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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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| Abbreviation | Party/Group |
|---------------------|------------------------------|
| CB | Cross Bench |
| Con | Conservative |
| DUP | Democratic Unionist Party |
| GP | Green Party |
| Ind Lab | Independent Labour |
| Ind LD | Independent Liberal Democrat |
| Ind SD | Independent Social Democrat |
| Ind UU | Independent Ulster Unionist |
| Lab | Labour |
| LD | Liberal Democrat |
| LD Ind | Liberal Democrat Independent |
| Non-afl | Non-affiliated |
| PC | Plaid Cymru |
| UKIP | UK Independence Party |
| UUP | Ulster Unionist Party |

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House of Lords

Thursday 24 May 2018

11 am

Prayers—read by the Lord Bishop of Worcester.

Introduction: The Lord Bishop of London

11.06 am

Sarah Elisabeth, Lord Bishop of London, was introduced and took the oath, supported by the Archbishop of Canterbury and the Bishop of Chichester, and signed an undertaking to abide by the Code of Conduct.

Forced Marriage

Question

11.11 am

Asked by Baroness Berridge

To ask Her Majesty's Government what steps they are taking to ensure that the Commonwealth Communiqué's commitment to eradicate forced marriage is realised, and to assess its inter-relationship with forced conversion.

Baroness Berridge (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and I draw attention to my interests as declared in the register.

The Minister of State, Department for International Development (Lord Bates) (Con): The UK was instrumental in ensuring the inclusion of child, early and forced marriage in the Commonwealth communiqué. We deliver our commitments through the Forced Marriage Unit and through our work to end child marriage in developing countries. While there are highly publicised instances of forced marriage and forced conversion, we do not have evidence that this is prevalent at scale. Where it happens, it is context-specific.

Baroness Berridge: My Lords, I thank my noble friend for his Answer but, according to the Aurat Foundation, 1,000 Hindu and Christian women and girls are abducted, forcibly converted and married off in Pakistan every year. In India, there are similar allegations of Muslim girls being forcibly converted to Hinduism and married off. Of course, this has also been a feature of Boko Haram's tactics. Despite the last four communiqués making reference to early, child and forced marriage, none has addressed investigating the interrelationship with forced religious conversion. As chair of the Commonwealth for the next two years, will Her Majesty's Government commission the necessary research to understand this complex relationship and investigate potential solutions?

Lord Bates: I am grateful for my noble friend's question and I pay tribute to her work with the Commonwealth Initiative for Freedom of Religion and Belief, which has had a significant impact. I draw attention to the very substantial measures on freedom of religion and belief—led by my noble friend

Lord Ahmad—that we have already announced, such as a £12 million fund through Aid Connect to look specifically at this. On the specific instance of Pakistan that my noble Friend mentioned, one of the things that we were clear about in Pakistan's UN review last year was the importance of protecting minority rights and the possible need for an independent commission on such rights. We are doing significant things but we have to be clear that this is not only about the communiqué. The Commonwealth charter talks about the importance of,

“tolerance, respect, understanding, moderation and religious freedom which are essential to the development of free and democratic societies”.

That is why we will continue to hold other states to account and seek to live up to that.

Baroness Hussein-Ece (LD): My Lords, child marriage is a global issue. I do not know whether the Minister knows this, but I was very surprised to learn that over 200,000 girls under the age of 16 have got married in the United States, where, in many states, it is still legal. In the Commonwealth, records show that 8.8 million girls have been forcibly married in this way. What progress has been made to eliminate this very harmful practice which, as the Minister said, breaches the rights of these girls? During the CHOGM conference, what further promotion was made of the Kigali Declaration?

Lord Bates: We have a major programme which is accelerating action against child and early forced marriage. We have been leaders in this area and put significant resource into it, and it has been engaging. We need to remind people not about the need for new declarations and new initiatives but of the fact that, 70 years ago, this matter was in the Universal Declaration of Human Rights: Article 16.2 states that there must be consent between the spouses. We just need to hold people to what they have already signed up to.

Lord Alton of Liverpool (CB): My Lords, given that the noble Lord, Lord Bates, said in answer to the noble Baroness, Lady Berridge, that there was not compelling evidence, will he undertake at least to look at the Aurat Foundation's evidence of 1,000 forced conversions every year and other evidence from Pakistan that suggests that between 20 and 30 women from Hindu backgrounds are forcibly converted every single month? In citing, as he has done, the Universal Declaration of Human Rights, will he point Commonwealth countries to Article 18, which states quite emphatically that everyone has the right to believe, not to believe or to change their beliefs and that no one should be forcibly converted?

Lord Bates: That is why we are doing so much in this area. We have done work through the Magna Carta Fund at the Foreign Office; we have new work coming on stream now. This is a fundamental area. Why are we doing it? It is simply because inclusive societies tend to be the most peaceful. Societies which empower and protect women tend to be the most prosperous. If you are in development, that is what you want to happen.

Lord Collins of Highbury (Lab): My Lords, I agree with the noble Baroness on translating the communiqué into action. One thing that can be done is to support the Commonwealth Office for Civil and Criminal Justice Reform. That would mean member countries translating commitments in the charter into legislative changes, so that people's rights can be protected. What are the Government doing to ensure that the Commonwealth Secretariat receives support for expanding that work?

Lord Bates: Clearly, it is a very important stream of work. The responsibility for implementing what has been signed up to by member states in the communiqué of course lies with the member states, but it is also right that we should be involved in the ways that I have outlined, through the various programmes and initiatives, to support countries to build more inclusive societies. We will continue to do that.

Lord Suri (Con): My Lords, as the UK is taking over the chairmanship of the Commonwealth for the next two years, and given the success of the Forced Marriage Unit, will my noble friend the Minister commit to sharing this model with Commonwealth countries where the level of forced marriages is particularly high?

Lord Bates: I often think that we need a certain degree of humility in this. We have been wrestling with the issue of forced marriage within our own communities here in the UK. There was a significant conviction in Birmingham just a couple of days ago, with someone sentenced to four and a half years in prison. If we engage with people at all levels, both at home and abroad, we can try to give young people the opportunities that we seek for them so that they might realise their full potential.

Baroness Barker (LD): Will the NCA be enabled with the resources to spread the intelligence that it has gathered in this country to its counterparts in Commonwealth countries?

Lord Bates: I presume that the noble Baroness is referring to the Forced Marriage Unit. That is an interesting point. The unit is situated in the Home Office but works jointly with the Foreign Office. I am not sure whether that happens. I will look into it and perhaps I may respond to the noble Baroness in writing.

Israel: Racial Discrimination

Question

11.19 am

Asked by *Baroness Tonge*

To ask Her Majesty's Government whether they intend to provide support to the Palestinian Authority in its complaint against Israel to the Committee on the Elimination of Racial Discrimination; and if so, how.

Baroness Goldie (Con): My Lords, the United Kingdom is not planning to provide support to this complaint. We continue to raise our strong concerns about the ongoing impact of the occupation with the Government of Israel and the UK remains a significant supporter

of the Palestinian Authority and its state-building efforts. The occupation and the problems that come with it will be ended only through a negotiated peace settlement leading to a two-state solution, which the UK actively supports.

Baroness Tonge (Non-Afl): My Lords, is the Minister aware that there are 65 laws in Israel that discriminate unjustly against non-Jewish people of that country? Surely I do not have to list the discrimination and cruelty meted out against the people of the Occupied Territories and Gaza, most recently by the slaughter of 110 people and the injuring of thousands more. Does this not remind the Minister of the Sharpeville shootings in apartheid South Africa a generation ago? Does she agree that it is time to call time on the apartheid Government of Israel?

Baroness Goldie: I think it is time to call time on the appalling and intractable situation between the Palestinian Authority and the state of Israel. That is why, globally, and certainly within the United Kingdom, there is a determined, concerted and consistent effort to assist the Middle East peace process and encourage the parties to refrain from provocative action—on both sides. The noble Baroness is right to refer to the recent scenes in Gaza. We have never disputed that they were appalling and deeply upsetting, but the United Kingdom Government have made clear that while we recognise the right of the Palestinians to engage in peaceful process and protest, there is a profound concern that that process was hijacked by terrorists. Equally, we recognise the right of Israel, if it thinks its security is at risk, to act proportionately in self-defence.

