



HOUSE OF LORDS

European Affairs Sub-Committee on the Protocol
on Ireland/Northern Ireland

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Lord Callanan
Parliamentary Under Secretary of State
(Minister for Business, Energy and Corporate Responsibility)
Department for Business, Energy & Industrial Strategy
1 Victoria Street
London SW1H 0ET

10 March 2022

Dear Martin,

SUBSIDY CONTROL BILL

Thank you for your letter, dated 25 February 2022, on the Subsidy Control Bill. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 9 March 2022.

We asked in our previous letter whether the Government considered that the potential for differing legal interpretations of the applicability of Article 10 could have an impact on the willingness of public authorities to give subsidies or could create a risk of beneficiaries having to repay subsidies found to be unlawful by the European Commission or the domestic courts. Your response did not directly address this point, but you mentioned the recent High Court judgment in *British Sugar plc, R (on the Application of) v Secretary of State for International Trade*. **Does the Government consider that this judgment settles the question of when Article 10 does and does not apply? If not, what assessment has the Government made of the possible impacts on public authorities and on subsidy beneficiaries of ongoing legal uncertainty about when Article 10 applies, and when the domestic regime applies?**

You have provided an outline of the main differences between the EU State aid rules and the subsidy control regime proposed by the Bill. However, we are still unclear about the Government's assessment of the potential impacts on Northern Ireland and on the UK internal market of some subsidies being subject to the domestic regime and some subsidies being subject to the EU regime. We understand that you are "firmly of the view that all parts of the UK should be able to benefit from the greater flexibilities in the future domestic regime", but **what is your assessment of the impact on Northern Ireland (in particular in relation to attracting Foreign Direct Investment) and on the UK internal market if some subsidies cannot do so? You referred in your letter to "the problems with Article 10"; can you elaborate on what you view these to be?**

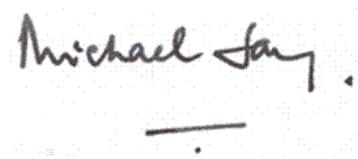
Similarly, we note that during the committee stage debate on the Bill on 7 February 2022, you said that exempting subsidies that fall within the scope of Article 10 from following the subsidy control processes in the Bill "does not go far enough. In respect of certain subsidies, Northern Ireland faces a disadvantage". **Can you elaborate on which subsidies this applies to, and what disadvantages you believe Northern Ireland faces?**

We understand that you do not wish to give detailed updates about the progress of the negotiations or the “significant gaps” between the two sides’ positions, **but are you able to confirm whether Article 10 and State aid were discussed at the Joint Committee meeting on 21 February 2022?** We note that neither the joint statement issued by the co-Chairs, nor the separate statement issued by Vice-President Šefčovič explicitly mentions the issue as a matter that was discussed.

We would be grateful for a response to this letter before the commencement of Report Stage on the Bill on 22 March 2022.

I am copying this letter to Baroness Drake, Chair of the Constitution Committee, Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee, Les Saunders and Donald Harris, Cabinet Office, Graeme Winchester, Department for Business, Energy and Industrial Strategy; and Dr Caoimhe Archibald MLA, Chair of the Northern Ireland Assembly Committee for the Economy.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Jay". Below the signature is a horizontal line with a small dot underneath it, serving as a separator or underline.

Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee