



# Select Committee on the European Union

## Internal Market Sub-Committee

### Corrected oral evidence: The level playing field and state aid

Thursday 5 March 2020

10.10 am

Watch the meeting

Members present: Baroness Donaghy (The Chair); Lord Berkeley; Baroness Kramer; Lord Lamont of Lerwick; Lord Lansley; Baroness Prashar; Lord Robathan; Lord Russell of Liverpool; Lord Shipley; Lord Wigley.

Evidence Session No. 2

Heard in Public

Questions 10 - 18

### Witnesses

[I](#): Professor Andrea Biondi, Professor of EU Law, King's College London; Dr Ulrich Soltész, Partner, Gleiss Lutz; Professor Veerle Heyvaert, London School of Economics; George Peretz QC, Monckton Chambers.

## Examination of witnesses

Professor Andrea Biondi, Dr Ulrich Soltész, Professor Veerle Heyvaert and George Peretz.

Q10 **The Chair:** Good morning, everybody. I welcome our witnesses to today's session. It is a continuation of our brief inquiry into the whole area of a level playing field and state aid, or subsidy as it is beginning to be called. It is very good to have you here. I remind you that this is a public session, so anything you say will be recorded. At the end, we will remind you that you can have a look at the transcript and let us know whether there is anything in it with which you are not comfortable.

Various members of the Committee have been allocated the questions, of which, hopefully, you have been given advance notice. It is for me to open. Do you think the EU has an order of priority for the different areas covered by the phrase "level playing field", whether it be labour, social protection, climate change, environment, health or other areas? What do you think is the rationale for the EU to toughen up on this, and what do you think could be the deal breakers? That is not very much to answer. If you want to make some opening remarks as well, please feel free to do so.

**Professor Veerle Heyvaert:** I am not going to indulge in long opening remarks but will just thank you for the opportunity to share and participate. I particularly appreciate it, because I believe that my colleagues are more versed in particular technical details of state aid, whereas I am more versed in the environmental aspects. I very much appreciate the opportunity to participate.

On the order of importance and whether there is prioritisation in the field of state aid competition, state-owned enterprises, social, employment and environmental standards, climate change and tax matters, they are certainly not in alphabetical order, but I do not think the ranking in the first clauses of the negotiation documents is very indicative. However, if we dig further into the text, clearly different degrees of intensity are being aimed at, and those are a much stronger indication of how seriously the EU takes the level playing field in this particular area. For example, in state aid provision itself, it wants to ensure the application of Union state aid rules to and in the United Kingdom. There, we have continued regulatory alignment with EU rules. That is the most forceful expression we find in the whole document of aspired closeness. If we compare it with provisions on state-owned partnership, there the mention is of continued partnership, which is different from saying alignment with EU rules specifically and seems to envisage slightly more flexibility and a slightly more co-operative arrangement.

There is a difference in the provisions between environmental protection on one hand and social, employment and tax provisions on the other hand. In environmental protection, the term is "non-regression provision", but there is allusion to scope for alignment on trans-boundary issues. There is explicit mention of the fact that the EU and the United

Kingdom share a common biosphere in respect of cross-border pollution. That means, for example, that there should be scope to agree common standards at the end of the transition period, so a longer-term alignment is being referred to there. I did not find the same reference with regard to taxation or employment, for example. Arguably, that is quite a useful steer on how closely the EU envisages its relationship with the United Kingdom post Brexit.

As to why it is part of EU strategy and whether it is a deal breaker, there is a range of different considerations, from the more general to the more specific, regarding its relationship with the United Kingdom. Generally, a level playing field and concern about the potentially adverse impacts of regulatory competition has been part of the ethos of the European Community and the EU for generations. It has been part of the way the EU views fair competition. Basically, regulatory competition is not the kind of competition that is seen as benign. Arguably, the reason for that is that the global market for regulation is fraught with inefficiencies and deficiencies, and, because of that, competing on regulation tends to risk reducing the quality of regulation overall rather than enhancing it.

That is a basic, general point of view, which would play out just as much in the trade relationship with South Korea as it does with the UK, but the consequences of having regulatory competition can be relocation and reinvestment. The likelihood of, say, a Dutch firm relocating to the UK, if there is a more benign regulatory climate from the business perspective, is much higher than the likelihood of that firm relocating to Seoul.

**George Peretz:** A question that is conspicuous by its absence but is worth asking on level playing field and state aid is why the UK is not concerned about EU subsidies. If one looks at the history of subsidies and the amount of state aid that is given, the amount per head in almost all countries of the EU is higher than it is in the UK. Why is the UK not concerned? I think that gives you a clue as to why the EU is concerned.

The reason the UK is not particularly concerned about it is that the UK can, as it were, free ride on the back of EU state aid rules. Why is the UK not concerned about, for example, the French Government giving large grants to enterprises to locate in Paris? The reason is that, even though the objective might be to lure business from the UK, it would also lure business from Holland and, therefore, is flatly contrary to EU state aid rules. There is no way that the French Government would be allowed to do that. The UK is in a sense in the very fortunate position of being able to free ride—I think that is the right expression—on the back of EU state aid rules, because we can be pretty confident that EU countries will not be throwing subsidies around that would distort competition. They cannot, because the Commission would stop them.

A slight rider to that is that occasionally there are examples of cases where the EU will permit a state aid—for example, to encourage a particular enterprise to locate in an EU country when the EU is confident that the alternative is that the company will locate outside the European Union. At a seminar I attended last night, a partner in a well-known City

law firm referred to a case he had been involved in where the EU had cleared aid given by Slovakia to an electric car plant to locate in Slovakia when it was clear that the alternative destination was Mexico. There will be examples of the EU allowing state aid to be granted when it is clear that the alternative is that someone will locate outside the EU, but that is a relatively rare case.

In the majority of cases, if a country is encouraging an industry to locate in its territory by grants, it will usually have an effect on other member states and, therefore, will be prohibited by the state aid rules. It is quite rare that it will be so focused that you can say that the only alternative to a company locating here is that some other non-EU state will get it. When one understands that, one can understand why the EU takes the point so seriously.

A number of members of this Committee are former Members of the House of Commons. This is the sort of question you have to ask yourself to see where the EU is coming from. An EU politician has to be able to sell domestically any deal that is done with the United Kingdom. A French politician would say, "We are not allowed to subsidise our widget manufacturers because we are stopped by the state aid rules, so what is to stop the United Kingdom throwing big subsidies at their widget manufacturers to enable them to subsidise their exports to France?" A French politician has to be able to answer that question; otherwise, the deal is probably not sellable.

**The Chair:** As you say, we have never pushed the existing system. Professor Biondi, do you have any points to make on this question?

**Professor Andrea Biondi:** Thank you for the opportunity to discuss state aid, which is becoming a little bit more fashionable than in the past.

To go back to the idea of priorities, I am not sure whether the EU has any specific priorities; the level playing field is essentially about trying to prevent both the distortion of trade and unfair advantages. Another dimension is the promotion of environmental protection, labelling standards and so forth. It is mostly about ensuring that one party does not undercut the other.

I am sorry to be so brutal, but state aid is mostly about money and costs that the state is taking on itself when they should usually be shouldered by undertakings. That means an immediate and measurable economic advantage for the undertaking. There might be no cost because the state might simply lower standards, but changing the law on standards, or non-compliance with international standards, has an impact that is a little less immediate. State aid is immediate; it is very tangible.

The other reason why I think state aid will be crucial is that it is an area of European law that applies across the board. According to the case law of the ECJ, it does not matter whether you are exercising regulatory competence that deals with environmental protection, taxation or level standards; it still has to be exercised in a manner compatible with state

aid law. There is a sort of cascade of state aid law effects on other policies. In my view, that will probably be one of the priorities in reality.

Why is the EU so concerned? One of the probable reasons was mentioned by George. A level playing field might have an element of political pressure. You are trying to persuade the other party to be good on the environment or on other standards. In this case, the UK is a very good, loyal citizen. It has been so loyal that the worry is: what if it becomes a little less loyal? It is a question of trust, and that makes sense. That is probably one concern.

The other important point is that state aid, looking more at experience on the continent, is also about ensuring the equality of member states. We need to ensure that everybody is treated the same. I find it quite reassuring that the European Union is putting such emphasis on state aid. Maybe that is because I am an optimistic person, but I hope it will be taken as meaning that the EU will still take state aid control very seriously.

**The Chair:** Dr Soltész, do you have anything to add?

**Dr Ulrich Soltész:** Thank you very much for inviting me. Being here is a great honour. I follow Brexit quite closely. Of course, my wife is British.

You asked why the European Union is toughening up. I do not have that perception. It was always on the table. Ironically, we had a state aid conference in Berlin the day after the Brexit referendum in 2016. A lot of British lawyers from the UK State Aid Law Association were there and it was absolutely clear. I think the first thing the Commission speaker said was, "If we have a future trade agreement, or whatever we have, we will have some type of mechanism", for reasons very well explained by my colleagues, "because we need a level playing field".

I think the term "level playing field" appears four times in the political declaration negotiated last October. Your Government are proud of this achievement. For most observers—obviously, I am not working for the Commission—it came as a bit more of a surprise that, in the guidelines for the negotiation published last week and the statement by the Government on 3 February, the Government were perhaps rejecting not the idea of a level playing field but the idea that there is a proper enforcement mechanism. That is pivotal to the European system.

We hear statements that the state aid rules are a tool to hold the UK back from becoming a dynamic competitor or to stop Britain unleashing its power. There are those close to or inside the Conservative Party who say that. I think the opposite is true, as George explained very well. The UK massively, and fairly, benefited from the system, in the financial sector for example.

As a law firm, we have been very heavily involved. To give just one example, in the 2000s the Commission stopped German support for the so-called Landesbanken, or public banks. British banks were complaining

as well. The subsidy was very distorting. Germany would never have abolished the subsidies. In the end, the Commission abolished them in 2000-01. If you look at the German banking market now, British banks are much, much stronger. When we have big infrastructure financing projects, there are always one, two, three, four or five big British banks in the room to finance it. The Landesbanken have been forced into privatisation and have downsized massively. That is something the Commission achieved.

There are a number of examples at the moment, such as the reports about the travel sector in the news this morning. Flybe stopped all its operations this morning. Some time ago, Thomas Cook, a 200 year-old company and a very well-known icon of British business, went bankrupt. That was not the fault of the Commission. The Commission never said, "Don't grant aid to these organisations". It was the UK Government who said, and I find it a very wise decision, "We don't have to support ailing companies". The Commission would say, "We don't have to support zombie companies".

The Germans think differently. Thomas Cook has a German subsidiary called Condor, which provides cheap flights and is a bit like Ryanair. Last year, the Germans gave Condor a loan of €380 million. It is ironic that at that point everybody was talking about Greta Thunberg and the Green Deal, but the Germans still did that. I think the British Government refused Flybe a loan of £110 million. You have a different perception. What you in the UK are doing, and have done for the past 47 years, is very sound and reasonable economic policy, and there is no reason to say that it has damaged or held back the British economy.

**Lord Lansley:** On the point about government loans to airlines, maybe I am wrong, but, as I understood it, the difference was between loans on commercial terms and loans not on commercial terms. If the distinction is being made between different kinds of loans, you cannot compare them and say that one Government provided a loan and another one did not. The point is that the British Government might well have offered a loan to Thomas Cook if it had been acceptable on commercial terms and stood a chance of repayment.

**Dr Ulrich Soltész:** I am sorry for not being clearer. What I was trying to say is that the British Government said that at that moment there was no possibility of granting a loan to those companies. I think it was the right decision. Do not get me wrong.

**Lord Lansley:** Was the loan to Condor by the German Government non-commercial?

**Dr Ulrich Soltész:** Yes. It was the Commission's decision; it approved the loan. It was a rescue aid decision and was limited to six months, but it was a non-commercial loan of €380 million, and it was backed by a German state guarantee. To clarify, there was no bank willing to grant it; it was granted by a German public bank—KfW.

**Lord Lamont of Lerwick:** I want to ask the two lawyers a question. Is the term “level playing field” a legal one? Does it have any legal meaning at all?

**Professor Andrea Biondi:** Between ourselves, I do not think anybody knows exactly what it means, and rightly so, because in reality what we are discussing are two radical visions of a level playing field. I see it more as laying down certain parameters, in negotiations for instance. I do not find it surprising that EU guidance refers to international standards and the European Union as a reference, because that is exactly what we have to work with. It is just a question of finding some kind of equilibrium, but, if you are looking for a very tight legal definition of what level playing field means, my personal view is that you will probably struggle to find one.

