Written evidence submission by the Chartered Institute of Taxation (FRE0043)

1 Introduction

1.1 We welcome this opportunity to provide evidence to the House of Commons Committee on the Future Relationship with the European Union's inquiry into progress of the negotiations on the UK's future relationship with the EU. In particular, you have asked us to provide a written submission setting out our thoughts on how the level playing field provisions which are being discussed by the UK with the EU might apply, or be relevant, to taxation.

1.2 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

1.3 Our stated objectives are for a tax system that includes:

- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

1.4 We refer to the letter to us dated 21 May 2020, requesting our input, and setting out some questions in relation to the level playing field provisions. As mentioned, the level playing field provisions include state aid, competition, social and employment standards, environment, climate change and relevant tax matters (as set out in the Political Declaration, paragraph 77). Our comments are limited to tax matters and consequently we do not propose to respond to each of the questions raised in the letter, which are intended to be applicable to all of the areas covered by the level playing field provisions, so may not be pertinent to taxation.

2 Executive summary

2.1 The Withdrawal Agreement does not contain level playing field provisions in relation to tax. The Political Declaration refers to '**relevant tax matters'**. These are not defined. There is a statement that the parties should 'commit to principles of good governance in the area of taxation and to curbing of harmful tax practices.'

2.2 The UK and EU draft texts of an agreement for the future relationship, in relation to tax, contain common ground in relation to adopting best practice in relation to harmful tax practices, to promoting good governance and to improving international cooperation in areas such as exchange of information. However the EU's draft refers to 'rules against tax avoidance practices' and to

common high standards at the end of the transition period, stating that the joint UK-EU 'Partnership Council' might include additional areas or lay down higher standards in the future.

2.3 Some EU parliamentarians and other commentators have cited concerns about the UK pursuing a policy of aggressive tax competition. We note that all governments pursue tax competition to a degree and membership of the EU has not particularly constrained this, for the UK or any other member state. Indeed because EU member states who seek to retaliate against another member state's tax competition initiatives can be impeded in some respects from doing so by rules protecting the EU's 'fundamental freedoms', it might be more difficult to pursue an aggressive tax competition policy outside, rather than inside, the EU.

2.4 At this stage, given that:

- the EU mandate does not identify particular tax measures that should be prohibited or implemented, beyond those relating to harmful tax practices and rules against tax avoidance practices, and

- the UK position accepts that an agreement could include commitments to principles of tax good governance as reflected in international standards (including on tax transparency, exchange of information, fair taxation) without it constraining UK tax sovereignty,

there does seem to be a possible route to an agreement. Under such an agreement the parties would not be prevented from taking such legislative measures as each sees fit in the future, subject to general international tax law constraints and practices.

2.5 Clarity around the application of existing cross border anti-avoidance and administrative Directives after the end of the transition period would be welcome.

3 The Withdrawal Agreement and the Political Declaration

3.1 The Withdrawal Agreement does not contain level playing field provisions in relation to tax. There is no general provision with regard to a level playing field. There are some specific provisions with regard to equal treatment, for example of individuals' and workers' rights, for EU citizens living in the UK and UK nationals resident in the EU. There are specific provisions with regard to state aid. The customs, VAT and excise provisions in the Withdrawal Agreement cover only the transition period and movements and transactions which straddle the end of the transition period (though the Protocol on Ireland / Northern Ireland does contain provisions in these areas which last beyond the transition period).

3.2 The Political Declaration refers to a Level Playing Field for Open and Fair Competition at paragraph 77 and states that 'the Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change and **relevant tax matters'**. 'Relevant tax matters' are not defined. There is a statement that the parties should 'commit to principles of good governance in the area of taxation and to curbing of harmful tax practices.'

3.3 The UK mandate[1] for negotiation on the future relationship with the EU provides that: 'Whatever happens, the Government will not negotiate any arrangement in which the UK does not have control of its own laws and political life. That means that we will not agree to any obligations for our laws to be aligned with the EU's, or for the EU's institutions, including the Court of Justice, to have any jurisdiction in the UK.' (paragraph 5). The mandate also says that, although all areas of policy set out in the Political Declaration will be relevant for the UK's future cooperation with the EU, the UK Government 'does not agree that that requires every area to be incorporated into a negotiated Treaty or similar arrangement' (paragraph 8).

3.4 The EU mandate[2] for negotiation states that the aim of the negotiations is to establish a new partnership 'that is comprehensive and covers the areas of interest outlined in the Political Declaration: trade and economic cooperation…' (paragraph 7). The EU mandate goes on to state that the envisaged partnership should be based on identified principles and 'key objectives' which include ensuring '… a level playing field that will stand the test of time' (paragraph 10, third bullet). The EU mandate also states the general principle that given the Union's and the UK's geographical proximity and economic interdependence, the envisaged partnership should ensure open and fair competition encompassing 'robust commitments to ensure a level playing field' which, as noted, includes 'relevant tax matters'.

3.5 Therefore it appears that (other than in relation to Northern Ireland[3]) the Withdrawal Agreement and the Political Declaration are of little assistance in relation to the future relationship in respect of taxation, as evidenced by the different negotiating positions of the parties. Although the Political Declaration mentions 'relevant tax matters' in the context of the overall objective of a level playing field, the UK does not consider that all areas of policy mentioned in the Political Declaration need to be covered in the negotiated agreement (or agreements). The EU takes the approach that the level playing field overall (as summarised in the Political Declaration) is one of its 'key objectives' and that the future agreement must encompass the robust commitments to ensure a level playing field that are referred to in the Political Declaration. However, with regard to tax the lack of definition of 'relevant tax matters' thus far leaves open the scope of what might be covered.

3.6 The Withdrawal Agreement contains a Protocol on Gibraltar which includes an Article 3 on **Fiscal matters and protection of financial interests**. Amongst other things, this says **'**Spain and the United Kingdom in respect of Gibraltar shall establish the forms of cooperation necessary to achieve full transparency in tax matters and in respect of the protection of financial interests of all the parties concerned, in particular by establishing an enhanced system of administrative cooperation to fight against fraud, smuggling and money laundering, and to resolve tax residence conflicts.' It has been possible for high net worth individuals to establish Gibraltarian residence under Gibraltarian law on the basis of having exclusive access to accommodation there, and then to benefit from a low tax regime. That would not have prevented such individuals from also being tax resident, and liable to more substantive taxation, in other jurisdictions (indeed including the UK): such 'dual residence' is not necessarily normally viewed as a 'tax residence conflict'. Double

[1] UK's approach to negotiations with the EU dated February 2020
[2] EU negotiating directives dated February 2020
[3] Time has not permitted us to consider in any detail the provisions of the Protocol on Ireland /Northern Ireland

taxation agreements (such as the UK has recently concluded with Gibraltar) typically incorporate a 'tie-breaker' rule to determine a sole jurisdiction of residence, but that is entirely a matter for bilateral agreement. We are not able to comment on the reference to fraud, smuggling and money laundering.

4 The current UK and EU taxation positions in relation to the Future Relationship

4.1 The EU's draft text of the 'Agreement on the New Partnership with the United Kingdom'[4] contains level playing field provisions (Title III: level playing field and sustainability) which include a section on taxation (page 32). The UK's draft text for 'Comprehensive free trade agreement between the United Kingdom and the European Union'[5] does not contain level playing field provisions, but does contain an article on 'Relevant Tax Matters' (Chapter 29 on page 259).

4.2 From the texts of both of these drafts, the wording of which is very similar, there appears to be largely common ground in relation to adopting best practice in relation to harmful tax practices, to promoting good governance and to improving international cooperation in areas such as exchange of information and the OECD standards against Base Erosion and Profit Shifting (BEPS)[6]. There are some differences though, in the approach and level of detail. The UK's draft agreement states the general principle and only specifically mentions BEPS. By contrast, the EU's draft agreement additionally refers to the BEPS Action Plan, the Code of Conduct for business taxation dated 1 December 1997 and mentions specific features of the protection against tax avoidance which the agreement should cover (see Article LPFS2.26). The EU's draft agreement does not go beyond that to specify other relevant tax matters in relation to which there would be a level playing field. There is general language in the EU's draft, such as 'rules against tax avoidance practices' (LPFS.2.26(1)(b)) which may give rise to issues over what would be covered and what would not.

4.3 However, there is lack of clarity in the two texts, and some divergence between them, around whether there is intended to be any alignment with specific EU legislation currently in force (see below with regard to compliance, anti-avoidance and administrative directives). The EU draft text for an agreement refers to common high standards at the end of the transition period and states that the 'Partnership Council' (a joint body which would oversee the future relationship proposed by the EU) might include additional areas or lay down higher standards in the future (Article LPFS.2.26: Taxation standards). The Partnership Council has the power to modify common standards and include additional areas (LPFS.2.26(2)).

