

Lord Kinnoull
Chair of the European Union Committee
House of Lords

3 March 2020

Dear Lord Kinnoull

Dialogue with the devolved legislatures

Thank you for your letter dated 12 February 2020 and for the restatement of the EU Committee's commitment to continued engagement with the devolved legislatures.

Before commenting on our future relationship, I would like to recognise the cooperation that has existed between the Assembly and the EU Committee over many years in relation to EU affairs. The willingness of the EU Committee to engage with Assembly committees strengthened the Assembly's ability to influence draft EU law and policy during the period of our membership of the EU. We hope that, in turn, providing a devolved perspective on particular issues was of benefit to the EU Committee, including its sub-committees.

More recently, as we have approached the challenging task of assessing the implications arising from EU exit, enhanced cooperation and information sharing between our committees has been an important and positive characteristic of our work.

We were, therefore, pleased to receive your 12 February letter and the renewed commitment to engage with us and other Assembly committees in the future.

In particular, we welcome the approach to scrutiny of draft EU legislation during the transition period that you describe.



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In response, we wish to confirm our commitment to continued dialogue and engagement with the EU Committee.

You invited views on the European Commission's 3 February 2020 Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, together with the UK Government's Written Ministerial Statement on UK/EU relations of the same date.

We have recently started our work on the negotiations and are, unfortunately, unable to offer a detailed response at this time. I have included an Annex to this letter that provides an initial response. We are continuing our work on the negotiations and hope to report shortly after the Easter recess. I will write to you again once we have a firmer position.

Each of the priority areas you identify in the penultimate paragraph of your letter are areas of interest to us.

As I have mentioned in this letter, we have started our work on assessing the implications for Wales arising from UK-EU future relationship negotiations. We intend to gather evidence from a wide range of Welsh stakeholders during the next month and hope to report shortly thereafter.

We are interested in assessing how the views of the devolved government and legislatures can be represented within the new formal mechanisms for dialogue, such as the Joint Committee on the Withdrawal Agreement. We are awaiting further clarity on any role to be afforded to the Welsh Government as a starting point for our work.

The implications for Wales arising from the Protocol on Ireland/Northern Ireland are of interest to us and we intend to investigate this further. We have an interest in the wider Ireland-Wales relationship and we are currently considering whether to launch a dedicated inquiry into this.

We remain committed to interparliamentary engagement, particularly through the Interparliamentary Forum on Brexit. I look forward to seeing you at the next meeting at the House of Lords.

In terms of international interparliamentary engagement, our current priority is to establish a relationship with the European Parliament. We are exploring the feasibility of engaging bilaterally or through wider UK structures, should that be a possibility. Alongside this, we

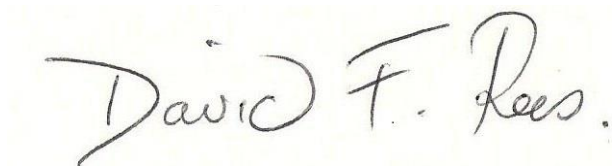


are considering the possibility of strengthening the network of relationships we have with regional and sub-state legislatures, in Europe and beyond.

Thank you again for the positive approach that you and the EU Committee are taking to engaging with the Assembly.

I look forward to meeting you again soon to continue a discussion about how we might best cooperate in the future.

Yours sincerely

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large 'D' and 'R'.

David Rees AM

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Annex

External Affairs and Additional Legislation Committee

Submission to the EU Committee on the European Commission's 3 February 2020 Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, together with the UK Government's Written Ministerial Statement on UK/EU relations of the same date.

Summary

The External Affairs and Additional Legislation Committee has recently started its work on the UK-EU future relationship. This submission is largely made on the basis of the EAAL Committee's previous work.

The EAAL Committee has previously expressed the view that:

- it is not persuaded of the value of regulatory divergence after Brexit; and
- the evidence it has received previously prioritises the maintenance of equivalent regulatory standards to ensure preferential market access over regulatory divergence after Brexit.

The EAAL Committee expresses the following views:

- a limited trade agreement between the UK and the EU is preferable to no agreement;
- the Welsh Government should be closely involved in the negotiations; and
- where new international obligations are being negotiated that might affect the competence of the Assembly, the Assembly should be consulted and afforded the opportunity to express a view.

The EAAL Committee is continuing its work on the detail of the UK-EU future relationship negotiations, with a view to reporting before Easter.