**George Peretz:** I have no idea what the French translation of it is. I think it is an Anglo-Saxon expression.

**Professor Andrea Biondi:** Sometimes you can translate it as fair competition, which is intriguing.

**Professor Veerle Heyvaert:** Typically, it is found in preambles rather than in actual provisions.

**Lord Robathan:** My question is a very short one and is perhaps for Dr Soltész. You mentioned Flybe. It has been said in the newspapers today that the Conservative Government cannot give aid subsidy to Flybe. Are you saying that is perhaps a slightly exaggerated statement?

**Dr Ulrich Soltész:** I have not seen the statement.

**Lord Robathan:** That is what is reported in the news.

**Dr Ulrich Soltész:** It is complex. There is a set of rescue and restructuring aid rules. What the Germans and French have done in many cases is grant rescue aid that is limited to half a year. That would contain state aid. It would not be on market terms. Broadly, within half a year the Government have to submit a so-called restructuring plan, which implies certain sacrifices, so to speak: the company has to downsize, restructure and lay people off, as Sabena, the Belgian airline, and Air France at some point, had to do years ago. They had to reduce the number of connecting flights. For example, Sabena stopped all African business; it was a big thing.

There are ways and means to do it, but it is fair enough for a Government like the UK Government to say, “No, we don’t want to do that because we don’t see Flybe as being of such importance”. Do not get me wrong. I think the Germans have saved too many companies, with the rubber stamp of Brussels. There are a number of cases in the car industry—for example, Rover.

**The Chair:** I have to stop you with all the examples. Let us have a small statement by Professor Biondi and then we will move on.

**Professor Andrea Biondi:** The Government could easily subsidise the internal routes. They are regional connections, so it could be seen as a public service obligation. They can simply subsidise routes.

**George Peretz:** As they do between Cornwall and London already. To fill in some background to what Ulrich was saying, in state aid there are exemptions. The vast majority of state aid that is granted falls within exemptions. The block exemption regulation is the main one. If your grant or measure fits within that, that is fine. You do not have to do anything; you can just do it; you do not need to go anywhere near the European Commission. The vast majority of aid that is granted falls within those provisions.

The Commission has issued guidelines, and this is where the rescue and restructuring-type aid fits in, which basically explain the criteria that the Commission will apply if you want to grant rescue and restructuring. You have to go to the Commission, but there are very detailed guidelines explaining what you need to show the Commission. If you can show the Commission that the business is viable in the long run, that it is going to restructure, suffer some pain and that all the benefit will not go to the shareholders, the Commission will go through the criteria and, if it is satisfied, it will say, "Fine, you can do it".

Q11 **Lord Russell of Liverpool:** We have usefully been veering towards the subject of my question, which is to do with business. I would like to focus not on businesses that are at death's door but on the majority of businesses that are doing very well, particularly those in the EU that do a lot of international trade.

Let us get away from the politics for a bit. In your experience and the interactions you have had with businesses, what are their views of where we are in the negotiations? Where are they afraid we might end up? Where would they like us to end up? What are you hearing from them? To what extent, if at all, are they successful in getting their point of view across to those in charge of negotiations?

**Professor Veerle Heyvaert:** I hear from businesses in the same way as you do, usually via the media, so I shall keep my response brief because my colleagues might have more detailed insights. I want to make a few points, especially with regard to EU businesses.

In the UK, there is a lot of concern. Not every business sees Brexit and the forthcoming negotiations in the same way. I am sure that is also the case in the EU. There might indeed be businesses that are very supportive of the Commission's stance on a level playing field; others are much more nervous and so worried about the prospect of no deal that they would be willing to sacrifice that in order to retain trade without tariffs and customs duties, for example. That is definitely going to be the case.

The question then is whether that is going to influence the Commission's negotiating position. A few factors have to be taken into account. First, there will be no unity on that view; and, secondly, the pressure would

have to be so great that it would translate into pressure by member states to make the Commission change its position. Just as we have a new Government here, we also have a new Commission and it has a five-year mandate. That is something to take into account. Another aspect is that the Commission is not seen in completely benign terms across the board, but it has a reputation for being very good on trade negotiations and gets a lot of credit for that. It can rely on quite a strong reputation, so that can insulate it a bit from pressures to switch and change course.

A final point to take into account is that, if EU businesses are so concerned about losing their smooth trade relationships with the UK that they will be willing to sacrifice the level playing field to get that deal, it means that for those businesses the greatest risk scenario—the real bogeyman at the door—is no deal. That is their greatest bogeyman. That is the default position. It means that they have a weaker hand to play than parties that are willing to accept a level playing field as a deal breaker. From a game theoretical point of view, it is questionable whether such voices would be successful in pushing the Commission away from its original position.

**The Chair:** Dr Soltész, this is very much your field.

**Dr Ulrich Soltész:** I have to give a very unhelpful answer. When talking to business over the past four years, Brexit was a major concern. I am sorry to be so blunt, but I am German: nobody I met, none of our clients, thought Brexit was a good idea, not only German but UK, Japanese and US businesses. I read in the papers that Mr Dyson in Singapore and others think it is a good idea. I think the chairman of Next said something similar. There might be people who think there is an upside to it, but I have not met them.

Of course, we have to accept Brexit; it is a democratic decision, but most of them when we talk about it are fed up with the subject. There is Brexit fatigue in Europe. They say, “We believe it is very important that there should be a level playing field”—by the way, there is no German word for it; it is an Anglo-Saxon expression, which is a good thing—“and state aid rules should be aligned as much as possible. We should have a common rulebook and some type of enforcement mechanism, whatever it is, which guarantees discipline”. People are concerned; they do a lot of trade with the UK and it should stay that way in both directions. They are worried about being undercut, which is precisely the point my colleague made, and that undermines the whole system. Such a system can be built only on the principle of reciprocity.

**Professor Andrea Biondi:** Generally, state aid control has changed so much over the years, probably because of UK influence, that now it is not just a constraint on member states; it is a guarantee for business that money will not be spent or wasted on keeping alive artificially undertakings that cannot survive. Generally speaking, EU businesses see keeping state aid control as a guarantee for business itself. Personally, I am slightly more worried about the attitude of certain member states that might see it more as an opportunity to reshape EU industrial policy

than simply about business. In my view, business is quite happy with 90% of the rules on state aid control.

**George Peretz:** A number of people on the continent noted with concern the speech made by the Prime Minister in the election campaign in which he said that one of the things we can do after Brexit is buy British and support British companies much more than EU state aid rules permit. It is true that during the same election campaign the Conservative Party proposed some form of anti-subsidy regime, which perhaps we can discuss later, but I am not sure that that message got over quite as much as the buy British and support British companies message.

