional investment in Wales

Our consultation 'A framework for the future of regional investment in Wales' closed on 10 June, having run for just over 14 weeks. To support this, we ran four regionally-based engagement webinars in the north, mid, south west and south east Wales during May, which attracted around 430 attendees. We also participated in online webinars arranged by other key stakeholders including Further Education, Higher Education, Business, and the Third Sector.

We also engaged with citizens, providing a short Citizen survey that was promoted by social media and a short explanatory film. A young people's survey was also undertaken, with support from Children in Wales.

Our engagement led to the submission of 134 responses from stakeholders and individuals to our main consultation questions, 285 citizen survey responses, and 42 young people survey responses. All of the feedback received is being analysed independently by a research company, but an initial analysis already shows that there is broad consensus on our proposals, while recognising the impact of COVID-19.

Our project with the OECD, which began in January 2019, to learn from international best practice, is also progressing well and has involved significant analysis and stakeholder engagement in order to produce a final report.

The OECD will be preparing its executive summary over the summer, while its remaining work involves the development of a flexible, self-assessment toolkit to help regional-level bodies assess their public investment and policy implementation capacity, and provide insight into areas for improvement, so that we can we commit to having a mix of national, regional and local approaches in the delivery of future regional investment.

We plan to publish both reports in September, and I look forward to sharing and discussing the findings with your Committee in due course. In the meantime, Welsh Ministers will be considering the initial overview of consultation findings and the OECD's final report and will agree next steps for consideration by officials with partners over the summer and autumn months so that we remain on track to put in place new investment arrangements from early 2021.

In respect of your queries on the UK Shared Prosperity Fund, despite the UK Government noting that Wales will receive no less funding than current levels of EU funding (Conservative Party Manifesto 2019; March 2020 Budget), there has yet to be any confirmation on how the SPF will come to the Welsh Government. Here, the Welsh Government has always maintained that the UK Government should allocate a specific, clear and transparent allocation to the Welsh Government directly, badged as our share of the Shared Prosperity Fund, and for this to be devolved and allocated appropriately in line with the priorities to deliver inclusive growth agreed in consultation with our partners.

We have also called that replacement funding to Wales should continue to be allocated on a needs basis to reflect the structural challenges that Wales continues to face along with multi-annual SPF budgets as all of our conversations with partners and beneficiaries cite this as being essential for longer-term planning. Our positions have also been published as evidence to the UK Parliament Welsh Affairs Committee inquiry on Wales and the SPF, which ran between 11 February and 25 May.

I met with the Secretary of State for Wales on 10th February and we have since been building on that meeting to seek agreement on some key principles of how the UK and the Welsh Government might work together effectively in the immediate future.

In recent discussions with the UK Ministry for Housing, Communities and Local Government (MHCLG), officials are indicating that work on the SPF is now gathering pace as SPF discussions have recently been held with UK Cabinet Ministers. We understand, however, that there are a number of other factors impacting on this work including the White Paper on devolution in England and wider plans for COVID economic recovery. We do not expect an announcement on the SPF until the Comprehensive Spending Review in the autumn, making the delivery of new funding before the 2021/2022 financial year and a smooth transition between investment programmes for the benefit of businesses, communities and people across Wales unlikely.

Moving forward, we remain keen to work constructively with the UK Government so we can make contributions to the debate on a proposed future model of the SPF. Officials will also continue to work with the Regional Investment for Wales Steering Group, chaired by Huw Irranca-Davies MS, and technical sub groups over the coming months to help develop a long-term operating model based on the recommendations and views received from the OECD and our consultation, together with transitional arrangements for future investment that require COVID recovery consideration.

I hope this information provides a useful update on the latest situation of the current programmes and the future of regional investment in Wales. Should you require any further clarification on the issues addressed within this letter please let me know. I would also be happy to update members on developments, including the OECD and consultation reports, at a meeting of the Committee in the autumn term.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

cc. Llyr Gruffydd MS, Chair, Welsh Parliament Finance Committee

Allocation of funding by region and type

We do not collect financial data by region or local authority area for the structural funds and rural development programmes (RDP). Most structural fund operations deliver benefits to more than one local authority area, including many that deliver across the programme area as a whole, as do many projects funded under the RDP, such as Farming Connect. It is not possible to identify the exact amount of funding a specific local authority area has 'received' because of the national/regional scope of so many of these projects and programmes.

We collect financial data for the lead beneficiary of operations and the table below is a summary of the amounts committed to local authorities, where local authorities are the lead beneficiary of those operations via the Structural Funds, European Territorial Co-operation (ETC) programme, the Wales Rural Development Programme (RDP) and the European Maritime and Fisheries Fund (EMFF). For the RDP and the EMFF the amount of money committed to Local Authorities is included but it is not possible to do this for each individual Local Authority.

Table 1: Summary of EU funds committed to local authorities for the 2014-20 programme period

Programme	**Total**
European Structural Funds (ESF & ERDF)	£230.8m
of which:	
Blaenau Gwent County Borough Council	£45.3m
Bridgend County Borough Council	£10.4m
Caerphilly County Borough Council	£3.6m
Carmarthenshire County Council	£4.3m
Ceredigion County Council	£0.6m
City and County of Swansea	£4.5m
Conwy County Borough Council	£7.0m
Cyngor Gwynedd Council	£11.8m
Denbighshire County Borough Council	£24.8m
Isle of Anglesey County Council	£8.8m
Neath Port Talbot County Borough Council	£29.2m
Newport City Council	£13.7m
Pembrokeshire County Council	£30.3m
Powys County Council	£2.1m
Rhondda Cynon Taf County Borough Council	£7.5m
Torfaen County Borough Council	£26.8m
European Maritime and Fisheries Fund	£0.5m
Welsh Rural Development Programme	£46.9m
European Territorial Co-operation Programme	€5.7m
of which:	
Carmarthenshire County Council	€1.6m
Pembrokeshire County Council	€4.1m

UK Government
Llywodraeth y DU

Rt Hon Simon Hart MP
Secretary of State for Wales
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Ref: 031MISC20

David Rees MS
Chair of the External Affairs and Additional Legislation Committee
Welsh Parliament
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20th July 2020

Dear David,

I am writing to you following my appearance before your Committee on 30 June. It was a pleasure engaging with you and your fellow Committee members on what I am sure you will agree are some very critical issues, and I hope you found it to be a productive session.

You will recall that during that session I committed to writing to you to provide further detail on some of the topics that we discussed. Firstly, you asked about preparedness. The UK Government's preparedness continues to be coordinated through the Cabinet Office, specifically Transition Task Force. Planning for the end of the transition period is well underway, and this planning is coordinated by the EU Exit Operations (XO) Cabinet Committee.

Secondly, we touched on the UK Government's Transition Period Readiness Portfolio Board which – as you will be aware – is an official-level forum. It is chaired by the Director General of the Transition Taskforce and was established on 25 February 2020. It meets fortnightly and maintains oversight of project-level performance, providing an essential route to escalate cross-cutting delivery issues that need to be resolved. From 3 June 2020, officials from the Devolved Administrations were invited to attend the Board on a monthly basis. The Board will escalate issues to the Cabinet Committees overseeing transition as appropriate, while ensuring that ministerial time is focused effectively on the most relevant issues.

Next, on the issue of up-to-date import and export guidance, there is existing guidance on GOV.UK (Imports: www.gov.uk/starting-to-import, Exports: www.gov.uk/starting-to-export) which includes content on trading with the EU from 1 January 2021. HMRC is working with key external stakeholders to understand how the guidance can best help businesses to prepare for the end of the transition period, and we will be releasing further guidance and communications on the Northern Ireland Protocol in due course.

UK Government
Llywodraeth y DU

Ref: 031MISC20

Rt Hon Simon Hart MP
Secretary of State for Wales
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The Committee also asked about the numbers required for post-Brexit customs procedures, referring to the industry calculation of 50,000 customs agents that will be required. The UK already has a well-established industry of customs intermediaries which serve British businesses trading outside the EU. The sector is made up of many different business models including specific customs brokers, freight forwarders and fast parcel operators – all of which will have specific staffing requirements. We are confident that the sector will respond to the staged introduction of customs processes and react to the increased demand from traders. We will continue to monitor industry preparations closely.

A UK Government support package of £34 million has also been designed to meet flexibly the needs of the customs intermediary sector to build capacity by covering training and IT innovation, as well as recruitment. This support has funded approximately 20,000 training courses in customs processes and procedures and the creation of a new UK Customs Academy, which has delivered 870 courses so far. Over 14,500 pieces of IT kit have also been applied for.

Furthermore, we have announced an additional £50 million of funding to support customs intermediaries to boost capacity, providing businesses with further support ahead of the new processes. In total, the UK Government has made £84 million available to support the customs intermediary sector at the end of the transition period.

Finally, I would like to draw your attention to a new public information campaign – *The UK's new start: let's get going* – launched by the UK Government on 13 July 2020. This campaign clearly sets out the actions that businesses and individuals need to take to prepare for the end of the transition period on 31 December 2020, and ensure they are ready to seize the opportunities that it will bring. This campaign will run alongside the UK's continued negotiations with the EU.

I hope that this letter is useful to you and your Committee, and I very much look forward to having further engagement with you all in the future.

Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

The Rt Hon Alok Sharma MP,
Secretary of State Department for Business,
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The Rt Hon Simon Hart MP
Secretary of State for Wales
Wales Office

27 July 2020

Launch of the UK internal market White Paper and consultation

Dear Alok and Simon

Thank you for your letter dated 16 July 2020 regarding the Launch of the UK internal market White Paper and consultation.

I am aware that both the External Affairs and Additional Legislation Committee and the Legislation, Justice and Constitution Committee have already undertaken work on this area and are planning on responding to your letter separately.

I feel it is sensible for those Committees to continue to lead on this piece of work. However the Economy, Infrastructure and Skills Committee will monitor the progress of the White Paper/developments around the UK Internal Market and may undertake scrutiny at a later date if it becomes appropriate.

I have copied this letter to David Rees MS, Chair of the External Affairs and Additional Legislation Committee, and Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

Russell George MS
Chair, Economy, Infrastructure and Skills Committee

CC: Mick Antoniw MS, Chair, Legislation, Justice and Constitution Committee
David Rees MS, Chair, External Affairs and Additional Legislation Committee

The Rt Hon Alok Sharma MP, Business Secretary

The Rt Hon Simon Hart MP, Secretary of State for Wales

7 August 2020

Dear Alok and Simon

UK internal market White Paper and consultation

Thank you for your letter of 16 July, which we considered at our meeting on 3 August.