Lord Pannick (CB): Does the Minister agree that a complaint by the Palestinian Authority about race discrimination would have more credibility if its President were to refrain from crude anti-Semitism? Did the Minister see, earlier this month, the report on the BBC News website and elsewhere of the speech made by Mahmoud Abbas in Ramallah, in which he said that the Holocaust was provoked by Jews, in particular by reason of their "usury and banking and such"?

Baroness Goldie: We were aware of President Abbas's comments at the Palestinian National Council. These comments were deeply concerning because any attempt to justify or explain away any element of the Holocaust is completely unacceptable. We understand that he has apologised and we welcome that apology. We understand that he has also shown a commitment to non-violence and to a two-state solution.

Lord Turnberg (Lab): My Lords, does the Minister agree that accusations of racial discrimination by Israel fly in the face of the fact that 20% of Israeli citizens are Arabs, that 17 members of the Knesset are Arabs elected by the population, and that many leaders of the medical profession, academe and the arts and music are Arabs? A Supreme Court judge who is an Arab sat in judgment on Ehud Olmert when he was put away recently. While the Palestinian leadership and the Israeli leadership are far from beyond criticism, it is hard to sustain an argument that Israel is an apartheid state.

Baroness Goldie: In relation to the original Question posed by the noble Baroness, Lady Tonge, the form of complaint made to the Committee on the Elimination of Racial Discrimination is significant, because I understand that this is the first interstate treaty complaint that has been brought. It means that Israel will be required to submit written evidence within three months and the committee will then investigate the claims made. That offers a forum for investigation of the grievance that the Palestinian Authority feels, but it is for the committee to look at the matter and prepare a report with recommendations.

The Lord Bishop of Worcester: My Lords, while argument goes on internationally about who was responsible for what happened in Gaza, is the Minister aware of the enormous suffering that continues there, particularly since the dreadful events of a little while ago? At the Al-Ahli Arab Hospital, run by the Anglican Church in Gaza, for example, the situation is described as critical. Is the Minister aware of that? What humanitarian aid is being provided to the people of Gaza at present, particularly to those injured?

Baroness Goldie: The United Kingdom has made it clear that it is not only aware of the humanitarian situation in Gaza but deeply concerned about it. We continue to ensure that our programmes can be responsive to what we would describe as spikes in need. We are closely monitoring that situation. As the right reverend Prelate will be aware, the UK works in close contact with relevant United Nations agencies, the ICRC and other donors to keep abreast of humanitarian needs and assess whether the UK should contribute funding to these partners.

Baroness Eaton (Con): The only way to achieve the lasting peace that we all want to see is for both Israel and the Palestinians to return to the negotiating table without preconditions. With that in mind, how are the United Kingdom Government helping to facilitate the resumption of direct peace talks?

Baroness Goldie: I thank my noble friend. The UK's long-standing position on the Middle East peace process is that we support a negotiated settlement. We want that to lead to a safe and secure Israel living alongside a viable and sovereign Palestinian state. We wish that based on the 1967 borders, with agreed land swaps, Jerusalem as the shared capital of both states and, importantly, a just, fair, agreed and realistic settlement for refugees. That is where the UK is in relation to this issue. We prosecute that case with all parties as robustly as we can. As my noble friend will be aware, we are part of and support the quartet process.

Sharia Law Question

11.26 am

Asked by **Baroness Cox**

To ask Her Majesty's Government what is their assessment of the report of the independent review of the application of sharia law in England and Wales, published on 1 February.

Baroness Manzoor (Con): My Lords, the Government are grateful for the independent review team's analysis and comprehensive report. The review found evidence of a range of practices across sharia councils, including women being forced to make concessions to gain a divorce. This is not acceptable. The Government responded to the review's recommendations in a Written Ministerial Statement on 1 February 2018 and in the *Integrated Communities Strategy*.

Baroness Cox (CB): My Lords, I thank the Minister for her sympathetic reply and welcome the Government's response to the sharia law review, which reflects the measures in my Private Member's Bill which would require all religious marriages to be legally registered, thereby eradicating the vulnerability of Muslim women in the application of sharia law in this country, whereby a man can divorce his wife merely by saying "I divorce you" three times, and there is widespread polygamy, causing great unhappiness. One Muslim lady told me, "I feel betrayed by Britain. I came here to get away from this, and it's worse here than in the country from which I came". Therefore, I ask the Minister whether Her Majesty's Government will make it a priority to respond urgently with appropriate legislation, because many Muslim women are suffering in this country in ways which would make our suffragettes turn in their graves.

Baroness Manzoor: I share the concerns of the noble Baroness and those raised in the review that some couples may marry in a way that does not give them the legal protections available to others in a civilly registered marriage. We have committed to explore the legal and practical challenges relating to marriage reform, and the Ministry of Justice will be taking this work forward.

Baroness Donaghy (Lab): My Lords, in my experience, at the heart of conciliation, arbitration and mediation, consent is crucial. There are now widespread concerns regarding the nature of consent given prior to sharia council hearings. Women may be pressured by their families into going to these councils and may lack knowledge of both the English language and their rights under English law. Does the Minister agree that this is an issue of equal rights for women? May I press her on how the Government will ensure the rights of Muslim women and ensure that the rule of law is upheld?

Baroness Manzoor: I entirely agree with the noble Baroness. As I have already stated, the Government are taking this issue very seriously and we will be undertaking further work to look at how sharia councils and sharia law work. People can abide by sharia principles if they wish. Individuals are free to go to their priest, imam or any other faith leader, but we want to ensure that these actions do not conflict with the law and people are not left vulnerable and discriminated against.

Lord Elton (Con): In assessing the scale of this problem, do Her Majesty's Government take into account the, I believe, considerable number of people living in closed communities who are under severe pressure, social and otherwise, not to tarnish a family's

[LORD ELTON]

honour by going to British law and who may not even speak the English language? They are not likely to show on the radar or to give evidence to inquiries. This problem seems to me bigger and more urgent than Her Majesty's Government are giving it credit for.

Baroness Manzoor: My Lords, the review that was undertaken recognised that there was an issue and made three recommendations: one was to look at marriage law reform; the second was on raising awareness; the third was to look at regulating sharia councils. I say to my noble friend that other women who go to sharia law have a need to go there because they feel it is necessary. At the same time, we have to raise much more awareness about them going to have their marriage registered civilly.

Baroness Flather (CB): My Lords, I have spoken on this subject at every opportunity in your Lordships' House. It is really appalling that we have an Equality and Human Rights Commission, but Muslim women have no equality and no human rights. It is really time to get into this issue properly. We have to look at the whole question of sharia. All the scholars have accepted that sharia discriminates against women not just in marriage or divorce but in every respect. A man can get a divorce by walking in—

Noble Lords: Question!

Baroness Flather: My question is: when are the Government going to deal with the issue properly, not just piecemeal with a bit here and a bit there? The issue is really with the whole of sharia application, which should never have been allowed in this country.

Baroness Manzoor: My Lords, the Government do take this issue very seriously, and that is why we undertook a review. The review's findings were put in place on 1 February and a Ministerial Statement was made. However, we must ensure that reform of marriage is not done in a piecemeal fashion because it is a complex area of legislation. We are looking at that area carefully and, as I said, within the communities we are putting much greater effort into working with other organisations such as advice centres, voluntary organisations and NGOs to raise much greater awareness so that these issues can be tackled.

Lord Paddick (LD): My Lords, the report says that, "those proposing a ban on sharia councils provide no counter proposal or any solution for anyone seeking a religious divorce ... We consider the closure of sharia councils is not a viable option". Do the Government agree?

Baroness Manzoor: Sharia councils provide a service for some of the women who need to go to them, but they are not a viable solution in terms of equality for those women. We are therefore trying to raise awareness among sharia councils and the women who go to them—90% of the work done by those councils in fact regards divorce. Raising awareness will ensure that sharia councils themselves ensure that they are signposting correctly for those women.

Baroness Corston (Lab): My Lords, as I understand it, the provisions of sharia law are that an allegation of rape can be heard only if the act is witnessed by two men. Given that this is almost never the case, how on earth can an allegation of rape be successful under sharia law?

Baroness Manzoor: My Lords, UK law has primacy and sharia law does not. The Government take that view very strongly. Where there have been cases of rape, as the noble Baroness has mentioned, sharia councils must ensure that they signpost correctly the legal remedies that are available. I hasten to add that, at the end of the day, we must ensure that the women themselves are aware of what their rights are in the UK.

