

National Assembly for Wales – Written evidence (LPF0011)

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.

On level playing field commitments, including state aid, 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 prioritises the maintenance of equivalent regulatory standards to ensure preferential market access over regulatory divergence after Brexit.

The EAAL Committee is continuing its work on the detail of the UK-EU future relationship negotiations, including level playing field commitments and state aid, with a view to reporting shortly after Easter.

Question 1: How would you assess the consultative arrangements between the UK Government and the devolved nations in developing the UK's negotiating position on the level playing field?

We have yet to ascertain the extent to which the UK Government consulted with the Welsh Government in relation to the UK's negotiating position on the level playing field.

On 9 March 2020, we have an evidence session with the Welsh Government's Counsel General and Brexit Minister, Jeremy Miles AM, where we intend to explore the level of consultation that was held.

We are unaware of any direct consultation with the Assembly.

We are in the process of seeking an evidence session with an appropriate UK Minister to explore this further.

We would be happy to provide you with further information after we have conducted further work in this area.

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

The level of input sought from the Assembly ahead of the UK negotiating position being finalised fell short of our expectations, as expressed in our December 2019 report particularly given previous UK Government commitments to engage with devolved legislatures.

Question 2: What is your assessment of:

- a) The Commission's position that EU state aid rules should continue to apply to the UK after the end of the transition period; and**
- b) The UK Government's position that any future UK-EU free trade agreement should not contain any measures on subsidy control beyond those typically included in comprehensive free trade agreements?**

We have recently written to the Lords EU Committee with an initial view on the EU and UK positions on level playing field commitments and repeat the relevant part of our submission below.

Level playing field commitments

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

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."

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.

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.

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 [...]"

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.

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.

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.

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."

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

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."

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.

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

State aid

On state aid, we have previously acknowledged the potential benefit of looking afresh at state aid rules (see our June 2017 report, *The future of regional policy - what next for Wales?*).

Whilst it is possible to contemplate possible benefits arising from changes to state aid rules, any benefit must be weighed against the cost in economic terms of this occasioning a more distant trading relationship with the EU. In a worst-case scenario, this must be weighed against the cost of trading with the EU on World Trade Organisation terms.

It is, again, our intention to continue testing this position with stakeholders in the coming months.

Question 3: What representations, if any, have you received from stakeholders in relation to:

- a) The design and goals of a future UK state aid or subsidy control regime; and**
- b) The implications of not yet having certainty about the shape and operation of such regime?**

We last received representations from stakeholders in relation to state aid as part of our 2017 inquiry into the future of regional policy.

We are currently exploring the implications for Wales arising from the UK-EU future relationship negotiations. This will include renewed stakeholder engagement.

We will be happy to share any relevant evidence we gather with you. We aim to report on this work shortly after Easter.

Question 4: What role should the devolved legislatures play in the design and operation of a future UK state aid or subsidy control regime, and how might this input best be ensured?

As with many areas of UK policy that have implications for devolution, the role afforded to the Welsh Government by the UK Government has implications for how Assembly committees can provide an input.

It is worth noting that the question of where competence lies for state aid policy is an area of dispute between the UK and Welsh Governments.

We believe that, given the significant interaction with devolved competences, any UK-wide policies on state aid or subsidy control should be subject to scrutiny by the Assembly.

In terms of how input might be ensured, we believe that the Welsh Government (or the UK Government depending on the level of intergovernmental cooperation in these areas) should invite views from the relevant Assembly committees at an early stage in the development of these policies.

Should these policies lead to legislative changes in devolved areas, then the consent of the Assembly will be required according to the legislative consent convention.

3 March 2020