Agenda – Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Lleoliad:

Fideo Gynadledda via Zoom

Dyddiad: Dydd Iau, 17 Medi 2020

Amser: 13.00

I gael rhagor o wybodaeth cysylltwch a:

Alun Davidson

Clerc y Pwyllgor

0300 200 6565

SeneddMADY@senedd.cymru

Yn unol â Rheol Sefydlog 34.19, mae'r Cadeirydd wedi penderfynu gwahardd y cyhoedd o gyfarfod y Pwyllgor er mwyn diogelu iechyd y cyhoedd.

Bydd y cyfarfod hwn yn cael ei ddarlledu'n fyw ar senedd.tv.

Cofrestru

(13.00–13.30)

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

(13.30)

2 Sesiwn graffu gyda'r Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd

(13.30–14.30) (Tudalennau 1 – 94)

Jeremy Miles AS, y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd

Chris Warner – Llywodraeth Cymru

Ed Sherriff – Llywodraeth Cymru

3 Papurau i'w nodi

(14.30–14.35)

3.1 Papur i'w nodi 1: Gohebiaeth gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig at Gadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig ynghylch Cynllun Masnachu Allyriadau - 15 Gorffennaf 2020

(Tudalennau 95 - 97)

3.2 Papur i'w nodi 2: Llythyr gan yr Ysgrifennydd Gwladol dros Fusnes, Ynni a Strategaeth Ddiwydiannol ac Ysgrifennydd Gwladol Cymru at y Cadeirydd ynghylch lansio'r Papur Gwyn ar Farchnad Fewnol y DU a'r ymgynghoriad cysylltiedig - 16 Gorffennaf 2020.

(Tudalennau 98 - 99)

3.3 Papur i'w nodi 3: Gohebiaeth gan Weinidog y Gymraeg a Chysylltiadau Rhyngwladol at y Cadeirydd a Chadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad ynghylch Fforwm y Gweinidogion ar Fasnach - 19 Gorffennaf 2020

(Tudalen 100)

3.4 Papur i'w nodi 4: Gohebiaeth gan y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd at y Cadeirydd ynghylch rhaglenni ariannu'r UE yng Nghymru a dyfodol cyllid ar gyfer buddsoddiadau rhanbarthol yng Nghymru - 20 Gorffennaf 2020.

(Tudalennau 101 - 106)

3.5 Papur i'w nodi 5: Gohebiaeth gan Ysgrifennydd Gwladol Cymru at y Cadeirydd ynghylch yr hyn sydd wedi digwydd ers y cyfarfod ar 30 Mehefin 2020 - 20 Gorffennaf 2020

(Tudalennau 107 - 108)

3.6 Papur i'w nodi 6: Gohebiaeth gan Gadeirydd Pwyllgor yr Economi, Seilwaith a Sgiliau at yr Ysgrifennydd Gwladol dros Fusnes, Ynni a Strategaeth Ddiwydiannol ynghylch lansio'r Papur Gwyn ar farchnad fewnol y DU a'r ymgynghoriad cysylltiedig - 27 Gorffennaf 2020.

(Tudalennau 109 - 110)

3.7 Papur i'w nodi 7: Gohebiaeth gan Gadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad at yr Ysgrifennydd Busnes ac Ysgrifennydd Cymru ynghylch y Papur Gwyn ar farchnad fewnol y DU a'r ymgynghoriad cysylltiedig - 7 Awst 2020

(Tudalennau 111 - 115)

3.8 Papur i'w nodi 8: Gohebiaeth gan y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd at y Cadeirydd a Chadeirydd y Pwyllgor Deddfwriaeth, Cyfianwder a'r Cyfansoddiad ynghylch Papur Gwyn Llywodraeth y DU ar farchnad fewnol y DU - 14 Awst 2020

(Tudalennau 116 - 125)

3.9 Papur i'w nodi 9: Gohebiaeth gan Weinidog y Gymraeg a Chysylltiadau Rhyngwladol at y Cadeirydd a Chadeirydd y Pwyllgor Deddfwriaeth, Cyfianwder a'r Cyfansoddiad ynghylch Fforwm y Gweinidogion ar Fasnach - 14 Awst 2020

(Tudalennau 126 - 127)

3.10 Papur i'w nodi 10: Gohebiaeth gan y Prif Weinidog at y Cadeirydd ynghylch y Cytundeb rhwng y DU a Gwlad Pwyl - 24 Awst 2020

(Tudalennau 128 - 129)

3.11 Papur i'w nodi 11: Gohebiaeth gan y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd at y Cadeirydd ynghylch hawliau dinasyddion a fframweithiau cyffredin - 25 Awst 2020

(Tudalennau 130 - 135)

3.12 Papur i'w nodi 12: Gohebiaeth gan y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd at Gadeirydd y Pwyllgor Deddfwriaeth, Cyfianwder a'r Cyfansoddiad ynghylch cyfarfod Cyd-bwyllgor y Gweinidogion (Negodiadau'r UE) - 27 Awst 2020

(Tudalen 136)

3.13 Papur i'w nodi 13: Gohebiaeth gan Weinidog y Gymraeg a Chysylltiadau Rhyngwladol at y Cadeirydd ynghylch y trefniadau gwahanu rhwng y DU, Gwlad yr Iâ, Liechtenstein a Norwy - 28 Awst 2020

(Tudalennau 137 - 138)

3.14 Papur i'w nodi 14: Marchnad Sengl yr UE - papur gan Dr Kathryn Wright - 28 Awst 2020

(Tudalennau 139 - 158)

3.15 Papur i'w nodi 15: Gohebiaeth gan y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd at y Cadeirydd ynghylch y Cytundeb Rhyng-sefydliadol - Cyfarfodydd Gweinidogol ar yr Adolygiad o Gysylltiadau Rhynglywodraethol - 4 Medi 2020

(Tudalennau 159 - 160)

4 Cynnig o dan Reolau Sefydlog 17.42 (vi) a (ix) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod

(14.35)

5 Sesiwn graffu gyda'r Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd - trafod y dystiolaeth

(14.35-14.50)

6 Trafod cytundebau rhyngwladol

(14.50-14.55) (Tudalennau 161 - 163)

7 Blaenraglen waith

(14.55-15.10) (Tudalennau 164 - 170)

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-2248-20

Mike Hedges AS
Cadeirydd
Pwyllgor Newid Hinsawdd, Ynni a Materion Gwledig

15 Gorffennaf 2020

Annwyl Mike

Yn fy Natganiad Ysgrifenedig ar 1 Mehefin, ymrwymais i ddiweddaru pwyllgorau'r Senedd ar y cynnydd wnaed ar ddyfodol prisio carbon yn y DU ar ôl ymadael â'r UE a'r safbwynt polisi ar y cyd a drafodwyd rhwng y Llywodraeth a phedair cenedl y DU. Byddaf yn esbonio'r broses o ddatblygu'r polisi, yn darparu trosolwg o'i ddyluniad gan gynnwys y ddeddfwriaeth a'r strwythurau llywodraethu a fydd yn sail iddo, ac yn awgrymu sut y gall fy swyddogion a minnau helpu pwyllgorau'r Senedd i graffu ar y polisi hwn.

Mae diogelu'r amgylchedd, gan gynnwys lleihau allyriadau a newid hinsawdd, yn faterion datganoledig. O ganlyniad i ymadawiad y DU â'r Undeb Ewropeaidd, roedd angen sicrhau ein bod yn parhau i gymell datgarboneiddio diwydiannol. Rwyf wedi bod yn gweithio gyda'r Gweinidogion cyfatebol eraill ar draws y DU i ddatblygu Fframwaith Cyffredin i ddisodli System Masnachu Allyriadau (ETS) yr UE. Nid yw Deddf yr Undeb Ewropeaidd (Ymadael) 2018 a Deddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 yn darparu pwerau digonol i sefydlu system ddeddfwriaethol newydd. Felly, penderfynodd y pedair Llywodraeth i gyd-sefydlu Cynllun Masnachu Allyriadau'r DU (ETS y DU) gan ddefnyddio'r pwerau presennol o dan Ran 3 o Ddeddf Newid yn yr Hinsawdd 2008.

Roedd ymarfer ymgynghori cyhoeddus ar y cyd yn 2019 wedi ceisio barn ar gynigion i gymhwyso ETS y DU ar ôl y cyfnod pontio, gyda'r cyfnod deng mlynedd cyntaf yn dechrau ar 1 Ionawr 2021. Bydd yn adlewyrchu dyluniad ETS yr UE, i sicrhau bod busnesau yn gallu trosglwyddo'n ddidrafferth ac yn hwyluso cysylltiad ag ETS yr UE cyn gynted â daethpwyd i gytundeb yn y trafodaethau rhwng y DU a'r UE. Roedd ymateb rhanddeiliaid i'r ymgynghoriad o blaid ETS y DU, yn enwedig un sy'n gysylltiedig ag ETS yr UE. Roedd Pwyllgor Newid Hinsawdd y DU yn cefnogi sefydlu cynllun masnachu cysylltiedig hefyd.

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Ers yr ymgynghoriad, mae'r pedair Llywodraeth wedi parhau i ddatblygu'r agweddau technegol ar ddyluniad polisi ETS y DU a ddisgrifir yn yr Ymateb Llywodraethol ar y Cyd a gyhoeddwyd ar 1 Mehefin. Mae dyluniad y polisi yn taro cydbwysedd rhwng yr heriau o ran sicrhau integredd amgylcheddol a rheoli materion o ran cystadleurwydd busnesau. Mae hyn yn hanfodol bwysig yng Nghymru gan fod y sector masnachu yn gyfrifol am ryw 46% o'n hallyriadau ac yn cynnwys rhai o'n cyflogwyr mwyaf. Mae'r ddogfen i'w gweld yma: https://gov.wales/future-uk-carbon-pricing.

Bydd ETS y DU yn cyd-fynd yn agos ag ETS yr UE ar y cychwyn. Mae'n berthnasol i'r un sectorau masnachu ac mae'n gosod yr un rhwymedigaethau ar gyfranwyr i fonitro allyriadau ac adrodd arnynt, ac ildio nifer cyfwerth o lwfansau. Mae'r cynllun yn darparu ar gyfer dyraniad am ddim sy'n dilyn dull a meini prawf cymhwystra'r UE, a sicrhau bod rôl cydymffurfio a gorfodi rheoleiddiol Cyfoeth Naturiol Cymru yn parhau.

Mae gwahaniaethau, fodd bynnag, rhwng ETS y DU a system yr UE. Bydd cap cychwynnol ETS yr UE yn cael ei osod 5% yn llai na chyfran tybiannol y DU o gap ETS yr UE, a bydd yn cael ei adolygu ar ôl cael cyngor pellach ar y llwybr i 2050, i sicrhau ei fod yn cyd-fynd â'n nod cyffredin o gyflawni allyriadau sero net ar draws y DU erbyn 2050. Bydd hefyd fecanweithiau i reoli prisiau hynod o uchel ac isel, gan gynnwys pris cadw arwerthiant wedi'i osod yn £15 y lwfans.

Mae Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr 2020, sy'n sefydlu ETS y DU ac yn cynnwys darpariaethau ar gyfer elfennau allweddol o'r polisi, yn cael ei osod gerbron y Senedd heddiw a bydd y pedair deddfwrfa yn craffu arno o fewn yr un cyfnod amser. Rhaid i'r Gorchymyn cael ei gymeradwyo gan y Senedd, a bydd dadl yn cael ei threfnu ar gyfer wythnos gyntaf mis Tachwedd. Bydd Gorchymyn pellach a ddefnyddia'r weithdrefn negyddol, sy'n mynd i'r afael â rhai o fanylion technegol y cynllun, yn cael ei ddwyn ymlaen tuag at ddiwedd 2020.

Yn ddiweddar, gwnaeth y Senedd gydsynio i bwerau sy'n galluogi arwerthu lwfansau allyriadau sydd wedi'u cynnwys ym Mil Cyllid Llywodraeth y DU[1]. Bydd Llywodraeth y DU yn dwyn ymlaen is-ddeddfwriaeth maes o law i sefydlu'r trefniadau manwl ar gyfer arwerthu.

Mae ETS y DU yn rhan o Raglen y Fframwaith Cyffredin a oruchwylir y Cyd-bwyllgor Gweinidogol ar Drafodaethau'r UE (JMC(EN)) ac fe'i datblygwyd gan ddefnyddio'r egwyddorion a nododd ym mis Hydref 2017. Bydd Cytundeb Amlinellol yn nodi'r sail resymegol dros sefydlu'r fframwaith a'r trefniadau gwneud penderfyniadau a llywodraethu. Bydd concordat rhwng Gweinidogion y pedair llywodraeth yn mynd gydag ef. Byddaf yn rhannu'r dogfennau hyn gyda'r Pwyllgor pan fyddant yn barod a chyn y cânt eu cyflwyno i'r JMC(EN) er mwyn iddo graffu arnynt.

Rwy'n awyddus i gefnogi'r gwaith craffu ar y ddeddfwriaeth a'r fframwaith ehangach, a byddaf yn barod iawn i ddarparu tystiolaeth. Mae fy swyddogion hefyd ar gael i ddarparu trosolwg technegol o'r fframwaith a manylion y ddeddfwriaeth pe bai hynny'n ddefnyddiol ichi.

[1] Pan gyflwynwyd y Bil yng Nhŷ'r Cyffredin ar 18 Mawrth 2020, y ddarpariaeth berthnasol oedd cymal 93 (Ffi ar gyfer dyrannu lwfansau o dan gynllun masnachu lleihau allyriadau). Diwygiwyd y Bil gan y Pwyllgor Biliau Cyhoeddus, a daeth cymal 93 yn gymal 94. Cyflwynwyd y Bil yn Nhŷ'r Arglwyddi ar 2 Gorffennaf 2020, a daeth cymal 94 yn gymal 96. Er bod rhifau'r cymal wedi newid, nid oes unrhyw ddiwygiadau wedi'u gwneud i'w sylwedd ers iddo gael ei gyflwyno. Mae cofnod o'r Bil i'w weld yma: https://services.parliament.uk/Bills/2019-21/finance/documents.html.

Rwy'n ymwybodol y bydd gan bwyllgorau eraill ddiddordeb yn y fframwaith hwn. O ganlyniad, awgrymaf fod fy swyddogion yn cysylltu â chi i wneud y trefniadau ar gyfer sicrhau proses graffu effeithlon.

Mae ETS y DU yn bolisi technegol gymhleth, ond mae ganddo oblygiadau pwysig i'n polisi hinsawdd a'n sylfaen ddiwydiannol. Edrychaf ymlaen at drafod â chi yn ystod y gwaith craffu ar ETS y DU.

Byddaf yn anfon copi o'r llythyr hwn at Gadeiryddion Pwyllgor yr Economi, Seilwaith a Sgiliau, y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad a'r Pwyllgor Busnes.

Cofion

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Department for Business, Energy & Industrial Strategy

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Russell George MS
Chair
Economy, Infrastructure and Skills Committee
Welsh Parliament
Cardiff Bay, Cardiff
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16 July 2020

Dear Russell,

Launch of the UK internal market White Paper and consultation

The White Paper on the *UK Internal Market* was published today (https://www.gov.uk/government/publications/uk-internal-market).

Today, the UK Internal Market supports jobs and livelihoods across our country. 75% of Welsh exports of final goods and services are consumed in the rest of the UK, three times as much as Wales exports internationally. In some parts of Wales, a quarter of workers commute in from England on a daily basis.

The Internal Market is just as vital for the rest of the UK. Northern Ireland sells more to the rest of the UK than to all EU member states combined. Scotland sells more to the rest of the UK than to the rest of the world put together.

Following the end of the Transition Period, the way we regulate labour, capital, goods and services in the UK will no longer be decided by the EU. Hundreds of powers previously exercised at EU level will flow directly to the devolved administrations in Edinburgh, Cardiff, and Belfast. The UK will be able to regulate our trade in goods and services in a tailored manner, specifically designed to benefit our businesses, workers and consumers while maintaining our high regulatory standards.

At this historic time, it is important that we provide businesses with certainty about how seamless internal trade will be upheld in the future.

Under the plans in this White Paper, the UK will continue to operate as a coherent internal market. A Market Access Commitment will guarantee UK companies can trade unhindered in every part of the United Kingdom, whilst maintaining our commitment to high regulatory standards.

It is the Government's firm belief that without this legislation, trade from one part of the Union to another could be disrupted through regulatory differences. This could put jobs at risk across the country and leave Welsh businesses potentially unable to sell their goods and services in other home nations.

The proposals in the White Paper will protect the UK internal market for the long-term, including:

- The principle of **mutual recognition –** goods and services from one part of the UK will be recognised across the country to ensure the devolved administrations can set their own rules and standards in areas of their competence, but still welcome the trade of businesses based anywhere in the UK.