I do not want to make political comment, but I was on a panel yesterday, one member of which was Victoria Hewson of the IEA, whom some of you know. She is a Conservative and I simply report what she said. She made the point that there is a tension within the current Government between people who appear to be very keen to support subsidies, at least for some types of British business, and others who follow a more free-trade and non-interventionist tradition. I am not entirely sure that that subtlety is necessarily appreciated; sometimes only one side of that debate is perceived on the continent.

**Lord Shipley:** I want to explore an assumption that I think two of you have expressed, which is that there is great concern about no deal within the EU. Can I describe to you a possible different scenario? If you are a German, French or Italian car manufacturer, is it not in your interest to have no deal so that there will be tariff barriers against British car manufacturers? A lot of people are very concerned about the collapse of the British car industry in the context of no deal and tariff barriers, so might they not sell even more cars if there was no British car industry?

**Dr Ulrich Soltész:** The reality is more complex. For example, we have clients who have complicated tier 1, tier 2 and tier 3 automotive supply-type relationships. A lot of companies with subsidiaries in the UK would be hit very hard by any type of tariff in both directions. We have a lot of clients who have subsidiaries in the UK and complex value chains. Of course, you can pick certain advantages, and the issue you highlighted might be helpful in that particular case, but, overall, they say clearly that the consequences of a hard Brexit would impact both sides of the channel very, very negatively.

It is not only about customs; it is also about non-tariff barriers. Companies that produce products in the UK can easily sell them in Europe without special approval. A Japanese company, one of our clients, has a huge subsidiary in the UK and is importing and manufacturing. It uses the subsidiary as a base for all its European operations; if it sells a device to Latvia or wherever, it does not need certification from the Latvian Government because it is an internal market. I know this is all decided and I do not want to question it, but you asked how people feel about it. People say it is a shame for many reasons that Brexit happened and they are just trying to limit the damage.

**Professor Veerle Heyvaert:** Companies need to survive in the short term and long term. The kind of pay-offs you mention, Lord Shipley, may be long-term ones, but they do not present in the short term. Having a drastic change of circumstances will be hugely disruptive and overwhelming for sectors for business.

Q12 **Lord Lamont of Lerwick:** On the basis of the Council negotiating directives, what would be the role of the UK independent enforcement authority requested by the EU, and what would be its relationship with the EU Commission? To put it another way, if there were no Brexit, would we have an authority over state aids? We have managed perfectly well for many years, as Mr Peretz said, not subsidising industry; we have observed extraordinary discipline. Why would we have an authority to discipline ourselves were it not for the fact of Brexit? Why is this authority really needed?

**George Peretz:** In the EU, no member state has a domestic state aid authority because it is all done by the Commission. The only slight exception I have ever been able to find is that, in Spain, the Spanish competition authority is able to report on possible state aid. That is it; there is simply nothing else, because the Commission's powers in this area are sufficient to control state aid across the board.

The issue of an independent state aid authority arises only in relation to states outside the EU. The UK is not the only one. Turkey, Ukraine and a number of the Balkan states that are planning to accede to the EU already have independent domestic state aid authorities that are required to follow EU state aid law and policy. The distinction is quite important; it is both law and policy. They follow the whole of the policy guidelines as to what type of aid can be approved. It is a model for which there are precedents, but they are all outside the EU.

The need for an independent competition authority arises only if you are outside the EU, and indeed the EEA, which has the EFTA Surveillance Authority. Under the Northern Ireland backstop as agreed by the Theresa May Government, the arrangement would have been that the Competition and Markets Authority was the independent UK state aid regulator with all the powers the Commission has, including, strikingly, the power to declare an Act of Parliament contrary to the state aid rules. That is the power the Commission has in the EU system, but the CMA would have had it under the Northern Ireland backstop. I was surprised that that was never quite picked up, because it was fairly startling.

The Competition and Markets Authority would also have had to act in very close liaison with the Commission. To put it bluntly, it would have had to send all its decisions, before they were taken, to the Commission to be marked. That is not the phrase used in the draft, but effectively that is what it was. The Commission would say yes or no, and the Competition and Markets Authority was under a duty to take "utmost regard" of what the Commission said, which in effect meant you had to have a very, very good reason for doing something different.

That is a model that a previous UK Government agreed, and it may be the sort of thing the EU has in mind. You may detect from my note of scepticism that I am not entirely certain that that model would ever have been sustainable if the Theresa May arrangement had gone through. There are problems with the CMA having, to put it bluntly, power to strike down an Act of Parliament. I am not sure that would have worked.

Maybe that is what the EU has in mind, but what the EU would settle for is a much more difficult question. From memory, the mandate talks about co-operation with the Commission. That can mean anything. It could be an arrangement to meet every now and then to discuss issues of common concern. That is probably very sensible; it is hard to object to that, but if it means anything more, there might be political problems. In the end, what one is prepared to live with is a political judgment. There might be more political problems with that.

**Lord Lamont of Lerwick:** In my experience, the UK regime operating with the EU has been pretty flexible. You get awkward cases such as the help to the automobile industry in the 1990s. On the face of it, you might argue that there was a very strong case against that, but for political reasons the Government wanted to do it and the EU authorities recognised the political pressure in the UK. It probably did not strictly accord with the rules. None the less, it operated as a system. It is quite difficult to imagine an independent system such as an industrial OBR telling the Government what they can and cannot subsidise. It is quite difficult to see that as a political reality.

**George Peretz:** The draft state aid regulation published by the previous Government in the event of no deal—a separate regime set up on that hypothesis—was going to replicate the EU state aid regime domestically, but with no role for the Commission because it was a no-deal scenario. In that case, there was an interesting balance between the Secretary of State, who was to be given power to set policy, and the CMA, which would have had a role simply in implementing that policy. Quite how that would have worked one does not know, but in the EU system both roles are held by the Commission, which both sets policy and applies it to individual cases.

What the UK Government are proposing, which we will come to later, is a very interesting question. There is a proposal for an anti-subsidy regime, and that sort of issue will have to be thought through domestically. What is the right balance between the overall direction of policy, which one might say ought to be set ultimately by politicians, and its application to individual cases where it may be right for politicians to stand back a bit? The whole point of having an independent authority looking in detail at a case is that it will know the facts much better. It is a decision we will have to make.

**The Chair:** I know these answers are very complex. I am trying to ensure that everybody has their say. Professor Biondi wants to come in.

**Professor Andrea Biondi:** On this point we need to be a little more open, because it seems to me at the moment that there is quite a large distance between them. The UK position no longer speaks about an independent authority; it is just some kind of commitment to transparency and notification every three years, so on that point the positions are different. There has to be some kind of discussion, because the EU mandate speaks of an independent authority. It seems to me that on this point the positions are quite different, so something has to be done. The question is whether you can introduce some kind of mechanism for continuous co-operation or something like that. It is one of the delicate points. At the moment, there is some distance between the positions.

**Lord Berkeley:** I have been involved for a number of years in trying to get a better ferry service to the Isles of Scilly. There is a very small one, but it is a monopoly at the moment. We are told, I think rightly, that, if there is to be any public service obligation support or capital grant or anything, it would need to be approved by the Commission's DG COMP, as it stands at the moment. That will need to be replicated in the UK, after we have left, or the monopolies will just say, "We'd like to have this money", and there will be no obligation for the Government to go out to tender and have a fair competition.

Is that not an argument for transferring the role of investigating such applications to the CMA or someone else, to avoid a monopoly getting a subsidy? It could apply to buses, not just ferries, and maybe trains, although I do not know what is going to happen to the railways. It could happen, and it is pretty important that there is some control over awarding large grants to monopolies to carry on operating in not always a particularly good way.

**Professor Andrea Biondi:** Personally, I was quite in agreement with what your previous report said about an independent authority. I did not think it was a bad idea. The idea of creating an independent authority is about transparency, too; you need to explain how public spending decisions are taken, particularly in the area of infrastructure and public service obligations. It is a reassurance of equality and transparency. I still believe that it would not be a bad idea. State aid control on public service obligations has been through many changes, and it is so different from the 1960s and 1970s. Now you have very specific parameters for how to use it and what is fair compensation. Again, that is mostly due to UK influence.

Large chunks of state aid control can be transported into the national context—in particular, the idea that public service obligations are fine, so there is no state aid control, provided that certain predetermined criteria are satisfied. It would make a lot of sense to have that in the UK system and would also serve the purpose of ensuring some regional solidarity.

**Professor Veerle Heyvaert:** A strong level of institutional capacity will be stripped away at the end of the transition period. Effectively, there are a lot of roles and tasks that EU institutions have performed for the UK, as

well as for other member states, which they will no longer perform, and those need to be replicated. We are no longer in the 1970s, and there are a number of new functions and roles that we do not want to lose at the end of the transition period.

**Q13 Lord Wigley:** You may be aware that at the end of last year this Committee conducted a short piece of work on the opportunities and challenges in designing a new domestic state aid framework. One of the points made to us in evidence was that, historically, the EU has shaped state aid rules around its broader economic and industrial policy objectives. Do you share that assessment? How effective do you think EU state aid rules have been in supporting the EU's objectives in other areas, such as the fight against climate change?

**Professor Veerle Heyvaert:** I shall speak to the last point, the environmental objectives. Generally, the approach to state aid in supporting environmental objectives and pursuing climate change has been very much the kind of approach that we have seen the EU adopt in free movement across the border. There can be tension, but there is a strong willingness on the part of EU institutions to reconcile the tension, to be flexible and allow initiatives to be taken by member states, if they are genuinely in support of environmental or climate change mitigation objectives. It is not an unconditional stance; there is always the requirement that EU institutions retain a degree of supervision, that some balancing is done and that principles, such as the proportionality principle, are respected.

In general, there is a high level of tolerance, but there has not been a proactive approach, trying to engineer the system so that it will deliver more on the environment and climate change. In fact, the EU, and the EU in state aids, has been critiqued on the point that, for example, it could have done more with the integration principle, which requires that environmental considerations such as sustainable development are integrated across different policies. That has not happened enough so far in state aid and, as a consequence, state aid policies can play out such that what the EU gives with one hand it takes away with the other; it agrees to a subsidy for renewable energies and then agrees to a subsidy for fossil-fuel using energy.

The sense I get from statements being made by the new Commission and Commissioner Vestager is that that is exactly an area the EU is going to look at more closely to try to integrate environmental and climate change considerations more proactively in its entire competition policy.

**Dr Ulrich Soltész:** It is probably fair to say that state aid rules have been shaped around the EU's broader economic and industrial policy objectives. However, I stress that I do not think state aid has been a political tool. It is not fair to say that; it is based on sound economic principles, which I would say are in line with mainstream free market economics, if there is such a thing. The principle that you do not help ailing or zombie companies is something that anybody would accept, and

US economists agree with that principle. A lot of US economists praise the European system.

As was just explained, there are the environmental aid guidelines; supporting environmental efforts is good. There are R&D guidelines, and regional aid for disadvantaged regions, which should receive support, just as small and medium-sized enterprises should receive support, along with certain types of infrastructure. It is not like a political tool that implements a political agenda.

State aid has been shaped by a lot of British civil servants in DG COMP. Leon Brittan, a great politician, did a lot for state aid policy, when I came to Brussels; it really took off during that period. Then there was Philip Lowe, who was a DG and very strong on state aid enforcement and principles. It was a good thing for Europe.

**George Peretz:** Can I flag up an issue that arises from this, to which I do not think enough attention has been paid? In areas such as environmental aid, broadband and so on, the European Commission has to formulate a policy. It is a balancing exercise, because it is accepted that the state will to some extent need to intervene in the market—for example, on broadband in rural areas or on environmental objectives for which there is not yet adequate support in the financial markets. Policy is developed by the European Commission in conjunction and dialogue with member states. When we are out of the EU, we will no longer have any part of that, but the EU surrounds us and is our huge and biggest neighbour.

The decisions that the Commission, along with the member states, make in this area will impact us, and we need to think about ways in which we can institutionalise at least some form of input to those discussions. If we end up, as I think we will because it is government policy, with some form of anti-subsidy regime of our own—the UK mandate does not refer to it, but it is UK Government policy—there may well be scope for some form of quid pro quo, and that at least the two entities will talk to each other about policy decisions taken in the field of state aid that will impact on the other. That is something we ought to have as a negotiating objective, and I am slightly disappointed that we do not.

Q14 **Lord Lansley:** What you have just said, Mr Peretz, takes me directly to what I wanted to come on to, specifically by reference to the Commission's developing Green Deal and environmental objectives, although it might equally apply to digital transformation. Looking not backwards but forwards, we can say, "Okay, so the European Union is going to shape new policies". We are slightly hamstrung, in that the industrial strategy is going to be published on Monday, so we can follow that up when we see it, but we can see at least some of the shape.