4.4 In addition, the more general provisions in the level playing field section of the EU's draft (notably Article COMPROV.11: 'Global cooperation on issues of shared economic, environment and social interest') refer to taxation, saying that 'the Parties shall cooperate on current and emerging global issues of common interest, such as … taxation … To that end they shall maintain constant and effective dialogue and, as much as possible, coordinate their positions in multilateral organisations

[4] EU's draft agreement dated 18 March 2020
[5] UK's draft agreement published on 18 May 2020
[6] The G20/OECD Base Erosion and Profit Shifting (BEPS) project began in 2013 and culminated in the final reports on the various (fifteen) actions of this project being published in 2015. The BEPS project was set up to counter perceived abuses by multinational enterprises by negotiated reforms to the international tax system.

…'. Although these provisions do not appear to mean that any future changes or arrangements could be imposed unilaterally on the UK, or that the UK could be required to take a particular position in its global negotiations, this language does contrast (but arguably does not necessarily conflict) with the UK's negotiating mandate which states that the agreement with the EU should not constrain tax sovereignty in any manner (paragraph 80).

5 To what extent might either party's position on the level playing field impact on either party's future plans to legislate?

5.1 One aspect of a 'level playing field' that is often discussed is competition around **direct taxation**, and in particular the possibility of the UK becoming a 'tax haven' which we take to mean pursuing a policy of aggressive tax competition, targeting mobile business with low rates or favourable arrangements. It is reasonably well known that some EU parliamentarians and other commentators have concerns over the UK 'undercutting' EU members on corporate taxes.

5.2 Although we are considering the future relationship with the EU, it is important to note that membership of the EU did not (and the transitional rules do not) require the UK to levy such taxes as income or corporation taxes at any particular rate, or indeed at all. They do constrain the UK in certain respects, for example from imposing withholding taxes on some cross border cash flows, favouring particular sectors of industry, or resident over non-resident companies, and so on. There are also arrangements for arbitration in the case of disputes involving different tax authorities and, recently agreed, for disclosure of certain tax avoidance schemes (see with regard to DAC6 below). Overall, none of these significantly curtail the UK's ability to pursue an independent tax policy.

5.3 However, we would also note that, as a practical matter, UK tax policy has been influenced by tax policy in other European countries even where it has not been bound to do so by EU law. An example might be the capital gains Substantial Shareholder Exemption to allow corporate groups to dispose of trading subsidiaries free of taxation on capital gains, which, we understand, was introduced at least in part because Germany, the Netherlands and a number of other major countries had it.

5.4 All governments practice tax competition to some degree. The constraints on pursuing a policy of aggressive tax competition in most countries include public opinion, the cost of tax revenue foregone, the difficulties of targeting to attract business at modest cost, the danger of retaliation by other countries, and the fact that business is often more attracted by stability and certainty of arrangements, than by tax incentives that seem gimmicky or too good to last: significant investments involve a commitment over a period of time, a period in which tax laws in many countries typically change.

5.5 Typically smaller countries, with less of a domestic tax base to need to protect, find it easier to pursue tax competition policies than larger ones. In general it is hard to associate the absence or presence of these factors in any systematic way with membership of the EU, as distinct from wider international constraints such as membership of the OECD.

5.6 In this regard the UK coalition government was instrumental in instigating the G20/OECD Base Erosion and Profit Shifting (BEPS) project to counter perceived abuses by negotiated reforms to the

international tax system. The BEPS project began in 2013 and culminated in the final reports on the various (15) actions of this project being published in 2015. The CIOT has been involved in the debate from the outset and supports the overall aims of the BEPS project.

5.7 The UK has been at the forefront of implementing the recommendations of the BEPS project; indeed the UK government's policy could often fairly be described as 'going first', and also in many cases the furthest, in implementing the BEPS recommendations, many of which were subsequently reflected in the EU Anti-Tax Avoidance Directives (ATAD1 and ATAD2).

5.8 The UK government is now fully engaged with the OECD's ongoing work addressing the tax challenges arising from the digitalisation of the economy, which is continuing to work towards a consensus-based, long term global solution which addresses the tax challenges raised (although the US Treasury Secretary has very recently suggested that these talks should be suspended due to the COVID-19 crisis). The UK has also introduced its own, unilateral, Digital Services Tax (with effect from 1 April 2020), against which the US is threatening retaliation.

5.9 A possible exception to the general comment above, that EU membership has had little interrelationship in practice with the constraints on pursuing a policy of aggressive tax competition, arises in relation to the risk of retaliation. EU member states who seek to retaliate against another member state's tax competition initiatives can be impeded by the 'fundamental freedoms' guaranteed under EU law, including the right of establishment rules. These, for example, limited (though by no means totally removed) the UK's ability to use 'controlled foreign company' rules (a type of anti-avoidance mechanism blessed by the OECD) against UK corporate groups attracted by more favourable tax arrangements in Dublin: such limits would not have applied had Ireland not been an EU member state. To that extent, an aggressive tax competition policy might even be harder, rather than easier, to pursue outside the EU.

5.10 The EU may move further in the direction of direct tax harmonisation in the future, with British influence (which has consistently opposed it) removed. This would likely tend to limit the scope for individual member states to pursue tax competition policies (and may continue to be resisted by some of them for that reason), but it would not rule out tax competition, or the exercise of crude negotiating power over taxing rights, by the bloc as a whole.

5.11 As noted above, there is some apparent divergence in the approaches of the UK and the EU and in their draft texts of an agreement for the future relationship, in relation to tax specifically and the level playing field more broadly. It seems that there has been no progress in the negotiations around the level playing field to date, even with regard to areas such as tax where the parties are not very far apart.

5.12 Nevertheless, we do see a possible route to an agreement in this area. The largely woolly statements of intent around certain aspects of tax policy and administration currently presented by both sides should not really be substantive sticking points (though neither, for that matter, do they provide taxpayers with any certainty as to the likely ways forward for tax policies either in the UK or in the EU). The EU mandate does not identify particular tax measures that should be prohibited or implemented, beyond those relating to harmful tax practices and rules against tax avoidance practices. The UK negotiating document accepts that an agreement could include 'commitments to the principles of tax good governance as reflected in international standards, including on tax

transparency, exchange of information, fair taxation' while still 'not constrain[ing] tax sovereignty in any manner'. This appears to leave room for an agreement under which the parties would not be prevented from taking such legislative measures as each sees fit in the future, subject to the general international tax law constraints and practices mentioned above.

5.13 It should also be noted that outside the EU, the concept of a level playing field has been described by a former official of the former Department of Trade and adviser on the EU's external trade policy, Michael Johnson, as among the 'vaguest and least helpful terms in the trade lexicon'. The OECD states that 'a level playing field in global trade means that all countries and firms compete on an equal footing to offer consumers everywhere the widest possible choice and best value for money.'. Although the WTO law contains provisions on subsidies and anti-dumping, in principle the tax sovereignty of states is not directly dealt with in WTO law and is at best indirectly affected, to the extent it is affected at all. That seems to reflect the UK's approach and desire to maintain flexibility over tax policy.

5.14 The EU mandate contains strong language in relation to state aid. State aid rules are broadly speaking intended to prevent national policies favouring particular players or categories of players in the market. In the tax field, these might restrict national governments from favouring one category of taxpayer over another (for example to protect a particular industry) or, for example, from allowing a region or nation with devolved tax power, such as Northern Ireland, to reduce its corporation tax rate, unless that region or nation finds the resources to finance this from its own budget More recently the EU Commission has begun to use these powers to reverse what it argues to be special tax deals struck by member states' tax authorities with particular multinationals. These are wide-ranging rules, and each of their possible applications to tax raise different issues. There is generally scope for argument about their application, and further complication is that a relaxation in state aid Rules owing to the COVID-19 crisis has seen all EU members introducing various measures to protect their economics. Germany and France have already announced such protective measures which will be extended into 2021 and possibly beyond, which has the potential to distort the position. All in all, it seems likely that either the UK's negotiating objective of sovereignty will prevail in preventing the application of such broad provisions, or that some high-level compromise will be achieved, rather than that there will be detailed negotiations over all the possible aspects and application of these rules.

5.15 Considering **indirect tax**, the UK could undercut the EU on external 'most favoured nation' tariffs. It is not yet clear how much autonomy the UK will have in relation to setting its own tariffs, although the UK mandate makes clear that it wishes to retain tax sovereignty without any constraints. This is where more clarity would be helpful. Article 5 of the Northern Ireland Protocol sets out protective measures for goods sold from Northern Ireland at risk of onward supply to EU member states.