Railways: Disabled Passengers

Question

11.35 am

Asked by **Baroness Brinton**

To ask Her Majesty's Government what steps they are taking to ensure that all train operating companies are complying with the Equality Act 2010 in providing assistance to disabled passengers.

Lord Young of Cookham (Con): My Lords, we expect all train companies to do everything possible to make travel easy for all passengers, including those with disabilities. Train companies have a legal obligation to make reasonable adjustments and must comply with the Equality Act 2010. They must also publish a disabled people's protection policy which sets out their plans for disabled access and which must be approved by the independent Rail Regulator. The Government will publish an inclusive transport strategy later this year.

Baroness Brinton (LD): I thank the Minister for his reply. Last week, Govia Thameslink introduced new formal guidance for staff stating that if the train might be delayed or late the PRM—that is a passenger with reduced mobility to you and me—must not be put on the train, not even if they have pre-booked and arrived in time: the train is now more important. I believe this breaches the Equality Act, and the Office of Rail and Road has said so. What can the Government do to ensure that all train operating companies comply with the Equality Act, and what will they say to Govia Thameslink?

Lord Young of Cookham: I have seen the guidance issued by Govia. It is insensitive and unacceptable. The Government have made their views clear to GTR. It is withdrawing the guidance and replacing it with guidance that makes it clear that its policy is to assist all passengers safely who need help with their journey. We are keen to see the Office of Rail and Road use its enforcement powers to hold train operating companies to account where they let disabled passengers down. I understand the distress caused by the guidance to which the noble Baroness referred.

Lord Foulkes of Cumnock (Lab): My Lords, does the Minister remember that when he took the legislation through the House of Commons to privatise rail services, the late, great Robert Adley said it would properly be described as the poll tax on wheels. Has that not proved correct?

Lord Young of Cookham: As a matter of fact, I did not take the legislation through the House of Commons; it was taken through by, I think, my noble friend Lord MacGregor. It was my task to implement it, which was as much of a challenge. Despite its criticism, the basic structure introduced in that Parliament has remained the same with the rolling stock companies, the train operating companies, franchising and Railtrack/Network Rail. If it was such a disastrous structure, why has it remained almost intact for 25 years?

Baroness Masham of Ilton (CB): My Lords, is the Minister aware that it is very difficult if you are a disabled person who has booked assistance, which I have sometimes, and you get delayed, generally by getting stuck in a taxi in the traffic, and cannot get through to the station to warn it that you are not coming on that train? Can he do something about that?

Lord Young of Cookham: I understand the noble Baroness's concern. All train operating companies have to sign up to Passenger Assist, which enables people to pre-book to make sure that the right facilities are in place at the right station at the right time. If the station is inaccessible to the passenger, the train operating company should make arrangements, perhaps with an accessible taxi, to get the passenger to a station which they can access. The ORR is reviewing the disabled passengers policy, and I will see that the noble Baroness's point is passed on to it.

Baroness Randerson (LD): My Lords, some disabilities are hidden. I declare an interest as I wear two hearing aids and hear very little. Such people have great difficulty coping with train and bus announcements made audibly to passengers who do not suffer in that way. What progress have the Government made in ensuring that the provision of visual and audio announcements on buses and trains is obligatory?

Lord Young of Cookham: My recollection is that when the buses Bill went through your Lordships' House a few years ago an amendment was passed obliging buses to have both audio and visual information available, and my understanding is that the regulations to facilitate that will be introduced shortly. In the meantime, 27% of bus services have accessibility, making it possible for those in wheelchairs to use public transport.

Lord Hamilton of Epsom (Con): Is my noble friend not being rather modest about his role in controlling the privatisation of the railway services? Surely a great tribute should be paid, given the enormous numbers of extra passengers travelling by privatised rail.

Lord Young of Cookham: I am enormously grateful to my noble friend. Pre-privatisation, when the rail network was in public ownership, I had to go to the Treasury on bended knee to plead for investment in

trains, and there was always education, health and defence. One of the key benefits of privatisation was that once the railway industry was in the private sector that constraint fell away, and there was a dramatic increase in investment in the railways after privatisation.

Lord Adonis (Lab): My Lords, I do not think I have ever heard so complete and satisfactory an Answer to a Question in this House as the Minister's first Answer. Could we therefore give him a leave of absence from the House so that he can deal with the underlying problem of why all the trains are so late and tend to them each individually?

Lord Young of Cookham: I think I am right in saying that the noble Lord himself was once Secretary of State for Transport. I wonder whether he delivered to himself the plea that he has just made to me.

Cash Ratio Deposits (Value Bands and Ratios) Order 2018

Motion to Approve

11.41 am

Moved by Lord Bates

That the draft Order laid before the House on 16 April be approved. *Considered in Grand Committee on 16 May.*

Motion agreed.

Refugees (Family Reunion) Bill [HL]

Report

11.41 am

Report received.

Brexit: Competition and State Aid (EUC Report)

Motion to Take Note

11.42 am

Moved by Lord Whitty

To move that this House takes note of the Report from the European Union Committee *Brexit: competition and state aid* (12th Report, HL Paper 67).

Lord Whitty (Lab): My Lords, this inquiry was conducted by the EU Internal Market Sub-committee between September 2017 and January this year and was published in February. My thanks as ever go to the members of my committee, several of whom are going to speak today, and particularly to the members of staff and to our specialist adviser, Professor Erika Szyszczak. We were pleased also to receive a response from the Government within the deadline—a decidedly better record than many of our Brexit reports have received. So our thanks go to the BEIS Minister, who has also given us a reply on the CMA's role as a post-Brexit state aid body. Congratulations to BEIS, and I hope that other departments will follow suit.

The speed of the ministerial response may be due in part to the fact that most of the report is relatively non-contentious in the sense that the Minister, broadly

[LORD WHITTY]

at least, agrees with us. This reflects the fact that the UK's domestic competition framework has been closely modelled on the EU's, but it is equally true to say that the EU model itself was based on the earlier precedent of British law and British experience. That does not mean that there is no dissent; witnesses were generally positive about the UK competition regime in its interaction with the EU, but concerns were raised about consumer protection and consumer rights, about tackling market dominance in new-fangled forms of markets such as online platforms, a topic on which the sub-committee had previously reported, and about delays and bureaucracy in the EU state aid approval process.

Repatriation of policy to the UK in these areas poses some complex problems in our relationship with the EU post Brexit and for the UK internally. A deep and comprehensive free trade agreement with the EU would undoubtedly retain some mutual arrangements on fair competition, state aid and public procurement. Indeed, any modern free trade agreement with any major economy would probably have some such provisions—as, to a degree, would trade on WTO terms. As in many areas, “taking back control” is therefore a relative term.

Nevertheless, the prospect of taking back control has raised some old arguments about these policies, especially on state aid, to which I shall return later. First, on the immediate short-term implications of Brexit, the Competition Act, under which UK procedures operate, sets out a consistency principle that obliges UK courts to ensure that there is no inconsistency between the application of domestic anti-trust prohibitions and EU law. That principle will clearly go after Brexit, but the Government apparently agree with the retention of some sort of duty on UK courts to take account of European competition jurisprudence. There is no clear indication what form that would take. I should be grateful if the Minister could give further detail on that: will it be “should have regard to”, “may have regard to”, “should take into account”, or whatever? Any comments would be helpful.

The domestic system of merger control currently operates alongside EU merger regulations. This arrangement is known as the “one-stop shop”. The loss of UK access to the one-stop shop at European level will lead to a need for separate notifications for markets that go beyond the UK to both the CMA and the European authorities. It will therefore mean not only an increased workload for the CMA but some businesses being faced with duplicate inquiries and costs.

The Government's response says that they intend to limit the impact of the loss of the one-stop shop by increasing the efficiency of the CMA. I am not sure that goes far enough. Should the Government not seek an arrangement that would modify, reduce or, in some cases, abrogate the need for a UK merger review when a transaction has already, or in parallel, been notified to the European authorities?

Contributors to the inquiry set out a number of common transitional issues relating to anti-trust, merger control and state aid. They involve the status of cases still live at the point of exit, future cases that relate to pre-exit behaviour and pre-Brexit cases where remedies

and commitments need to continue to be monitored by the authorities. That raises the whole question of the enforcement gap. Given the UK's red line on the involvement of the European Court of Justice in these matters, has any further progress been made in negotiations on how such things would be dealt with after Brexit?

I will raise one tangential issue. There was discussion in the committee as to whether we should mention this, as it involves the employment of lawyers, and we were not quite sure whether it was relevant to the inquiry—but as we are a sub-committee that deals with non-financial services in the Brexit context, we thought that we should raise it. The UK is effectively the leading jurisdiction for private individuals or businesses seeking damages for breaches of EU anti-trust law. Litigants are attracted to the UK for the skill of its lawyers, the clearness of its procedures, et cetera. Many of those features may well continue. Nevertheless, there was anxiety that that substantial—and, indeed, remunerative—part of EU legal services may cease with Brexit.

The Government say in their response that the UK's attractiveness as a jurisdiction should not be affected, but they acknowledge that the legal base for pursuing claims based on Commission decisions will be subject to negotiations about future civil justice co-operation. Again, does the Minister have any further detail on those discussions and negotiations so far?

Those are the transitional problems. The key issue is where future UK policy goes. While there was broad consensus from witnesses that there should be general continuity of policy in these areas, there was also recognition that we would have the opportunity and scope to look at policies again. This applies particularly to policy on mergers, for example—on attitudes to the public interest dimension and to overseas takeovers—and even more so to the most difficult area of state aid. Some of these are quite old arguments that are now posed in a new post Brexit context.

I shall take each of the main areas separately. First, on anti-trust, the global nature of competition has resulted in a broadly consistent international approach to competition policy. While it was made clear to us, and we agreed, that the UK should maintain the principles underpinning its competition policy, there will be some opportunities post Brexit to improve the regime, for example in the area I mentioned earlier in relation to the market dominance within digital areas such as online platforms. The Government say that they do not intend to fundamentally change the UK's competition law and enforcement framework, but they have, for example, said that they are taking steps, independent of Brexit—allegedly—to strengthen this framework, including granting additional resources to the CMA and completing their review of UK competition policy by April next year. I ask the Minister whether there might be commitments in the future UK-EU relationship that could limit or prevent the UK in future from taking a more innovative, independent approach to enforcement.

Secondly, on the merger side, the discussions we have had on mergers policy in this country in the last few years has been overshadowed a bit by the Cadbury

takeover by Kraft, which was one of the most controversial foreign acquisitions of a UK firm in recent years, and indeed one where the conditions imposed by the UK authorities were subsequently ignored by the acquiring company. That has rather coloured people's views on the effectiveness of our merger policy, and some view Brexit as an opportunity to revise and strengthen the public interest criteria in merger control.

We, however, concluded that historically it has not been EU state aid rules that have seriously restricted the UK authorities looking at wider merger control criteria. However, it is the case that it is likely that Brexit will mean increased pressure internally to change current UK legislation and practice. The pressure on overseas takeovers could be in one of two directions—one from a protectionist view to defend UK-owned assets, and the other from the globalists who want to be more welcoming to international investment. Our general view is that we should keep things broadly as they are.

The Government recognise that a reliable merger control regime is important, but of course they themselves have opened the door a little by proposing some new public interest regimes in relation to security issues in the October 2017 National Security and Infrastructure Investment Review. This has amended the threshold tests for the military and dual-use sectors and parts of advanced technology—which could be quite a substantial part of the economy. How will the Government balance future changes in merger control because of these domestic pressures with their stated desire to ensure that we continue to be broadly aligned with European processes? In relation to resources, are the Government convinced that the additional resources provided to the CMA will be sufficient to cover the increased number and complexity of cases?

In terms of negotiations the UK and the EU start from a position of extensive mutual assistance on competition matters through what is known as the European Competition Network of national competition authorities. We would hope, and the Government would hope, that we will maintain that co-operation. What kind of role, if any, would the Government see for the CMA in the European Competition Network, which has provided us with a very substantial degree of benefit over the years?

The last area is state aid, and it is the most complex area that we considered. The EU is, of course, conferred with exclusive competence in this area, and its rulings are applied directly and enforced directly by the Commission. EU state aid rules have clearly been a source of frustration for some and, in some cases, have been painted as the central obstacle to government intervention—a particular example, allegedly, being the recent crisis in the steel sector. However, we concluded that, in general, successive Governments have found EU state aid rules flexible enough to provide support where they have wanted to provide assistance for major projects. Indeed, we found that other EU member states had managed to spend significantly higher sums on state aid, suggesting that it is not really EU rules themselves that are the barrier. To take a topical example, an incoming Chancellor—say, John McDonnell—could quadruple state aid spending in this country without matching the level of other leading economies such as Germany, and in most cases would

do so without incurring EU state aid censure. That is not to say that he would not run into trouble with some other bits of EU legislation, but not on state aid provisions.

For post-Brexit state aid policy and institutions, we need a new state aid authority, which will have a dual perspective: first, to ensure that proposed state aid does not contravene our international obligations under our free trade agreement with Europe or, indeed, with anybody else, or indeed under WTO rules. It is likely that any significant free trade agreement will have some such provisions. The EU has been clear that it seeks an agreement that ensures a level playing field between parties on competition matters, and there will need to be co-operation between the CMA and the proposed trade remedies body that is going to be set up under the Trade Bill—if and when it makes progress in another place.

Secondly, as well as those international obligations—and, in a sense, for the first time—the new authority will decide whether state aid, including public procurement aspects, granted by UK bodies, is compatible and does not distort the European or international market or, indeed, the UK internal single market. That is a bit of a novel responsibility, which could cause significant internal political tensions. That is why we emphasised the need for the Government to act in concert particularly with devolved Administrations and local government when they draw up their post-Brexit state aid policy, and the CMA takes on that responsibility.

It is, of course, also true that under EU rules there are substantial block exemptions from state aid limitations, which includes most public services and agriculture, for example. In immediate terms, those will be transposed under the withdrawal Bill, but we would like to hear from the Government whether that is likely to be altered in future or whether we will continue to try to retain the same block exemptions that are in European law. More explicitly, will the £23.6 million additional finance for the CMA be sufficient for it to take on the state aid role, as well as providing resources for the substantial increase in the number of merger and anti-trust cases? Could the Minister report on the views of the devolved Administrations on establishing the UK-wide state aid regulator?

Building a coherent post-Brexit competition and state aid framework will be of vital importance to the UK and, throughout our inquiry, we were told that the UK has a robust and well-respected competition regime and that Brexit does not necessitate a fundamental revision. However, we see some pressures and opportunities for the UK to take a more innovative approach. The repatriation of responsibilities for state aid approval will be the fundamental change, and it is important that government works to involve and secure the support of local government and the devolved Administrations in that.

In determining the UK's future approach to state aid, the UK will have the opportunity to address criticisms of the complexity and bureaucracy faced under the current EU regime, as well as related issues such as public procurement procedures. The UK will have the opportunity to create a system that is easier for small businesses, in particular, to understand and for consumers to appreciate and benefit from.

[LORD WHITTY]

In general, this report and our relative consensus with the Government on it should indicate a way forward, but there are some issues that I would like the Government to address, which I hope I have spelled out in the course of my speech. I beg to move.

Noon

Baroness Noakes (Con): My Lords, when the UK took the momentous decision to leave the EU nearly two years ago, the underlying rationale for the EU committee structure in your Lordships' House was largely destroyed. This was set up to scrutinise EU proposals that would impact the UK. According to my countdown app, just before I rose to speak, there are only 311 days and 11 hours before we leave the EU. Much of what we are now scrutinising is unlikely to be implemented in the UK, and so scrutiny, at the moment, has little or no meaning. I had expected that the EU Select Committee and its six sub-committees—absorbing the energies of 70 or 80 noble Lords—would, by now, have been reduced and streamlined. But the committees have been busily converting their purpose to scrutinising Brexit. Since the referendum, over 30 reports entitled “Brexit this” or “Brexit that” have been issued. There is a clear role for your Lordships' House in holding the Government to account in this hugely important policy area, but I query whether we have got the balance right, either in the use of our own resources or—more importantly—in the burden we impose on the Government, given the scale of their task in preparing for Brexit. That both Ministers and officials have dealt with your Lordships' scrutiny in good heart is a tribute to them. But the question that I pose to the House is whether we should be acting in this way and whether we are being reasonable and proportionate.

The report that we are considering today is from the sub-committee that has the internal market in its title—though it does not deal with goods or financial services and might better be called the “odds and ends” EU sub-committee. I am a member of this odds-and-ends sub-committee and, despite my views on the utility of the EU committee work at the moment, I pay warm tribute to the noble Lord, Lord Whitty, for being an excellent chairman.