We note that the consultation on your proposals lasts for only four weeks over the traditional parliamentary summer recess period. We also understand that the intention is for the subsequent UK Bill to complete its passage through the UK Parliament before the end of the year.

The timeframe for consideration of your proposals is wholly inadequate. Furthermore, given that the White Paper contains little detail as to how the mechanisms for managing an internal market will work in practice, there is little scope for meaningful engagement by the devolved legislatures and stakeholders before the introduction of a UK Bill.

It would have been preferable for us to have been able to question the UK Government on its proposals, with the aim of identifying what it is seeking to achieve. In particular, this would have enabled us fully to consider your argument that primary legislation is the best solution for managing internal barriers to trade at the end of the transition period. This is not least because we believe any UK Bill on the internal market should be central to the UK Government's thinking, rather than being rushed through the UK Parliament at the end of the Brexit transition process (with a range of Bills covering, for example, trade, fisheries and agriculture much further advanced).

In the absence of such an opportunity, we enclose a series of questions that we would have required responses to had we been consulted and engaged properly.

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Given the lack of detailed and relevant information, we are yet to conclude whether a UK Bill of the kind proposed in the White Paper is needed.

If such a UK Bill is to be introduced, it could potentially impact the way the Senedd seeks to legislate in the future and have profound constitutional implications for the UK. At the very least it must:

- be developed from open, transparent and meaningful consultation on proposals that are at a formative stage, such consultation being based on clear and well-defined principles;
- be introduced only after there has been consultation on a draft Bill, which we deem to be a basic and fundamental requirement for all Bills of constitutional significance;
- reflect detailed discussions with the devolved governments and legislatures on how the provisions of the Bill would work in practice and their practical impact on the devolution settlements;
- adopt an approach that works for each part of the United Kingdom;
- interact logically and coherently with all statutory and non-statutory common frameworks to be agreed under the ongoing work programme;
- not seek to re-centralise power, either directly or indirectly, by allowing the UK Government and the UK Parliament to dominate policy areas that are devolved;
- include provisions agreed by all parties setting out an independent governance structure that ensures parity between all governments of the UK and a robust dispute resolution mechanism;
- provide the devolved governments and legislatures with the same freedoms to protect their citizens and economies in key areas of public health, consumer and environmental standards that they previously enjoyed under the EU's single market;
- enshrine within it the key constitutional principles of subsidiarity and proportionality, which have governed the operation of the internal market through the UK's membership of the EU, and have been faithfully guarded by all the legislatures of the UK;
- not be imposed on the devolved countries of the United Kingdom without their consent;
- not rely on the use of intergovernmental agreements with the devolved governments, as a means of bypassing scrutiny by devolved legislatures of matters that should be included within the UK Bill.

Yours sincerely,

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

cc.

David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru
Russell George MS. Economy, Infrastructure and Skills Committee, Senedd Cymru
Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament
Michelle Ballantyne MSP, Economy, Energy and Fair Work Committee, Scottish Parliament
Dr Caoimhe Archibald, Committee for the Economy, Northern Ireland Assembly
Colin McGrath, Committee for the Executive Office. Northern Ireland Assembly
Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons
William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons
Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords

Enclosure - Questions relating to the UK Internal Market White Paper

The need for primary legislation and the principles behind it

1. Why is primary legislation needed to regulate the UK's Internal Market?

2. If primary legislation is needed, what is your current thinking as to how the legislative consent process will work? In particular, is this a "normal" situation for the purposes of the legislative consent convention?

3. What constitutional principles will underpin this primary legislation?

4. Will the constitutional principles of proportionality and subsidiarity that currently underpin the operation of the EU Single Market be enshrined in the legislation in any way?

5. What mechanisms will be put in place to ensure that the UK maintains high standards and that there will be no 'race to the bottom' within the UK?

Devolution and scope of the Internal Market

6. Can you confirm that beyond a new reservation on subsidy control, the legislation to enshrine a Market Access Commitment will make no other changes to the devolved settlements? And how will you work with the devolved governments in framing any new reservations?

7. The White Paper states that the UK's Internal Market will be overseen by the UK Parliament. What role will there be for the devolved legislatures, and how will their voice be heard?

8. In relation to the scope of the Internal Market, can you clarify:

    - The meaning of 'pre-existing differences' and whether the Internal Market legislation would apply retrospectively in any way to devolved legislation.

    - The meaning of 'Certain social policy measures with little Internal Market impacts' and the scope of legislation that will come within this exclusion.

Oversight, impact assessments and enforcement

9. Can you elaborate on the governance and institutional mechanisms that will be established to oversee the Internal Market in the UK?

10. Will there be any requirement (legal or otherwise) for the UK's governments and regulators to carry out an assessment of the effect of any new legislative proposals on the UK Internal Market prior to their introduction?

11. Will the legislation generate any new rights of redress to internal trade barriers for individuals and business and, if so, how will these be enforced?

Dispute resolution and common frameworks

12. How will dispute mechanisms ensure parity between the four governments of the UK?

13. Who will be the final arbiter of disputes between the four governments of the UK?

14. How will you ensure that the relationship between common frameworks and the legal architecture associated with the Internal Market is clearly defined and easy to navigate?

15. If increased divergence arises through a process agreed through the common frameworks programme, will this be excluded from the scope of the Market Access Commitment?

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

David Rees MS
Chair, External Affairs and Additional Legislation Committee

14 August 2020

Dear Chairs,

I am writing to draw your attention to the Welsh Government's analysis of the UK Government's White Paper on the UK Internal Market, which I have sent to the Secretary of State for BEIS today and is attached for your information.

I look forward to engagement with your Committees in due course on the matters covered in the analysis.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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Llywodraeth Cymru
Welsh Government

The Rt. Hon Alok Sharma MP
Secretary of State for Business, Energy & Industrial Strategy
secretary.state@beis.gov.uk

14 August 2020

Dear Alok,

I am writing further to the UK Government's White Paper on the UK Internal Market, published just four weeks ago.

Prior to the Paper's publication, I wrote to you and the Chancellor of the Duchy of Lancaster (7 July) to set out our position on the UK Internal Market and the steps we believe we should take to ensure future regulatory and economic cooperation across the UK, as a result of the UK leaving the EU Single Market. Our position and thoughts on a potential approach to this issue, as set out in my letter, have not changed.

The Welsh Government is concerned that the long-term survival of the United Kingdom is under great strain and that the approach taken in the White Paper will exacerbate those tensions in a way which, if not addressed, will accelerate the break-up of the Union. Our initial view was that the White Paper was fundamentally flawed and misleading – further analysis of the substance of your proposals has confirmed this view.

We have already made clear that we are not opposed to an internal market for the United Kingdom, neither are we opposed to legislation being brought forward to support the functioning of a UK Internal Market. Wales' interests, and those of the UK as a whole, are best served by ensuring smooth trading arrangements for businesses across all four nations. However, your proposals do not deliver this and in any case, this should be a collaborative piece of work in which all the governments within the UK have the opportunity to participate fully and on an equal basis.

Legislation of the kind proposed in your White Paper is simply not necessary, and we do not recognise the need for this type of solution as the UK Internal Market is already highly integrated.

The proposals also undermine three years of collaboration via Common Frameworks. Our commitment to the Frameworks programme remains and we continue to focus on the effective delivery of the programme.

Our reading of the proposals is that the proposed legislation would prevent the Senedd or Welsh Ministers from imposing mandatory requirements relating to lawful sale of goods and services in Wales – even where there were justified by public health objectives,

environmental concerns or any other public policy reason. This would represent a direct attack on the current model of devolution. The power – even if untouched – to regulate for goods and services produced in Wales would moreover be severely undermined, if not made completely impractical as in almost any sector, only a minority of good and services consumed in Wales are produced here.

The White Paper would thus remove or emasculate the current rights of the devolved institutions to implement changes to the regulatory environment in devolved policy areas governed to date by EU law, such as labelling, or environmental standards.

Attached to this letter is the Welsh Government's analysis to the substance of the UK Government's White Paper. I cannot emphasise strongly enough that, in our view, the model of primary legislation envisaged in the White Paper is unnecessary, unworkable, heavy-handed, and will not secure legislative consent from the Senedd.

I ask that you resume multilateral discussions on the future UK Internal Market, underpinned by our continuing and joint efforts to put in place Common Frameworks, to design and agree appropriate arrangements which serve the interests of the whole of the United Kingdom.

I am copying this letter to the Chancellor of the Duchy of Lancaster, the Secretary of State for Wales, the Scottish Government's Cabinet Secretary for the Constitution, Europe and External Affairs, and the First Minister and deputy First Minister of Northern Ireland.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

The UK Government's White Paper on a UK Internal Market
Welsh Government Analysis

Claims of risk / harm without legislative underpinning

The assertion that the UK Government, through the proposals in the White Paper, will 'give' the DAs new powers is misleading – the powers in question are not reserved and, in the absence of UK legislation to reverse the devolution settlement, would automatically and properly come back to the devolved institutions in any case.

The risks of harm to the UK economy if an Internal Market Bill is not introduced are overstated and are based on speculation on the extent of regulatory differences which *may* emerge, rather than the current situation within the UK which includes, and has included for some time, managed regulatory divergence. We have been clear from the outset that policy and regulatory divergence already exists within the UK, and this ability to diverge has led to innovative solutions being developed in one nation and subsequently introduced across the UK.

We note that the White Paper refers to construction and building regulations as examples where differences in regulations could create complexities over time. With the transfer of functions in 2012, England and Wales have diverged on their approach to building regulations as a reflection of each administration's policies and priorities. The construction sector has become accustomed to dealing with differing processes and performance standards set through regulations and associated statutory advice, in particular with regard to energy performance of buildings and fire safety. Liaison amongst the four administrations ensures that, where practical and of mutual benefit, policy work is shared – divergence is not considered a barrier to development.

Generally, the White Paper's analysis is very focussed on hypothetical examples of policy and/or regulatory divergence and there is no study of the impact of current divergence, such as building regulations, on businesses and how they manage current regulatory practices within the UK. There is no evidence of any engagement with stakeholders already operating in areas of current divergence in regulations.

We would question the economic modelling and analysis used to support the Paper's assertions of risk and the basis for a legislative underpinning of the kind proposed. For example, the use of Germany as a model to determine the economic cost to the UK if trade costs increased (pages 36 & 90), however with the clear caveat on page 89 that this data should not be used as a prediction for the UK market. This is deeply concerning.

It is clear that the evidence to support the White Paper's proposals is flawed in many ways. Stakeholder views and evidence should be analysed from across the UK and across a variety of sectors with differing levels of current divergence – this evidence should reflect the needs of the *whole* of the UK, not solely one nation.