5.16 In due course the UK and the EU could diverge in relation to VAT rates, VAT exemptions and zero rating, though many current zero-ratings in particular (for example of food) area matter of member state discretion rather than a uniform EU policy. In any event most VAT exemptions and zero-rating in the UK are justified (insofar as there is a clear rationale) for social policy reasons rather than a means of promoting international competiveness. The exemption of financial services is perhaps the clearest-cut substantial exemption simply there because the EU has required it. Article 8 of the Northern Ireland Protocol requires that for goods, VAT and excise in Northern Ireland must comply with EU VAT and excise rules, so it would be politically sensitive to implement an advantageous VAT

or excise position in Great Britain that could not also be applicable in Northern Ireland. The VAT, customs and excise position in Northern Ireland is subject to the ongoing consent of the Joint Committee.

5.17 There are a large number of fundamental changes coming through on VAT over the next five years in the EU which impact on both goods and services. The UK will have to decide in due course to what extent the UK will adopt the same or very similar changes, perhaps with the aim of facilitating UK plc doing business in the EU. We would also mention indirect tax fraud, which is a considerable problem within the EU. We would encourage continued co-operation between the UK and the EU to combat this problem and close down opportunities which are identified by fraudsters after the end of the transition period. We would anticipate that fraud prevention measures and cross-border information sharing in relation to indirect tax fraud would be an area of common ground for the UK and the EU.

6 Anti-avoidance, compliance and administrative directives

6.1 The UK's draft agreement does not specifically mention mutual assistance and recovery, but does commit to 'global standards on tax transparency and exchange of information' (Article 29.1). The EU's draft text is more specific and refers to facilitating the collection of tax revenue and exchange of information (LPFS 2.25 and 2.26). It would be useful to have some clarification, as soon as possible, around whether existing EU directives in the areas of anti-avoidance, compliance and administration will continue to have effect after the end of the transaction period.

6.2 For example, the UK has introduced The International Tax Enforcement (Disclosable Arrangements) Regulation 2020, which comes into force on 1 July 2020, to implement EU Directive 2018/822 (commonly known as DAC6). Other than a technical information note from HMRC dated 13 January 2020 stating that the measure will be kept under review, there are no signs yet that these regulations will be repealed, so it appears that the UK will continue to comply with DAC6 after the end of the transition period, but it would be useful to better understand the UK's and the EU's intentions around this and other existing directives.

6.3 It is not clear, for example, whether the UK will be able to access the central EU database established under the DAC6 Directive, and exchange information with EU member states, or whether intermediaries and taxpayers in other EU states will be able to rely on UK disclosures, after 31 December 2020. We had understood that it was envisaged that the UK would keep contributing by supplying the disclosures as long as implementation of DAC6 occurs before 31 December 2020. However, as a result of the COVID-19 pandemic, there has been a proposal to defer the deadlines for the first exchanges of information, such that the first exchange of information by member states will not now take place until 31 January 2021, that is after the end of the transitional period (political agreement for deferral was reached by member states' representatives at the beginning of June and it is anticipated that the revised proposal will be formally adopted by the EU Council before the end of June).

6.4 It would also be helpful to know whether the UK government considers any transfers of such data

to the EU database after 31 December 2020 will still be compliant with UK General Data Protection Regulations (GDPR).

6.5 There are other directives pursuant to which the UK liaises with the EU in relation to civil and criminal exchanges of information and mutual assistance and co-operation. There is currently little clarity around how or whether these mechanisms will continue after the end of the transition period.

6.6 There are, however, other international instruments, notably the OECD/COE multilateral Mutual Assistance Convention that address exchange of information and recovery of taxes and also the OECD's country by country reporting. These may supersede the EU directives in these areas.

7 UK's record on compliance with EU rules

7.1 We mention above that the UK implemented many of the OECD's BEPS recommendations at the earliest opportunity and did so in such a way as to ensure that the UK's tax rules also more than satisfied the requirements of the EU's ATAD1 and ATAD2, which required member states to introduce laws reflecting some of those BEPS recommendations. ATAD1 and ATAD2 are examples of the UK adopting a higher standard than required by an EU directive.

7.2 There is also, in our view, a current example of the UK risking 'over-implementing' aspects of an EU Directive, that is, the incorporation of the Fifth Anti-Money Laundering Directive (5MLD) into UK law; this is different to consciously adopting a higher standard, and indeed our major concern is that effective standards of protection will be reduced in consequence. As well as being an educational charity, CIOT is also a supervisor of certain tax advisory firms under anti-money laundering (AML) legislation and has in this capacity responded to government consultations in this area.