Background

1. On 24 February 2020, we began our work to assess the implications for Wales arising from the UK-EU future relationship negotiations. This included an initial consideration of the documents the EU Committee is considering.

2. We have considered the question of Wales' future relationship with Europe previously and arrived at a number of conclusions. The following reports might be of interest in this regard:

- **Implications for Wales of leaving the European Union** (January 2017)
- **Wales' future relationship with Europe: Part 1** (March 2018)
- **Wales' future relationship with Europe and the World** (February 2019)

Level playing field commitments

3. A central area of apparent difference between the UK and EU positions is in relation to level playing field commitments.

4. Under the heading "*Competition Policy, Subsidies, Environment and Climate, Labour, Tax*", **the UK Government's Written Statement** explains that the UK will not agree to measures that go beyond "*those typically included in a comprehensive free trade agreement.*" As such, it calls for both parties to:

"recognise their respective commitments to maintaining high standards in these areas; confirm that they will uphold their international obligations; and agree to avoid using measures in these **areas to distort trade.**"

5. **The European Commission's 3 February 2020 Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland** sets out a more prescriptive position on level playing field provisions and sustainability under a number of sub-headings.

6. In terms of level playing field provisions, we note that the text of the 3 February 2020 recommendation has been updated in the European Council's **Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland**, published on 25 February 2020.



7. The text of the Directives referred to in the preceding paragraph appear to extend the level playing field provisions to include reference to them being maintained over time. For example, paragraph 94 states:

“[...] the envisaged agreement should uphold common high standards, and corresponding high standards over time with Union standards as a reference point [...]”

8. The UK Government’s 27 February 2020 document, **The Future Relationship with the EU: The UK’s Approach to Negotiations**, expands the UK Government’s position.

9. Chapter headings correlating with the EU’s level playing field provisions are included. For example, in relation to subsidies, competition policy, trade and labour, and trade and environment.

10. From our initial reading of these chapter descriptions, the UK Government appears to be committed to not weakening or reducing existing standards, but it does not wish to be bound to:

- an alignment with EU standards over time; or
- EU standards being a reference point for UK standards.

11. For example, in relation to ‘trade and environment’ the UK Government states:

“The Agreement should include reciprocal commitments not to weaken or reduce the level of protection afforded by environmental laws in order to encourage trade or investment. In line with precedent, such as CETA, the Agreement should recognise the right of each party to set its environmental priorities and adopt or modify its environmental laws.”

12. We are currently working on our assessment of the implications for Wales arising from these respective positions.

13. Without prejudice to the evidence we might receive in the course of our further work, or the conclusion we might draw from it, the evidence we have received to date has not persuaded us to deviate from the conclusion we drew in our 2018 report, **Wales’ future relationship with Europe Part one: a view from Wales**, that:



“We note the inverse relationship between regulatory divergence and the level of EU market access available to the UK after Brexit.

From the evidence received, we are not persuaded of the value of regulatory divergence after Brexit and note that the evidence overwhelmingly prioritises the maintenance of equivalent regulatory standards to ensure preferential market access over regulatory divergence after Brexit.”

14. In restating the above conclusion, we acknowledge the changed political context within which this restatement is made. Following the 2019 UK general election, it is clear that the current UK Government’s position does not accord with our conclusion.

15. It is our intention to continue testing our position with stakeholders in the coming months.

General observations

A limited deal is better than no deal at all

16. Our previous work suggests that securing an agreement, even an agreement that is limited in scope and that only minimally reduces barriers to trade, is preferable to trading with the EU on World Trade Organisation terms from 1 January 2021.

17. On 4 December 2019, we wrote to the Welsh Counsel General and Brexit Minister, Jeremy Miles AM, as part of our ‘preparedness’ work stream. In relation to the end of the transition period, we concluded that:

“We recognise the risks of ‘no deal’ at the end of the transition period, as highlighted by stakeholders, and continue to have deeply held concerns about such an outcome and its damaging implications for Wales.”

UK Government engagement with Welsh Government and the Assembly

18. In December 2019, we reported on a role for the Assembly in considering UK international agreements after Brexit.

19. It is vital for the Welsh Government to be closely involved in the negotiations to ensure that the impact on Wales of any decisions are understood.



20. Where new international obligations are being negotiated that might affect the competence of the National Assembly for Wales, the Assembly should be consulted and afforded the opportunity to express a view prior to those international obligations being determined.

21. Such an approach would improve the chances of an agreement reflecting the interests of the whole of the United Kingdom.