- The principle of **non-discrimination –** so that there is equal opportunity for companies trading in the UK regardless of where in the UK the business is based.

These principles will prevent any part of the UK from blocking products or services from another part while protecting devolved powers, such as introducing plastic bag minimum pricing or introducing smoking bans.

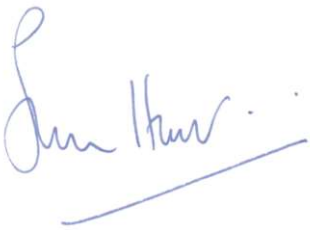
The consultation launched at the same time as the White Paper will enable businesses, academics, consumer groups and trade unions to input their views of the proposals and consultation questions.

We have welcomed the engagement we have already had with Welsh Government officials and would like to build on this to make sure we fully discuss all the issues raised in the White Paper and consultation. We would value you and your Committee's input in this process.

If you have additional questions or would like further information, our ministerial colleagues and officials would welcome the opportunity to assist you.

Yours sincerely,

THE RT HON ALOK SHARMA MP
Secretary of State for Business, Energy & Industrial Strategy



THE RT HON SIMON HART MP
Secretary of State for Wales

Elluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Llywodraeth Cymru
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David Rees AS
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cc: Aelodau'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad.

Gorffennaf 2020

Annwyl Gadeiryddion,

Rwy'n ysgrifennu o dan y cytundeb ar gysylltiadau rhyng-sefydliadol i roi gwybod ichi bod cyfarfod o'r Fforwm Masnach Gweinidogol yn cael ei gynnal ddydd Mawrth, 21 Gorffennaf.

Yn ystod y cyfarfod, bydd yr wybodaeth ddiweddaraf am y negodiadau ar gytundebau masnach rydd a'r Rhaglen Parhad yn cael eu trafod, a bydd diweddariad hefyd ar Fil Masnach y DU.

Byddaf yn ailbwysleisio safbwynt Llywodraeth Cymru o ran bod yn rhaid ystyried safbwyntiau'r Gweinyddiaethau Datganoledig wrth ddatblygu safbwyntiau negodi.

Byddaf yn ysgrifennu atoch eto ar ôl y cyfarfod.

Yn gywir,

M. E. Morgan

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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20 Gorffennaf 2020

Annwyl David,

Diolch am eich llythyr dyddiedig 25 Mehefin yn gofyn am ddiweddariad i'r Pwyllgor ar y rhaglenni arian UE cyfredol yng Nghymru a dyfodol cyllid buddsoddi rhanbarthol yng Nghymru.

Rwyf wedi cynnwys y wybodaeth bellach y gofynnoch amdani isod.

Rhaglenni arian UE cyfredol (2014-2020)
Mae WEFO wedi ymrwymo dyraniad cyfan Cronfeydd Strwythurol yr UE ar gyfer 2014-2020, gan fuddsoddi dros £2 biliwn, gan yrru cyfanswm gwariant o dros £3.9 biliwn (ffigurau diwedd Mehefin) sydd hefyd yn cynnwys addasu cronfeydd strwythurol yr UE i gefnogi ymateb Cymru i bandemig COVID-19.

Mae Menter Buddsoddi Ymateb Coronafeirws yr Undeb Ewropeaidd (CRII) wedi darparu pecyn o hyblygrwydd i ddefnyddio Cronfeydd Strwythurol a Buddsoddi Ewropeaidd (ESI) mewn ymateb i effeithiau economaidd Covid-19. Mae mesurau i amrywio cyfraddau ymyrryd Cronfeydd ESI, lefelau gwariant mewn Echelau Blaenoriaeth a hyblygrwydd arall, yn darparu amrywiaeth o gyfleoedd i fynd i'r afael â'r gwahanol amgylchiadau a brofir gan y DU ac Aelod-wladwriaethau eraill yr UE.

Mae'r hyblygrwydd newydd yn berthnasol i beth sy'n gymwys am gymorth yr UE, i drosglwyddiadau rhwng cronfeydd, i gyfraddau ymyrryd a ganiateir ac i amseriad y broses gymeradwyo. Ni chafwyd unrhyw newid sylweddol i'r drefn lywodraethu ariannol, felly mae'r gofynion arferol ar gyfer amcanion clir, allbynnau mesuradwy a llwybrau archwilio yn berthnasol o hyd.

Mae WEFO'n gwneud y gorau o'r cyfleoedd a ddarparwyd gan CRII, gan glustnodi hyd at £245 miliwn o gronfeydd Ewropeaidd i gefnogi ail don y Gronfa Cadernid Economaidd, yn cynnwys benthyciadau buddsoddi a wnaed gan Fanc Datblygu Cymru, a chostau gwasanaeth iechyd sy'n gysylltiedig â Covid-19, yn arbennig i gefnogi recriwtio staff meddygol ychwanegol a phrynu cyfarpar diogelu personol.

Mae hefyd yn cefnogi adleoli staff prosiect dros dro i waith Covid-19 lle bo'n briodol a galwad Covid-19 benodol am gynigion o dan Gynllun Cynhwysiant Gweithredol Cyngor Gweithredu Gwirfoddol Cymru.

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O ran rhaglen Cronfa Datblygu Rhanbarthol Ewrop (ERDF), mae'r rhan fwyaf o brosiectau'n mynd rhagddynt yn dda er gwaethaf y tarfu yn sgil pandemig COVID-19 a mesurau cyfyngiadau symud o ganlyniad i hynny. Fodd bynnag, mae yna rai pryderon am nifer o brosiectau seilwaith strategol na fydd yn gallu cwblhau eu gwaith neu eu gwariant cyn diwedd 2023 o bosibl. Mae WEFO yn ymgynghori ag arweinwyr prosiectau penodol er mwyn gweithio tuag at amserlenni gwell a modelau cyflawni eraill posibl.

Mewn cyferbyniad i'r ERDF, mae cyfyngiadau symud cyfredol Covid-19 wedi cael effaith ar gyflawniad y rhan fwyaf o weithrediadau Cronfa Gymdeithasol Ewrop (ESF) gan fod llawer o weithgareddau sy'n cefnogi cyfranogwyr wedi'u cwtogi, a llawer llai o gyfranogwyr newydd a chyflogwyr yn cael eu recriwtio i brosiectau. Mae rhai prosiectau'n parhau i ddarparu dysgu o bell neu gymorth arall i gyfranogwyr o bell, pan fo natur y prosiect yn caniatáu hyn. Mae WEFO yn caniatáu i brosiectau a ariennir gan arian yr UE ac sy'n darparu hyfforddiant i fusnesau, lacio rheolau ar gyd-fuddsoddi, fel ffordd o helpu cwmnïau i gael gafael ar hyfforddiant gan y cynlluniau hyn a ariennir gan yr UE yn ystod y cyfnod adfer yn sgil Covid-19.

Mae ymrwymiad y rhaglen ar gyfer Rhaglen Gydweithredu Iwerddon Cymru yn €75.2m – 95% o ddyraniad ERDF. Mae WEFO a'i bartneriaid cyflawni yn Iwerddon yn trafod y dulliau mwyaf effeithiol o ddefnyddio'r cyllid sydd ar ôl. Rhoddir ystyriaeth i fesurau adfer Covid-19 posibl fel rhan o'r ymarfer hwn yn cynnwys unrhyw weithgareddau newydd a allai fod yn fwy perthnasol i sefyllfa ôl-argyfwng.

O ran y Rhaglen Datblygu Gwledig (RDP), yn Chwefror 2020, roedd lefel ymrwymiad y prosiect yn £689.5 miliwn, sef 82.6% o ymrwymiad mewn cronfeydd (cyfanswm gwerth y rhaglen yw £834,816,280). Ar hyn o bryd, mae swyddogion yn asesu effaith Covid-19 ar brosiectau RDP unigol, gan fod nifer o weithgareddau a drefnwyd ar gyfer Mawrth a Gorffennaf wedi'u canslo neu eu gohirio. Mae ymarfer ailgynllunio'n cael ei gwblhau i ymrwymo'r RDP yn llawn, gan fanteisio ar y cyfle i barhau i ymrwymo i brosiectau ar ôl diwedd y flwyddyn, cyhyd â bod y prosiectau hynny'n cael eu cyflawni erbyn Mehefin 2023.

Gweler **Atodiad A** am ddadansoddiad pellach ar gyfer cyfnod rhaglen 2014-20.

Er gwaethaf y pandemig, mae WEFO wedi parhau i gynnal yr holl swyddogaethau allweddol gan weithio o bell, gan ailddyrannu adnoddau i sicrhau bod y brif flaenoriaeth o brosesu hawliadau a gwneud taliadau i fuddiolwyr yn parhau i gael eu darparu'n effeithiol. Mae hyn hefyd wedi sicrhau bod gwaith rheoli arian parod WEFO ei hun, yn cynnwys cael arian parod gan y CE, wedi'i gynnal gydol y pandemig.

Yn sgil cyfyngiadau symud COVID-19 ledled Cymru a Lloegr, mae rhai gwiriadau gwariant yn y fan a'r lle wedi'u gohirio, gan achosi ôl-groniad anochel. Fodd bynnag, gan mai mater i'r DU gyfan yw hwn, mae Awdurdodau Rheoli'r DU yn ysgrifennu llythyr ar y cyd i'r CE i ystyried ffyrdd o reoli'r mater hwn.

Banc Buddsoddi Ewrop
Mae Banc Buddsoddi Ewrop (EIB) wedi gwneud cyfraniad allweddol yn cefnogi buddsoddiad hirdymor i wella tai cymdeithasol, addysg, seilwaith ynni, trafnidiaeth a seilwaith dŵr ledled Cymru.

Mae hyn yn cynnwys cymorth ar gyfer ail Bont Hafren a ffordd ddeuol yr A55 o Gaer i Gaergybi, yn ogystal â ffyrdd newydd yn Ne a Gorllewin Morgannwg, Dyfed a Gwent. Mae buddsoddiadau allweddol gan Ford ym Mhen-y-bont ar Ogwr, Norgine yn Hengoed a chan Dŵr Cymru wedi derbyn cefnogaeth, yn cynnwys yn Ysgol Gynradd Stebonheath yn Llanelli lle mae prosiect Rainscape yn helpu i leihau gorlif carthffosiaeth i Fôr Hafren.

Mae benthyca diweddar gan y Banc wedi cefnogi buddsoddiad addysg yng Nghymru, yn cynnwys cefnogi campws newydd Bae Prifysgol Abertawe a lleihau costau gwresogi ym Mhrifysgol Bangor.

O ran unrhyw effaith ar brosiectau a ariennir yn sgil Brexit, fe wnaeth Grŵp EIB ymrwymiad cyhoeddus ar 31 Ionawr i anrhydeddu'r cyllid sydd ganddo yn y DU ar hyn o bryd. Bydd benthyciadau'n parhau i gael eu rheoli gan eu contractau cyllid perthnasol.

Mae bod yn bartner tanysgrifiol i EIB Cymru wedi dod â manteision ychwanegol, gan gynnig mynediad at arbenigedd a'r arferion gorau masnachol sylweddol. Fe wnaeth prosiect Metro De Cymru elwa, er enghraifft, ar arbenigedd masnachol EIB wrth lywio'r broses gaffael.

Felly, yn ein Papur Gwyn, *Diogelu Dyfodol Cymru*, dadleuwyd y dylai'r DU barhau i fod yn bartner tanysgrifio gan ei fod yn dod â manteision uniongyrchol i'n heconomi yn ogystal â gwella capasiti economaidd mewn mannau eraill, gan helpu'r amgylchedd masnachu byd-eang, yr ydym yn ei gefnogi.

Yn 2018, darparwyd tystiolaeth ysgrifenedig gennym i Ymchwiliad Tŷ'r Arglwyddi ar y berthynas rhwng y DU a'r UE yn dilyn Brexit. Ysgrifennwyd hefyd at Weinidogion Trysorlys y DU, yn nodi pryderon am y diffyg cynnydd o ran datblygu opsiynau polisi ar gyfer ein perthynas â'r EIB.

Yn Chwefror 2019, mabwysiadodd Tŷ'r Arglwyddi adroddiad a nododd fod seilwaith y DU wedi derbyn dros €118 biliwn mewn benthyciadau gan yr EIB. Roedd yn nodi'r dirywiad nodedig sydd wedi bod mewn cyllid gan yr EIB ers y refferendwm a thanio Erthygl 50, a'r ffaith, er ein bod ni yn colli mynediad i'r EIB ar ôl Brexit, nad yw'r Llywodraeth Geidwadol wedi dweud fawr ddim am unrhyw berthynas â'r EIB neu ddewisiadau domestig posibl eraill yn y dyfodol.

Fe fyddem ni wedi dymuno gweld y DU yn parhau i fod yn bartner tanysgrifio yn y Banc. Fodd bynnag, gan na ddigwyddodd hynny, rydym yn gofyn am gael mandad cyn gynted â phosibl i sicrhau bod y DU yn dal i allu derbyn benthyciadau gan yr EIB.

Dyfodol buddsoddiad rhanbarthol yng Nghymru
Daeth ein hymgynghoriad, 'Fframwaith ar gyfer dyfodol buddsoddiad rhanbarthol yng Nghymru' i ben ar 10 Mehefin, ar ôl para am ychydig dros 14 wythnos. I gefnogi hyn, cynhaliwyd pedwar gweminar ymgysylltu rhanbarthol yn y gogledd, canolbarth, de-orllewin a de-ddwyrain yn ystod mis Mai, a ddenodd dros 430 o fynychwyr. Fe wnaethom ni hefyd gymryd rhan mewn gweminarau ar-lein a drefnwyd gan randdeiliaid allweddol eraill yn cynnwys Addysg Bellach, Addysg Uwch, Busnes a'r Trydydd Sector.

Fe wnaethom ni hefyd ymgysylltu â dinasyddion, gan ddarparu arolwg Dinasyddion byr a hyrwyddwyd gan y cyfryngau cymdeithasol a ffilm esboniadol fer. Cwblhawyd arolwg pobl ifanc, gyda chymorth Plant yng Nghymru.

Yn sgil ein gwaith ymgysylltu derbyniwyd 134 o ymatebion gan randdeiliaid ac unigolion i gwestiynau'r prif ymgynghoriad, 285 o ymatebion i'r arolwg dinasyddion, a 42 o ymatebion i'r arolwg pobl ifanc. Mae'r holl adborth a dderbyniwyd yn cael ei ddadansoddi'n annibynnol gan gwmni ymchwil, ond mae dadansoddiad cychwynnol eisoes yn dangos bod yna gonsensws cyffredinol ar ein cynigion, gan gydnabod effaith COVID-19.

Mae ein prosiect gyda'r OECD, a ddechreuodd ym mis Ionawr 2019, i ddysgu o arferion gorau rhyngwladol, hefyd yn mynd yn ei flaen yn dda ac wedi cynnwys dadansoddiad ac ymgysylltu sylweddol â rhanddeiliaid er mwyn llunio adroddiad terfynol.

Bydd yr OECD yn paratoi ei grynodeb gweithredol dros yr haf, tra bod ei waith sy'n weddill yn cynnwys datblygu pecyn cymorth hunanasesu hyblyg i helpu cyrff rhanbarthol i asesu eu buddsoddiad cyhoeddus a'u capasiti i weithredu polisi, a darparu dirnadaeth o'r meysydd sydd angen eu gwella, fel y gallwn ymrwymo i gael cymysgedd o ddulliau cenedlaethol, rhanbarthol a lleol ar gyfer darparu buddsoddiad rhanbarthol yn y dyfodol.

Bwriadwn gyhoeddi'r ddau adroddiad ym mis Medi, ac edrychaf ymlaen at rannu a thrafod y canfyddiadau gyda'ch Pwyllgor maes o law. Yn y cyfamser, bydd Gweinidogion Cymru'n ystyried y trosolwg cychwynnol o ganfyddiadau'r ymgynghoriad ac adroddiad terfynol yr OECD yr a byddaf yn cytuno ar y camau nesaf i'w hystyried gan swyddogion gyda phartneriaid dros fisoedd yr haf a'r hydref fel ein bod ni'n dal ar y llwybr iawn i gyflwyno trefniadau buddsoddi newydd o ddechrau 2021.

O ran eich ymholiadau ynghylch Cronfa Ffyniant Gyffredin y DU, er gwaethaf y ffaith bod Llywodraeth y DU wedi nodi na fydd Cymru'n derbyn llai o gyllid na lefelau cyfredol cyllid yr UE (Maniffesto'r Blaid Geidwadol 2019; Cyllideb Mawrth 2020), ni chafwyd cadarnhad eto sut bydd y Gronfa yn dod i Lywodraeth Cymru. Yma, mae Llywodraeth Cymru wedi dadlau y dylai Llywodraeth y DU ddyrannu dyraniad penodol, clir a thryloyw i Lywodraeth Cymru'n uniongyrchol, wedi'i ddisgrifio fel ein cyfran o'r Gronfa Ffyniant Gyffredin, ac i hyn gael ei ddatganoli a'i ddyrannu'n briodol yn unol â'r blaenoriaethau i sicrhau twf cynhwysol fel y cytunwyd arno mewn ymgynghoriad â'n partneriaid.