Mutual Recognition & Non-discrimination

The Welsh Government has already clearly stated that the mutual recognition model proposed in the White Paper would undermine the Welsh and wider UK economy, our work on Common Frameworks, inter-governmental relations and the devolution settlements.

Whilst we recognise that the UK Government's proposals are careful not to suggest that there will be a constraint on devolved legislative competence to make regulations for goods

and services produced in Wales, it seems inevitable that the legislation will limit the Senedd's competence to legislate on goods which are placed on the market in Wales. Moreover, the effects of an overarching Internal Market Bill would also hollow out our competence in these areas. The economic dominance of England within the UK would undermine any policy innovation that could only apply to Welsh goods in Wales, as Welsh laws will not apply to goods and services being sold in Wales.

In addition, whilst the principles of mutual recognition and non-discrimination are well-established elements of the architecture of the EU Single Market, they are balanced by a commitment to subsidiarity and proportionality, a baseline of minimum standards and by the recognition that certain public policy concerns, for example in terms of environmental protection or public health, can in certain circumstances over-ride these principles. This is not reflected in the UK Government's proposals within the White Paper. It is also widely recognised by academics that there is a big difference between what is being suggested by the UK Government and how the EU Single Market works, and the context of the UK is key. By legislating in this way, the UK Government would be imposing a model of mutual recognition and non-discrimination on the three other nations of the UK, whereas the EU Single Market is a result of Member States voluntary coming together to negotiate and agree a set of rules to which they are all bound.

We also note that the principles of mutual recognition and non-discrimination will apply in an unqualified way to goods and services from Northern Ireland being put on the market in Great Britain. This will not be the case in the reverse direction, since the Northern Ireland Protocol requires a large proportion of goods which are placed on the market there to conform to EU standards. We are concerned that there is a distinct lack of detail within the UK Government's proposals of how an Internal Market Bill will work alongside the Northern Ireland Protocol.

We have also made clear in past discussions with BEIS officials that comparing the UK's Internal Market to mutual recognition systems in other countries such as Australia is flawed as these comparisons do not reflect our structures, levels of devolution and way of working within the UK. Indeed, the closest comparison to be made would be with Spain, which also has a system of asymmetric devolution – where, in 2017, the law establishing the principle of mutual recognition was cancelled following a ruling by the Spanish Constitutional Court.

In addition, the non-discrimination provisions, while mentioned by UK Government during our discussions, were not interrogated in detail as part of our collaborative work on the Internal Market and continue to lack substance within the White Paper.

The economic weight of England and its impact on the rest of the UK's nations must be fully recognised and considered, and any adverse impact mitigated or minimised. What actions is the UK Government putting in place to ensure this?

Why is it proposed that mutual recognition will apply to all goods and services placed on the market in the UK rather than only to those originating in the UK?

How will the UK Government ensure that arrangements for the UK Internal Market reflect the unique multinational character of the UK and that learning from other systems is properly analysed in both home and UK contexts?

Services and Qualifications

The White Paper makes explicit that services and professional qualifications will be covered by the mutual recognition principle. This is an area of divergence which already exists and

each nation of the UK already has its own regulators overseeing areas such as social care and education.

The current Provision of Services Regulations 2009 implement the EU's 'Services Directive'. The UK 2009 Regulations facilitate both the cross-border provision of services within the EU *and* intra-UK access, therefore allowing people to live and work freely within the UK. Importantly, the 2009 Regulations also allow for divergence and exceptions, if justified – therefore allowing each nation of the UK to amend its rules if they believe it is within the public interest.

It is not clear whether this exception will be preserved if the system under the 2009 Regulations is brought within the Internal Market system, as proposed by the White Paper.

Case study: teachers' qualifications

This is illustrated by teachers' qualifications. Presently, in order to teach in maintained settings in Wales teachers must hold Qualified Teacher Status (QTS) and be registered with the Education Workforce Council. Teachers trained and awarded QTS in England are currently automatically recognised as being able to teach in Wales. For a number of years the route to being awarded QTS and the standards underpinning QTS have diverged significantly between England and Wales. Student teachers studying in Wales must hold GCSE (or equivalent) qualifications at a certain level, complete a degree level academic qualification as well as be assessed against the Welsh QTS Standards. In addition the Scottish regulatory model for teachers is also continuing to be altered in a policy direction slightly different from that in Wales in order to support their own education system effectively.

In England, the entry requirements to the teaching profession are lower and the English version of QTS can be awarded without undertaking an academic qualification. The policy direction in England continues to move towards an unregulated professional space or at least with minimal statutory requirements or academic qualifications in order to teach in schools. This is an example of an existing regulatory difference – while we would need to seek confirmation that this position can be maintained and will be outside the scope of the legislation, the worst case scenario of the proposed system of mutual recognition could be the significant reduction of the standards of the teaching workforce in Wales. Also, should the requirements to gain QTS continue to fall in England, potential student teachers could be attracted by lower cost and lower standard routes into teaching in England and seek to undertake their training there before returning to teach in Wales, undermining the requirements set to gain QTS in Wales.

Can the UK Government clarify how their proposals will affect (and indeed protect) the system of divergence for services and qualifications, already in place within the UK?

Common Frameworks

We have previously set out our proposals for future economic and regulatory cooperation across the UK. These proposals were, and continue to be, based on the Common Frameworks programme – and the development of other tools such as regulatory impact assessments – which would ensure any detrimental effect to the Internal Market of any policies are identified and could be weighed against any identified benefits such as public policy reasons.

Common Frameworks are expressly designed to allow for managed divergence in areas where all four Governments agree there is a need for this. In setting up the Common Frameworks programme, the UK Government identified the areas they considered may need a Framework to ensure the functioning of the UK Internal Market – these areas are supposed to cover all areas of returning powers. This would suggest, on the UK Government's own analysis, that there are no other areas outside the Frameworks areas which require agreement on divergence. Since that exercise, and in good faith, policy areas have been considering to what extent any Frameworks are needed in specific areas based on the fact-specific circumstances of each Framework area. This work has been developed on the basis of collaboration and cooperation across the UK's nations, in line with the Inter-governmental Agreement already agreed.

The UK Government, through the proposals set out in the White Paper, now suggests that the Common Frameworks programme does not go far enough in protecting the integrity of the UK's Internal Market. We have been clear that, while we agree that every aspect of the Internal Market is not covered by current Frameworks, this is not a justification for a heavy-handed piece of legislation which goes much further than areas covered by retained EU law.

The UK Government has stated on numerous occasions that Common Frameworks do not go far enough to protect the UK Internal Market.

Which areas fall outside the scope of Common Frameworks and are in need of an overarching legislative underpinning?

How has the UK Government reached the conclusion that legislation of this type is justified to govern those areas?

As Common Frameworks provide the mechanism for agreeing in specific detail what divergence is possible in all areas identified as part of that programme – why do these areas require a blunt, catch-all Bill that fails to reflect or recognise the years of work undertaken on Common Frameworks?

Exemptions & Exclusions

The list of exclusions from mutual recognition and non-discrimination within the White Paper is very limited, with no provision made for future exceptions. This does not allow for a sustainable, future-proofed way of working, neither does it allow for future changes to be made based on agreement by consensus.

The proposed exclusions do not reflect the current position in EU law which allow derogations for public policy reasons, neither are they consistent with similar arrangements in other countries such as Canada.

We will also need to consider the scope of any exceptions under the principle of non-discrimination and how this would apply in practice – the White Paper is very lacking in detail in this area. For example, it is not clear how the proposals may impact Welsh language requirements.

The Paper also makes reference to existing regulatory differences being excluded. However, it is not clear how this would impact changes to existing regulation – where there is existing divergence – and where the underlying policy remains. It raises the question what level of changes to existing policies would render a policy 'changed' and therefore within scope of the Internal Market system.

Why has the UK Government limited the exceptions and exclusions in such a way which is inconsistent with systems already in operation in other parts of the world?

Maintaining high standards

While the UK Government has stressed in discussions and publicly that their intention is to continue to apply high standards, for example in environmental and animal welfare areas, there is no suggestion within the White Paper that the legislation would set these standards in law, nor set a mechanism for agreeing them, and create a baseline for minimum, maximum or unitary standards, as exists within the EU mutual recognition model. At an EU level, Member States voluntarily agree to these standards and agreement is made by collaboration – the Welsh Government has also been involved in this process via the Committee of the Regions and also in discussion with the UK Government to shape the negotiating position. It is therefore deeply concerning that this is not set within the UK Government's proposals.

Welsh business groups have also made clear that this setting of a baseline for standards is absolutely crucial to ensure certainty for business. Without such a baseline, the risk of deregulation by one of the nations of the UK is great and in itself would lead to uncertainty for business, as the risk would be vastly differing standards across the UK which would ultimately lead to radical deregulation and a 'race to the bottom'.

Case study: single use plastic items

This is illustrated by the ban on single use plastic items. While the Welsh Government's proposals to introduce a ban on the sale of nine single use plastic items in Wales aligns with the nine items included in Article 5 of the EU's Single Use Plastics (SUP) Directive[1], the UK Government's proposal for a similar ban for England will only apply to three of the nine items. Therefore, the sale of three of the items banned in Wales would also be banned in England, the sale of the other six items would be lawful in England. The mutual recognition principle could mean that Wales would not be able to introduce legislation or, if legislation is introduced, enforce the ban on the sale of these six items in Wales, irrespective of their origin. A ban that could only apply to Welsh produced plastics would undermine the policy and render it ineffective. Furthermore, even if the UK Government were to bring its ban in line with the SUP Directive in the future, it would not be possible for Wales to go further and ban other single use plastic products without the policy being undermined by such plastics from other parts of the UK being sold in Wales.

Case study: food standards

A second example concerns food standards. Under the current EU regime, common standards are agreed at EU level on the basis of negotiation and compromise. Moreover, it is open to the Welsh Government to specify higher standards for food put on the market in Wales provided this can be justified in terms of public policy and is not discriminatory.

However, should the UK Parliament legislate, for example, to permit the use of hormones in beef cattle, the mutual recognition principle as envisaged by the White Paper would mean that meat from such cattle could be placed on the market in Wales, even if our current regulations – which forbid such techniques – remained in place in respect of cattle reared in Wales. Moreover, it would most likely be impossible for the Welsh Government to insist on labelling to identify beef produced from hormone-injected cattle, since beef products which originated elsewhere in the UK would only have to respect the labelling regulations of the

[1] Article 5 of Directive (EU) 2019/904 (the Single Use Plastic Directive) – see Annex C for further detail.

part of the UK in which they were produced. And since the legislation would apply to all goods, whether produced in the UK or imported, provided the UK Parliament had legislated to reduce standards in this way in England, the Welsh Government would have no possibility of excluding English produced or imported beef from sale in Wales or even making consumers aware of what they were buying.