Professor Heyvaert, there may be a number of ways in which what the Commission sets out to do with the Green Deal would impact directly on how it fashions competition policy, state aid and the like. Tell me if you think we are wrong about this, but I would characterise it as that,

whereas in the past there might have been industrial reform and restructuring, now we might see the EU trying to structure block exemptions under competition policy, looking at how it interprets state aid and subsidies, in relation to environmental objectives.

The environmental transformation, with climate-neutral products and circular economy actions, things that people outside the European Union might regard as somewhat protectionist, would actually be justified by reference to environmental objectives. I have another thing to move on to, but let us stick with that for the moment. That might well be the direction the Commission is heading in.

**Professor Veerle Heyvaert:** That completely echoes my reading of it, so I absolutely agree. The message that comes out of the Green Deal and the stance on the green digital future is that there is going to be a very purposive drive with public money to invest in those sectors and decarbonise, so that the EU can deliver on its 2030 and 2050 climate change mitigation objectives. Figures that have been mentioned are, for example, €1 billion on a just transition mechanism to support regions in conversion to green industry; then there is the sustainable Europe investment plan to the sum of €1 trillion investment. The message that has come from the new Commission is that its plan is definitely not to block public investment; it wants public investment to happen in accordance with competition rules so that the best bid actually gets the grant, for example.

That is definitely one point. In addition, I get the sense of a rather permissive approach to subsidies and state aids coming through in that field, and a slightly more interventionist approach. For example, in the Green Deal, it is explicitly mentioned that there is an initiative to phase out grants to end state aid to fossil fuel sectors, which is much more sector directed than the traditional approach to state aid.

There is a kind of language coming through that points to an intensified degree of centralisation, with a strong emphasis on integrated, interconnected and digitalised energy markets. There is a sense that it will be flexible, but there will be quite a lot of centralised decision-making, probably orchestrated by the Commission, on how the money is injected in several areas.

**Lord Lansley:** This is slightly outside the context of this particular inquiry, but the Commission is going to try to use the power of the single market to set environmentally challenging standards and then see them extend through the global value chain. It has said that, so we are going to have to deal with that. It is going to put a shedload of money into changing energy-intensive and resource-intensive industries. In a sense, we are going to be sitting there saying, "Well, hang on a minute; these are subsidies". We will not be alone; we might not even be at the head of the queue. That might be America, for example. The EU will say, "Our green card gets us out of that. They are not subsidies; they are environmental transformation. They are not anti-competitive; they are pro-environmental". There will be tension between those two things.

If the EU sets climate ambitions and other countries do not, and the EU pursues those carbon pricing or carbon taxation—

**Professor Veerle Heyvaert:** Border adjustment.

**Lord Lansley:** The carbon border adjustment mechanism. In effect, that is saying, “If you have lower carbon objectives, we can slap taxes on you. It’s not tariffs, it’s green”, and because it is green it is not something, but actually it is.

**Professor Veerle Heyvaert:** When these initiatives go forward, there will have to be some careful balancing of the border adjustment so that the EU does not fall foul of WTO rules on that score. You are absolutely right: if there is a rather dynamic interpretation of what can be done to pursue green objectives and meet obligations under the Paris Agreement and EU environmental law, it could allow for a lot of public financial support. That makes it all the more important that the UK and the EU have a relationship on that, and that the UK does not just walk away from the table and say, “We’re doing our own thing”. Doing its own thing in this regard could hurt the UK and reduce its opportunity to discuss these things.

**Lord Lansley:** I do not mean to interrupt, but that gets us to Mr Peretz’s good point. We might have an absolutely equivalent climate ambition to the European Union—

**Professor Veerle Heyvaert:** We actually do.

**Lord Lansley:** But we might do it through quite different mechanisms, particularly with regard to carbon taxation or carbon pricing. We might find ourselves in a position where, if we do not do it the way the EU does it, we end up with what is in effect a border mechanism and a border tariff, or something of that kind. I am not saying how the negotiations should end up, but, if we have the same climate ambition, we have to make it very clear in our negotiations that the EU cannot impose what are effectively green environmental obstacles to trade.

**The Chair:** We are getting into hypotheticals—

**Professor Veerle Heyvaert:** And the next subject.

**The Chair:** Indeed. Lord Shipley, we have covered some of this to an extent, but are there any aspects that you would like to press?

Q15 **Lord Shipley:** I am concerned about non-regression, because it will depend on setting minimum standards and the broader agreement. We have covered quite a lot of this, but would you like to say anything further about how non-regression clauses could operate and might be enforced? Is there more to it than we have considered?

**Professor Veerle Heyvaert:** Yes, in the environmental field there is definitely more, but I shall keep it brief in the interests of time. There is one way of interpreting non-regression clauses as literal, so that at least

the cut-off at the end of the transition period needs to be respected. In the environmental field, that is not very helpful, because the environment is dynamic and evolving. It might mean that if you maintain the same standards, 10 years from now, in practical terms, you will have completely regressed; or you are overshooting, in practical terms. If there is a particular species on the endangered species list and protection initiatives are undertaken and are successful, there is no reason for the species to remain on the list because of a non-regression clause.

Another way of interpreting non-regression is through ambition, to have a more purposive understanding of non-regression. Arguably, for both sides at the negotiating table, the EU and the UK, that would be a more productive approach to non-regression, and would carry more across different sectors, including the sector of state aid, where such a provision might be contemplated. In that case, the consequence would be that it would need further elaboration; there would need to be more case-by-case assessment of what a non-regression ambition means in particular fields.

There is a range of different ways to implement it, from a very soft-touch implementation, so that the clause is in the treaty, for example, and the assumption is that all parties comply with the treaty, but there is an opportunity for each party to call into question whether a new initiative, such as recasting an environmental directive, actually conforms with the non-regression obligation. It could be more intensively implemented—for example, as a form of impact assessment, with new legislation that falls under the remit, such that an assessment has to be done and an explanation needs to be given on how it meets the non-regression obligations. There is scope for implementation with different levels of intensity and supervision.

**The Chair:** Lord Robathan, do you think your question has been covered?

**Lord Robathan:** Not really. May I ask it?

**The Chair:** Absolutely.

Q16 **Lord Robathan:** I shall be as swift as I can. This has been a particularly informative session, so thank you very much indeed. I would like to look backwards, like any good Conservative, and ask for your subjective judgments on the results and what conclusions you draw about state aid, particularly whether the UK has benefited or been hindered by the EU state aid control rules. You have already mentioned banking and the Landesbank situation. Has it been good for us or bad for us?

Secondly, we know that France and, particularly, Germany spend a great deal more than us on state aid. In your opinion, which of course has to be subjective, has it been cost effective and worth the money?