7.3 The new provisions came into force in the UK on 10 January 2020 for most aspects of the 5MLD other than the Trust Register. We believe the UK risks implementing the Trust Registration aspects of 5MLD in a way which is wider than is required by Directive and which is not, therefore, consistent with the establishment of a level playing field that is referred to in the Directive itself. In our view for this reason the UK measures in relation to Trust Registration may run counter to effective anti-money laundering measures by encouraging overseas trusts to seek trust management and related professional services from other less or non-compliant jurisdictions. This will also lead to a commercial loss of business for the UK. Our full responses on 5MLD can be found here and here.

8 Dispute resolution

At this stage, the general position is that as there is no dispute settlement mechanism in relation to provisions on tax and no provisions concerning tax, other than on mutual cooperation against harmful tax practices, it seems that should any significant dispute arise, it will be a matter for policy makers to negotiate over dispute resolution in relation to tax matters. In specific cases, there may be scope for the WTO dispute resolution mechanism to be invoked, but that would very much

depend on the circumstances.

9 The Chartered Institute of Taxation

9.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

June 2020

Committee on the Future Relationship with the European Union

House of Commons, London, SWIA OAA

Email: freucom@parliament.uk Website: https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/

21 May 2020

Jayne Simpson
Technical Officer for Indirect Tax
Chartered Institute of Taxation

Dear Ms Simpson,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our call for evidence, which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

In the questions below, we take the level playing field provisions to include state aid, competition, social and employment standards, environment, climate change, and relevant tax matters, as set out in the Political Declaration. We welcome contributions that address one, some or all of these areas and in your submission you can choose to group them together as level playing field provisions or to break out issues where you feel it is important to draw the Committee's attention to them. Please do not feel you need to address all of these policy areas.

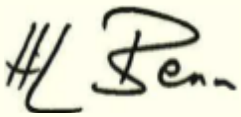
- What, if any, existing level playing field provisions are already included in the Withdrawal Agreement? What, if any, role is there for the Joint Committee to address any such provisions? What, if any, means is there for stakeholders to enforce any such provisions in domestic courts?
- What are the current UK and the EU positions on the level playing field provisions in the negotiations on a Future Relationship? What is your assessment of the level of technical detail the negotiators have grappled with on these provisions to date? To what extent might either position impact either party's future plans to legislate?
- How does the EU's position on a level playing field with the UK compare to that which it held in negotiations on CETA with Canada and the EU-Japan FTA?
- How does the EU's position on dispute settlement in the level playing field compare to the role of dispute resolution in the level playing field provisions in CETA with Canada and the EU-Japan FTA? Have there been any disputes to date concerning the level playing field in either agreement and, if so, how have they been settled and enforced?
- How relevant are geographical proximity and economic interconnectedness to level playing field provisions?
- To what extent would agreeing to the EU's position on a level playing field restrict the UK's ability to reach a trade agreement with the US and other third countries? To what extent is the

EU restricted by its existing agreements with third countries in what it can offer the UK on a level playing field?

- Where an EU Directive has provided for minimum standards, has the UK tended to go for the minimum or to choose to set higher standards on the areas covered by the level playing field? How does the UK's record on compliance to EU rules compare to EU Member States on the areas covered by the level playing field? What is your assessment of the level of trust on each side that either will maintain or enhance their standards and compliance in future?
- How confident are you that it is possible to conduct negotiations on something as technical as the level playing field by videoconference? Given COVID-19 has the potential to fundamentally change some aspects of the economy and the way people live and work, is there are case for looking again at what the two sides are trying to negotiate? Is there a danger that the current negotiating aims and mandate will lead us to an outcome on the level playing field that is not fit for purpose in a post-pandemic economy?
- Could you sketch out a possible compromise on the level playing field provisions and how it might be achieved? Would it be possible for such an outcome to not involve the CJEU? How united are EU Member States and the European Parliament in what the EU can offer the UK in the negotiations on the level playing field? To what extent might treating the areas of the level playing field separately help or hinder a compromise?
- What international commitments do the UK and the EU have on the areas covered by the negotiations on a level playing field? If an agreement is not reached before the end of the Transition Period, what would be the WTO and international legal baseline as regards the policy areas being negotiated on a level playing field?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours sincerely,



Hilary Benn
Chair of the Committee