While the UK Government, at this time, may publicly commit to maintaining high standards, these proposals would mean that any *future* reduction in standards would result in lower standard products entering the Welsh market.

How will the UK Government ensure that high standards will be agreed and preserved?

Governance

The section within the White Paper focussed on governance and independent monitoring is relatively light on detail, including on mechanisms for dispute resolution.

The reference to the oversight role of the UK Parliament (para. 154) suggests no role for the devolved legislatures in any new system which could be created to manage the UK Internal Market. As any new system would impact the whole of the UK, this is wholly unacceptable.

On independent advice and monitoring, the Paper states that there is a “range of potential vehicles” to explore. There is no real detail included, specifically in terms of the functions, constitution and accountability of an independent body.

In a country such as the UK, close collaboration and cooperation via a clear system of governance, based on strong inter-governmental relations and parity of participation, and agreed at the outset by each of the UK nations, is vital.

How does the UK Government envisage an independent body would be scrutinised and held accountable?

What governance and oversight role is envisaged for the devolved legislatures?

Subsidies regime / State aid

Currently, the Government of Wales Act 2006 (GoWA) does not include State aid in its list of reservations, and therefore State aid is not a reserved matter. The White Paper implicitly accepts this view by stating that the UK Government intends to “legislate to expressly provide that subsidy control is a reserved matter”, rolling back the process of devolution and constraining the Senedd’s ability to legislate on this matter.

We have made clear, through discussion with the UK Government, that we cannot foresee any way in which the Senedd would give legislative consent to changes to GoWA which would introduce a reservation on State aid policy.

Whilst the Paper commits to “work[ing] closely with all the devolved administrations to seek to agree the shape of a UK-wide domestic subsidy control regime” (para. 174) the inference is that the future UK subsidy regime will be developed to reflect the interests of the UK Government, rather than be the results of a collaborative development process, as is currently the case for the EU State aid rules.

The White Paper also gives little detail on the UK's future subsidy regime and makes no reference to an independent regulator for a future regime.

What are the UK Government's plans for a future subsidy regime and why do these require changes to the devolution settlements if the intention is to proceed by agreement?

Procurement

Despite the fact that procurement is a devolved competence, the White Paper confirms that the UK Government is considering extending the non-discrimination duty to the procurement of goods.

In raising the issue of the non-discrimination principle in relation to procurement, the UK Government is seeking to resolve an anomaly caused by the UK's exit from the EU, in relation to the WTO's Government Procurement Agreement (GPA). This issue has been raised as part of the discussions in relation to the Common Framework for procurement, the current draft of which states "The parties will… maintain principles of non-discrimination, equal treatment and transparency in respect of economic operators from the UK''. No Party to the draft Concordat has objected to the inclusion of this intra-UK non-discrimination commitment.

This begs the question of why this provision should be included in an overarching Internal Market Bill. By unnecessarily extending the proposed UK non-discrimination provision to the procurement of goods there may be unintended adverse consequences for policy making in Wales and/or our devolved competence in this area.

What justification can the UK Government give to including this area within their proposals?

What impact will these proposals have on work already underway to agree a Common Framework for procurement?

Spending powers

It is not clear from the White Paper what is meant by 'spending powers', which at paras 47, 126 and 128 are characterised as new or "clarified" powers for the UK Government but at para 182 are described as for "all levels of Government". Reference is also made at para 182 to powers "for the UK Government to construct replacements of EU programmes". There is no further detail or substance about the rationale or impact of this, or about how this relates to ongoing intergovernmental discussions about the Shared Prosperity Fund and continued participation on programmes such as Erasmus+.

Could the UK Government clarify the meaning of 'spending powers' in this context and how they will ensure that any plans respect the current devolution settlements?

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Llywodraeth Cymru
Welsh Government

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Cc: LJC Committee Members

14 August 2020

Dear Chairs,

I wrote to you in July to inform you that a meeting of the Ministerial Forum for Trade would be taking place on the 21 July.

Greg Hands, Minister for International Trade, chaired the meeting and my counterparts from Scotland and Northern Ireland were also present.

The meeting provided updates on the free trade negotiations taking place and I again stressed the importance of ensuring that these do not compromise the current environmental and animal health and welfare standards we hold dear in Wales. The meeting also provided updates on the continuity negotiations programme and the UK Trade Bill.

The engagement with DIT remains positive and my officials continue to work closely with UK Government officials to progress this work.

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We currently do not have a date for the next meeting, but I will write to you again before any further meetings take place.

Yours sincerely,

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

David Rees MS
Chair of the External Affairs and Additional Legislation Committee

SeneddEAAL@senedd.wales

24 August 2020

Dear Chair

Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Poland on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other

I am writing in response to your letter of 8 July regarding the above treaty ("UK-Poland Agreement"). The answers to the questions raised by the Committee are set out below.

Question 1

The provisions of the UK-Poland Agreement are not incompatible with our proposals in the Local Government and Elections Bill. Consequently we are content with the arrangements established by the Agreement.

Question 2

As the Explanatory Memorandum states, we were consulted on the proposed arrangements prior to the Treaty being signed. The Welsh Ministers are not able to enter into treaties binding in international law with overseas governments. I confirm we are therefore content with the UK Government having agreed those arrangements with the Polish Government.

Question 3

The UK Government has worked closely with the Welsh Government during the development of the Agreement. We are satisfied the UK Government has fulfilled its previous commitment. However the exchange of letters at ministerial level did take place towards the end of the process and we would have preferred earlier engagement which would have enabled engagement with the Senedd. We will pursue this with the UK Government with a view to ensuring earlier engagement with future agreements of this nature.

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Question 4

Given the volume of pressures with which we have been dealing in recent months it has not been possible to agree such a mechanism with the UK Government. The Treaty provides that either party may terminate the Agreement by giving written notification to the other Party. The Treaty also requires that the UK and Polish Governments notify each other of changes to the franchise in their domestic law that are relevant to the scope and implementation of the Agreement. It also makes provision for amendments to be made to the Treaty. Should a future Senedd wish to legislate to alter the franchise for local government elections it would be open to the Welsh Government to request the UK Government to seek to agree any such changes to the Treaty as may be necessary.

Question 5

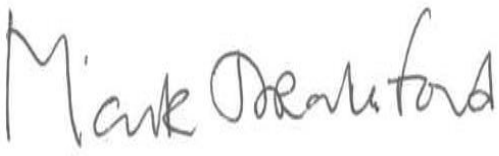
Officials in both the Welsh Government and UK Government regularly discuss developments with respect to treaties on reciprocal voting rights.

Questions 6, 7 and 8

The engagement of the Welsh Government and the other devolved administrations by the UK Government, and confirmation of that in the accompanying Explanatory Memorandum, is an acknowledgement that the franchise for local government elections is not a reserved matter. Consequently we have no reason to believe the UK Government would seek to legislate to remove EU citizens' voting rights in Welsh local government elections. We would of course object to any such attempt. However it would be for the Senedd to determine how to use its legislative competence in this area should the UK Parliament attempt to legislate in such a way.

This letter is copied to the Llywydd.

Best wishes



MARK DRAKEFORD

Jeremy Miles AS/MS
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25 August 2020

Dear David,

I am writing in response to your letter of 30 July following my appearance before the External Affairs and Additional Legislation Committee on 14 July.

In your letter you asked a number of questions on Citizens' Rights and Common Frameworks that were not covered at Committee because of the time available. The questions and my response to them are set out below.

Citizens' Rights

1. **According to the best available data, as of the end of May, over 20,000 EU citizens estimated to be living in Wales had not yet applied to the EU Settlement Scheme. Please confirm whether the Welsh Government has a targeted strategy to encourage the remaining EU citizens in Wales who have not yet applied to apply ahead of the June 2021 deadline?**

As of the end of July 2020, the Home Office had received 62,700 applications from Wales, although this refers to the numbers of applications rather than the number of applicants. I am not sure what best available data you refer to but as the Migration Observatory have reported, it is not possible to accurately calculate the number of EU citizens who have not applied. This is because the UK Government does not know how many EU Citizens are eligible to apply for EUSS and estimates of the number of EU citizens living in the UK have important limitations. Some of those who applied to the scheme will have left the UK, but it is not known how many.

This means it is not possible to compare numbers of people granted status with official EU citizen population estimates. For some nationalities, more people have already applied for the scheme than official data estimate are resident.[1]

Also while Irish citizens can apply to the EU Settlement Scheme many are unlikely to do so as they can move freely and reside in the UK under the Common Travel Area agreement. There are estimated to be 10,000 Irish citizens living in Wales[2].

We will continue to press the Home Office for clearer statistics on which groups seem not to be applying and for much more clarity on those rejected applications (particularly as these people may be eligible and may be able to benefit from more tailored support for their application).

Although this matter is wholly reserved, Welsh Ministers have committed both time and funding to support Wales-based residents to apply successfully for settled status. Our central concern has been those in more vulnerable or more excluded groups who may be unable to easily access Home Office services. Welsh Government work has included social media campaigns and direct funding of third sector groups who can connect with and support these groups. Specifically, we have provided around £2m of funding through the European Transition Fund and other funding to organisations including Citizens Advice Bureau, Settled, Local Authorities, and Newfields Law to reach out and support more complex cases, less connected groups, looked-after children and adults in social care.

The EUSS Wales Co-ordination Group, chaired by the Welsh Government, and which comprises Newfields Law, Citizens Advice Cymru, the successful Home Office grant recipients, the Home Office and other key delivery partners, such as the WLGA and the WCVA, is currently mapping planned communication and awareness raising activities to further identify hard-to-reach groups. This will help to develop a collective strategy to target EU citizens at risk of not applying through to the June 2021 deadline.

The Covid-19 pandemic has prevented groups working directly in face-to-face environments to support people in their applications, and led to the temporary closure of a number of Home Office support services. I recently wrote to the Home Secretary to press her to consider extending the deadline for applications to the scheme so that vulnerable people who require additional support are not doubly penalised as a result of the pandemic.

The UK Government has refused to extend the deadline and maintains that where someone has reasonable grounds for missing the deadline, they will be given a further opportunity in which to apply. As a result I continue to be concerned that EU citizens, particularly children and young people, who are unaware of the need to apply for the EU Settlement Scheme, will become unlawfully resident in the UK.

As the deadline nears, we will press the UK Government to grant a moratorium to people who have not applied for EUSS by the deadline to avoid the “cliff edge” scenario of potentially thousands of people becoming illegally resident overnight.

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[1] Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/

[2] https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality

2. **Can you confirm whether the Welsh Government is actively monitoring analytics from its online resources for EU citizens to determine the level of engagement with the public, i.e. number of visits, enquiries or regular feedback reports from third party partners, such as Newfields Law firm or Citizens Advice Cymru?**

The Welsh Government monitors analytics through the Preparing Wales website on a monthly basis. The website provides advice and guidance for EU citizens who need to apply for settled status.

A focused digital campaign to raise awareness of the EUSS ran from 24 February to 24 March 2020 and targeted EU citizens in Wales, seeking advice about the EUSS and users browsing websites in an EU language to help enhance the performance and delivery of the campaign. The material was produced in three priority languages – Polish, Portuguese and Romanian.

The Welsh Government receives monthly activity reports from Newfields Law Immigration Advice Service and regular meetings are held between Newfields Law and the Welsh Government's European Transition team to review progress and monitor activity.

Citizens Advice also provide regular updates to Welsh Government. They are required to report formally each quarter and have weekly meetings with the Welsh Government's EU Citizens' Rights project manager. The weekly update is a verbal meeting designed to keep in touch and share information from both parties.

The quarterly report contains a dashboard of statistics in relation to the number of clients seen and the volume and type of issues handled. It also reports on the number of clients supported with EUSS applications. The dashboard is supplemented by a narrative which outlines engagement activities, events attended, as well as networking that has been undertaken to promote use of the advice provision.

3. **In responding to the above question, can you please describe the key findings from these analytics and how these will be used in the time remaining?**

A number of different sources of information are considered such as Home Office statistics on EUSS applications, feedback from the information shared at the co-ordination groups by service providers, LG Brexit co-ordinators and community cohesion co-ordinators as well as from group working with people who may be vulnerable to not applying. This collective picture informs the coordination group's strategy for further targeting, communications and outreach work. Based on work to date, we will be targeting:

a. People who do not realise that they can and need to apply such as children, people (often older) who may have once held another form of status, those who have previously been rejected for a form of status, and those with criminal records.

b. People in vulnerable circumstances because of their age, or their capabilities (including but not only language barriers and computer literacy).

c. People who are 'hard to reach' because they are working long hours in relatively isolated circumstances and people living in remote locations where transport services and other infrastructure are limited and where ties to others from the same nationality or in similar circumstances, are distant.

4. **Can you confirm whether the Welsh Government funded EUSS Coordinator post, funded as part of its No Deal planning to raise awareness of the EUSS, is active and to provide an update on their work and reach?**

The Wales Coordinator post within Settled (a charity which works with vulnerable and hard-to-reach EU/EEA citizens in the UK) was funded to recruit, develop and manage a network of volunteers, (or Settled Status Angels), advising EU citizens in the community, operating under the Office of the Immigration Services Commissioner (OISC) EUSS Level 1 exemption. By the end of March 2020, the Coordinator had 10 OISC-registered Settled Status Angels in Wales and they all have links to EU communities. One Angel is based in West Wales, the others are concentrated in the South Wales area. They speak many different EU languages between them e.g. Italian, Spanish, Czech, Slovak, Greek and Bulgarian, and professionally they have varied experiences e.g. Benefits Adviser, Secondary School Teacher, ESOL Teaching Assistant, Local Authority Manager and 5 University lecturers.

Given the concentration of EU citizens in social care and other public services, Settled made links with Unison the union and have recruited a further 17 volunteers to become Angels – these are based in Cardiff, Bridgend and Abergele. Training had commenced but due to the coronavirus it has been difficult to complete OISC registration (so to date 7 are registered).

Settled have also been attending events to promote the EUSS, offering 1-to-1 support on applications and engaging with organisations and groups Wales wide.

Settled are members of the EUSS Wales Co-ordination Group.

5. **Is the Coordinator's work limited to Wales or have they reached citizens from Wales residing in the EU27?**

The funded Settled post of Wales Coordinator is to work within Wales and there has not been work conducted with Welsh citizens residing in the EU27. The responsibility for assisting UK citizens resident overseas is clearly a reserved matter and we would have neither the information nor resources to identify and assist UK citizens who are, or identify as, Welsh.

6. **What support, if any, is available from the Welsh Government to those whose applications are not successful? Have you discussed this with the UK Government?**

Through Newfields Law Immigration Advice Service, and the Citizens Advice EU Citizens' Rights Project, the Welsh Government is supporting all EU citizens to apply for their settled status. Where a case is considered particularly complex, then Newfields Law will look at these types of cases and see where they can best provide support. There is also advice available for people who have not been successful with their application and wish to go through the appeals process or be supported to re-apply when people have been awarded pre-settled status when they believed they should have been awarded full settled status.

The Welsh Government has pressed the UK Government on why there have been refusals, and officials have indicated that it is largely due to the applicant not meeting the criteria, or lack of evidence to meet the criteria. A small number of applications have been refused on serious criminality grounds.

The Welsh Government will continue to press the UK Government for more information relating to refusals.

7. **Have any discussions taken place with the EU institutions, or EU27 Member States, on EU citizens in Wales?**

Last October I hosted an event with the Honorary Consuls in Wales and we will continue to work with the consulates to promote our advice services in Wales. The First Minister and myself will meet the recently appointed EU Ambassador to the UK in the coming weeks.

Common Frameworks

8. **Will there be any opportunity for legislatures and stakeholders to input into framework outline agreements before they become operable at the end of the year?**

Both legislatures and stakeholders will have the opportunity to influence the development of framework outline agreements:

- The legislatures' opportunity will be via technical briefings to their committees.

- Stakeholders will have the opportunity to input through technical consultation. This process will be tailored to the individual frameworks. Several Frameworks are currently preparing for technical consultation including Public Procurement and Food and Feed Safety and Hygiene Law.

The above processes are intended to conclude by December 2020. Formal scrutiny will then take place from the beginning of 2021.

We anticipate that a small number of frameworks which are more advanced will reach formal scrutiny earlier, i.e. in the Autumn.

9. **For those framework areas where no framework outline agreement is reached by the end of the year, can you describe what the interim arrangement will be and what it will include?**

The governments are still in discussion about what interim arrangements might be needed for Frameworks which do not reach Outline Agreement stage by the end of the year.

I hope the Committee finds this information helpful.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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27 August 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement that on Thursday 3 September, the next Joint Ministerial Committee (EU Negotiations) will again take place virtually. The meeting will discuss the Common Frameworks programme, the UK Internal Market, negotiations between the UK-EU, and an update on transition matters including UK Readiness, engagement, the Northern Ireland Protocol and legislation.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee (EAAL).

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for European Transition

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David Rees MS
Chair of External Affairs and Additional Legislation Committee
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28 August 2020

Dear David,

Thank you for your letter of 28 July. I have responded to your questions below, and would be happy to expand on these answers at the next committee meeting.

Separation arrangements between the UK, and Iceland, Liechtenstein and Norway

1. **The Explanatory Memorandum [to the Separation Agreement] stated that "The UK Government engaged the devolved administrations on this agreement and shared the draft text advance of it being agreed." Can you please confirm that this was the case, and outline the form your engagement with UK Government took, in particular in relation to the areas outlined above?**

   The draft agreement was shared with Welsh Government officials just ahead of publication but this was on the basis of advanced sight of the agreed details rather than a process of detailed joint work and joint oversight of the agreement. At all stages the Welsh Government has been calling on the UK Government for a genuine process of joint working and shared ownership of matters which relate to the UK's withdrawal from the EU and our future relationship. The UK Government has not worked on that basis and as such agreements reached should be seen as decisions made entirely by the UK Government.

2. **In addition to the arrangements set out in the separation agreement, the UK will need to negotiate and reach additional agreements on future UK-EEA EFTA arrangements before the end of the transition period. Can you please outline any involvement you have had or expect to have in these negotiations?**

   The EEA-EFTA countries' respective governments have agreed to accelerated negotiations with the UK Government through the summer, with an ambition to conclude a set of agreements covering both trade and non-trade areas.

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The Department for International Trade (DIT) will co-ordinate the trade and economic aspects of these negotiations, working with the Foreign and Commonwealth Office given its responsibility for broader bilateral relations with each country, and with Task Force Europe, to ensure consistency with the UK-EU Free Trade Agreement. Due to the current level of integration between the UK and the EEA EFTA States, we are advised that the UK is seeking continuity, as far as possible, with arrangements already in place.

In order to ensure the devolved administrations are kept abreast of developments, DIT has shared the UK's high level negotiating principles and proposed that regular updates are provided at official and ministerial level, aligned with existing communication and engagement mechanisms. We have yet to see whether these arrangements will be honoured on a regular basis.

I trust these answers provide a sufficient update.

Yours Sincerely,

Eluned Morgan AS/MS
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Minister for International Relations and the Welsh Language

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The EU Single Market

14 September 2020

Introduction

On 16 July the UK Government published its White Paper on proposals for a UK Internal Market. The UK Internal Market Bill was subsequently published on 9 September.

Part of the UK Government's rationale for the Bill is that it is needed to replace the EU rules that governed the operation of the UK market whilst it was a Member of the EU and that still currently apply by virtue of the requirements of the transition period.

To aid Members in their consideration of the Bill, a piece of work was commissioned from Dr Kathryn Wright at York University using the Senedd's Brexit Academic Framework, to set out they key rules and principles that govern the operation of the EU's Single Market, on what grounds Member States are able to diverge from them e.g. to introduce laws that prevent the free movement of goods for public health grounds and how the rules of the EU's Single Market currently apply at sub-state level. It include a case study of the minimum alcohol price legislation introduce firstly by the Scottish

Government and subsequently by the Welsh Government to illustrate some of the papers main points. The paper is included below.

Dr Kathryn Wright, is a member of York Law School and an expert in EU law.

Senedd

Framework Agreement for Research and Briefing Services in relation to Brexit

EU INTERNAL MARKET BRIEFING

Dr Kathryn Wright

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28 August 2020

Contents:

1. Historical context of the EU internal market

The internal market is an area without internal barriers based on the '**four freedoms**': free movement of goods, persons, services and capital. As the ultimate interpreter of EU law, the Court of Justice of the European Union (CJEU) has played a central role in market integration, defining concepts laid down in the Treaties and developing key principles such as mutual recognition.

There are two elements to removing internal barriers:

- removing tariffs, which is the function of a customs union, and
- dealing with regulatory barriers. These non-tariff barriers are more significant, both in terms of number and complexity.

The EU has developed from a customs union to a common market to a single - or internal - market. The **customs union** means that there are no tariffs for trade within the EU and there is one single customs tariff for trade with non-EU Member States: the Common External Tariff (CET). External trade is an exclusive competence of the EU, which is why Member States are not free to set their own individual trade policies.

A **common market** is a free trade area with no tariffs for goods and relatively free movement of capital and of services, but not so advanced in reduction of non-tariff trade barriers. The Common Market – the European Economic Community (EEC) - was mostly associated with the idea of 'negative integration' – that is, the removal of existing barriers to trade.

The **Single, or Internal, Market**, goes further regarding non-tariff barriers with more focus on 'positive integration' – that is, harmonising regulations and recognising remaining national measures as equivalent. The internal market is made up of various policy areas subject to the shared competence of the EU and the Member States.

The Single Market ambition was a response to the oil crisis of the 1980s which led to inflation and unemployment. The European Commission's 1985 White Paper, under its then President Jacques Delors, identified physical and technical obstacles that still needed to be removed to complete the Single Market. It set out around 300 specific measures to be achieved in stages by 1993.

After the fall of the Berlin Wall, the European integration project became more ambitious in terms of political as well as economic integration. Among other

features, the Maastricht Treaty introduced the concept of EU citizenship, set a timetable for monetary union, and introduced a three-pillar system: the Economic Community (EC), Justice & Home Affairs (JHA), and the Common Foreign and Security Policy (CFSP). The latter two pillars were characterised by more intergovernmental decision-making. To accommodate the interests of some Member States, the Treaty allowed for opt-outs for the first time, such as for Euro membership. Subsequently the Treaty of Amsterdam allowed for 'enhanced cooperation' among Member States wanting to integrate at a faster pace in particular areas.

The internal market has developed through successive treaties and the enlargement of the EU from the original 6 to 28 (now 27) Member States. It is an ongoing project. The goods market is more integrated than services, and a Digital Single Market strategy was announced in May 2015 to take account of progress in technology.

Key dates

1957 Treaty of Rome, creating the European Economic Community (EEC). Common market established – free movement of goods, services, capital and people

1968 Customs union created: all import tariffs between the 6 EEC Member States removed

1986 Single European Act, creating the European Community (EC) (in force 1987) – 12 Member States by now - set timetable for the completion of the Single Market by 1 January 1993

1992 Maastricht Treaty: Treaty on European Union (in force 1993) – greater political and economic integration, three pillars, foundation for Economic & Monetary Union (EMU), opt-outs

1993 completion of Single Market – physical borders removed

2002 euro notes and coins in circulation and national currencies phased out

2007 Treaty of Lisbon (in force 2009): updating and consolidating the previous Treaties into two: the Treaty on European Union (TEU), and the Treaty on the Functioning of the European Union (TFEU), the latter containing the rules on the internal market – 27 Member States at this point

2. Key principles and features of the EU internal market

The legal basis for the internal market is Art 26 TFEU, which refers to the **free movement of goods, services, capital and persons**. Firms and people from one EU Member State should be able to operate in another Member State market under the same laws and conditions as those applying to the host Member State's own nationals. Member States cannot create unjustified barriers to trade. In EU law there is a general **principle of non-discrimination** on grounds of nationality. In the context of free movement of goods and services it is bound up with the principle of mutual recognition, discussed in this section. Whereas in its early case law the Court focused on discrimination, it increasingly applies a market access approach i.e. does a national rule prevent or hinder a claimant's access to that market?

This briefing discusses free movement of goods and services, with a focus on physical goods.

Barriers to trade in services

The core provisions governing the single market for **services** are the **freedom to establish** a company in another EU country (Art 49 TFEU), and the **freedom to provide or receive services** in an EU country other than the one where the company or consumer is established (Art 56 TFEU).

In terms of exceptions, activities directly connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Art 51 TFEU). Member States may exclude the production of or trade in war material (Art 346(1)(b) TFEU) and retain rules for non-nationals in respect of public policy, public security or public health (Art 52(1) TFEU).

Freedom of establishment and free movement of services have been further developed through the Court of Justice of the EU's case law. Some case law has been codified into the Services Directive (Directive 2006/123/EC) which includes sectors such as retail, tourism, construction and business services. The directive covers services provided within countries as well as between Member States. There are also separate directives on particular sectors, such as financial services, transport, telecommunications, postal services, broadcasting and patient rights, supported by other rules such as recognition of professional qualifications. Implementation of the Services Directive, initially due in 2009, has been delayed

in some Member States, so the internal market in services is not as integrated as in goods.

Barriers to trade in goods

Free movement of **goods** is governed by Article 34 TFEU, which provides that **quantitative restrictions** on imports and **all measures having equivalent effect** [abbreviated as '**MEQR**s' or 'MEEs'] shall be prohibited between Member States. Art 35 TFEU is the similar provision applying to exports.

A **quantitative restriction** is a measure which amounts to a total or partial restraint of imports, exports or goods in transit (case 2/73 Geddo). An example would be a quota, prohibiting or limiting importation by amount or by volume. Most national measures are not direct quantitative restrictions but may have a similar effect, hence the prohibition against equivalent measures too.

'Measures having equivalent effect' to quantitative restrictions encompass "all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially", trade within the EU (case 8/74 Dassonville, concerning a Belgian rule preventing the sale of products such as Scotch whisky without a certificate of authenticity). It should be noted that this definition has a broad scope. For example, these measures may relate to a product's content, its labelling or sale conditions, or its use.

In the Keck case (C-267/91), the Court of Justice of the European Union (CJEU) decided that rules on 'selling arrangements' (as opposed to 'product characteristics') that are non-discriminatory and impose an equal burden on imported and domestic products in law and in fact, fall outside Art 34 TFEU altogether. However, more recent case law focuses on the impact on market access regardless of the type of measure.

In a case concerning a Swedish law prohibiting the advertisement of alcohol on radio, television and in magazines (case C-405/98 Gourmet International), the CJEU focused on factual (in)equality: did the national measure impede access to the national market more for imported products than for domestic products? Although they could still advertise in the trade press to retailers and restaurants owners, the ban affected potential importers more heavily as they could not access potential consumers directly.

In C-110/05 Commission v Italy (Trailers), which concerned an Italian ban on the use of certain road vehicle trailers, the CJEU ruled:

"measures adopted by a Member State the object or effect of which is to treat products coming from other Member States less favourably are to be regarded as measures having equivalent effect to quantitative restrictions on imports… Any other measure which hinders access of products originating in other Member States to the market of a Member State is also covered by that concept." The Court also noted that a ban on the use of a product in the territory of a Member State has a considerable influence on the behaviour of consumers, which also affects the access of that product to the national market.

A similar approach is found in the cases on free movement of services. Under Art 56 TFEU, restrictions on freedom to provide services are prohibited in respect of Member State nationals who are established in a Member State other than that of the person for whom the services are intended. This covers all measures "liable to hinder or make less attractive the exercise of fundamental freedoms" (C-55/94 Gebhard) or that "prohibit, impede, or render less advantageous the activities of a service provider established in another Member State where they lawfully provide similar services" (cases C-369 & C-376/96 Arblade).

Showing again the focus on market access, in case C-384/93 Alpine Investments a ban on cold-calling potential customers deprived the firm of a "rapid and direct technique for marketing and for contacting potential clients in another Member State." (However, the ban could be justified on grounds of consumer protection – justifications are discussed below.)

Mutual recognition

Where there are harmonised rules, all EU and non-EU operators must comply with them within the internal market. In harmonised sectors EU countries do not have the option of introducing divergent national rules.

For non-harmonised products, a central feature of free movement of goods is the **principle of mutual recognition**. This covers approximately 25% of products on the EU market (European Commission, Evaluation of the Application of the mutual recognition principle in the field of goods, June 2015, p.31).

The principle of mutual recognition provides that if a product or service has been lawfully placed on the market in one Member State, there is no valid reason why it cannot be marketed in another Member State. This creates a presumption in favour of free movement. The principle was established by the Court of Justice in the important Cassis de Dijon case (case 120/78).

That case concerned the sale of cassis de Dijon, a type of crème de cassis (blackcurrant liqueur), in Germany by an importer and retailer, Rewe. A German law stipulated that products sold as fruit liqueur must contain at least 32% alcohol by volume, whereas crème de cassis produced in France only contains 15-20%. The relevant section of the German Federal Ministry of Finance told Rewe that the cassis de Dijon could be imported. On the other hand, it advised that it could not be marketed as a liqueur in Germany. This represented an MEQR.

The Cassis de Dijon case also categorised national rules into 'distinctly' and 'indistinctly' applicable measures according to their effect on imported and domestic products:

A **distinctly applicable measure** is one that is overtly discriminatory as it only applies to imported products and not to national products. For example, minimum or maximum prices for imported products; payment conditions for imported products which differ from those for domestic products; conditions in respect of packaging, composition, identification, size, weight, etc, which apply only to imported goods; a government campaign encouraging consumers to favour domestic products.

An **indistinctly applicable measure** on the face of it applies to all products – both domestic and imported – but in practice imposes a greater restriction on imported products. For example, an advertising ban which may make it more difficult for potential importers to reach a new market.

This categorisation is important as the type of measure influences the range of justifications open to Member States for diverging. In practice most measures are indistinctly applicable.

The possibility for Member States to diverge

As noted above, there is no lawful basis for Member States to diverge where harmonised rules apply.

There are possibilities to diverge in non-harmonised sectors where the principle of mutual recognition applies. These are known as Member State **derogations.** The Member State's justification for divergence must be based on grounds laid down in EU law, necessary, proportionate and genuine. In the traditional analysis, measures applying exclusively to non-national goods can only be justified by a narrow, closed category laid down in the Treaty. When the measures affect both national and non-national goods there is a wider scope for justification through

the case law discussed below. The burden of proof shifts to the Member State to show that the restriction on trade is justified.

Traditionally, **distinctly applicable measures** can only be justified under the exhaustive list of derogations in Art 36 TFEU, which are:

- public morality,
- public policy or public security,
- protection of health and life of humans, animals or plants,
- protection of national treasures possessing artistic, historic or archaeological value, and
- protection of industrial and commercial property

Art 36 also states that Member States' measures "shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States." Economic protectionism is not allowed, as confirmed by case law such as case 40/82 Commission v UK on Christmas turkeys, and case C-1/00 Commission v France after the end of the BSE crisis in British beef, where the UK and France respectively unsuccessfully tried to invoke public health grounds.