Lord Lea of Crondall (Lab): I am grateful to the noble Baroness for giving way. Does she not agree that, on this question of how Brexit would affect state aid, my noble friend Lord Whitty, in his role as chairman, has made a number of observations that show how important and topical it is? I do not understand why the noble Baroness is taking this opportunity to criticise the role of the network of sub-committees. This is a good example of it doing its job very well.

Baroness Noakes: My Lords, I was only trying to say that I thought the amount of effort being devoted to this particular aspect of government policy could be regarded as disproportionate, given that the fundamental rationale for the EU Select Committee and sub-committees was to scrutinise the proposals emerging from the EU which would affect the UK. It has stretched its current terms of reference to deal with Brexit matters but, since there is a large number of sub-committees with a large number of noble Lords

involved, we tend to produce reports on a very large number of issues, many of which overlap and cover the same underlying issues; for example, mobility of labour. I am merely challenging the proportion; I am not challenging whether any particular aspect of any particular report is or is not interesting or useful.

Perhaps I may continue. I will not deal with the report overall, because the noble Lord, Lord Whitty, has already ably summarised that. The Government have provided a very speedy reply which is comprehensive within the constraints of the current state of negotiations with the EU, which is entirely understandable. The response indicates—although it is too polite to say so in terms—that our report did not identify any new issues beyond those already on the Government's own list of Brexit things to do. I think that that supports my critique about how well your Lordships' House is spending its time.

I shall focus on two areas: mergers and state aid. On mergers, one important implication of our leaving the EU is that we will no longer be subject to the decisions of the Commission and the jurisdiction of the European Court of Justice in relation to mergers which affect solely the UK. At the moment, the Commission can and does claim exclusive jurisdiction over mergers which engage no issues whatever outside the UK. These are inevitably the larger transactions affecting the UK. It is right and proper that these cases should return to the exclusive competence of the Competition and Markets Authority.

Of course, mergers that cross the border between the EU and the UK may become a little more complex in future in that both the Commission and the CMA could be involved. The one-stop shop is currently a convenient mechanism for businesses involved in cross-border EU-only mergers. But many mergers engage interests that go beyond the EU and thus may well inevitably involve more than one global competition authority, and the loss of the overall one-stop shop will barely affect those. In my view, the loss of the one-stop shop is therefore a marginal issue.

The report rightly emphasises the desirability of strong co-operation mechanisms going forward, and there need to be mechanisms to allow the sharing of data. But in practice this is unlikely to affect merger cases, because the parties should be happy to agree to data sharing in order to speed up clearance processes. None of our witnesses thought that data sharing and co-operation will in practice be a showstopper.

There was also general agreement that our overall competition policy, for mergers in particular, would not change markedly post Brexit. That is partly because there is a broadly converged global approach to competition and mergers. However, Brexit will allow the UK to develop incrementally; for example, in faster and more responsive processes and in more innovative solutions. We will be free to develop in ways that our own Parliament determines. Our courts can develop their own jurisprudence and, in particular, will not be constrained by the ECJ's overarching principle of developing the EU internal market. So the general view was that not much is likely to change for now but that we will in future be able to change our policy in ways that suit our economy. That, in my view, is the one big message from this report.

I will turn briefly to state aid. The report is clear, as the noble Lord, Lord Whitty, has already pointed out, that state aid rules are not a major issue for the UK economy at the moment; indeed, the UK is one of the smaller countries in the EU in terms of spend on state aid per head of population. The UK managed perfectly well without a state aid authority before we joined the EU, but it seems that we will not be able to leave without one. There seem to be two reasons for this. First, it is likely that any future free trade agreement will need something to guard against unfair competition due to state aid. Secondly, a bizarre consequence of devolution is that we will apparently need an authority to determine whether there are state aid distortions within what we now have to call the UK's own internal market.

Since our report was issued, the Government have confirmed what was widely suspected, namely that the CMA will take over the state aid authority role. In that connection, it was good to see that the CMA has received nearly £24 million this year in connection with Brexit preparations and an additional £3 million for additional staffing for the additional caseload. The CMA, in evidence to our committee, was itself relaxed about the adequacy of resources for the task given to it, and I see that one of its executive directors, Dr Michael Grenfell, reiterated that in a speech this week.

I have a couple of questions for my noble friend the Minister about the Government's role in relation to the CMA, and these touch on the CMA's independence. First, at present the Government appoint the board of the CMA. In future, the CMA, as the state aid authority, will be sitting in judgment on the Government's actions from a state aid perspective. This is quite unlike other public sector bodies. Does my noble friend agree that the independence of the CMA, which I know the Government value, needs to be underpinned by appointment processes which are demonstrably independent of the Government? The judicial appointments model offers a useful precedent here.

Secondly, the Government have issued to the CMA what they describe as a "strategic steer". Do the Government think that that will continue to be appropriate once the CMA has assumed a new role in relation to state aid? It seems to me that a strategic steer comes perilously close to being a direction to the CMA by the back door, and that would clearly be wholly inappropriate in relation to state aid decisions.

Thirdly, within the strategic steer, the Government currently commit to a presumption that they will accept the CMA's recommendations but allow for policy override. I do not think that that will be good enough for state aid responsibilities. Will my noble friend agree that the Government will need to show a firmer commitment to abide by the CMA's decisions in relation to state aid?

Those are points of detail. The main message is that no burning issues arise from this report, and certainly none that the Government are not already fully engaged on.

12.11 pm

Baroness Donaghy (Lab): My Lords, I thank my noble friend Lord Whitty for introducing this debate and for steering us through a subject which is a potential minefield. If you can achieve a unanimous report with

such a variation of political views as those held by me and by the noble Baroness, Lady Noakes, you are indeed a master of the universe—either that or one of us was asleep on the job. I accepted that we were looking at a snapshot of what we do now and what we need in the immediate post-Brexit future, and that debating the wider public interest effects was for another day.

Dr Michael Grenfell from the Competition and Markets Authority referred to,

"a challenge to the 'market competition' consensus that has prevailed in policy-making, at least in the advanced industrialised world, for the past three decades".

He acknowledged that,

"the coming years may well see changes to competition policy to reflect these wider public concerns and policy trends".

He was referring not just to the EU referendum but to the election of Donald Trump and the rise of populist parties, both left and right, in countries across Europe and to what commentators had called "an expression of the public mood".

However, frustrating as it might have been, the committee concentrated on the job at hand, which was about the immediate future. What was remarkable about the evidence that we took was that nearly everyone said the same thing. One can draw one of two conclusions from that: either the existing system is working well or the witnesses believe that maintaining tight control over the current system is preferable to any alternative. Those who want a more buccaneering approach to trade and mergers will be disappointed by the report, and those who do not believe that the system works well for consumers and who believe that greater use of the existing state aid provisions would be welcomed will also be disappointed. Therefore, it could be argued that the report is about right because it disappoints everyone except the CMA.

The report might seem dry and boring on the surface but it is the thin crust covering a maelstrom of political debate about ownership and control, and about appropriate assistance for the regions. In my view, successive Governments have not maximised their ability to use state aid for important social measures. According to two legal experts in EU state aid law, the UK would have to triple the amount that it spends on state aid to match the proportion of GDP spent by Germany. In 2015, the UK spent 0.35% of GDP on state aid schemes, excluding railways, France spent 0.62% and Germany 1.22%. The Italians and the Germans subsidise their steel industries but, somehow, the rules did not apply to the UK to do the same for Redcar steelworks. Conversely, there are over 800 companies with state ownership in the EU—one of which will be printing our passports soon.

It is clear, therefore, that the so-called liberalisation of the market has been the policy of successive Governments, which probably explains why state aid in the UK has been pushed into the sidings. I question whether the existing set-up protects the consumer: no consumer choice in the water industry; Hobson's choice in the energy so-called market; and unacceptable quality of broadband coverage in significant parts of the country. Perhaps market power has taken over from competition. A *Financial Times* article pointed out that lack of competition in banking cost customers

[BARONESS DONAGHY]

£6 billion a year, or £116 each, according to a competition inquiry in 2016. In the energy so-called market, another inquiry found that we are paying £1.7 billion too much every year. The *Financial Times* wrote:

“Despite official investigations galore, neither has been addressed”.

I will now turn to the government response and select a few issues. The government response makes it clear that the CMA will receive additional funding as our report indicated and has concluded that it will take on the new role as the UK state aid regulator—another area of concern in our report. I think the Government are seized of all the issues and are giving a priority to this in negotiations. The Minister reiterated the Prime Minister’s statement that:

“As with any trade agreement, we must accept the need for binding commitments—for example, we may choose to commit some areas of regulations like State aid and competition to remaining in step with the EU’s”.