**George Peretz:** Can I deal with the first of those questions? It is more within my expertise as somebody who spent 15 years on Attorney-

General panels and as Queen's Counsel advising government on state aid law issues.

The UK's experience of the state aid regime has, first, been as an extremely competent player in it. We are very influential in Brussels; we know the system. Getting clearances for state aid projects that the UK wants has been an extremely professional operation, which has tended to produce the results that the UK Government wanted. We were professional and well organised and knew how to present cases to the Commission. We have a very respectable history of respecting state aid rules. Occasional problems sometimes arise because there are genuine grey areas, where it is all quite difficult, but generally the UK is a very respected player and one that honours state aid rules.

Two members of this Committee have held very senior Cabinet office, and you probably remember from your own experiences in government that state aid law is taken very seriously. If it is a state aid issue, advice will be got and serious thought will be given on how to comply with the rules, and the rules will be complied with. That is not true of all member states all the time. Our record is pretty good, and the European Commission will say that.

As for whether it has ever stopped us doing what we want to do, Ulrich is absolutely right: it is hard to think of examples of something that the UK Government really wanted to do that has been in the end frustrated by the state aid rules. I am sure that those of you who have held senior ministerial office will remember occasions when, because a particular project involved state aid, it got more complicated; it meant that there was a certain amount of delay, something had to go to the Commission and there were an awful lot of meetings about it. There was that sort of routine annoyance, but I think at the end of the day the UK Government operated the system very well and generally got what they wanted out of it.

**Professor Andrea Biondi:** Lord Robathan asked for a subjective assessment. I had the honour of serving for a year and a half as a legal adviser on state aid matters to the Italian Prime Minister. Once I asked the chief of staff, "Why did you choose me?", and they said, "Because you're British". In other words, I got the job because I know how state aid applies. Joking apart, we are a model of state aid compliance as a member state.

In my experience working for the Italian Government, it was a model because all the emphasis is on horizontal policies. It was the fact that we always applied rules so well and so precisely. I can think of thousands of examples of measures adopted by the Italian Government that fall foul of state aid control—I can stay here the whole day, if you like—but I cannot think of any specific UK measure that was rejected by the European Commission. Fiscal aid and those kinds of issues are a headache for all member states, and there is a general problem at the moment with state aid control. Apart from fiscal aid, I cannot think of any other examples.

**Dr Ulrich Soltész:** My personal perception was that the British invented the state aid rules, and if you say, “Buy British”, you should buy into those concepts. To take another example, the British granted state aid during the financial crisis, to RBS and Lloyds; those were the biggest aid packages ever approved by the Commission. Okay, they were under commitments, but they were approved and never stopped. Bradford & Bingley and Northern Rock, names that nobody ever mentions nowadays, were approved within 24 hours. It is not correct to say that they have been held back.

In future, Britain could benefit. You have an excellent system of renewable and green energy, which works with a relatively low level of subsidies. The Germans have a not very good system, which the Government and consumers pump billions into, and it does not really work. Your green energy producers may in future be exposed to the distortion potential of competition, because German green energy is heavily subsidised. If there is a supranational body such as the Commission, or whatever enforcing mechanism, your green energy manufacturers can complain about those subsidies. I think that is an advantage.

**Lord Robathan:** Was it not cost effective in Germany?

**Dr Ulrich Soltész:** No, it was not at all cost effective. The Landesbanken cases were a disaster.

Q17 **Baroness Kramer:** I want to pick up the issue of Northern Ireland. As you know, the UK will remain bound by EU state aid rules through the protocol, so could you give us some sense of the protocol’s provisions on state aid and how they might have a practical impact?

**George Peretz:** That is probably for me, because I have written rather a lot on it. The key provision of the protocol is Article 10, which provides that any UK measure that has an effect on trade in goods between Northern Ireland and the EU—and therefore Ireland in particular, obviously—is subject to the full panoply of the EU state aid regime from the end of transition onwards. I have no evidential basis for this, but I have a hunch that, when the UK Government signed up to that, they did not quite understand what they were signing up to. When a number of us in the state aid community saw that provision, there was a certain amount of jaw-dropping. I am not entirely certain that it was understood by the Government at the time.

There was a certain amount of jaw-dropping, first, because it applies to any UK measure. It is not confined to things done by the Northern Ireland Administration or to Northern Irish measures; it potentially affects anything that the UK Government do. A UK measure is anything that any UK public authority does. That is point one.

Secondly, the effect on trade criteria, a crucial jurisdictional hinge, in state aid is notoriously low. You do not need evidence to prove an effect on trade. If you look at a lot of Commission and European court

decisions, analysis of the effect on trade is at an astonishingly superficial level. It does not involve panoplies of economic evidence; it is done on the basis of a couple of lines of generic reasoning and is notoriously low. It does not take much to prove an effect on trade.

Because of Northern Ireland's particular geography, I can think of a number of occasions when I was asked to advise on whether a UK measure was a state aid. When it came to the effect on trade, the easy answer was to say, "Oh well, that affects Northern Ireland. Therefore, there is bound to be an effect on trade because it will affect what is done in Fermanagh, which is only two miles from the border, so people will come across from Ireland and start buying things that will be affected by it". For Great Britain, because it is an island and people have to spend money to get in and out of it, it might be said that there was less of an impact.

The potential effect of the provision is extremely wide. I have given some examples. A UK general tax measure that benefited widget manufacturers would almost certainly get caught if there were any Irish widget manufacturers or any GB-registered companies that have activities in Northern Ireland supplying widgets. The scope of the application is wide. It is not universal; one can easily think of a number of examples of aid that the UK Government and public authorities might give that would clearly not affect trade with Northern Ireland.

It is also about the extent to which the Northern Ireland economy ends up being split off from the rest of the economy. That has raised some issues for the Government, who are trying to say that it will not happen. Provided that Northern Ireland remains very integrated in the UK economy, there will be a very large number of examples where things that the UK Government do are subject to the full panoply of EU state aid rules. That means the European Commission investigating, the European Commission ordering the UK Government what to do, and national courts, critically, applying state aid rules.

If I have a client who is unhappy with a UK measure, and we can argue that it contravenes Article 10 of the protocol, we can go to a UK court on judicial review and order the measure to be quashed on that basis. Section 7A of the withdrawal Act provides that this has direct effect, so it overrides an Act of Parliament. That is what direct effect means, just as obligations under the European Communities Act overrode everything else that an Act of Parliament did.

I do not think the implications were understood. It certainly does not mean that, effectively, we remain completely in the EU state aid regime, because clearly it is only a subcategory of measures, but it has very wide continuing implications.

**Baroness Kramer:** The examples that you gave were all physical goods. Is there some interpretation that this applies to services? I am not even raising the issue of the fact that many sales are blended.

**Professor Veerle Heyvaert:** It could in the field of electricity, because there is the single electricity market, and electricity provision obviously includes a range of goods and services provision. In that field, it is definitely possible. I see no exemption there; whereas there are some carve-outs for agricultural products, I believe there is no exemption for electricity mentioned.

**George Peretz:** No, there is none. There is very little learning on this, because EU state aid law does not distinguish goods and services, so one does not have this problem. You could, in principle, conceive of a situation whereby there was a grant to a services business that supplied services to a lot of goods manufacturers and you might well be able to say that, because those services could then be supplied much more cheaply for the whole range of goods manufacturers, it had an effect on trade in goods, so there would be a sort of chain of effect. It would be wrong to say that the provision could never affect a measure that favours services suppliers, because one can think of examples where it might. In the end, it has to demonstrate that it has an effect on trade, in the language of the provision "in respect of measures that affect that trade ... subject to this Protocol", which effectively means goods.

Q18 **The Chair:** We have come to the end of the time. I am very sorry, but we will not have time to ask your question, Lady Prashar, and Lord Berkeley has had to go to Oral Questions.

Would our four guests like to leave us with some final words? It is frustrating, because there is so much to say; it has been fascinating, and we are very grateful to you. If there are any thoughts or something that you felt you would have liked to say but there was no time, now is the time.

**Professor Andrea Biondi:** I have a super-brief point on the effect on trade, which might be one of the delicate points in future negotiations. I slightly disagree with George. Of course, the threshold is very low at the moment for the effect on trade, because it makes sense within a single market context; any kind of effect in a single market is a relevant point.

That point will have to be revisited, because we will move to international relations. There will be some need for both parties to rethink certain kinds of concepts. I reiterate the point that, for state aid in European law, first you have to have state intervention and then you have to grant an advantage that you would not have granted as an economic operator. You have to determine that you are conferring an advantage to specific undertakings, and then there might be an effect on trade.

We need to look at the whole perspective, not just one element. Some elements can be easily rethought, because we are looking for a different kind of relationship. It is no longer a single market; it is trade between two sovereign entities.

**Professor Veerle Heyvaert:** I sincerely hope that in all corners of government serious thought is given to the question of whether this is really the right hill to die on. From the conversation here, it is very clear

that there are serious questions about it. I end by quoting my colleague, Kitty Stewart, at the LSE, who wrote on the subject of state aid and social policy: "There is an obvious irony in the fact that leaving the EU would offer the UK the freedom to abandon an approach that it has been pursuing unilaterally for many years".

**George Peretz:** To go back briefly to what Professor Biondi said about the effect on trade, it is obviously right that the greater the extent to which the UK market gets segregated from the EU, including of course Northern Ireland, which will effectively be part of the EU single market, the less likely it is that there will be an effect on trade. It is important to note who in the end decides whether there is an effect on trade, and the answer is the courts and, ultimately, the European Court of Justice. That is the arbiter; it will be the court that makes the decision.

Following on from the Northern Ireland protocol, the Government will have to think about the effect the existence of that regime has on the regime we want domestically. I made the point earlier that it is government policy to have an anti-subsidy regime; Conservative Party proposals during the election campaign were quite clear about that. The Government want one that is nominally based on the WTO concept of a subsidy rather than the EU concept of a state aid. I have written about this, and I do not actually think that there is much difference between them; it is somewhat superficial. But that is the regime they want. If you are going to have a Northern Ireland regime that continues, you want to try to avoid a situation where you have to ask, about any UK measure, a question about compatibility with two separate regimes. To have one state aid regime is a necessity, but to have two looks a bit like carelessness.

It is interesting that we want our own regime. There are good domestic reasons for that, not least the fact that the devolution settlement was devised on the understanding that we did not need to do anything about decisions by the Scottish Parliament that could affect the UK internal market because we had the EU state aid regime, which we could rely on to deal with that for us. We need a replacement to deal with what otherwise might be a problem. We do not want the situation they have in the United States, with different bits of the United Kingdom bidding against each other for the favours of multinationals such as Amazon to come and locate in their territory. That is not something we want, and there are very good reasons for not having it.

If we have decided, as I think we have, that we want some form of anti-subsidy regime, that is something that we should, and I hope at some point will, put on the table in the negotiations. Our position is actually not, as one might glean from the negotiating mandate, that we do not want to make any commitments on it at all. We want a domestic subsidy regime. It feeds into the question of whether there is any sort of landing room, but one can see a situation where we put that on the table, perhaps taking into account suggestions or proposals from the EU about how it might be improved. We might end up with a regime that the EU

was broadly satisfied with and we could make commitments to keep that regime operating and to talk to each other about our respective policies. That might be an area where there was some landing space in what I think everyone accepts is one of the most difficult areas of negotiation.

**The Chair:** Professor Biondi, I think you were slightly disagreeing on the issue of the law courts. Did you want to say something?

**Professor Andrea Biondi:** I see the position of the UK as quite reasonable. Obviously, we would need to discuss the extent of the powers of the arbitration tribunal, or whatever it is going to be called. It seems to me that, within the withdrawal agreement, we were looking at the past and that there was, in my view, a strong point about keeping a possibility for the European Court of Justice to intervene, because we were still dealing with concepts of EU law. Looking forward, I am not entirely sure that the European Court of Justice will still have to be involved, if it is just a question of facts and whether one of the two parties has violated the agreement. In my view, there is a bit of scope for rethinking the role of the European Court of Justice in the future free trade agreement.

**Dr Ulrich Soltész:** If I can make a recommendation, I would say that, from the business point of view—UK business, in the first place—you should aim for a maximum of convergence in substance. You can still debate the degree of involvement of EU institutions such as the Court of Justice. I understand completely that that is a sensitive question. In substance, the state aid rules should be aligned as much as possible. There is no upside in divergent systems on either side of the channel. If you managed to create a common rulebook, which I would be rather optimistic about, based on the same principles that you have anyway always agreed to, with a bit of institutional framework around it, that would be good for the UK economy, and that is what we all want.

**The Chair:** I am most grateful to all of you. It has been a very good session. You will receive copies of the transcript for your correction. On behalf of the Committee, thank you for coming along. It has been fascinating.