Rydym hefyd am weld y cyllid disodli hwn yn parhau i gael ei ddarparu i Gymru ar sail angen i adlewyrchu'r heriau strwythurol y mae Cymru'n dal i'w hwynebu ynghyd â chyllidebau aml-flwyddyn y Gronfa Ffyniant Gyffredin gan fod ein holl sgyrsiau â'n partneriaid a'n buddiolwyr yn nodi bod hyn yn hanfodol ar gyfer cynllunio hirdymor. Mae ein safbwyntiau wedi'u cyhoeddi fel tystiolaeth i ymchwiliad Pwyllgor Materion Cymreig Llywodraeth y DU ar Gymru a'r Gronfa Ffyniant Gyffredin, a gynhaliwyd rhwng 11 Chwefror a 25 Mai.

Cefais gyfarfod ag Ysgrifennydd Gwladol Cymru ar 10 Chwefror ac ers hynny rydym wedi bod yn adeiladu ar y cyfarfod hwnnw i geisio cytundeb ar rai egwyddorion allweddol ynglŷn â sut gallai Llywodraeth y DU a Llywodraeth Cymru gydweithio'n effeithiol yn y dyfodol agos.

Mewn trafodaethau diweddar â Gweinyddiaeth Tai, Cymunedau a Llywodraeth Leol y DU roedd swyddogion yn dweud fod gwaith ar y Gronfa Ffyniant Gyffredin yn cyflymu gan fod trafodaethau ynghylch y Gronfa newydd gael eu cynnal gyda Gweinidogion Cabinet y DU. Fodd bynnag, deallwn fod nifer o ffactorau eraill yn effeithio ar y gwaith hwn yn cynnwys y Papur Gwyn ar ddatganoli yn Lloegr a chynlluniau ehangach ar gyfer adferiad economaidd ar ôl COVID. Nid ydym yn disgwyl cyhoeddiad am y Gronfa Ffyniant Gyffredin hyd nes y cyhoeddir yr Adolygiad Cynhwysfawr o Wariant yn yr hydref, sy'n golygu ei bod hi'n annhebygol y bydd cyllid newydd yn cael ei ddarparu cyn blwyddyn ariannol 2021/22 ac y bydd pontio didrafferth yn digwydd rhwng rhaglenni buddsoddi er budd busnesau, cymunedau a phobl ledled Cymru.

Wrth symud ymlaen, rydym yn dal i barhau'n awyddus i weithio'n adeiladol gyda Llywodraeth y DU fel y gallwn wneud cyfraniadau i'r ddadl ar fodel arfaethedig y dyfodol ar gyfer y Gronfa Ffyniant Gyffredin. Bydd swyddogion hefyd yn parhau i weithio gyda Grŵp Llywio Buddsoddi Rhanbarthol Cymru, dan gadeiryddiaeth Huw Irranca-Davies AS, ac is-grwpiau technegol dros y misoedd nesaf i helpu i ddatblygu model gweithredu hirdymor yn seiliedig ar yr argymhellion a'r sylwadau a dderbyniwyd gan yr OECD a'n hymgynghoriad, ynghyd â threfniadau pontio ar gyfer buddsoddiad yn y dyfodol sydd angen eu hystyried yng ngoleuni'r adferiad ar ôl COVID.

Rwy'n gobeithio y bydd y wybodaeth hon yn rhoi diweddariad defnyddiol ar sefyllfa ddiweddaraf y rhaglenni cyfredol a dyfodol buddsoddiad rhanbarthol yng Nghymru. Os hoffech esboniad pellach ar y materion a drafodir yn y llythyr hwn rhowch wybod i mi. Byddwn hefyd yn hapus i roi diweddariad i aelodau ar ddatblygiadau, yn cynnwys adroddiadau'r OECD ac adroddiadau ymgynghori, yn un o gyfarfodydd y Pwyllgor yn ystod tymor yr hydref.

Yn gywir,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

cc. Llyr Gruffydd AS, Cadeirydd, Pwyllgor Cyllid Senedd Cymru

Dyrannu cyllid yn ôl rhanbarth a math

Nid ydym yn casglu data ariannol yn ôl rhanbarth neu ardal awdurdod lleol ar yfer y cronfeydd strwythurol a'r rhaglenni datblygu gwledig. Mae'r rhan fwyaf o weithrediadau'r gronfa strwythurol yn sicrhau manteision i fwy nag un ardal awdurdod lleol, yn cynnwys llawer sy'n cyflawni ar draws ardal y rhaglen yn gyffredinol, fel y mae llawer o brosiectau a ariennir fel rhan o'r rhaglen RDP, fel Cyswllt Ffermio. Nid yw'n bosibl nodi faint yn union o gyllid mae ardal awdurdod lleol benodol wedi'i 'dderbyn' oherwydd cwmpas cenedlaethol/rhanbarthol cymaint o'r prosiectau a'r rhaglenni hyn.

Rydym yn casglu data ariannol ar gyfer prif fuddiolwr gweithrediadau ac mae'r tabl isod yn crynhoi'r symiau a ddyrannwyd i awdurdodau lleol, mewn achosion pan mai'r awdurdodau lleol yw prif fuddiolwr y gweithrediadau hynny drwy'r Cronfeydd Strwythurol, rhaglen Cydweithredu Tiriogaethol Ewropeaidd (ETC), Rhaglen Datblygu Gwledig (RDP) Cymru a Chronfa'r Môr a Physgodfeydd Ewrop (EMFF). Ar gyfer yr RDP a'r EMMFF mae swm yr arian a ddyrannwyd i Awdurdodau Lleol wedi'i gynnwys ond nid yw'n bosibl gwneud hyn ar gyfer pob Awdurdod Lleol unigol.

Tabl 1: Crynodeb o gronfeydd yr UE a ddyrannwyd i awdurdodau lleol ar gyfer cyfnod rhaglenni 2014-20

Rhaglen	**Cyfanswm**
Cronfeydd Strwythurol Ewropeaidd (ESF ac ERDF)	£230.8m
Ar gyfer:	
Cyngor Bwrdeistref Sirol Blaenau Gwent	£45.3m
Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr	£10.4m
Cyngor Bwrdeistref Sirol Caerffili	£3.6m
Cyngor Sir Gaerfyrddin	£4.3m
Cyngor Sir Ceredigion	£0.6m
Dinas a Sir Abertawe	£4.5m
Cyngor Bwrdeistref Sirol Conwy	£7.0m
Cyngor Gwynedd	£11.8m
Cyngor Bwrdeistref Sirol Sir Ddinbych	£24.8m
Cyngor Sir Ynys Môn	£8.8m
Cyngor Bwrdeistref Sirol Castell-nedd Port Talbot	£29.2m
Cyngor Dinas Casnewydd	£13.7m
Cyngor Sir Penfro	£30.3m
Cyngor Sir Powys	£2.1m
Cyngor Bwrdeistref Sirol Rhondda Cynon Taf	£7.5m
Cyngor Bwrdeistref Sirol Torfaen	£26.8m
Cronfa'r Môr a Physgodfeydd Ewrop	£0.5m
Rhaglen Datblygu Gwledig Cymru	£46.9m
Rhaglen Cydweithredu Tiriogaethol Ewropeaidd	€5.7m
Ar gyfer:	
Cyngor Sir Gaerfyrddin	€1.6m
Cyngor Sir Penfro	€4.1m

UK Government
Llywodraeth y DU

Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

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Ref: 031MISC20

David Rees MS
Chair of the External Affairs and Additional Legislation Committee
Welsh Parliament
Cardiff Bay
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20 July 2020

Dear David,

I am writing to you following my appearance before your Committee on 30 June. It was a pleasure engaging with you and your fellow Committee members on what I am sure you will agree are some very critical issues, and I hope you found it to be a productive session.

You will recall that during that session I committed to writing to you to provide further detail on some of the topics that we discussed. Firstly, you asked about preparedness. The UK Government's preparedness continues to be coordinated through the Cabinet Office, specifically Transition Task Force. Planning for the end of the transition period is well underway, and this planning is coordinated by the EU Exit Operations (XO) Cabinet Committee.

Secondly, we touched on the UK Government's Transition Period Readiness Portfolio Board which – as you will be aware – is an official-level forum. It is chaired by the Director General of the Transition Taskforce and was established on 25 February 2020. It meets fortnightly and maintains oversight of project-level performance, providing an essential route to escalate cross-cutting delivery issues that need to be resolved. From 3 June 2020, officials from the Devolved Administrations were invited to attend the Board on a monthly basis. The Board will escalate issues to the Cabinet Committees overseeing transition as appropriate, while ensuring that ministerial time is focused effectively on the most relevant issues.

Next, on the issue of up-to-date import and export guidance, there is existing guidance on GOV.UK (Imports: www.gov.uk/starting-to-import, Exports: www.gov.uk/starting-to-export) which includes content on trading with the EU from 1 January 2021. HMRC is working with key external stakeholders to understand how the guidance can best help businesses to prepare for the end of the transition period, and we will be releasing further guidance and communications on the Northern Ireland Protocol in due course.

UK Government
Llywodraeth y DU

Ref: 031MISC20

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The Committee also asked about the numbers required for post-Brexit customs procedures, referring to the industry calculation of 50,000 customs agents that will be required. The UK already has a well-established industry of customs intermediaries which serve British businesses trading outside the EU. The sector is made up of many different business models including specific customs brokers, freight forwarders and fast parcel operators – all of which will have specific staffing requirements. We are confident that the sector will respond to the staged introduction of customs processes and react to the increased demand from traders. We will continue to monitor industry preparations closely.

A UK Government support package of £34 million has also been designed to meet flexibly the needs of the customs intermediary sector to build capacity by covering training and IT innovation, as well as recruitment. This support has funded approximately 20,000 training courses in customs processes and procedures and the creation of a new UK Customs Academy, which has delivered 870 courses so far. Over 14,500 pieces of IT kit have also been applied for.

Furthermore, we have announced an additional £50 million of funding to support customs intermediaries to boost capacity, providing businesses with further support ahead of the new processes. In total, the UK Government has made £84 million available to support the customs intermediary sector at the end of the transition period.

Finally, I would like to draw your attention to a new public information campaign – *The UK's new start: let's get going* – launched by the UK Government on 13 July 2020. This campaign clearly sets out the actions that businesses and individuals need to take to prepare for the end of the transition period on 31 December 2020, and ensure they are ready to seize the opportunities that it will bring. This campaign will run alongside the UK's continued negotiations with the EU.

I hope that this letter is useful to you and your Committee, and I very much look forward to having further engagement with you all in the future.

Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Y Gwir Anrhydeddus Alok Sharma AS
Ysgrifennydd Gwladol
Yr Adran Busnes, Ynni a Strategaeth Ddiwydiannol,
1 Victoria Street,
Llundain, SW1H 0ET

Y Gwir Anrydeddus Simon Hart AS
Ysgrifennydd Gwladol Cymru
Swyddfa Ysgrifennydd Gwladol Cymru

27 Gorffennaf 2020

Annwyl Alok a Simon,

Diolch am eich llythyr ynglŷn â lansio Papur Gwyn ac ymgynghoriad marchnad fewnol y DU.
Rwy'n ymwybodol bod y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol a'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad eisoes wedi gwneud gwaith yn y maes hwn ac yn bwriadu ymateb i'ch llythyr ar wahân.

Rwy'n teimlo ei bod yn synhwyrol i'r Pwyllgorau hynny barhau i arwain ar y darn hwn o waith. Fodd bynnag, bydd Pwyllgor yr Economi, Seilwaith a Sgiliau yn monitro hynt y Papur Gwyn/datblygiadau sy'n ymwneud â Marchnad Fewnol y DU ac mae'n bosibl y bydd yn craffu'n ddiweddarach os bydd yn briodol gwneud hynny.

Rwyf wedi anfon copi o'r llythyr hwn at David Rees AS, Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, a Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad.

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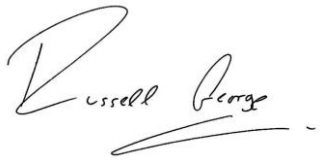
Yn gywir,



Russell George AS

Cadeirydd Pwyllgor yr Economi, Seilwaith a Sgiliau

CC: Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
David Rees AS, Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

The Rt Hon Alok Sharma MP, Business Secretary

The Rt Hon Simon Hart MP, Secretary of State for Wales

7 August 2020

Dear Alok and Simon

UK internal market White Paper and consultation

Thank you for your letter of 16 July, which we considered at our meeting on 3 August.

We note that the consultation on your proposals lasts for only four weeks over the traditional parliamentary summer recess period. We also understand that the intention is for the subsequent UK Bill to complete its passage through the UK Parliament before the end of the year.

The timeframe for consideration of your proposals is wholly inadequate. Furthermore, given that the White Paper contains little detail as to how the mechanisms for managing an internal market will work in practice, there is little scope for meaningful engagement by the devolved legislatures and stakeholders before the introduction of a UK Bill.

It would have been preferable for us to have been able to question the UK Government on its proposals, with the aim of identifying what it is seeking to achieve. In particular, this would have enabled us fully to consider your argument that primary legislation is the best solution for managing internal barriers to trade at the end of the transition period. This is not least because we believe any UK Bill on the internal market should be central to the UK Government's thinking, rather than being rushed through the UK Parliament at the end of the Brexit transition process (with a range of Bills covering, for example, trade, fisheries and agriculture much further advanced).

In the absence of such an opportunity, we enclose a series of questions that we would have required responses to had we been consulted and engaged properly.

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Given the lack of detailed and relevant information, we are yet to conclude whether a UK Bill of the kind proposed in the White Paper is needed.

If such a UK Bill is to be introduced, it could potentially impact the way the Senedd seeks to legislate in the future and have profound constitutional implications for the UK. At the very least it must:

- be developed from open, transparent and meaningful consultation on proposals that are at a formative stage, such consultation being based on clear and well-defined principles;
- be introduced only after there has been consultation on a draft Bill, which we deem to be a basic and fundamental requirement for all Bills of constitutional significance;
- reflect detailed discussions with the devolved governments and legislatures on how the provisions of the Bill would work in practice and their practical impact on the devolution settlements;
- adopt an approach that works for each part of the United Kingdom;
- interact logically and coherently with all statutory and non-statutory common frameworks to be agreed under the ongoing work programme;
- not seek to re-centralise power, either directly or indirectly, by allowing the UK Government and the UK Parliament to dominate policy areas that are devolved;
- include provisions agreed by all parties setting out an independent governance structure that ensures parity between all governments of the UK and a robust dispute resolution mechanism;
- provide the devolved governments and legislatures with the same freedoms to protect their citizens and economies in key areas of public health, consumer and environmental standards that they previously enjoyed under the EU's single market;
- enshrine within it the key constitutional principles of subsidiarity and proportionality, which have governed the operation of the internal market through the UK's membership of the EU, and have been faithfully guarded by all the legislatures of the UK;
- not be imposed on the devolved countries of the United Kingdom without their consent;
- not rely on the use of intergovernmental agreements with the devolved governments, as a means of bypassing scrutiny by devolved legislatures of matters that should be included within the UK Bill.

Yours sincerely,

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

cc.

David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru
Russell George MS. Economy, Infrastructure and Skills Committee, Senedd Cymru
Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament
Michelle Ballantyne MSP, Economy, Energy and Fair Work Committee, Scottish Parliament
Dr Caoimhe Archibald, Committee for the Economy, Northern Ireland Assembly
Colin McGrath, Committee for the Executive Office. Northern Ireland Assembly
Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons
William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons
Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords

Enclosure - Questions relating to the UK Internal Market White Paper

The need for primary legislation and the principles behind it

1. Why is primary legislation needed to regulate the UK's Internal Market?

2. If primary legislation is needed, what is your current thinking as to how the legislative consent process will work? In particular, is this a "normal" situation for the purposes of the legislative consent convention?

3. What constitutional principles will underpin this primary legislation?

4. Will the constitutional principles of proportionality and subsidiarity that currently underpin the operation of the EU Single Market be enshrined in the legislation in any way?

5. What mechanisms will be put in place to ensure that the UK maintains high standards and that there will be no 'race to the bottom' within the UK?

Devolution and scope of the Internal Market

6. Can you confirm that beyond a new reservation on subsidy control, the legislation to enshrine a Market Access Commitment will make no other changes to the devolved settlements? And how will you work with the devolved governments in framing any new reservations?