That is a significant statement. The Government have also confirmed that existing state aid rules will continue to apply during the implementation period and that they do not plan to make fundamental changes to the UK competition framework, as has already been said.

In response to our comment about delays in bureaucracy in the EU state aid approval process, the Minister simply said that aid givers are always advised to take advantage of the pre-notification procedures to engage in constructive conversations with the European Commission as early as possible. So no government help there then.

On our comment about consumer concerns regarding pricing and dominance in some markets, the Government announced that they would be issuing a consumer Green Paper. I will be asking the Minister a question on that later.

My noble friend Lord Whitty has already covered the issue of having regard to EU law and precedent. Briefly, on our request for clarification, the Minister welcomed our arguments and then said that the Government will,

“take account of the views in the Committee’s account”.

I think that is what is known as a delphic comment.

The Government have accepted the importance of information sharing in merger cases, and this will form part of their negotiations. It refers to businesses agreeing confidentiality waivers to allow confidential information to be shared between enforcement agencies.

Our request that the Government should take account of the future of specialist legal services in the UK in recommendation 5 has been answered with a polite brush-off.

Our report refers to the opportunities for the UK to develop a more effective competition enforcement regime. The Government have responded that they are already taking steps under their industrial strategy, including publishing a review of the existing competition regime by April 2019 to make sure it is working as effectively as it can and publishing a consumer Green Paper that tackles markets that are not working well for consumers and businesses. What form will the review of the existing competition regime take? Will the views of stakeholders be sought and taken into account or will

the CMA be marking its own homework? Secondly, when can we expect the consumer Green Paper and how will it interact with the Domestic Gas and Electricity (Tariff Cap) Bill which has just had its Second Reading?

On local government and the devolved Administrations, the Local Government Association, while recognising that its primary function is not to be a vehicle for state aid, submitted that leaving the EU could provide an opportunity to reform the state aid process, simplifying it and introducing greater local flexibilities for councils—for instance, to support smaller-scale local authority activities which deliver public benefits but not unduly distorting competition. The LGA also supports the development of a UK regional aid policy aligned with the industrial strategy. This would provide local government and its partners with the flexibility to tailor interventions and investment to best support local growth.

The Government noted the concerns expressed and, “shares the ambition to see a UK State aid regime operate as effectively as possible”.

The only solution was to transpose the general block exemptions regulations into UK law, a cautious and predictable response but disappointing for local government.

The devolved Administrations are a key area to resolve. The institutions surrounding them did not exist when we entered the EC and this will present us with a new way of working on these issues.

12.21 pm

Lord German (LD): My Lords, I join others in thanking the noble Lord, Lord Whitty, for his chairmanship of this committee and for the report that has emerged. I also thank the committee staff, who have been moving with the sands of time, and therefore the noble Lord’s skilful chairmanship of the committee has been absolutely essential in taking us to this stage.

It will not surprise noble Lords that I do not agree with the noble Baroness, Lady Noakes, on the roles of the European Union Committee and its sub-committees. The primary purpose of the committees of this House is to scrutinise the Government’s relationship with the European Union. These matters are top, front and all that dominate their work in relationship to Brexit—it is the one show in town—and it is perfectly appropriate for committees to carry out this kind of scrutiny.

The noble Baroness has raised issues on which I agree with her—I will come to them in a moment—but I do not agree that there are not new issues raised in the report. The issue of state aid, on which I want to focus, did not exist prior to our membership of the European Union, and what happens next is of critical importance, particularly to the poorer parts of the United Kingdom which have a lower success rate than the south-east of England.

Regarding the committee’s report, on the issue of mergers, acquisitions and anti-trust issues it was demonstrated that we have a robust policy in this country at the moment and that continuing the robust nature of our policy is important. The UK regime is perhaps a leader in this matter, and the issues considered and agreed raise only one major fundamental difference, and that is whether or not the UK regime can continue

to engage with, and continue our membership of, the European competition networks. There is benefit in being able to share, learn and work with others even though we may be separated from them. However, when the committee started taking evidence, it became clear that state aid was increasingly cutting through as a key issue which needed to be understood and progressed.

In their response, the Government have said that they do not yet have a state aid policy, but we will need one from day one of our exit from the EU. That end-point could occur whenever the transition or implementation phase comes to an end, so there is time for the Government to come up with a state aid policy for the UK and, therefore, the issue is one that they will have to address. Given that, beginning to address it now is critical in order to avoid the uncertainty that will otherwise result for those parts of the United Kingdom where legal powers enable them to promote and support industry and business development.

As we know from the government response but did not know at the time when we took evidence from the Minister, the CMA will be the state aid authority. I draw the conclusion that we were told at the time of the evidence session, and before we were told that the CMA would take on the state aid authority role, that the £23.6 million which had previously been announced by the Government was for the CMA to undertake Brexit-related issues within its existing responsibilities and that it was therefore not related to the new responsibility of becoming the state aid authority, which of course resulted from the evidence given by the Government in response to this report.

However, I agree absolutely with the noble Baroness, Lady Noakes, that the body has to be independent of government, since it will be advising not only on the state aid regime which the UK Government may have responsibilities for but also that for which the devolved Administrations may have responsibility—and, further on from them, the elected mayors and perhaps the northern powerhouse, which may gain some traction as well. The question of what form that independence for the CMA will take and how it will be guaranteed in its state aid role is pretty critical. I agree with the comments of the noble Baroness, Lady Noakes, in that respect.

The other issue, which was touched on, by both the noble Lord, Lord Whitty, and the noble Baroness, Lady Donaghy, is that the state aid rules are not a barrier to developing business and enterprise in this country. As we have heard, we would have to triple the amount we spend on state aid as a proportion of GDP in order to match the amount that Germany spends on such aid. We might wish to spend more, and we are certainly not among the big spenders. But neither do the state aid rules prevent state ownership, which some people are in favour of and indeed some parties have already set out their stall on this matter. The EU already has 800 state-owned companies working within it, and therefore no barrier is imposed by the state aid rules should any future UK Government wish to go in that direction, which I hope they will not.

EU structural funds, which is the funding that the European Union provides to this country and will be coming back to the UK should we ever leave the EU,

already permit distortion to the level playing field, which is a principal pillar of the single market and the customs union. These funds have been greatly useful in west Wales and in the valleys, where GDP has persistently been below 75% of the EU average for the whole of the past 20 to 25 years. The ability to develop infrastructure for business training support and business assistance programmes, which have received European funding and are available in most other parts of the United Kingdom, clearly shows that there is some need to be able to support the different parts of the United Kingdom. State aid is a facilitation of the infrastructure, but despite this, business in the UK has not been a major user of the interventions which have been permitted.

I should also point out the change that has occurred since devolution. Those Members of the House who were involved in political life prior to us joining the European Union will of course be aware that, at that stage, we had regional selective assistance programmes, which were a major subject of dispute within government. But think what will happen now, as those disputes arise between those with the legislative powers to execute those changes. Business development support is certainly something that is within the power of the devolved Administrations. As a former Minister for Economic Development in the Welsh Government, I had to use those powers to the extreme when we faced the closure of steelworks in Wales, where we needed to provide as much assistance as we could to create and retain part of the steel-making fabric in other parts of Wales.

There are now new players on the agenda, apart from Wales, Scotland and Northern Ireland. In the future, this could mean that mayoral powers and local government might be given more in the way of business support. In its new role, the CMA will have to reflect both those changes and the interests of each of those legislative bodies, which it will adjudicate on. So it is not sufficient for the CMA to take instruction from the UK Government alone.

That brings me to the issue of frameworks. The Government's response to the report mentions that they will need a framework because, although the CMA will be the regulator, it will not provide the strategic framework in which a UK single market will operate. If a UK single market is to operate with those different legislatures, it will need instruction, direction or some form of agreement—at least a fabric of agreement—from them on the framework in which it will operate. As noble Lords just heard, there will be a difference, for example, in the water industry. Some parties in this Chamber may want to nationalise the water industry, but I would point out to those of us who are recipients of water from Welsh Water that it is a not-for-profit organisation, and I do not think that the people of Wales would want to change that—thank you very much. Blanket policies that try to operate across the United Kingdom will certainly not work in the interests of parts of the UK where legislative powers exist to make sure that these things are dealt with at different levels.

So the framework that is about to be discussed is urgently important. Who will determine it? In the debates on the European Union (Withdrawal) Bill,

[LORD GERMAN]

issues relating to powers for Scotland and Wales were the subject of great dispute. While the UK Government have reached an agreement with the Welsh Government, they have not reached one with the Scottish Government on how they will operate certain powers. There is a lesson in this: the UK Government ought to work now with the devolved Administrations, local government and mayors to try to find a way in which this framework can be put together.

Of course, a route for that to happen is through a joint ministerial council, which is meant to bring together Ministers from the different Administrations to come to an agreement. I believe that there is now a role for a JMC to be put on a statutory basis and become the body that will issue and develop a strategy that has the agreement of the whole United Kingdom, so that the CMA can operate in its new state aid role. As we know, the current agreement with the Welsh Government on the European Union (Withdrawal) Bill is that the various powers that reflect on the Welsh and UK Governments have been frozen until the framework is in place. That agreement was reached by the UK Government with the Welsh Government but has not yet been reached with the Scottish Government. That route was taken because the Government needed some process by which they could advance on how those powers would be developed and used. We need joint agreement very rapidly.

Finally, I want to ask the Minister some questions about the future. First, when will the Government begin engagement with the devolved Administrations on the structure of a future framework for state aid, or whatever they might think of as a suitable name for the new subsidy regime for the United Kingdom?

Secondly, does the Minister anticipate that any form of trade deal with the EU, or indeed any other country, will require some form of state aid restriction? We know that the WTO rules are different from the EU rules, but do the Government anticipate some form of state aid restrictions inevitably being put before us?

Thirdly and finally, do the Government agree that some formulation for determining the future state aid regime similar to the joint ministerial committee is an appropriate mechanism? Given the variety of frameworks, not least those identified during the passage of the EU withdrawal Bill through your Lordships' House, is a permanent statutory structure of a joint ministerial committee an appropriate way of dealing with it?

12.35 pm

Lord Wigley (PC): My Lords, I am glad to have an opportunity to take part in this debate. I do so as a member of the sub-committee, although the report before us today is based on an investigation which had commenced before I joined it late last year. I was happy to put my name to the report, albeit based on the limited information I had gleaned after joining the committee. I thank the noble Lord, Lord Whitty, for the inclusive and helpful way in which he chairs the committee meetings and for his focused introduction to today's debate. I also pay tribute to the work of the excellent staff who serve that committee.

I want to address briefly just one aspect of the report. That relates to the vexed issue of state aid—as we have heard from many contributors today—and how it bears in the context of devolution, and specifically to the challenges that it poses for the Welsh Government and the National Assembly. I identify with the comments made by the noble Lord, Lord German. We tried to put the JMC on a statutory basis as an amendment to the EU withdrawal Bill, but that was not acceptable to the Government. I have no doubt that we will need to return to that matter.

I shall focus first on the background to this issue. Noble Lords will be aware that the Wales Act 2017 changed the model of devolution regarding which powers are devolved to the Welsh Government and the National Assembly for Wales from a conferred powers model, whereby all the devolved powers were listed, to a reserved powers model more similar to that of Scotland, by which all powers not listed in the Bill are considered devolved.

The powers reserved from Wales to Westminster number in the hundreds, but they do not include state aid. Whitehall departments were widely consulted in this process and were, effectively, given a veto, which inevitably meant that they sought to hold on to every conceivable power they could. Yet they did not specifically hold on to state aid as a reserved matter. So, whether by design or by accident, state aid was deemed by this Act to be a responsibility of the National Assembly.

However, it now transpires that the UK Government wish to extend the number of powers reserved to include such policy fields as food geographical indicators and the subject of today's debate: state aid. This is the background to accusations from both Edinburgh and Cardiff—of which we have heard already today—of there being effectively a power grab. It has caused immense anger, for reasons I shall outline in a moment.

I turn to the body of the report. It states:

“The UK will have significant decisions to make with regard to future State aid policy ... It will be important for the Government to involve, and secure the support of, the devolved administrations in determining the shape of this future State aid regime”.

The report emphasised this particularly forcefully in the context of any decision relating to how the state aid regulatory function should be undertaken. In the event, the Government opted for placing it in the hands of the Competition and Markets Authority, the CMA. The decision appears to have been taken in parallel with our committee's investigation. That of course is totally understandable given the pressure to get post-Brexit structures into place in good time.

However, our report had recommended specifically, at paragraph 219, that the Government should,

“involve and secure the support of the devolved administrations in this process”—

that is, developing the regulatory framework—

“including in agreeing the terms of reference, remit and priorities of any new UK State aid authority”.

The report further warned of the dangers of the UK Government being perceived to be both rule-maker and rule-taker in this matter.

The Government, in their response of 29 March, glaringly failed to accept this point, merely stating:

“The Government ... recognises that the regulation of State aid is a UK-wide issue”.

I ask noble Lords to please note that it does not say that they have the power; they just rest their case on a bland assertion that they “recognise” it. So we have no securing of the support of the devolved Administrations, as recommended by the committee; we have no mutual agreement of the terms of reference; and we have no agreement of the regulatory body’s remit and priorities. The Government have flagrantly ignored the central point of this report in this matter and have not even deemed it worth while explaining why they have done so. It is little wonder that this has caused such acrimony in Cardiff and Edinburgh.

This glaring failure of the Government to respect and involve the devolved Administrations is central to the stand-off that has developed between London, Cardiff and Edinburgh between last December and this month and led to the Scottish Parliament refusing a legislative consent order for the EU withdrawal Bill. This area of controversy is over and above the 24 areas listed where agreement was not forthcoming, and perhaps I should remind the House that the refusal of the LCO by Scotland’s Parliament is supported by Labour and Liberal Democrat MSPs as well as SNP Members. The failure of the Government to recognise the sensitivity of this issue, flying in the face of the committee’s warnings, is what has turned the whole issue sour—quite unnecessarily so. It has been a ham-fisted botch job which will echo for many years to come, and I will explain why.

There are important reasons why powers over state aid should reside in Wales following Brexit. The Welsh Government have responsibility for economic development in Wales; they have subsumed into them the work of the former Welsh Development Agency. The economic damage that leaving the European single market and customs union would do to Wales is potentially tremendous. Export-driven industries, of which we have a high proportion in the manufacturing sector in Wales and on which so many jobs rely, would face serious difficulties if tariff and non-tariff barriers were placed on them. The Tata Steel crisis last year showed that Wales cannot expect Westminster to offer support to our industries in that context; or even facilitate interventions used in other EU steel-producing countries to safeguard their industries. Jobs were eventually saved when the Welsh Government themselves committed to supporting the plant in Port Talbot with a package of support worth tens of millions of pounds, a demonstration that the Welsh Government were in charge of the state aid aspect of their work.

The fundamental truth is that the UK Government’s priorities for state aid are not aligned with the predictable needs of the Welsh economy. State support is used only rarely by the UK Government, in circumstances such as the banking bailout that followed the 2008 financial crash. London’s free market economy model is at variance with the social priorities so highly valued in both Cardiff and Edinburgh. Furthermore, the recent transfer of tax powers to Wales, which will take another step next year when income tax is partly devolved, means that for the first time my country will

be responsible for raising some of the money that it spends. It is only morally and politically right that it is allowed to spend this money in ways it deems appropriate, including to use a proportionate state aid vehicle where that is necessary and where it does not unduly distort the UK single market.

I am simply making the point that the priorities of government in Wales and Westminster are different, and therefore it is only common sense that relevant powers should lie with the appropriate Executive. If they do not, every time there is a threat to a strategically important industry in Wales, such as a steelworks, and the Welsh Government are prevented from intervening by the CMA, the whole sorry saga will flare up again. Every time a car or aircraft factory threatens, post Brexit, to move production to a European mainland location and the Welsh Government seek to save the jobs, if the CMA blocks it on the basis of state aid considerations, it is the CMA that will face the political odium.

The Government’s failure to follow or even to acknowledge our committee’s recommendations in this regard will make life totally impossible for the CMA. I wonder whether Ministers warned the CMA chairman of this likelihood when they discussed the matter with him. This culpable failure to think through the issue will stoke up resentment between the devolved Administrations and Westminster—a resentment that could have been avoided—and ultimately could well provide the backdrop to a second Scottish independence referendum. The Government are playing with fire without realising it—in the midst of a post-Brexit powder keg which could blow us all to kingdom come.