Regarding **indistinctly applicable measures**, the Cassis de Dijon case also allows for the possibility of other derogations through a '**rule of reason**'. It mentions 'mandatory requirements' relating in particular to:

- effectiveness of fiscal supervision,
- protection of public health,
- fairness of commercial transactions, and
- defence of the consumer

This list of '**mandatory requirements**' is not exhaustive, so it is open to a Member State to justify an indistinctly applicable measure on another ground. For example, the Italian ban on the use of trailers breached Art 34 TFEU but could be justified on grounds of road safety (C-110/05 Commission v Italy (Trailers)). Similarly, a Swedish ban on the use of jet skis on all public waterways could be justified on the grounds of public and environmental nuisance (case C-145/02 Mickelsson v Roos).

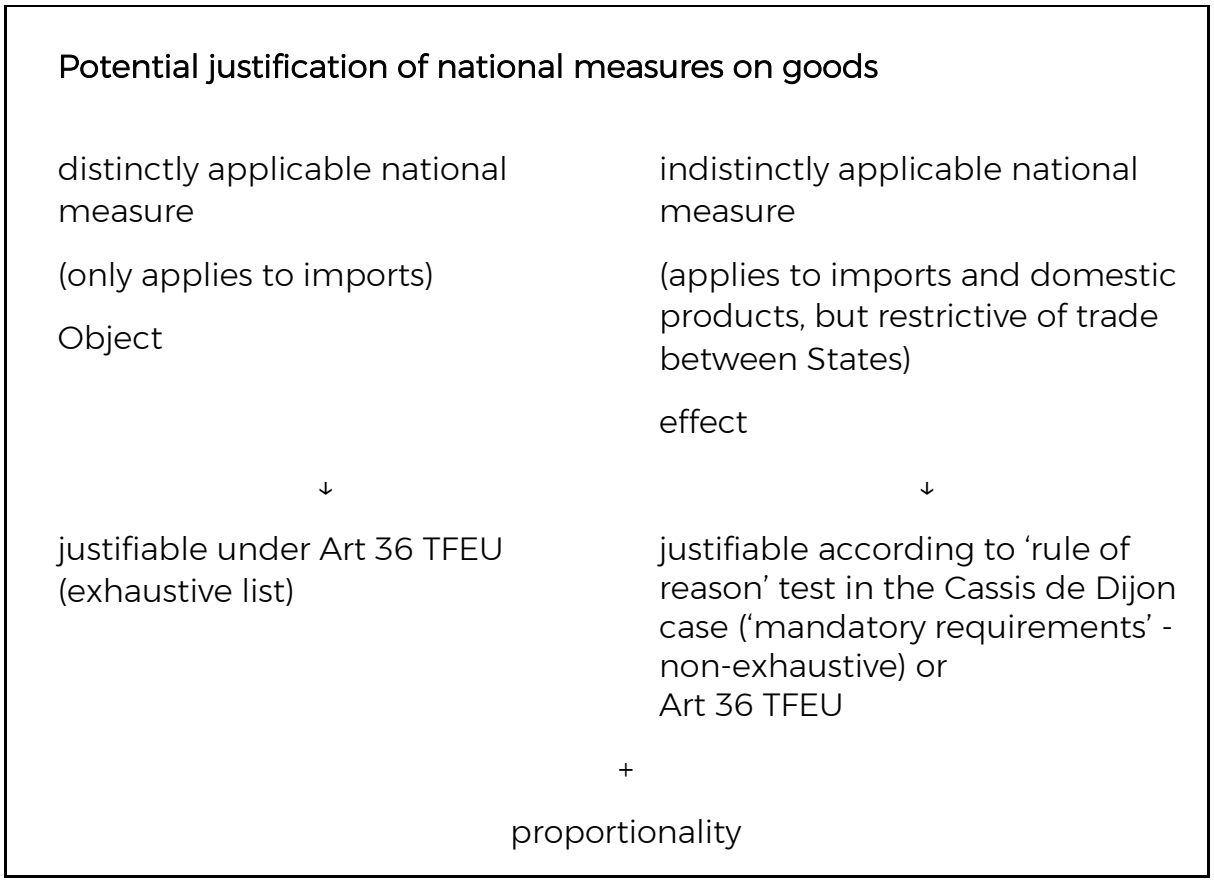
On occasion the Court has taken a less strict approach to the derogations for distinctly applicable measures, blurring the distinction between the categories of justifications. It has done this by not explicitly labelling a measure as distinctly applicable – simply deciding it is an MEQR, or by allowing mandatory

requirements to be considered as justifications (e.g. in C–54/05 Commission v Finland, allowing import licences to be justified by road safety).

In the Walloon Waste case (C-2/90 Commission v Belgium), the Walloon Regional Council prohibited waste originating in another Member State or in another region of Belgium to be stored or dumped in Wallonia. This could be considered a distinctly applicable measure because it did not apply to waste originating in Wallonia itself. The Court assessed environmental protection as a justification, although that is not one of the options in Art 36 TFEU. (This case can also be seen in line with other judgments on measures imposed by sub-State administrations, outlined in section 5.)

In free movement of services, the Säger case concerning patent attorney services (case C-76/90) established that only rules applying to all service providers pursuing an activity in the State of destination (i.e. indistinctly applicable measures) are potentially permissible. They must be justified by "imperative reasons relating to the public interest" Distinctly applicable measures are not justifiable at all.

Any justifications are also subject to a proportionality test. The national measure must be appropriate for securing its intended objective and must not go beyond what is necessary in order to achieve it. This includes considering whether alternative, less trade-restrictive, measures are available to achieve the aim. This operation of the proportionality test is discussed in more detail in the case study on Scotch Whisky in the final section of this briefing.



National derogations give an opportunity to diverge from the free movement rules, in non-harmonised areas. However, they must be justified on a case-by-case basis according to the facts, and they are only allowed in the context of the institutional governance structures of the EU. Governance is discussed in more detail in section 4 below.

The Single Market Transparency Directive 2015/1535 also aims to prevent barriers before they materialise for products which are not, or only partially, harmonised. Member States are required to notify any draft regulations concerning these products to the European Commission at least three months before their proposed adoption (the 'standstill' period). These measures are recorded in the Technical Regulation Information System ('TRIS') database. The Commission then analyses them in light of EU legislation, and other Member States can also give their opinion on the notified draft regulations.

Practical operation of mutual recognition

Mutual recognition within the internal market is also governed by legislation. The new Mutual Recognition Regulation (Regulation 2019/515 - applied from 19 April

2020) outlines rules and procedures on the application of the mutual recognition principle in individual cases. It includes:

- an assessment procedure to be followed by national authorities when assessing goods
- compulsory elements to be included in an administrative decision that restricts or denies market access
- a voluntary mutual recognition declaration, which businesses can use to demonstrate that their products are lawfully marketed in another EU country
- a problem-solving procedure, based on the existing SOLVIT service, that includes the possibility of an assessment from the European Commission on the compatibility of a national decision restricting or denying market access with EU law. SOLVIT is a practical problem-solving network to assist EU citizens or businesses when they encounter a problem in another Member State because a public authority is not respecting their obligations under EU law.
- stronger administrative cooperation to improve the application of the mutual recognition principle
- more information to businesses through reinforced product contact points and a single digital gateway

(see European Commission, Mutual recognition of goods: https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en)

3. An overview of harmonised and non-harmonised sectors

Harmonised sectors account for 70-75% of products on the EU market. These sectors include toys, electronic and electric equipment, such as electric motors, laptops, domestic refrigerators/freezers, gardening equipment, petrol pumps, air conditioners and integrated circuits, machinery, measuring instruments, lifts, medical devices, recreational craft, fireworks, personal protective equipment, fireworks, automotive, chemicals.

In most harmonised sectors, EU legislation is limited to essential health and safety and environmental standards. Manufacturers then adhere to technical specifications or voluntary standards to show compliance. These standards are separately drafted through European Standards Organisations involving industry actors. In other sectors (automotive, chemicals), technical specifications for particular products are detailed in specific legislation itself.

Different aspects of a product can be harmonised: for toys, EU legislation covers all characteristics; for other products, it lays down only the technical characteristics (such as level of noise, chemical substances) or the rules concerning labelling (e.g. for composition of clothes and shoes, energy efficiency labelling for household electric appliances).

Concerning harmonised product rules, Regulation (EU) 2019/1020 on market surveillance and compliance of products aims to strengthen market surveillance rules for non-food products. It increases coordination of market surveillance, clarifies procedures for a mutual assistance mechanism, and requires non-EU manufacturers to designate a responsible authority for compliance information.

Non-harmonised sectors include certain foodstuffs, medicines, food additives and food supplements, furniture, textiles, bicycles, automotive spare parts, construction products, fertilisers, cooking implements, precious metals.

Conformity assessment by an accredited body is needed before a product (such as medicines) can be placed on the EU market, showing that it meets all the applicable requirements. CE marking denotes conformity with high safety, health, and environmental protection requirements.

The European Commission's 'Blue Guide' (July 2016) is a handbook on the implementation of EU product rules on non-food and non-agricultural products. It aims to help businesses, trade and consumer associations, standardisation bodies and conformity assessment bodies and national inspectors apply the rules consistently across different sectors and throughout the single market.

4. The governance of the internal market and the role of different institutions

The European Commission, the CJEU, European standardisation bodies and national courts and authorities are involved in internal market governance.

The European Commission is the guardian of the Treaties. It promotes the general interest of the EU, implements policies, and proposes and oversees the implementation of EU legislation. It is the approximate equivalent of the civil service for the EU. EU legislation is passed by the Council of the EU, comprising

Member State ministers, and the European Parliament, made up of directly elected representatives.

Regulations are directly applicable from their adoption, whereas Directives need to be transposed into national law by Member States within two years, or by the date specified in the legislation. The measures taken to implement the Directive must be notified to the European Commission. If a country fails to implement a Directive properly, notify the Commission, or otherwise violates the Treaties, the Commission may start infringement proceedings under Art 258 TFEU.

The first step is a letter of formal notice requesting further information from the Member State, which must send a detailed reply within a specified period. If the Commission considers the response unsatisfactory, it sends a 'reasoned opinion', formally requesting that the country complies with EU law. It explains why the Commission considers there is a breach, and again asks the Member State to inform the Commission of the measures taken by a specified deadline, usually 2 months. If the Member State still does not comply, the Commission may decide to refer the case to the Court of Justice. Most cases are settled before this point. If the Court of Justice finds that the Member State has breached EU law, the national authorities must take action to comply with its judgment. If this still does not happen the Commission can propose that the Court apply financial penalties.