7. The White Paper states that the UK's Internal Market will be overseen by the UK Parliament. What role will there be for the devolved legislatures, and how will their voice be heard?

8. In relation to the scope of the Internal Market, can you clarify:

    - The meaning of 'pre-existing differences' and whether the Internal Market legislation would apply retrospectively in any way to devolved legislation.

    - The meaning of 'Certain social policy measures with little Internal Market impacts' and the scope of legislation that will come within this exclusion.

Oversight, impact assessments and enforcement

9. Can you elaborate on the governance and institutional mechanisms that will be established to oversee the Internal Market in the UK?

10. Will there be any requirement (legal or otherwise) for the UK's governments and regulators to carry out an assessment of the effect of any new legislative proposals on the UK Internal Market prior to their introduction?

11. Will the legislation generate any new rights of redress to internal trade barriers for individuals and business and, if so, how will these be enforced?

Dispute resolution and common frameworks

12. How will dispute mechanisms ensure parity between the four governments of the UK?

13. Who will be the final arbiter of disputes between the four governments of the UK?

14. How will you ensure that the relationship between common frameworks and the legal architecture associated with the Internal Market is clearly defined and easy to navigate?

15. If increased divergence arises through a process agreed through the common frameworks programme, will this be excluded from the scope of the Market Access Commitment?

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Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

Mick Antoniw AS
Cadeirydd, Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Cadeirydd, Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

14 Awst 2020

Annwyl Gadeiryddion,

Rwyf yn ysgrifennu atoch i dynnu eich sylw at ddadansoddiad Llywodraeth Cymru i Bapur Gwyn Lywodraeth y DU ar Farchnad Fewnol y DU. Rwyf wedi anfon y llythyr yma heddiw at yr Ysgrifennydd Gwladol dros Fusnes, Ynni a Strategaeth Ddiwydiannol ac atodaf ef er eich gwybodaeth.

Edrychaf ymlaen at ymgysylltu gyda'ch Pwyllgorau chi ymhellach ar y materion a drafodwyd yn y dadansoddiad.

Yn gywir,

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Llywodraeth Cymru
Welsh Government

The Rt. Hon Alok Sharma MP
Secretary of State for Business, Energy & Industrial Strategy
secretary.state@beis.gov.uk

14 August 2020

Dear Alok,

I am writing further to the UK Government's White Paper on the UK Internal Market, published just four weeks ago.

Prior to the Paper's publication, I wrote to you and the Chancellor of the Duchy of Lancaster (7 July) to set out our position on the UK Internal Market and the steps we believe we should take to ensure future regulatory and economic cooperation across the UK, as a result of the UK leaving the EU Single Market. Our position and thoughts on a potential approach to this issue, as set out in my letter, have not changed.

The Welsh Government is concerned that the long-term survival of the United Kingdom is under great strain and that the approach taken in the White Paper will exacerbate those tensions in a way which, if not addressed, will accelerate the break-up of the Union. Our initial view was that the White Paper was fundamentally flawed and misleading – further analysis of the substance of your proposals has confirmed this view.

We have already made clear that we are not opposed to an internal market for the United Kingdom, neither are we opposed to legislation being brought forward to support the functioning of a UK Internal Market. Wales' interests, and those of the UK as a whole, are best served by ensuring smooth trading arrangements for businesses across all four nations. However, your proposals do not deliver this and in any case, this should be a collaborative piece of work in which all the governments within the UK have the opportunity to participate fully and on an equal basis.

Legislation of the kind proposed in your White Paper is simply not necessary, and we do not recognise the need for this type of solution as the UK Internal Market is already highly integrated.

The proposals also undermine three years of collaboration via Common Frameworks. Our commitment to the Frameworks programme remains and we continue to focus on the effective delivery of the programme.

Our reading of the proposals is that the proposed legislation would prevent the Senedd or Welsh Ministers from imposing mandatory requirements relating to lawful sale of goods and services in Wales – even where there were justified by public health objectives, environmental concerns or any other public policy reason. This would represent a direct attack on the current model of devolution. The power – even if untouched – to regulate for goods and services produced in Wales would moreover be severely undermined, if not made completely impractical as in almost any sector, only a minority of good and services consumed in Wales are produced here.

The White Paper would thus remove or emasculate the current rights of the devolved institutions to implement changes to the regulatory environment in devolved policy areas governed to date by EU law, such as labelling, or environmental standards.

Attached to this letter is the Welsh Government's analysis to the substance of the UK Government's White Paper. I cannot emphasise strongly enough that, in our view, the model of primary legislation envisaged in the White Paper is unnecessary, unworkable, heavy-handed, and will not secure legislative consent from the Senedd.

I ask that you resume multilateral discussions on the future UK Internal Market, underpinned by our continuing and joint efforts to put in place Common Frameworks, to design and agree appropriate arrangements which serve the interests of the whole of the United Kingdom.

I am copying this letter to the Chancellor of the Duchy of Lancaster, the Secretary of State for Wales, the Scottish Government's Cabinet Secretary for the Constitution, Europe and External Affairs, and the First Minister and deputy First Minister of Northern Ireland.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

The UK Government's White Paper on a UK Internal Market
Welsh Government Analysis

Claims of risk / harm without legislative underpinning

The assertion that the UK Government, through the proposals in the White Paper, will 'give' the DAs new powers is misleading – the powers in question are not reserved and, in the absence of UK legislation to reverse the devolution settlement, would automatically and properly come back to the devolved institutions in any case.

The risks of harm to the UK economy if an Internal Market Bill is not introduced are overstated and are based on speculation on the extent of regulatory differences which *may* emerge, rather than the current situation within the UK which includes, and has included for some time, managed regulatory divergence. We have been clear from the outset that policy and regulatory divergence already exists within the UK, and this ability to diverge has led to innovative solutions being developed in one nation and subsequently introduced across the UK.

We note that the White Paper refers to construction and building regulations as examples where differences in regulations could create complexities over time. With the transfer of functions in 2012, England and Wales have diverged on their approach to building regulations as a reflection of each administration's policies and priorities. The construction sector has become accustomed to dealing with differing processes and performance standards set through regulations and associated statutory advice, in particular with regard to energy performance of buildings and fire safety. Liaison amongst the four administrations ensures that, where practical and of mutual benefit, policy work is shared – divergence is not considered a barrier to development.

Generally, the White Paper's analysis is very focussed on hypothetical examples of policy and/or regulatory divergence and there is no study of the impact of current divergence, such as building regulations, on businesses and how they manage current regulatory practices within the UK. There is no evidence of any engagement with stakeholders already operating in areas of current divergence in regulations.

We would question the economic modelling and analysis used to support the Paper's assertions of risk and the basis for a legislative underpinning of the kind proposed. For example, the use of Germany as a model to determine the economic cost to the UK if trade costs increased (pages 36 & 90), however with the clear caveat on page 89 that this data should not be used as a prediction for the UK market. This is deeply concerning.

It is clear that the evidence to support the White Paper's proposals is flawed in many ways. Stakeholder views and evidence should be analysed from across the UK and across a variety of sectors with differing levels of current divergence – this evidence should reflect the needs of the *whole* of the UK, not solely one nation.

Mutual Recognition & Non-discrimination

The Welsh Government has already clearly stated that the mutual recognition model proposed in the White Paper would undermine the Welsh and wider UK economy, our work on Common Frameworks, inter-governmental relations and the devolution settlements.

Whilst we recognise that the UK Government's proposals are careful not to suggest that there will be a constraint on devolved legislative competence to make regulations for goods

and services produced in Wales, it seems inevitable that the legislation will limit the Senedd's competence to legislate on goods which are placed on the market in Wales. Moreover, the effects of an overarching Internal Market Bill would also hollow out our competence in these areas. The economic dominance of England within the UK would undermine any policy innovation that could only apply to Welsh goods in Wales, as Welsh laws will not apply to goods and services being sold in Wales.

In addition, whilst the principles of mutual recognition and non-discrimination are well-established elements of the architecture of the EU Single Market, they are balanced by a commitment to subsidiarity and proportionality, a baseline of minimum standards and by the recognition that certain public policy concerns, for example in terms of environmental protection or public health, can in certain circumstances over-ride these principles. This is not reflected in the UK Government's proposals within the White Paper. It is also widely recognised by academics that there is a big difference between what is being suggested by the UK Government and how the EU Single Market works, and the context of the UK is key. By legislating in this way, the UK Government would be imposing a model of mutual recognition and non-discrimination on the three other nations of the UK, whereas the EU Single Market is a result of Member States voluntary coming together to negotiate and agree a set of rules to which they are all bound.

We also note that the principles of mutual recognition and non-discrimination will apply in an unqualified way to goods and services from Northern Ireland being put on the market in Great Britain. This will not be the case in the reverse direction, since the Northern Ireland Protocol requires a large proportion of goods which are placed on the market there to conform to EU standards. We are concerned that there is a distinct lack of detail within the UK Government's proposals of how an Internal Market Bill will work alongside the Northern Ireland Protocol.

We have also made clear in past discussions with BEIS officials that comparing the UK's Internal Market to mutual recognition systems in other countries such as Australia is flawed as these comparisons do not reflect our structures, levels of devolution and way of working within the UK. Indeed, the closest comparison to be made would be with Spain, which also has a system of asymmetric devolution – where, in 2017, the law establishing the principle of mutual recognition was cancelled following a ruling by the Spanish Constitutional Court.

In addition, the non-discrimination provisions, while mentioned by UK Government during our discussions, were not interrogated in detail as part of our collaborative work on the Internal Market and continue to lack substance within the White Paper.

The economic weight of England and its impact on the rest of the UK's nations must be fully recognised and considered, and any adverse impact mitigated or minimised. What actions is the UK Government putting in place to ensure this?

Why is it proposed that mutual recognition will apply to all goods and services placed on the market in the UK rather than only to those originating in the UK?

How will the UK Government ensure that arrangements for the UK Internal Market reflect the unique multinational character of the UK and that learning from other systems is properly analysed in both home and UK contexts?

Services and Qualifications

The White Paper makes explicit that services and professional qualifications will be covered by the mutual recognition principle. This is an area of divergence which already exists and

each nation of the UK already has its own regulators overseeing areas such as social care and education.

The current Provision of Services Regulations 2009 implement the EU's 'Services Directive'. The UK 2009 Regulations facilitate both the cross-border provision of services within the EU *and* intra-UK access, therefore allowing people to live and work freely within the UK. Importantly, the 2009 Regulations also allow for divergence and exceptions, if justified – therefore allowing each nation of the UK to amend its rules if they believe it is within the public interest.

It is not clear whether this exception will be preserved if the system under the 2009 Regulations is brought within the Internal Market system, as proposed by the White Paper.

Case study: teachers' qualifications

This is illustrated by teachers' qualifications. Presently, in order to teach in maintained settings in Wales teachers must hold Qualified Teacher Status (QTS) and be registered with the Education Workforce Council. Teachers trained and awarded QTS in England are currently automatically recognised as being able to teach in Wales. For a number of years the route to being awarded QTS and the standards underpinning QTS have diverged significantly between England and Wales. Student teachers studying in Wales must hold GCSE (or equivalent) qualifications at a certain level, complete a degree level academic qualification as well as be assessed against the Welsh QTS Standards. In addition the Scottish regulatory model for teachers is also continuing to be altered in a policy direction slightly different from that in Wales in order to support their own education system effectively.

In England, the entry requirements to the teaching profession are lower and the English version of QTS can be awarded without undertaking an academic qualification. The policy direction in England continues to move towards an unregulated professional space or at least with minimal statutory requirements or academic qualifications in order to teach in schools. This is an example of an existing regulatory difference – while we would need to seek confirmation that this position can be maintained and will be outside the scope of the legislation, the worst case scenario of the proposed system of mutual recognition could be the significant reduction of the standards of the teaching workforce in Wales. Also, should the requirements to gain QTS continue to fall in England, potential student teachers could be attracted by lower cost and lower standard routes into teaching in England and seek to undertake their training there before returning to teach in Wales, undermining the requirements set to gain QTS in Wales.

Can the UK Government clarify how their proposals will affect (and indeed protect) the system of divergence for services and qualifications, already in place within the UK?

Common Frameworks

We have previously set out our proposals for future economic and regulatory cooperation across the UK. These proposals were, and continue to be, based on the Common Frameworks programme – and the development of other tools such as regulatory impact assessments – which would ensure any detrimental effect to the Internal Market of any policies are identified and could be weighed against any identified benefits such as public policy reasons.

Common Frameworks are expressly designed to allow for managed divergence in areas where all four Governments agree there is a need for this. In setting up the Common Frameworks programme, the UK Government identified the areas they considered may need a Framework to ensure the functioning of the UK Internal Market – these areas are supposed to cover all areas of returning powers. This would suggest, on the UK Government's own analysis, that there are no other areas outside the Frameworks areas which require agreement on divergence. Since that exercise, and in good faith, policy areas have been considering to what extent any Frameworks are needed in specific areas based on the fact-specific circumstances of each Framework area. This work has been developed on the basis of collaboration and cooperation across the UK's nations, in line with the Inter-governmental Agreement already agreed.

The UK Government, through the proposals set out in the White Paper, now suggests that the Common Frameworks programme does not go far enough in protecting the integrity of the UK's Internal Market. We have been clear that, while we agree that every aspect of the Internal Market is not covered by current Frameworks, this is not a justification for a heavy-handed piece of legislation which goes much further than areas covered by retained EU law.

The UK Government has stated on numerous occasions that Common Frameworks do not go far enough to protect the UK Internal Market.

Which areas fall outside the scope of Common Frameworks and are in need of an overarching legislative underpinning?

How has the UK Government reached the conclusion that legislation of this type is justified to govern those areas?

As Common Frameworks provide the mechanism for agreeing in specific detail what divergence is possible in all areas identified as part of that programme – why do these areas require a blunt, catch-all Bill that fails to reflect or recognise the years of work undertaken on Common Frameworks?

Exemptions & Exclusions

The list of exclusions from mutual recognition and non-discrimination within the White Paper is very limited, with no provision made for future exceptions. This does not allow for a sustainable, future-proofed way of working, neither does it allow for future changes to be made based on agreement by consensus.

The proposed exclusions do not reflect the current position in EU law which allow derogations for public policy reasons, neither are they consistent with similar arrangements in other countries such as Canada.

We will also need to consider the scope of any exceptions under the principle of non-discrimination and how this would apply in practice – the White Paper is very lacking in detail in this area. For example, it is not clear how the proposals may impact Welsh language requirements.

The Paper also makes reference to existing regulatory differences being excluded. However, it is not clear how this would impact changes to existing regulation – where there is existing divergence – and where the underlying policy remains. It raises the question what level of changes to existing policies would render a policy 'changed' and therefore within scope of the Internal Market system.

Why has the UK Government limited the exceptions and exclusions in such a way which is inconsistent with systems already in operation in other parts of the world?

Maintaining high standards

While the UK Government has stressed in discussions and publicly that their intention is to continue to apply high standards, for example in environmental and animal welfare areas, there is no suggestion within the White Paper that the legislation would set these standards in law, nor set a mechanism for agreeing them, and create a baseline for minimum, maximum or unitary standards, as exists within the EU mutual recognition model. At an EU level, Member States voluntarily agree to these standards and agreement is made by collaboration – the Welsh Government has also been involved in this process via the Committee of the Regions and also in discussion with the UK Government to shape the negotiating position. It is therefore deeply concerning that this is not set within the UK Government's proposals.

Welsh business groups have also made clear that this setting of a baseline for standards is absolutely crucial to ensure certainty for business. Without such a baseline, the risk of deregulation by one of the nations of the UK is great and in itself would lead to uncertainty for business, as the risk would be vastly differing standards across the UK which would ultimately lead to radical deregulation and a 'race to the bottom'.

Case study: single use plastic items

This is illustrated by the ban on single use plastic items. While the Welsh Government's proposals to introduce a ban on the sale of nine single use plastic items in Wales aligns with the nine items included in Article 5 of the EU's Single Use Plastics (SUP) Directive[1], the UK Government's proposal for a similar ban for England will only apply to three of the nine items. Therefore, the sale of three of the items banned in Wales would also be banned in England, the sale of the other six items would be lawful in England. The mutual recognition principle could mean that Wales would not be able to introduce legislation or, if legislation is introduced, enforce the ban on the sale of these six items in Wales, irrespective of their origin. A ban that could only apply to Welsh produced plastics would undermine the policy and render it ineffective. Furthermore, even if the UK Government were to bring its ban in line with the SUP Directive in the future, it would not be possible for Wales to go further and ban other single use plastic products without the policy being undermined by such plastics from other parts of the UK being sold in Wales.