The Court of Justice of the EU (CJEU) interprets EU law to ensure it is applied consistently, and adjudicates cases between national governments and EU institutions. CJEU rulings are binding on the Member States. It is important to note that it is not an appeal court from the Member States.

In free movement cases the CJEU would have jurisdiction in two ways: European Commission infringement proceedings brought against a Member State e.g. for non-implementation of legislation as explained above; or through the preliminary reference procedure after a case is brought in a national court to enforce an individual's or a firm's free movement rights.

Under the preliminary reference procedure (Art 267 TFEU), if a national court is unsure of the interpretation of EU law applicable to a case, it can (and must, in the case of the highest court) make a reference to the CJEU. Once the CJEU has given its binding interpretation - 'the preliminary ruling' - on the point of EU law raised, the national judge applies that ruling to the dispute between the parties.

Member States' courts and authorities play an important role in enforcing EU law. Flowing from the foundation principle of supremacy of EU law, they are required and empowered to:

- give effect to EU law: the principle of **direct effect** (case 26/62 Van Gend en Loos)
- interpret national law in line with EU law: the principle of **indirect effect** (case C-106/89 Marleasing)
- set aside national provisions which conflict with EU law (case 70/77 Simmenthal)

The principle of direct effect means that individuals and firms can enforce their free movement rights in national courts by challenging State measures on the basis of the Treaty. They do not need to go to the CJEU, and in fact the CJEU does not have jurisdiction to hear their cases, except indirectly through the preliminary reference procedure.

As noted above, European Standards Organisations are responsible for drawing up technical specifications, which meet the essential requirements laid down in Regulations and Directives. If producers comply with these standards there is a presumption of conformity with the essential requirements. These standards may define requirements for products, production processes, services or test methods. They are developed by industry actors following principles of consensus, openness, transparency and non-discrimination. Standards are aimed at ensuring interoperability and safety, reducing costs and facilitating integration. The European Standardisation Organisations are the European Committee for Standardisation (CEN – known by its French acronym), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI).

5. The 'wholly internal' situation and the sub-State context

If there is no movement between Member States in a particular case, free movement rights in EU law are not engaged.

In the context of free movement of goods, Article 34 TFEU applies to obstacles to trade "between Member States". An inter-State element is therefore a prerequisite and it does not apply to 'wholly internal' situations i.e. the measure should be "capable of hindering, directly or indirectly, actually or potentially" trade between

Member States (the Dassonville case). It does not apply to measures only affecting domestic goods. The need for an inter-State element means that EU law does not prevent Member States from treating their domestic products less favourably than imports i.e. **reverse discrimination** (although they would be unlikely to want to do that deliberately).

However, Art 34 TFEU does apply where a domestic product leaves the Member State but is imported back again (case 78/70 Deutsche Grammophon) - unless the sole purpose is to circumvent the domestic rules (case 229/83 Leclerc). It also applies to goods in transit (C-320/03 Commission v Austria). Irrespective of the place where they are originally produced inside or outside the internal market, once they are in free circulation all goods benefit from the principle of free movement (Cassis de Dijon).

Potential effects on inter-State movement have allowed national producers to successfully challenge national rules applying to all producers, on the grounds that the rule could also create a disadvantage for non-national producers in accessing the market (e.g. C–184/96 Commission v France - foie gras; C–321–324/94 Pistre). Similarly an obstacle or delay posed to national producers may have a knock-on effect further along the chain, indirectly affecting later cross-border trade (C-293/02 Jersey Potatoes).

The Lancry case (C-363/93, C-409/93 & C-411/93) concerned different parts of the same State. Dock dues imposed by Réunion (as a French overseas territory) on all goods, including those from mainland France, to boost local production were held to infringe Art 34. The Court found it would be "inconsistent to hold that a charge applied to all goods crossing a regional frontier, whatever their origin, should be classified as a charge having equivalent effect when it applies to goods from other Member States but not when it applies to goods from another part of the same State."

The Walloon Waste case, discussed above in section 2, demonstrates that a measure adopted by a sub-State administration which affects producers in other sub-State territories as well as other States is open to justification.

6. Case study: the Scotch Whisky case on minimum pricing of alcohol

Summary: The key issue in the Scotch Whisky case was the proportionality of the Scottish legislation introducing a minimum price unit for alcohol, and whether

there were less trade-restrictive measures, such as taxation, which would be equally effective at achieving the intended aim of protecting human life and health. Scotland ultimately implemented a minimum price of 50p per unit of alcohol in 2018.

Facts

In 2012, the Scottish Parliament approved a minimum unit price for alcoholic drinks through s.6A(1) of the Licensing (Scotland) Act 2005, amended by the Alcohol (Minimum Pricing) (Scotland) Act. Its aim was to increase the price of alcohol to discourage excessive drinking, so protecting human life and health.

The legislation was not implemented initially as the Scotch Whisky Association and other alcohol lobby groups challenged it through a judicial review. Some of its arguments were based on EU law, namely that imposing a minimum unit price would breach the free movement of goods rules and EU Regulation 1308/2013 on the common organisation of agricultural markets. The Scotch Whisky Association was able to invoke EU law as it could argue that importers from other EU Member States were also affected by the legislation. When the case reached the Court of Session in Edinburgh on appeal, it made a preliminary reference to the EU Court of Justice (case C-333/14 Scotch Whisky v Lord Advocate).

Applying the free movement of goods framework to the case:

- The proposed minimum unit price was a 'measure having equivalent effect to a quantitative restriction' (MEQR) according to Art 34 TFEU and the Dassonville definition
- It was an 'indistinctly applicable' measure: it applied to Scottish and other UK producers of alcoholic drinks as well as those from other EU Member States
- It was justified: 'protection of health and life of humans' is explicitly one of the grounds in Art 36 TFEU, and consumer protection is also considered a 'mandatory requirement'

  Therefore, the key issue was the proportionality of the proposed minimum price unit for alcohol

The Court of Justice of the EU's ruling

The CJEU applied the market access test i.e. would the minimum unit price present an obstacle to importers' access to the market and affect fair competition? A manufacturer who could lawfully produce an alcoholic drink in other Member States more cheaply due to lower production or labour costs

would not be able to compete by offering their products below the set minimum unit price in Scotland.

The CJEU accepted the objective of the legislation: "the protection of the health and life of humans… ranks foremost among the assets or interests protected by Article 36 TFEU. It is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they wish to assure" (para 35 of the judgment)

When it came to assessing whether the minimum unit price was proportionate to the aim of protecting human life and health, the Court examined whether there were less trade-restrictive alternatives which would be equally effective. In particular it considered that a fiscal measure which increases the taxation of alcoholic drinks is likely to be less restrictive of trade in those products within the EU than a measure imposing a minimum unit price. An MUP significantly restricts the freedom of economic operators to determine their retail selling prices in a way that taxation does not (para 46). The fact that increased taxation of alcoholic drinks entails a general increase in prices, affecting both moderate drinkers and those whose consumption is harmful, does not necessarily mean that increased taxation is less effective (para 47).

As explained above, in the preliminary reference procedure it is ultimately for the national court to decide the case on the facts, applying the CJEU's binding ruling on the interpretation of the EU rule. In this case the CJEU gave a strong direction:

"Articles 34 TFEU and 36 TFEU must be interpreted as precluding a Member State choosing, in order to pursue the objective of the protection of human life and health by means of increasing the price of the consumption of alcohol, the option of legislation … which imposes an MUP for the retail selling of alcoholic drinks, and rejecting a measure, such as increased excise duties, that may be less restrictive of trade and competition within the European Union. It is for the referring court to determine whether that is indeed the case, having regard to a detailed analysis of all the relevant factors in the case before it. The fact that [taxation] may bring additional benefits and be a broader response to the objective of combating alcohol misuse cannot, in itself, justify the rejection of that measure." (para 50)

However, the burden of proof on the Member State "cannot extend to creating the requirement that, where the competent national authorities adopt national legislation imposing a measure such as the MPU, they must prove, positively, that no other conceivable measure could enable the legitimate objective pursued to be attained under the same conditions" (para 55)

In deciding the case, the national court should ensure that the relevant national authorities bring sufficient evidence to justify their measure (para 49, 54). The national court could take into account scientific uncertainty, and the fact that the minimum unit price had a time limit of 6 years unless the Scottish Parliament decided to extend it (para 57).

Outcome

The case returned to the domestic courts to apply the CJEU's ruling, first in the Court of Session and then in the UK Supreme Court on appeal. The UK Supreme Court ultimately found the minimum unit price to be lawful (*Scotch Whisky Association & Ors v The Lord Advocate & Anor (Scotland) [2017] UKSC 76* (15 November 2017)). Following the principles in the CJEU's judgment, the court emphasised the evidence behind the policy, the consideration of alternatives and the suitability of the measure for its intended objective. A minimum price of 50p per unit of alcohol was implemented in Scotland on 1 May 2018.

Similarly, Wales adopted a 50p minimum unit price on 2 March 2020 under the Public Health (Minimum Price for Alcohol) (Wales) Act 2018. The regulations specifying and explaining the minimum price unit had to be notified to the European Commission under the Single Market Transparency Directive before the measure came into force.

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4 September 2020

Dear David,

Inter-institutional Agreement - Intergovernmental Relations Review Ministerial Meetings

The Joint Ministerial Committee (EU Negotiations) met in May this year and we agreed that work on the Intergovernmental Relations Review (IGRR) should resume. At our subsequent JMC(EN) in July we endorsed the progress that had been made on the Review, particularly on Dispute Avoidance and Resolution (DAR). At that meeting I called for the details to be finalised swiftly so that the outcomes of the review can be put into operation, and for efforts on IGR machinery proposals to be intensified. In order to continue discussions and bring speedy completion to the IGRR - now in its third year of review - JMC(EN) agreed that we would continue to finalise the details even through the summer recess.

Consequently, I am pleased to inform you that the IGR ministers met for the first time in a series of discussions focussing on DAR and machinery on 12 August.

The meeting was chaired by the Minister for the Constitution and Devolution, Chloe Smith MP, UK Government, with the Cabinet Secretary for Constitution, Europe and External Affairs, Mike Russell MSP, Scottish Government and First Minister, Rt Hon Arlene Foster MLA, Northern Ireland Executive also in attendance.

Discussions at that meeting were positive and I welcome the long overdue progress being made. To continue momentum we will further consider the detail of these topics at meetings scheduled to take place on 8 and 10 September.

As previously indicated, I will provide more information on these developments when the discussions with the UK Government and other devolved Governments have concluded.

I have written similarly to the Chair of the Legislation, Justice and Constitution Committee, Mick Antoniw MS.

Yours sincerely,

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Agenda Item 7

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