Case study: food standards

A second example concerns food standards. Under the current EU regime, common standards are agreed at EU level on the basis of negotiation and compromise. Moreover, it is open to the Welsh Government to specify higher standards for food put on the market in Wales provided this can be justified in terms of public policy and is not discriminatory.

However, should the UK Parliament legislate, for example, to permit the use of hormones in beef cattle, the mutual recognition principle as envisaged by the White Paper would mean that meat from such cattle could be placed on the market in Wales, even if our current regulations – which forbid such techniques – remained in place in respect of cattle reared in Wales. Moreover, it would most likely be impossible for the Welsh Government to insist on labelling to identify beef produced from hormone-injected cattle, since beef products which originated elsewhere in the UK would only have to respect the labelling regulations of the

[1] Article 5 of Directive (EU) 2019/904 (the Single Use Plastic Directive) – see Annex 3 for further detail.

part of the UK in which they were produced. And since the legislation would apply to all goods, whether produced in the UK or imported, provided the UK Parliament had legislated to reduce standards in this way in England, the Welsh Government would have no possibility of excluding English produced or imported beef from sale in Wales or even making consumers aware of what they were buying.

While the UK Government, at this time, may publicly commit to maintaining high standards, these proposals would mean that any *future* reduction in standards would result in lower standard products entering the Welsh market.

How will the UK Government ensure that high standards will be agreed and preserved?

Governance

The section within the White Paper focussed on governance and independent monitoring is relatively light on detail, including on mechanisms for dispute resolution.

The reference to the oversight role of the UK Parliament (para. 154) suggests no role for the devolved legislatures in any new system which could be created to manage the UK Internal Market. As any new system would impact the whole of the UK, this is wholly unacceptable.

On independent advice and monitoring, the Paper states that there is a "range of potential vehicles" to explore. There is no real detail included, specifically in terms of the functions, constitution and accountability of an independent body.

In a country such as the UK, close collaboration and cooperation via a clear system of governance, based on strong inter-governmental relations and parity of participation, and agreed at the outset by each of the UK nations, is vital.

How does the UK Government envisage an independent body would be scrutinised and held accountable?

What governance and oversight role is envisaged for the devolved legislatures?

Subsidies regime / State aid

Currently, the Government of Wales Act 2006 (GoWA) does not include State aid in its list of reservations, and therefore State aid is not a reserved matter. The White Paper implicitly accepts this view by stating that the UK Government intends to "legislate to expressly provide that subsidy control is a reserved matter", rolling back the process of devolution and constraining the Senedd's ability to legislate on this matter.

We have made clear, through discussion with the UK Government, that we cannot foresee any way in which the Senedd would give legislative consent to changes to GoWA which would introduce a reservation on State aid policy.

Whilst the Paper commits to "work[ing] closely with all the devolved administrations to seek to agree the shape of a UK-wide domestic subsidy control regime" (para. 174) the inference is that the future UK subsidy regime will be developed to reflect the interests of the UK Government, rather than be the results of a collaborative development process, as is currently the case for the EU State aid rules.

The White Paper also gives little detail on the UK's future subsidy regime and makes no reference to an independent regulator for a future regime.

What are the UK Government's plans for a future subsidy regime and why do these require changes to the devolution settlements if the intention is to proceed by agreement?

Procurement

Despite the fact that procurement is a devolved competence, the White Paper confirms that the UK Government is considering extending the non-discrimination duty to the procurement of goods.

In raising the issue of the non-discrimination principle in relation to procurement, the UK Government is seeking to resolve an anomaly caused by the UK's exit from the EU, in relation to the WTO's Government Procurement Agreement (GPA). This issue has been raised as part of the discussions in relation to the Common Framework for procurement, the current draft of which states "The parties will… maintain principles of non-discrimination, equal treatment and transparency in respect of economic operators from the UK''. No Party to the draft Concordat has objected to the inclusion of this intra-UK non-discrimination commitment.

This begs the question of why this provision should be included in an overarching Internal Market Bill. By unnecessarily extending the proposed UK non-discrimination provision to the procurement of goods there may be unintended adverse consequences for policy making in Wales and/or our devolved competence in this area.

What justification can the UK Government give to including this area within their proposals?

What impact will these proposals have on work already underway to agree a Common Framework for procurement?

Spending powers

It is not clear from the White Paper what is meant by 'spending powers', which at paras 47, 126 and 128 are characterised as new or "clarified" powers for the UK Government but at para 182 are described as for "all levels of Government". Reference is also made at para 182 to powers "for the UK Government to construct replacements of EU programmes". There is no further detail or substance about the rationale or impact of this, or about how this relates to ongoing intergovernmental discussions about the Shared Prosperity Fund and continued participation on programmes such as Erasmus+.

Could the UK Government clarify the meaning of 'spending powers' in this context and how they will ensure that any plans respect the current devolution settlements?

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Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

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14 Awst 2020

Annwyl Gadeiryddion,

Gwnes i ysgrifennu atoch ym mis Gorffennaf er mwyn eich hysbysu y byddai cyfarfod o'r Fforwm Gweinidogol ar gyfer Masnach yn cael ei gynnal ar 21 Gorffennaf.

Cafodd y cyfarfod ei gadeirio gan Greg Hands, y Gweinidog Masnach Ryngwladol, ac roedd fy nghymheiriaid o'r Alban a Gogledd Iwerddon hefyd yn bresennol.

Cafwyd diweddariadau yn ystod y cyfarfod ynghylch y trafodaethau a oedd yn cael eu cynnal am fasnach rydd a gwnes bwysleisio o'r newydd bwysigrwydd sicrhau nad yw'r trafodaethau hyn yn niweidiol i'r safonau presennol sy'n uchel eu parch yng Nghymru o safbwynt yr amgylchedd ac iechyd a lles anifeiliaid. Cafwyd diweddariadau yn ogystal ynghylch y rhaglen trafod parhad a Bil Masnach y DU.

Mae'r ymgysylltu â'r Adran Masnach Ryngwladol yn parhau'n bositif ac mae fy swyddogion yn parhau i gydweithio'n agos â swyddogion Llywodraeth y DU er mwyn symud y gwaith hwn yn ei flaen.

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Nid oes gennym ddyddiad ar gyfer y cyfarfod nesaf eto ond byddaf yn ysgrifennu atoch eto cyn y bydd unrhyw gyfarfod arall yn cael ei gynnal.

Yr eiddoch,

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

David Rees AS
Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

SeneddMADY@senedd.cymru

24 Awst 2020

Annwyl Gadeirydd

Cytundeb rhwng Teyrnas Unedig Prydain Fawr a Gogledd Iwerddon a Gweriniaeth Gwlad Pwyl ar Gyfranogiad Gwladolion Pob Gwlad sy'n Preswylio yn Nhiriogaeth y Llall mewn Etholiadau Penodedig

Rwyf yn ysgrifennu mewn ymateb i'ch llythyr ar 8 Gorffennaf ynghylch y cytuniad uchod ("Cytundeb y DU-Gwlad Pwyl"). Nodir yr atebion i'r cwestiynau a godwyd gan y Pwyllgor isod.

Cwestiwn 1

Nid yw darpariaethau Cytundeb y DU-Gwlad Pwyl yn anghydnaws â'n cynigion ym Mil Llywodraeth Leol ac Etholiadau. O ganlyniad rydym yn fodlon â'r trefniadau a sefydlir gan y Cytundeb.

Cwestiwn 2

Fel y mae'r Memorandwm Esboniadol yn datgan, ymgynghorwyd â ni ar y trefniadau arfaethedig cyn i'r Cytuniad gael ei lofnodi. Nid yw Gweinidogion Cymru yn gallu gwneud cytuniadau sy'n rhwymol mewn cyfraith ryngwladol â llywodraethau tramor. Rwyf yn cadarnhau ein bod yn fodlon felly fod Llywodraeth y DU wedi cytuno ar y trefniadau hyn â Llywodraeth Gwlad Pwyl.

Cwestiwn 3

Mae Llywodraeth y DU wedi cydweithio'n agos â Llywodraeth Cymru wrth ddatblygu'r Cytundeb. Rydym yn fodlon bod Llywodraeth y DU wedi cyflawni ei hymrwymiad blaenorol. Er hynny, cafodd llythyrau eu cyfnewid ar lefel weinidogol tua diwedd y broses ac fe fyddai wedi bod yn well gennym weld ymgysylltu cynharach a fyddai wedi galluogi ymgysylltu â'r Senedd. Byddwn yn mynd ar drywydd hyn gyda Llywodraeth y DU er mwyn sicrhau ymgysylltu cynharach â chytundebau o'r math hwn yn y dyfodol.

Bae Caerdydd • Cardiff Bay
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Cwestiwn 4

O gofio maint y pwysau yr ydym wedi bod yn delio â hwy yn y misoedd diwethaf ni fu modd cytuno ar fecanwaith o'r fath â Llywodraeth y DU. Mae'r Cytuniad yn darparu y caiff y naill barti neu'r llall derfynu'r Cytundeb trwy roi hysbysiad ysgrifenedig i'r Parti arall. Mae'r Cytuniad yn ei gwneud yn ofynnol hefyd fod Llywodraeth y DU a Llywodraeth Gwlad Pwyl yn hysbysu ei gilydd am newidiadau i'r etholfraint yn eu cyfraith ddomestig sy'n berthnasol i gwmpas a gweithrediad y Cytundeb. Mae'n darparu hefyd i ddiwygiadau gael eu gwneud i'r Cytuniad. Os bydd Senedd yn y dyfodol yn dymuno deddfu i newid yr etholfraint ar gyfer etholiadau llywodraeth leol byddai'n agored i Lywodraeth Cymru ofyn i Lywodraeth y DU geisio cytuno ar unrhyw newidiadau o'r fath i'r Cytuniad a allai fod yn angenrheidiol.

Cwestiwn 5

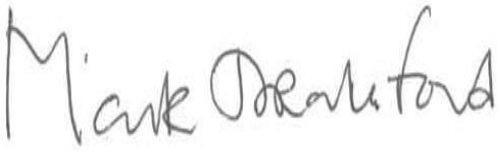
Mae swyddogion yn Llywodraeth Cymru a Llywodraeth y DU yn trafod datblygiadau yn rheolaidd mewn perthynas â chytuniadau ar hawliau pleidleisio dwyochrog

Cwestiynau 6, 7 ac 8

Mae ymgysylltiad Llywodraeth Cymru a'r gweinyddiaethau datganoledig eraill gan Lywodraeth y DU, a chadarnhad o hynny yn y Memorandwm Esboniadol cysylltiedig, yn gydnabyddiaeth nad yw'r etholfraint ar gyfer etholiadau llywodraeth leol yn fater a gedwir yn ôl. O ganlyniad, nid oes gennym unrhyw reswm dros gredu y byddai Llywodraeth y DU yn ceisio deddfu i ddileu hawliau pleidleisio dinasyddion yr UE yn etholiadau llywodraeth leol yng Nghymru. Byddem, wrth gwrs, yn gwrthwynebu unrhyw ymgais o'r fath. Er hynny, mater i'r Senedd fyddai penderfynu sut i ddefnyddio ei chymhwysedd deddfwriaethol yn y maes hwn os bydd Senedd y DU yn ceisio deddfu fel hyn.

Anfonir copi o'r llythyr hwn at y Llywydd.

Dymuniadau gorau



MARK DRAKEFORD

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

David Rees AS
Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol
Senedd Cymru
Bae Caerdydd
CF99 1SN

25 Awst 2020

Annwyl David,

Rwy'n ysgrifennu mewn ymateb i'ch llythyr ar 30 Gorffennaf yn dilyn fy ymddangosiad gerbron y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol ar 14 Gorffennaf.

Yn eich llythyr roeddech yn gofyn nifer o gwestiynau ar Hawliau Dinasyddion a Fframweithiau Cyffredin na chawsant sylw yn y Pwyllgor oherwydd yr amser a oedd ar gael. Mae'r cwestiynau a fy ymateb iddynt wedi'u nodi isod.

Hawliau Dinasyddion

1. **Yn ôl y data gorau sydd ar gael, ar ddiwedd mis Mai amcangyfrifwyd bod dros 20,000 o ddinasyddion yr UE sy'n byw yng Nghymru heb wneud cais hyd yma i'r Cynllun Preswylio'n Sefydlog i Ddinasyddion yr UE (EUSS). A wnewch chi gadarnhau bod gan Lywodraeth Cymru strategaeth wedi'i thargedu i annog gweddill dinasyddion yr UE yng Nghymru nad ydynt eto wedi gwneud hynny i wneud cais cyn y dyddiad cau ym mis Mehefin 2021?**

Ar ddiwedd mis Gorffennaf 2020, roedd y Swyddfa Gartref wedi cael 62,700 o geisiadau o Gymru, er bod hyn yn cyfeirio at nifer y ceisiadau yn hytrach na nifer yr ymgeiswyr. Nid wyf yn siŵr at ba ddata rydych chi'n cyfeirio ond, fel y mae'r Arsyllfa Ymfudo wedi nodi, nid yw'n bosibl cyfrif yn fanwl gywir nifer dinasyddion yr UE nad ydynt wedi gwneud cais. Y rheswm am hyn yw nad yw Llywodraeth y DU yn gwybod faint o ddinasyddion yr UE sy'n gymwys i wneud cais am EUSS ac mae cyfyngiadau pwysig ar amcangyfrifon o nifer dinasyddion yr UE sy'n byw yn y DU. Bydd rhai o'r bobl a wnaeth gais am y cynllun wedi gadael y DU, ond nid yw'n hysbys faint ohonynt fydd wedi gwneud hynny.

Golyga hyn nad yw'n bosibl cymharu niferoedd y bobl y rhoddwyd statws iddynt ag amcangyfrifon swyddogol o boblogaeth dinasyddion yr UE. Yn achos dinasyddion o rai

gwledydd, mae mwy o bobl eisoes wedi gwneud cais am y cynllun nag y mae'r amcangyfrif data swyddogol wedi dangos eu bod yn preswylio yma.[1]

Hefyd er y gall dinasyddion o Iwerddon wneud cais i'r Cynllun Preswylio'n Sefydlog i Ddinasyddion yr UE mae nifer ohonynt yn annhebygol o wneud hynny gan y gallant symud yn rhydd ac yn byw yn y DU dan gytundeb yr Ardal Deithio Gyffredin. Amcangyfrifir bod 10,000 o ddinasyddion Gwyddelig yn byw yng Nghymru[2].

Byddwn yn parhau i bwyso ar y Swyddfa Gartref am ystadegau cliriach ar ba grwpiau yr ymddengys nad ydynt yn gwneud cais ac am lawer mwy o eglurder ar y ceisiadau a wrthodwyd (yn enwedig gan y gallai'r bobl hyn fod yn gymwys ac efallai y gallent elwa o gymorth mwy addas ar gyfer eu cais).

Er bod hwn yn fater a gadwyd yn ôl yn llawn, mae Gweinidogion Cymru wedi ymrwymo amser ac arian i gefnogi preswylwyr yng Nghymru i wneud cais llwyddiannus am statws preswylydd sefydlog. Ein pryder mawr yw bod yna rai mewn grwpiau mwy agored i niwed neu wedi'u hallgáu a allai fod yn methu dod i gysylltiad â gwasanaethau'r Swyddfa Gartref yn hawdd. Mae gwaith Llywodraeth Cymru wedi cynnwys ymgyrchoedd yn y cyfryngau cymdeithasol a chyllid uniongyrchol i grwpiau trydydd sector sy'n gallu cysylltu â'r grwpiau hyn a'u cynorthwyo. Yn benodol, rydym wedi darparu tua £2m o gyllid trwy'r Gronfa Bontio'r UE a chyllid arall i sefydliadau gan gynnwys Cyngor ar Bopeth, Settled, Awdurdodau Lleol, a Newfields Law i estyn allan a chefnogi achosion mwy cymhleth, grwpiau llai cysylltiedig, plant sy'n derbyn gofal ac oedolion mewn gofal cymdeithasol.

Ar hyn o bryd mae Grŵp Cydlynu EUSS Cymru, dan gadeiryddiaeth Llywodraeth Cymru, ac sy'n cynnwys Newfields Law, Cyngor ar Bopeth Cymru, rhai a lwyddodd i gael grantiau'r Swyddfa Gartref, y Swyddfa Gartref a phartneriaid cyflenwi allweddol eraill, megis CLlLC a CGGC yn cynllunio gweithgareddau cyfathrebu a chodi ymwybyddiaeth i ddod o hyd i ragor o bobl o grwpiau anodd eu cyrraedd. Bydd hyn yn helpu i ddatblygu strategaeth ar y cyd i dargedu dinasyddion yr UE sydd mewn perygl o beidio â gwneud cais hyd at y dyddiad cau ym mis Mehefin 2021.

Mae pandemig Covid-19 wedi atal grwpiau sy'n gweithio'n uniongyrchol mewn amgylchedd wyneb yn wyneb rhag cynorthwyo pobl gyda'u ceisiadau, ac wedi arwain at gau nifer o wasanaethau cymorth y Swyddfa Gartref dros dro. Yn ddiweddar, ysgrifennais at yr Ysgrifennydd Cartref i bwyso arni i ystyried ymestyn y dyddiad cau ar gyfer ceisiadau i'r cynllun fel nad yw pobl agored i niwed sydd angen cymorth ychwanegol yn cael eu cosbi ddwywaith o ganlyniad i'r pandemig.

Mae Llywodraeth y DU wedi gwrthod ymestyn y dyddiad cau ac yn honni y bydd cyfle pellach i wneud cais yn cael ei roi i rywun sydd â sail resymol dros fethu'r dyddiad cau. O ganlyniad, rwy'n parhau i bryderu bod dinasyddion yr UE, yn enwedig plant a phobl ifanc, nad ydynt yn ymwybodol o'r angen i wneud cais am y Cynllun Preswylio'n Sefydlog i Ddinasyddion yr UE yn mynd i fod yn preswylio'n anghyfreithlon yn y DU. Wrth i'r dyddiad cau agosáu byddwn yn pwyso ar Lywodraeth y DU i roi moratoriwm i bobl nad ydynt wedi gwneud cais am EUSS erbyn y dyddiad cau er mwyn osgoi senario "ymyl y dibyn" lle gallai fod miloedd o bobl yn dod yn breswylwyr anghyfreithlon dros nos.

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[1] Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/

[2] https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality

2. **A allwch gadarnhau bod Llywodraeth Cymru yn mynd ati i fonitro dadansoddeg o'i hadnoddau ar-lein ar gyfer dinasyddion yr UE er mwyn pennu lefel yr ymgysylltiad â'r cyhoedd, h.y. nifer ymweliadau, ymholiadau neu adroddiadau adborth rheolaidd gan bartneriaid trydydd parti, megis cwmni Newfields Law neu Cyngor ar Bopeth Cymru?**

Mae Llywodraeth Cymru yn monitro dadansoddeg trwy wefan Paratoi Cymru yn fisol. Mae'r wefan yn darparu cyngor ac arweiniad i ddinasyddion yr UE sydd angen gwneud cais am statws preswylydd sefydlog.

Cynhaliwyd ymgyrch ddigidol benodol i godi ymwybyddiaeth o EUSS rhwng 24 Chwefror a 24 Mawrth 2020 a thargedodd ddinasyddion yr UE yng Nghymru a oedd yn ceisio cyngor am EUSS a defnyddwyr a oedd yn pori gwefannau yn un o ieithoedd yr UE i helpu i wella'r modd roedd yr ymgyrch yn perfformio ac yn cyflawni. Cynhyrchwyd y deunydd mewn tair iaith flaenoriaethol – Pwyleg, Portiwgaleg a Rwmaneg.

Mae Llywodraeth Cymru yn cael adroddiadau ar weithgaredd misol gan Wasanaeth Cynghori ar Fewnfudo Newfields Law a chynhelir cyfarfodydd rheolaidd rhwng Newfields Law a thîm Trefniadau Pontio Ewropeaidd Llywodraeth Cymru i adolygu cynnydd a monitro gweithgaredd.

Mae Cyngor ar Bopeth hefyd yn darparu diweddariadau rheolaidd i Lywodraeth Cymru. Mae'n ofynnol iddynt adrodd yn ffurfiol bob chwarter a chael cyfarfodydd wythnosol gyda rheolwr prosiect Hawliau Dinasyddion UE Llywodraeth Cymru. Cyfarfod llafar yw'r diweddariad wythnosol wedi'i gynllunio i gadw mewn cysylltiad a rhannu gwybodaeth gan y ddau barti.

Mae'r adroddiad chwarterol yn cynnwys dangosfwrdd o ystadegau mewn perthynas â nifer y cleientiaid a welwyd, a pha faint a pha fath o faterion yr ymdriniwyd â hwy. Mae hefyd yn adrodd ar nifer y cleientiaid a gynorthwyir i wneud ceisiadau EUSS. Ategir y dangosfwrdd gan naratif sy'n amlinellu'r gweithgareddau ymgysylltu, y digwyddiadau a fynychwyd, a'r rhwydweithio a gyflawnwyd i hyrwyddo'r defnydd o'r ddarpariaeth.

3. **Wrth ymateb i'r cwestiwn uchod, a wnewch chi ddisgrifio canfyddiadau allweddol y ddadansoddeg hon a sut bydd y rhain yn cael eu defnyddio yn yr amser sy'n weddill?**

Mae nifer o wahanol ffynonellau gwybodaeth yn cael eu hystyried megis ystadegau'r Swyddfa Gartref ar geisiadau EUSS, adborth o'r wybodaeth a rennir yn y grwpiau cydlynu gan ddarparwyr gwasanaeth, cydgysylltwyr Brexit llywodraeth leol a chydgysylltwyr cydlyniant cymunedol yn ogystal ag o waith grŵp gyda phobl a allai fod mewn perygl o beidio â gwneud cais. Mae'r darlun cyfunol hwn yn llywio strategaeth y grŵp cydlynu ar gyfer gwaith targedu, cyfathrebu ac allgymorth pellach. Yn seiliedig ar waith hyd yma byddwn yn targedu:

a. Pobl nad ydynt yn sylweddoli y gallant wneud cais neu fod angen iddynt wneud megis plant, pobl (hŷn yn aml) a allai fod wedi bod â math arall o statws ar un adeg, rhai a wrthodwyd yn flaenorol ar gyfer rhyw fath o statws, a rhai â chofnod troseddol.

b. Pobl mewn amgylchiadau bregus oherwydd eu hoedran, neu eu galluoedd (gan gynnwys rhwystrau iaith a llythrennedd cyfrifiadurol, ond heb eu cyfyngu i'r rheini).

c. Pobl sy'n 'anodd eu cyrraedd' oherwydd eu bod yn gweithio oriau hir mewn amgylchiadau cymharol ynysig a phobl sy'n byw mewn lleoliadau anghysbell lle mae gwasanaethau

trafnidiaeth a seilwaith arall yn gyfyngedig a lle mae'r cysylltiadau ag eraill o'r un wlad neu mewn amgylchiadau tebyg, yn bell.

4. **A allwch gadarnhau bod swydd Cydlynydd EUSS a ariennir gan Lywodraeth Cymru fel rhan o'i chynlluniau ar gyfer ymadael â'r UE heb gytundeb er mwyn codi ymwybyddiaeth o'r EUSS, yn weithredol? A allwch roi'r wybodaeth ddiweddaraf am eu gwaith a'u cyrhaeddiad?**

Ariannwyd swydd Cydlynydd Cymru yn Settled (elusen sy'n gweithio gyda dinasyddion bregus ac anodd eu cyrraedd yr UE/AEE yn y DU) i recriwtio, datblygu a rheoli rhwydwaith o wirfoddolwyr, (neu Angylion Statws Preswylydd Sefydlog), i gynghori dinasyddion yr UE yn y gymuned, gan weithredu o dan esemptiad Lefel 1 EUSS Swyddfa'r Comisiynydd Gwasanaethau Mewnfudo (OISC). Erbyn diwedd mis Mawrth 2020, roedd gan y Cydlynydd 10 o Angylion Statws Preswylydd Sefydlog wedi'u cofrestru gan OISC yng Nghymru ac mae gan bob un ohonynt gysylltiadau â chymunedau yn yr UE. Mae un Angel wedi'i leoli yng Ngorllewin Cymru, a'r lleill wedi'u crynhoi yn ardal De Cymru. Maent yn siarad llawer o wahanol ieithoedd yr UE rhyngddynt e.e. Eidaleg, Sbaeneg, Tsieceg, Slofaceg, Groeg a Bwlgareg, ac yn broffesiynol mae ganddynt brofiad amrywiol e.e. Cynghorydd Budd-daliadau, Athro Ysgol Uwchradd, Cynorthwyydd Addysgu ESOL, Rheolwr Awdurdod Lleol a 5 darlithydd Prifysgol.

O ystyried cymaint o ddinasyddion yr UE sydd ym maes gofal cymdeithasol a gwasanaethau cyhoeddus eraill, aeth Settled ati i greu cysylltiadau ag undeb Unsain ac maent wedi recriwtio 17 gwirfoddolwr arall i ddod yn Angylion – mae'r rhain wedi'u lleoli yng Nghaerdydd, Pen-y-bont ar Ogwr ac Abergele. Roedd hyfforddiant wedi cychwyn ond oherwydd y coronafeirws mae wedi bod yn anodd cwblhau cofrestriad OISC (felly 7 sydd wedi'u cofrestru hyd yma).

Mae Settled hefyd wedi bod yn mynychu digwyddiadau i hyrwyddo EUSS, gan gynnig cymorth un i un i wneud ceisiadau ac ymgysylltu â sefydliadau a grwpiau ledled Cymru.

Mae Settled yn aelodau o Grŵp Cydlynu EUSS Cymru.

5. **A yw gwaith y Cydlynydd yn gyfyngedig i Gymru neu a ydynt wedi cyrraedd dinasyddion o Gymru sy'n byw yn yr UE27?**

   Mae swydd Cydlynydd Cymru Settled sydd wedi'i hariannu i fod i weithio yng Nghymru ac ni wnaed gwaith gyda dinasyddion Cymru sy'n byw yn yr UE27. Mae'r cyfrifoldeb am gynorthwyo dinasyddion y DU sy'n preswylio dramor yn amlwg yn fater a gadwyd yn ôl ac ni fyddai gennym wybodaeth nac adnoddau i nodi a chynorthwyo dinasyddion y DU sydd, neu sy'n ystyried eu hunain, yn Gymry.

6. **Pa gefnogaeth, os o gwbl, sydd ar gael gan Lywodraeth Cymru i'r rhai nad yw eu ceisiadau'n llwyddiannus? A ydych wedi trafod hyn gyda Llywodraeth y DU?**

Drwy Wasanaeth Cynghori ar Fewnfudo Newfields Law, a Phrosiect Hawliau Dinasyddion UE Cyngor ar Bopeth, mae Llywodraeth Cymru yn cefnogi holl ddinasyddion yr UE i wneud cais am eu statws preswylydd sefydlog. Pan ystyrir bod achos yn arbennig o gymhleth, bydd Newfields Law yn edrych ar y mathau hynny o achosion ac yn gweld lle sydd orau iddynt ddarparu cymorth. Hefyd, ceir cyngor i bobl na fu'n llwyddiannus gyda'u cais ac sy'n dymuno mynd trwy'r broses apelio neu gael eu cefnogi i ailymgeisio lle bydd pobl wedi cael

statws preswylydd cyn-sefydlog a'u bod yn credu y dylent fod wedi cael statws preswylydd sefydlog llawn.

Mae Llywodraeth Cymru wedi gofyn i Lywodraeth y DU pam y cafodd pobl eu gwrthod, ac mae swyddogion wedi nodi bod hynny wedi digwydd yn bennaf o ganlyniad i ymgeisydd yn methu bodloni'r meini prawf, neu ddiffyg tystiolaeth i fodloni'r meini prawf. Gwrthodwyd nifer fach o geisiadau ar sail troseddau difrifol.

Bydd Llywodraeth Cymru yn parhau i bwyso ar Lywodraeth y DU i roi rhagor o wybodaeth yn ymwneud â cheisiadau a wrthodir.

7. **A oes unrhyw drafodaethau wedi digwydd gyda sefydliadau'r UE, neu Aelod-wladwriaethau'r UE27, ynglŷn â dinasyddion yr UE yng Nghymru?**

Fis Hydref y llynedd cynhaliais ddigwyddiad gyda'r Conswliaid Anrhydeddus yng Nghymru a byddwn yn parhau i weithio gyda'r conswliaid i hyrwyddo ein gwasanaethau cynghori yng Nghymru. Bydd y Prif Weinidog a minnau yn cyfarfod â Llysgennad yr UE i'r DU a benodwyd yn ddiweddar yn ystod yr wythnosau nesaf.

Fframweithiau Cyffredin

8. **A fydd unrhyw gyfle i ddeddfwrfeydd a rhanddeiliaid gyfrannu at gytundebau amlinellol fframwaith cyn iddynt ddod yn weithredol ar ddiwedd y flwyddyn?**

Bydd deddfwrfeydd a rhanddeiliaid yn cael cyfle i ddylanwadu ar ddatblygiad cytundebau amlinellol fframwaith:

- Bydd cyfle i'r deddfwrfeydd wneud hynny trwy sesiynau briffio technegol i'w pwyllgorau.

- Bydd rhanddeiliaid yn cael cyfle i gyfrannu trwy ymgynghori technegol. Bydd y broses hon wedi'i theilwra i'r fframweithiau unigol. Ar hyn o bryd mae sawl Fframwaith yn paratoi ar gyfer ymgynghoriad technegol gan gynnwys Caffael Cyhoeddus a Chyfraith Hylendid a Diogelwch Bwyd a Bwyd Anifeiliaid.

Bwriedir i'r prosesau uchod ddod i ben erbyn mis Rhagfyr 2020. Yna bydd craffu ffurfiol yn digwydd o ddechrau 2021.

Rhagwelwn y bydd nifer fach o fframweithiau sy'n fwy datblygedig yn cyrraedd y cam craffu ffurfiol yn gynharach, h.y. yn yr hydref.

9. **Ar gyfer meysydd fframwaith lle na cheir cytundeb amlinellol fframwaith erbyn diwedd y flwyddyn, a wnewch chi ddisgrifio beth fydd y trefniant dros dro a beth fydd yn ei gynnwys?**

Mae'r llywodraethau'n dal i drafod pa drefniadau dros dro y gallai fod eu hangen ar gyfer Fframweithiau nad ydynt yn cyrraedd y cam Cytundeb Amlinellol erbyn diwedd y flwyddyn.

Rwy'n gobeithio bod y wybodaeth hon o fudd i'r Pwyllgor.

Yr eiddoch yn gywir,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Jeremy Miles AS/MS
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Mick Antoniw AS
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27 Awst 2020

Annwyl Mick,

Rwy'n ysgrifennu i'ch hysbysu, yn unol â'r cytundeb ar gysylltiadau rhyngsefydliadol, y bydd cyfarfod nesaf Cyd-bwyllgor y Gweinidogion (Negodiadau'r UE) yn cael ei gynnal ddydd Iau 3 Medi, a hynny'n rhithiol unwaith eto. Bydd y cyfarfod yn trafod y rhaglen Fframweithiau Cyffredin, Marchnad Fewnol y DU, trafodaethau rhwng y DU a'r UE, a diweddariad ar y materion pontio gan gynnwys Parodrwydd y DU, ymgysylltu, Protocol Gogledd Iwerddon a deddfwriaeth.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol.

Jeremy Miles AS/MS
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28 Awst 2020

Annwyl David,

Diolch am eich llythyr dyddiedig 28 Gorffennaf. Rwyf wedi ymateb i'ch cwestiynau isod, a byddwn yn hapus i ymhelaethu ar yr atebion hyn yng nghyfarfod nesaf y Pwyllgor.

Trefniadau gwahanu rhwng y DU, Gwlad yr Iâ, Liechtenstein a Norwy

1. **Dywedodd y Memorandwm Esboniadol [ar gyfer y Cytundeb Gwahanu] i Lywodraeth y DU drafod y cytundeb hwn â'r gweinyddiaethau datganoledig a rhannu'r cytundeb drafft cyn y cytunwyd arno. A allwch gadarnhau bod hyn yn wir, ac amlinellu natur eich trafodaethau â Llywodraeth y DU, yn benodol mewn perthynas â'r meysydd a amlinellir uchod?**

   Rhannwyd y cytundeb drafft â swyddogion Llywodraeth Cymru yn union cyn iddo gael ei gyhoeddi, ond roedd hyn er mwyn gweld y manylion y cytunwyd arnynt ymlaen llaw yn hytrach na gwneud gwaith manwl ar y cyd ar y cytundeb a rhannu'r berchnogaeth. Ar bob cam mae Llywodraeth Cymru wedi bod yn galw ar Lywodraeth y DU am broses o gydweithio a chydberchnogaeth ar gyfer materion sy'n ymwneud â'r DU yn ymadael â'r UE a'n perthynas â'r UE yn y dyfodol. Nid yw Llywodraeth y DU wedi gweithio ar y sail honno, ac yn hyn o beth dylid ystyried cytundebau o'r fath fel penderfyniadau a wnaethpwyd gan Lywodraeth y DU yn unig.

2. **Yn ogystal â'r trefniadau a amlinellir yn y Cytundeb Gwahanu, bydd angen i'r DU drafod a gwneud cytundebau ychwanegol ar drefniadau rhwng y DU a'r Ardal Economaidd Ewropeaidd/Cymdeithas Masnach Rydd Ewrop cyn diwedd y cyfnod pontio. A allwch amlinellau unrhyw ran rydych wedi ei chwarae neu'n disgwyl ei chwarae yn y trafodaethau hyn?**

   Mae llywodraethau'r gwahanol wledydd yn yr Ardal Economaidd Ewropeaidd/Cymdeithas Masnach Rydd Ewrop wedi cytuno i gyflymu trafodaethau â'r

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DU yn ystod yr haf, gyda'r nod o wneud set o gytundebau sy'n ymdrin ag ardaloedd masnach ac ardaloedd nad ydynt yn ardaloedd masnach.

Bydd yr Adran Masnach Ryngwladol yn cydlynu'r agweddau masnachol ac economaidd ar y trafodaethau hyn, gan weithio gyda'r Swyddfa Dramor a Chymanwlad – o ystyried ei chyfrifoldeb am gysylltiadau dwyochrog ehangach â phob gwlad, a chyda'r Tasglu ar Ewrop, i sicrhau cysondeb yn y Cytundeb Masnach Rydd rhwng y DU a'r UE. Oherwydd lefel yr integreiddio rhwng y DU a gwledydd yr Ardal Economaidd Ewropeaidd/Cymdeithas Masnach Rydd Ewrop, rydym wedi cael ein hysbysu bod y DU yn ceisio cysondeb, cyn belled ag y bo modd, a bod trefniadau eisoes ar waith.

I sicrhau bod y gweinyddiaethau datganoledig yn cael y wybodaeth ddiweddaf am y datblygiadau, mae'r Adran Masnach Ryngwladol wedi rhannu egwyddorion trafodaethau lefel uchel y DU ac wedi cynnig rhoi diweddariadau rheolaidd ar lefel swyddogol a lefel weinidogol, gan alinio â mecanweithiau cyfathrebu ac ymgysylltu presennol. Rydym eto i weld a fydd y trefniadau hyn yn cael eu anrhydeddu yn rheolaidd.

Hyderaf fod yr atebion hyn yn rhoi diweddariad digonol.

Yn Gywir,

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
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Welsh Parliament | Research Service

The EU Single Market

14 September 2020

Introduction

On 16 July the UK Government published its White Paper on proposals for a UK Internal Market. The UK Internal Market Bill was subsequently published on 9 September.

Part of the UK Government's rationale for the Bill is that it is needed to replace the EU rules that governed the operation of the UK market whilst it was a Member of the EU and that still currently apply by virtue of the requirements of the transition period.

To aid Members in their consideration of the Bill, a piece of work was commissioned from Dr Kathryn Wright at York University using the Senedd's Brexit Academic Framework, to set out they key rules and principles that govern the operation of the EU's Single Market, on what grounds Member States are able to diverge from them e.g. to introduce laws that prevent the free movement of goods for public health grounds and how the rules of the EU's Single Market currently apply at sub-state level. It include a case study of the minimum alcohol price legislation introduce firstly by the Scottish

Government and subsequently by the Welsh Government to illustrate some of the papers main points. The paper is included below.

Dr Kathryn Wright, is a member of York Law School and an expert in EU law.

Senedd

Framework Agreement for Research and Briefing Services in relation to Brexit

EU INTERNAL MARKET BRIEFING

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28 August 2020

Contents:

1. Historical context of the EU internal market

The internal market is an area without internal barriers based on the '**four freedoms**': free movement of goods, persons, services and capital. As the ultimate interpreter of EU law, the Court of Justice of the European Union (CJEU) has played a central role in market integration, defining concepts laid down in the Treaties and developing key principles such as mutual recognition.

There are two elements to removing internal barriers:

- removing tariffs, which is the function of a customs union, and
- dealing with regulatory barriers. These non-tariff barriers are more significant, both in terms of number and complexity.

The EU has developed from a customs union to a common market to a single - or internal - market. The **customs union** means that there are no tariffs for trade within the EU and there is one single customs tariff for trade with non-EU Member States: the Common External Tariff (CET). External trade is an exclusive competence of the EU, which is why Member States are not free to set their own individual trade policies.

A **common market** is a free trade area with no tariffs for goods and relatively free movement of capital and of services, but not so advanced in reduction of non-tariff trade barriers. The Common Market – the European Economic Community (EEC) - was mostly associated with the idea of 'negative integration' – that is, the removal of existing barriers to trade.

The **Single, or Internal, Market**, goes further regarding non-tariff barriers with more focus on 'positive integration' – that is, harmonising regulations and recognising remaining national measures as equivalent. The internal market is made up of various policy areas subject to the shared competence of the EU and the Member States.

The Single Market ambition was a response to the oil crisis of the 1980s which led to inflation and unemployment. The European Commission's 1985 White Paper, under its then President Jacques Delors, identified physical and technical obstacles that still needed to be removed to complete the Single Market. It set out around 300 specific measures to be achieved in stages by 1993.

After the fall of the Berlin Wall, the European integration project became more ambitious in terms of political as well as economic integration. Among other

features, the Maastricht Treaty introduced the concept of EU citizenship, set a timetable for monetary union, and introduced a three-pillar system: the Economic Community (EC), Justice & Home Affairs (JHA), and the Common Foreign and Security Policy (CFSP). The latter two pillars were characterised by more intergovernmental decision-making. To accommodate the interests of some Member States, the Treaty allowed for opt-outs for the first time, such as for Euro membership. Subsequently the Treaty of Amsterdam allowed for 'enhanced cooperation' among Member States wanting to integrate at a faster pace in particular areas.

The internal market has developed through successive treaties and the enlargement of the EU from the original 6 to 28 (now 27) Member States. It is an ongoing project. The goods market is more integrated than services, and a Digital Single Market strategy was announced in May 2015 to take account of progress in technology.

Key dates

1957 Treaty of Rome, creating the European Economic Community (EEC). Common market established – free movement of goods, services, capital and people

1968 Customs union created: all import tariffs between the 6 EEC Member States removed

1986 Single European Act, creating the European Community (EC) (in force 1987) – 12 Member States by now - set timetable for the completion of the Single Market by 1 January 1993

1992 Maastricht Treaty: Treaty on European Union (in force 1993) – greater political and economic integration, three pillars, foundation for Economic & Monetary Union (EMU), opt-outs

1993 completion of Single Market – physical borders removed

2002 euro notes and coins in circulation and national currencies phased out

2007 Treaty of Lisbon (in force 2009): updating and consolidating the previous Treaties into two: the Treaty on European Union (TEU), and the Treaty on the Functioning of the European Union (TFEU), the latter containing the rules on the internal market – 27 Member States at this point

2. Key principles and features of the EU internal market

The legal basis for the internal market is Art 26 TFEU, which refers to the **free movement of goods, services, capital and persons**. Firms and people from one EU Member State should be able to operate in another Member State market under the same laws and conditions as those applying to the host Member State's own nationals. Member States cannot create unjustified barriers to trade. In EU law there is a general **principle of non-discrimination** on grounds of nationality. In the context of free movement of goods and services it is bound up with the principle of mutual recognition, discussed in this section. Whereas in its early case law the Court focused on discrimination, it increasingly applies a market access approach i.e. does a national rule prevent or hinder a claimant's access to that market?

This briefing discusses free movement of goods and services, with a focus on physical goods.

Barriers to trade in services

The core provisions governing the single market for **services** are the **freedom to establish** a company in another EU country (Art 49 TFEU), and the **freedom to provide or receive services** in an EU country other than the one where the company or consumer is established (Art 56 TFEU).

In terms of exceptions, activities directly connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Art 51 TFEU). Member States may exclude the production of or trade in war material (Art 346(1)(b) TFEU) and retain rules for non-nationals in respect of public policy, public security or public health (Art 52(1) TFEU).

Freedom of establishment and free movement of services have been further developed through the Court of Justice of the EU's case law. Some case law has been codified into the Services Directive (Directive 2006/123/EC) which includes sectors such as retail, tourism, construction and business services. The directive covers services provided within countries as well as between Member States. There are also separate directives on particular sectors, such as financial services, transport, telecommunications, postal services, broadcasting and patient rights, supported by other rules such as recognition of professional qualifications. Implementation of the Services Directive, initially due in 2009, has been delayed

in some Member States, so the internal market in services is not as integrated as in goods.

Barriers to trade in goods

Free movement of **goods** is governed by Article 34 TFEU, which provides that **quantitative restrictions** on imports and **all measures having equivalent effect** [abbreviated as '**MEQR**s' or 'MEEs'] shall be prohibited between Member States. Art 35 TFEU is the similar provision applying to exports.

A **quantitative restriction** is a measure which amounts to a total or partial restraint of imports, exports or goods in transit (case 2/73 Geddo). An example would be a quota, prohibiting or limiting importation by amount or by volume. Most national measures are not direct quantitative restrictions but may have a similar effect, hence the prohibition against equivalent measures too.

'Measures having equivalent effect' to quantitative restrictions encompass "all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially", trade within the EU (case 8/74 Dassonville, concerning a Belgian rule preventing the sale of products such as Scotch whisky without a certificate of authenticity). It should be noted that this definition has a broad scope. For example, these measures may relate to a product's content, its labelling or sale conditions, or its use.

In the Keck case (C-267/91), the Court of Justice of the European Union (CJEU) decided that rules on 'selling arrangements' (as opposed to 'product characteristics') that are non-discriminatory and impose an equal burden on imported and domestic products in law and in fact, fall outside Art 34 TFEU altogether. However, more recent case law focuses on the impact on market access regardless of the type of measure.

In a case concerning a Swedish law prohibiting the advertisement of alcohol on radio, television and in magazines (case C-405/98 Gourmet International), the CJEU focused on factual (in)equality: did the national measure impede access to the national market more for imported products than for domestic products? Although they could still advertise in the trade press to retailers and restaurants owners, the ban affected potential importers more heavily as they could not access potential consumers directly.

In C-110/05 Commission v Italy (Trailers), which concerned an Italian ban on the use of certain road vehicle trailers, the CJEU ruled:

"measures adopted by a Member State the object or effect of which is to treat products coming from other Member States less favourably are to be regarded as measures having equivalent effect to quantitative restrictions on imports… Any other measure which hinders access of products originating in other Member States to the market of a Member State is also covered by that concept." The Court also noted that a ban on the use of a product in the territory of a Member State has a considerable influence on the behaviour of consumers, which also affects the access of that product to the national market.

A similar approach is found in the cases on free movement of services. Under Art 56 TFEU, restrictions on freedom to provide services are prohibited in respect of Member State nationals who are established in a Member State other than that of the person for whom the services are intended. This covers all measures "liable to hinder or make less attractive the exercise of fundamental freedoms" (C-55/94 Gebhard) or that "prohibit, impede, or render less advantageous the activities of a service provider established in another Member State where they lawfully provide similar services" (cases C-369 & C-376/96 Arblade).

Showing again the focus on market access, in case C-384/93 Alpine Investments a ban on cold-calling potential customers deprived the firm of a "rapid and direct technique for marketing and for contacting potential clients in another Member State." (However, the ban could be justified on grounds of consumer protection – justifications are discussed below.)

Mutual recognition

Where there are harmonised rules, all EU and non-EU operators must comply with them within the internal market. In harmonised sectors EU countries do not have the option of introducing divergent national rules.

For non-harmonised products, a central feature of free movement of goods is the **principle of mutual recognition**. This covers approximately 25% of products on the EU market (European Commission, Evaluation of the Application of the mutual recognition principle in the field of goods, June 2015, p.31).

The principle of mutual recognition provides that if a product or service has been lawfully placed on the market in one Member State, there is no valid reason why it cannot be marketed in another Member State. This creates a presumption in favour of free movement. The principle was established by the Court of Justice in the important Cassis de Dijon case (case 120/78).

That case concerned the sale of cassis de Dijon, a type of crème de cassis (blackcurrant liqueur), in Germany by an importer and retailer, Rewe. A German law stipulated that products sold as fruit liqueur must contain at least 32% alcohol by volume, whereas crème de cassis produced in France only contains 15-20%. The relevant section of the German Federal Ministry of Finance told Rewe that the cassis de Dijon could be imported. On the other hand, it advised that it could not be marketed as a liqueur in Germany. This represented an MEQR.

The Cassis de Dijon case also categorised national rules into 'distinctly' and 'indistinctly' applicable measures according to their effect on imported and domestic products:

A **distinctly applicable measure** is one that is overtly discriminatory as it only applies to imported products and not to national products. For example, minimum or maximum prices for imported products; payment conditions for imported products which differ from those for domestic products; conditions in respect of packaging, composition, identification, size, weight, etc, which apply only to imported goods; a government campaign encouraging consumers to favour domestic products.

An **indistinctly applicable measure** on the face of it applies to all products – both domestic and imported – but in practice imposes a greater restriction on imported products. For example, an advertising ban which may make it more difficult for potential importers to reach a new market.

This categorisation is important as the type of measure influences the range of justifications open to Member States for diverging. In practice most measures are indistinctly applicable.

The possibility for Member States to diverge

As noted above, there is no lawful basis for Member States to diverge where harmonised rules apply.

There are possibilities to diverge in non-harmonised sectors where the principle of mutual recognition applies. These are known as Member State **derogations.** The Member State's justification for divergence must be based on grounds laid down in EU law, necessary, proportionate and genuine. In the traditional analysis, measures applying exclusively to non-national goods can only be justified by a narrow, closed category laid down in the Treaty. When the measures affect both national and non-national goods there is a wider scope for justification through

the case law discussed below. The burden of proof shifts to the Member State to show that the restriction on trade is justified.

Traditionally, **distinctly applicable measures** can only be justified under the exhaustive list of derogations in Art 36 TFEU, which are:

- public morality,
- public policy or public security,
- protection of health and life of humans, animals or plants,
- protection of national treasures possessing artistic, historic or archaeological value, and
- protection of industrial and commercial property

Art 36 also states that Member States' measures "shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States." Economic protectionism is not allowed, as confirmed by case law such as case 40/82 Commission v UK on Christmas turkeys, and case C-1/00 Commission v France after the end of the BSE crisis in British beef, where the UK and France respectively unsuccessfully tried to invoke public health grounds.

Regarding **indistinctly applicable measures**, the Cassis de Dijon case also allows for the possibility of other derogations through a '**rule of reason**'. It mentions 'mandatory requirements' relating in particular to:

- effectiveness of fiscal supervision,
- protection of public health,
- fairness of commercial transactions, and
- defence of the consumer

This list of '**mandatory requirements**' is not exhaustive, so it is open to a Member State to justify an indistinctly applicable measure on another ground. For example, the Italian ban on the use of trailers breached Art 34 TFEU but could be justified on grounds of road safety (C-110/05 Commission v Italy (Trailers)). Similarly, a Swedish ban on the use of jet skis on all public waterways could be justified on the grounds of public and environmental nuisance (case C-145/02 Mickelsson v Roos).

On occasion the Court has taken a less strict approach to the derogations for distinctly applicable measures, blurring the distinction between the categories of justifications. It has done this by not explicitly labelling a measure as distinctly applicable – simply deciding it is an MEQR, or by allowing mandatory

requirements to be considered as justifications (e.g. in C–54/05 Commission v Finland, allowing import licences to be justified by road safety).

In the Walloon Waste case (C-2/90 Commission v Belgium), the Walloon Regional Council prohibited waste originating in another Member State or in another region of Belgium to be stored or dumped in Wallonia. This could be considered a distinctly applicable measure because it did not apply to waste originating in Wallonia itself. The Court assessed environmental protection as a justification, although that is not one of the options in Art 36 TFEU. (This case can also be seen in line with other judgments on measures imposed by sub-State administrations, outlined in section 5.)

In free movement of services, the Säger case concerning patent attorney services (case C-76/90) established that only rules applying to all service providers pursuing an activity in the State of destination (i.e. indistinctly applicable measures) are potentially permissible. They must be justified by "imperative reasons relating to the public interest" Distinctly applicable measures are not justifiable at all.

Any justifications are also subject to a proportionality test. The national measure must be appropriate for securing its intended objective and must not go beyond what is necessary in order to achieve it. This includes considering whether alternative, less trade-restrictive, measures are available to achieve the aim. This operation of the proportionality test is discussed in more detail in the case study on Scotch Whisky in the final section of this briefing.

Potential justification of national measures on goods

distinctly applicable national measure	indistinctly applicable national measure
(only applies to imports)	(applies to imports and domestic products, but restrictive of trade between States)
Object	effect
↓	↓
justifiable under Art 36 TFEU (exhaustive list)	justifiable according to 'rule of reason' test in the Cassis de Dijon case ('mandatory requirements' - non-exhaustive) or Art 36 TFEU

+

proportionality

National derogations give an opportunity to diverge from the free movement rules, in non-harmonised areas. However, they must be justified on a case-by-case basis according to the facts, and they are only allowed in the context of the institutional governance structures of the EU. Governance is discussed in more detail in section 4 below.

The Single Market Transparency Directive 2015/1535 also aims to prevent barriers before they materialise for products which are not, or only partially, harmonised. Member States are required to notify any draft regulations concerning these products to the European Commission at least three months before their proposed adoption (the 'standstill' period). These measures are recorded in the Technical Regulation Information System ('TRIS') database. The Commission then analyses them in light of EU legislation, and other Member States can also give their opinion on the notified draft regulations.

Practical operation of mutual recognition

Mutual recognition within the internal market is also governed by legislation. The new Mutual Recognition Regulation (Regulation 2019/515 - applied from 19 April

2020) outlines rules and procedures on the application of the mutual recognition principle in individual cases. It includes:

- an assessment procedure to be followed by national authorities when assessing goods
- compulsory elements to be included in an administrative decision that restricts or denies market access
- a voluntary mutual recognition declaration, which businesses can use to demonstrate that their products are lawfully marketed in another EU country
- a problem-solving procedure, based on the existing SOLVIT service, that includes the possibility of an assessment from the European Commission on the compatibility of a national decision restricting or denying market access with EU law. SOLVIT is a practical problem-solving network to assist EU citizens or businesses when they encounter a problem in another Member State because a public authority is not respecting their obligations under EU law.
- stronger administrative cooperation to improve the application of the mutual recognition principle
- more information to businesses through reinforced product contact points and a single digital gateway

(see European Commission, Mutual recognition of goods: https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en)

3. An overview of harmonised and non-harmonised sectors

Harmonised sectors account for 70-75% of products on the EU market. These sectors include toys, electronic and electric equipment, such as electric motors, laptops, domestic refrigerators/freezers, gardening equipment, petrol pumps, air conditioners and integrated circuits, machinery, measuring instruments, lifts, medical devices, recreational craft, fireworks, personal protective equipment, fireworks, automotive, chemicals.

In most harmonised sectors, EU legislation is limited to essential health and safety and environmental standards. Manufacturers then adhere to technical specifications or voluntary standards to show compliance. These standards are separately drafted through European Standards Organisations involving industry actors. In other sectors (automotive, chemicals), technical specifications for particular products are detailed in specific legislation itself.

Different aspects of a product can be harmonised: for toys, EU legislation covers all characteristics; for other products, it lays down only the technical characteristics (such as level of noise, chemical substances) or the rules concerning labelling (e.g. for composition of clothes and shoes, energy efficiency labelling for household electric appliances).

Concerning harmonised product rules, Regulation (EU) 2019/1020 on market surveillance and compliance of products aims to strengthen market surveillance rules for non-food products. It increases coordination of market surveillance, clarifies procedures for a mutual assistance mechanism, and requires non-EU manufacturers to designate a responsible authority for compliance information.

Non-harmonised sectors include certain foodstuffs, medicines, food additives and food supplements, furniture, textiles, bicycles, automotive spare parts, construction products, fertilisers, cooking implements, precious metals.

Conformity assessment by an accredited body is needed before a product (such as medicines) can be placed on the EU market, showing that it meets all the applicable requirements. CE marking denotes conformity with high safety, health, and environmental protection requirements.

The European Commission's 'Blue Guide' (July 2016) is a handbook on the implementation of EU product rules on non-food and non-agricultural products. It aims to help businesses, trade and consumer associations, standardisation bodies and conformity assessment bodies and national inspectors apply the rules consistently across different sectors and throughout the single market.

4. The governance of the internal market and the role of different institutions

The European Commission, the CJEU, European standardisation bodies and national courts and authorities are involved in internal market governance.

The European Commission is the guardian of the Treaties. It promotes the general interest of the EU, implements policies, and proposes and oversees the implementation of EU legislation. It is the approximate equivalent of the civil service for the EU. EU legislation is passed by the Council of the EU, comprising

Member State ministers, and the European Parliament, made up of directly elected representatives.

Regulations are directly applicable from their adoption, whereas Directives need to be transposed into national law by Member States within two years, or by the date specified in the legislation. The measures taken to implement the Directive must be notified to the European Commission. If a country fails to implement a Directive properly, notify the Commission, or otherwise violates the Treaties, the Commission may start infringement proceedings under Art 258 TFEU.

The first step is a letter of formal notice requesting further information from the Member State, which must send a detailed reply within a specified period. If the Commission considers the response unsatisfactory, it sends a 'reasoned opinion', formally requesting that the country complies with EU law. It explains why the Commission considers there is a breach, and again asks the Member State to inform the Commission of the measures taken by a specified deadline, usually 2 months. If the Member State still does not comply, the Commission may decide to refer the case to the Court of Justice. Most cases are settled before this point. If the Court of Justice finds that the Member State has breached EU law, the national authorities must take action to comply with its judgment. If this still does not happen the Commission can propose that the Court apply financial penalties.

The Court of Justice of the EU (CJEU) interprets EU law to ensure it is applied consistently, and adjudicates cases between national governments and EU institutions. CJEU rulings are binding on the Member States. It is important to note that it is not an appeal court from the Member States.

In free movement cases the CJEU would have jurisdiction in two ways: European Commission infringement proceedings brought against a Member State e.g. for non-implementation of legislation as explained above; or through the preliminary reference procedure after a case is brought in a national court to enforce an individual's or a firm's free movement rights.

Under the preliminary reference procedure (Art 267 TFEU), if a national court is unsure of the interpretation of EU law applicable to a case, it can (and must, in the case of the highest court) make a reference to the CJEU. Once the CJEU has given its binding interpretation - 'the preliminary ruling' - on the point of EU law raised, the national judge applies that ruling to the dispute between the parties.

Member States' courts and authorities play an important role in enforcing EU law. Flowing from the foundation principle of supremacy of EU law, they are required and empowered to:

- give effect to EU law: the principle of **direct effect** (case 26/62 Van Gend en Loos)
- interpret national law in line with EU law: the principle of **indirect effect** (case C-106/89 Marleasing)
- set aside national provisions which conflict with EU law (case 70/77 Simmenthal)

The principle of direct effect means that individuals and firms can enforce their free movement rights in national courts by challenging State measures on the basis of the Treaty. They do not need to go to the CJEU, and in fact the CJEU does not have jurisdiction to hear their cases, except indirectly through the preliminary reference procedure.

As noted above, European Standards Organisations are responsible for drawing up technical specifications, which meet the essential requirements laid down in Regulations and Directives. If producers comply with these standards there is a presumption of conformity with the essential requirements. These standards may define requirements for products, production processes, services or test methods. They are developed by industry actors following principles of consensus, openness, transparency and non-discrimination. Standards are aimed at ensuring interoperability and safety, reducing costs and facilitating integration. The European Standardisation Organisations are the European Committee for Standardisation (CEN – known by its French acronym), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI).

5. The 'wholly internal' situation and the sub-State context

If there is no movement between Member States in a particular case, free movement rights in EU law are not engaged.

In the context of free movement of goods, Article 34 TFEU applies to obstacles to trade "between Member States". An inter-State element is therefore a prerequisite and it does not apply to 'wholly internal' situations i.e. the measure should be "capable of hindering, directly or indirectly, actually or potentially" trade between

Member States (the Dassonville case). It does not apply to measures only affecting domestic goods. The need for an inter-State element means that EU law does not prevent Member States from treating their domestic products less favourably than imports i.e. **reverse discrimination** (although they would be unlikely to want to do that deliberately).

However, Art 34 TFEU does apply where a domestic product leaves the Member State but is imported back again (case 78/70 Deutsche Grammophon) - unless the sole purpose is to circumvent the domestic rules (case 229/83 Leclerc). It also applies to goods in transit (C-320/03 Commission v Austria). Irrespective of the place where they are originally produced inside or outside the internal market, once they are in free circulation all goods benefit from the principle of free movement (Cassis de Dijon).

Potential effects on inter-State movement have allowed national producers to successfully challenge national rules applying to all producers, on the grounds that the rule could also create a disadvantage for non-national producers in accessing the market (e.g. C–184/96 Commission v France - foie gras; C–321–324/94 Pistre). Similarly an obstacle or delay posed to national producers may have a knock-on effect further along the chain, indirectly affecting later cross-border trade (C-293/02 Jersey Potatoes).

The Lancry case (C-363/93, C-409/93 & C-411/93) concerned different parts of the same State. Dock dues imposed by Réunion (as a French overseas territory) on all goods, including those from mainland France, to boost local production were held to infringe Art 34. The Court found it would be "inconsistent to hold that a charge applied to all goods crossing a regional frontier, whatever their origin, should be classified as a charge having equivalent effect when it applies to goods from other Member States but not when it applies to goods from another part of the same State."

The Walloon Waste case, discussed above in section 2, demonstrates that a measure adopted by a sub-State administration which affects producers in other sub-State territories as well as other States is open to justification.

6. Case study: the Scotch Whisky case on minimum pricing of alcohol

Summary: The key issue in the Scotch Whisky case was the proportionality of the Scottish legislation introducing a minimum price unit for alcohol, and whether

there were less trade-restrictive measures, such as taxation, which would be equally effective at achieving the intended aim of protecting human life and health. Scotland ultimately implemented a minimum price of 50p per unit of alcohol in 2018.

Facts

In 2012, the Scottish Parliament approved a minimum unit price for alcoholic drinks through s.6A(1) of the Licensing (Scotland) Act 2005, amended by the Alcohol (Minimum Pricing) (Scotland) Act. Its aim was to increase the price of alcohol to discourage excessive drinking, so protecting human life and health.

The legislation was not implemented initially as the Scotch Whisky Association and other alcohol lobby groups challenged it through a judicial review. Some of its arguments were based on EU law, namely that imposing a minimum unit price would breach the free movement of goods rules and EU Regulation 1308/2013 on the common organisation of agricultural markets. The Scotch Whisky Association was able to invoke EU law as it could argue that importers from other EU Member States were also affected by the legislation. When the case reached the Court of Session in Edinburgh on appeal, it made a preliminary reference to the EU Court of Justice (case C-333/14 Scotch Whisky v Lord Advocate).

Applying the free movement of goods framework to the case:

- The proposed minimum unit price was a 'measure having equivalent effect to a quantitative restriction' (MEQR) according to Art 34 TFEU and the Dassonville definition
- It was an 'indistinctly applicable' measure: it applied to Scottish and other UK producers of alcoholic drinks as well as those from other EU Member States
- It was justified: 'protection of health and life of humans' is explicitly one of the grounds in Art 36 TFEU, and consumer protection is also considered a 'mandatory requirement'

  Therefore, the key issue was the proportionality of the proposed minimum price unit for alcohol

The Court of Justice of the EU's ruling

The CJEU applied the market access test i.e. would the minimum unit price present an obstacle to importers' access to the market and affect fair competition? A manufacturer who could lawfully produce an alcoholic drink in other Member States more cheaply due to lower production or labour costs

would not be able to compete by offering their products below the set minimum unit price in Scotland.

The CJEU accepted the objective of the legislation: "the protection of the health and life of humans… ranks foremost among the assets or interests protected by Article 36 TFEU. It is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they wish to assure" (para 35 of the judgment)

When it came to assessing whether the minimum unit price was proportionate to the aim of protecting human life and health, the Court examined whether there were less trade-restrictive alternatives which would be equally effective. In particular it considered that a fiscal measure which increases the taxation of alcoholic drinks is likely to be less restrictive of trade in those products within the EU than a measure imposing a minimum unit price. An MUP significantly restricts the freedom of economic operators to determine their retail selling prices in a way that taxation does not (para 46). The fact that increased taxation of alcoholic drinks entails a general increase in prices, affecting both moderate drinkers and those whose consumption is harmful, does not necessarily mean that increased taxation is less effective (para 47).

As explained above, in the preliminary reference procedure it is ultimately for the national court to decide the case on the facts, applying the CJEU's binding ruling on the interpretation of the EU rule. In this case the CJEU gave a strong direction:

"Articles 34 TFEU and 36 TFEU must be interpreted as precluding a Member State choosing, in order to pursue the objective of the protection of human life and health by means of increasing the price of the consumption of alcohol, the option of legislation … which imposes an MUP for the retail selling of alcoholic drinks, and rejecting a measure, such as increased excise duties, that may be less restrictive of trade and competition within the European Union. It is for the referring court to determine whether that is indeed the case, having regard to a detailed analysis of all the relevant factors in the case before it. The fact that [taxation] may bring additional benefits and be a broader response to the objective of combating alcohol misuse cannot, in itself, justify the rejection of that measure." (para 50)

However, the burden of proof on the Member State "cannot extend to creating the requirement that, where the competent national authorities adopt national legislation imposing a measure such as the MPU, they must prove, positively, that no other conceivable measure could enable the legitimate objective pursued to be attained under the same conditions" (para 55)

In deciding the case, the national court should ensure that the relevant national authorities bring sufficient evidence to justify their measure (para 49, 54). The national court could take into account scientific uncertainty, and the fact that the minimum unit price had a time limit of 6 years unless the Scottish Parliament decided to extend it (para 57).

Outcome

The case returned to the domestic courts to apply the CJEU's ruling, first in the Court of Session and then in the UK Supreme Court on appeal. The UK Supreme Court ultimately found the minimum unit price to be lawful (*Scotch Whisky Association & Ors v The Lord Advocate & Anor (Scotland) [2017] UKSC 76* (15 November 2017)). Following the principles in the CJEU's judgment, the court emphasised the evidence behind the policy, the consideration of alternatives and the suitability of the measure for its intended objective. A minimum price of 50p per unit of alcohol was implemented in Scotland on 1 May 2018.

Similarly, Wales adopted a 50p minimum unit price on 2 March 2020 under the Public Health (Minimum Price for Alcohol) (Wales) Act 2018. The regulations specifying and explaining the minimum price unit had to be notified to the European Commission under the Single Market Transparency Directive before the measure came into force.

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4 Medi 2020

Annwyl David,

Cytundeb Rhyng-sefydliadol – Cyfarfodydd Gweinidogol ar yr Adolygiad Cysylltiadau Rhynglywodraethol

Cynhaliwyd cyfarfod o Gydbwyllgor y Gweinidogion (Negodiadau'r UE) ym mis Mai eleni, ac fe wnaethom gytuno y dylai'r gwaith ar yr Adolygiad Cysylltiadau Rhynglywodraethol ailddechrau. Yn ein cyfarfod dilynol ym mis Gorffennaf, gwnaethom gymeradwyo'r cynnydd a wnaed gyda'r Adolygiad, yn enwedig ym maes Osgoi a Datrys Anghydfod. Yn y cyfarfod hwnnw, galwais am sicrhau bod y manylion yn cael eu cwblhau'n gyflym er mwyn gallu rhoi canlyniadau'r adolygiad ar waith, ac i ddwysau'r ymdrechion o ran cynigion mecanweithiau Cysylltiadau Rhynglywodraethol. Er mwyn parhau â'r trafodaethau a chwblhau proses yr Adolygiad Cysylltiadau Rhynglywodraethol yn brydlon – hon yw trydedd flwyddyn yr adolygiad – cytunodd y Cydbwyllgor y byddem yn dal ati i gwblhau'r manylion hyd yn oed yn ystod toriad yr haf.

O ganlyniad, mae'n bleser gennyf eich hysbysu bod y gweinidogion Cysylltiadau Rhynglywodraethol wedi cyfarfod am y tro cyntaf ar 12 Awst i gynnal cyfres o drafodaethau gan ganolbwyntio ar Osgoi a Datrys Anghydfod a mecanweithiau.

Cadeiriwyd y cyfarfod gan y Gweinidog dros y Cyfansoddiad a Datganoli, Chloe Smith AS, Llywodraeth y DU, gydag Ysgrifennydd y Cabinet dros y Cyfansoddiad, Ewrop a Materion Allanol, Mike Russell ASA, Llywodraeth yr Alban a'r Prif Weinidog, y Gwir Anrhydeddus Arlene Foster ACD, Gweithrediaeth Gogledd Iwerddon hefyd yn bresennol.

Roedd y trafodaethau yn y cyfarfod hwnnw'n gadarnhaol ac rwy'n croesawu'r datblygiad hir-ddisgwyliedig hwn. I barhau â'r momentwm byddwn yn ystyried manylion y testunau hyn ymhellach mewn cyfarfodydd sydd i'w cynnal ar 8 a 10 Medi.

Fel y nodwyd yn flaenorol, byddaf yn darparu rhagor o wybodaeth am y datblygiadau hyn pan fydd y trafodaethau gyda Llywodraeth y DU a'r Llywodraethau datganoledig eraill wedi'u cwblhau.

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Counsel General and Minister for European Transition

Mae cyfyngiadau ar y ddogfen hon

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