In conclusion, I draw to the attention of the House the recently reported survey which is highly relevant to this report and which may make less than comfortable reading for both sides of the Brexit debate. The survey draws on the findings of the Legatum/Populus report of last autumn and shows that while opinion is still closely balanced—depending on the questions asked—on most aspects of the Brexit issue, the one aspect on which there is a clear-cut majority relates to the widely shared hope that Brexit will enable government to intervene to safeguard jobs that are at risk in a way that has been impossible in recent years because of EU state aid regulations.

It is clear by now that the vote to quit the EU, which was particularly high in old industrial areas such as the south Wales valleys and north-east England, was most emphatically not a vote to re-establish a UK single market on the same free market principles as have underpinned the EU single market. This is something Mr Corbyn has clearly understood, and it is a central factor in the Scottish refusal to give the withdrawal Bill legislative consent—and why Mr Corbyn personally backed that stance. It reflects a fundamental refusal to see Brexit as merely replacing Brussels with London and for everything otherwise to continue as was, which is the central tenet of the withdrawal Bill. This all comes into focus with the state aid issue, which Westminster will ignore at its peril.

12.46 pm

Lord Inglewood (Con): My Lords, I was not a member of the committee but despite—or because of—that, I congratulate the committee and the chairman

[LORD INGLEWOOD]

because this is a very important and complicated topic and the report is important, albeit, as I shall suggest, we are still talking about unfinished business.

Competition and state aid policies form one of the unsung but crucial parts of the contemporary marketplace which is our economy. After all, we need a free, regulated and fair marketplace which is necessary and appropriate for a 21st-century society and contributes to stability, prosperity and personal freedom. The origins of this in this country go back deep into the 20th century, as the report points out, and were integral to the European Economic Community, as it then was, right from the beginning; I refer, for example, to Articles 85 and 89 of the treaty. As people have said, it is hard enough to do this within a single jurisdiction but it is much more complicated to do it across jurisdictional boundaries, which in turn need common institutions to administer and enforce what is in place.

I am one of those unfashionable and eccentric people who consider that the European Union single market was one of the extraordinary legal, diplomatic and political triumphs of the 20th century, albeit it has not yet even been completed. In some quarters I may well be considered a dinosaur—possibly even one clad in ermine—but so be it.

If a country leaves the EU, it leaves all this behind it, but no man is an island, least of all a global trading nation, and these things cannot be looked at introspectively. Domestically, as we have already heard, the consequences of leaving are systemically reasonably straightforward and align with the processes we are considering in the context of the European Union (Withdrawal) Bill. Internationally, however, it becomes rather more complicated because the reality, as is recognised in the much looser WTO rules, is that at least some framework dealing with a number of these topics is both appropriate and necessary. In the case of arrangements going beyond that, the requirements, such as those in the context of the European Union, are likely to be more stringent. If this country is looking for comprehensive, frictionless trade into the EU post Brexit, it is more or less completely wishful thinking not to suppose that something giving effect to the vast generality of existing EU rules will be required. This is a proposition with which the Government seem to concur.

However, it is not simply a matter of the rules. There is also the question of enforcement. Currently, as we know, Brexit is defined by the Government as leaving the jurisdiction of the European Court of Justice, so how can we achieve that? It is true that the EFTA and EEA mechanisms exist but I am not sure whether like is really being compared with like. After all, Iceland, Liechtenstein and Switzerland's economies are not comparable with our own and they have an entirely different relationship with the economy of the European Union.

When I was working on the detail of the single market, quite some years ago now, one perennial problem was the difficulties thrown up by non-tariff barriers and creative, partial and partisan legal interpretations. Just as those difficulties were an issue

then, I expect that similar things may turn out to be an issue in this context in the future. An additional problem that I anticipate could be that if we secure trade agreements of some kind of superior character with other nations around the world, they may well want to reciprocate arrangements covering such things with us. While those agreements may be compatible with WTO rules, how will they lock into whatever arrangement we may put in place with the European Union? Before we know where we are, we would be in the world of having to deal with the kind of problems that used to arise across Europe with the question of parallel imports.

In the whole debate in this country about these topics, we spend far too much time talking to ourselves about what we want and insufficient time thinking about what the counterparties with whom we will be—and are—negotiating would like to have. In the case of the EU, I dare say that the counterparties are a trifle disgruntled with us but, to secure a deal, it has to be agreed by both sides. We have to find ways of meeting both sides' aspirations.

As we know, the current plan is that we are jettisoning membership of the European Union on 29 March next year but, as yet, we really have no idea what is to follow it. As I understand it, it increasingly looks as if the Government are going to say to us, "Well, we don't know what's coming next—but trust us". That looks to be close to signing a blank cheque and, when I was brought up, I was told that was a very foolish thing to do. It is a view that I subscribe to still. It is now all about not leaving the European Union but what we are going to get next.

The point is that we currently do not know and the crucial moment will be the withdrawal agreement. That agreement seems rather akin to getting on a train at the station—but when you get on one, you need to know your destination. You otherwise risk being like the heroine who was sung about by Marie Lloyd on the music-hall stage:

"Oh! Mister Porter, what shall I do?
I want to go to Birmingham
And they're taking me on to Crewe".

We need to know when we board that train what the destination will be. As far as competition and the other policies we are discussing are concerned, we need to know what that framework is going to be, and currently we do not.

12.53 pm

Viscount Chandos (Lab): My Lords, I thank my noble friend Lord Whitty and the other committee members for this important and interesting report. I also thank the Government for their response which, as my noble friend pointed out, was rather more prompt than we are seeing on many other reports. Indeed, last week I spoke in a debate on one report where, after 13 months, there had been no response at all. I draw your Lordships' attention to my entry in the register of interests.

Anti-trust, merger and state aid policies are hugely important to the workings of a social market economy and, for that reason, I very much agree with what the noble Lord, Lord Inglewood, has just said. They are at the heart of balancing the benefits of the markets for

employment, growth, prosperity and tax revenues with the specific interests of consumers, over and above their participation in a successful and efficient economy. Under the EU regime, these policies have generally been applied well but, not surprisingly, not perfectly. In the area of anti-trust and mergers, for instance, Res Publica gave evidence to the committee and said:

“Something has gone wrong with our markets and something has gone wrong with our competition law”.

That view is held, within reason, across the ideological spectrum.

We should ask whether it would have been better if we had been outside the EU throughout this period. Today is literally the eve of the implementation of GDPR. Admittedly it is around privacy and data, but none the less it is a great example of the European Commission’s initiatives relating to the largest internet and data companies and it has also taken energetic and vigorous action against them in the areas of competition and tax.

What then should be the future in this area after we have left the EU? It seems important that there should be active co-operation, as the committee recommended, for instance through a relationship with the European competition network, and renewed and rigorous focus by the CMA. Should that include a change to broader public interest rather than narrower competition issues? In the speech that other noble Lords have referred to, Michael Grenfell of the CMA posed that question. I recognise that that is outside the scope of the committee, but it is inevitably a live and important topic. As the movie would have it, “It’s Complicated”. In 2005, there was a proposal for Pepsi to take over Danone. The Anglo-Saxon financial community mocked the French for treating yoghurt and mineral water as strategic assets, but five years later we found that cream eggs and tonic water were perhaps as strategic to us as yoghurt and mineral water were to the French. More recently, issues surrounding the hostile take of GKN by Melrose have brought renewed focus on this issue. I hope that there will be continuing debate over the months to come as we fine-tune, I hope, competition policy in the UK post Brexit.

In the area of state aid, there is no doubt that the EU regime has caused problems and issues, but however complex and important they may have been to local government, devolved Administrations and others, it is fair to say that they are minor in the scheme of things. Other noble Lords have highlighted the extent to which we have been modest investors of state aid in industry and the economy. One of the leaders of the leave campaign said to me, before the referendum, that the reason for leaving the EU was that the UK just did not know how to play the EU game. That may to some extent account for the relatively modest deployment of state aid and the tendency to see the EU as the constraint on greater exploitation of it. That comment rather begs the question: if the UK did not understand how to play the EU game while it was a member, why would it understand how to play that game during its negotiations to leave?

I believe it is right that there should be a formal regime after Brexit and that responsibility for it should be assigned to the CMA. The Secretary of State for

Exiting the EU, in a speech in Vienna at the end of February, when I suspect he was taking his sensible pills, said:

“It cannot be right that a company situated in the European Union would be able to be heavily subsidised by the state but still have unfettered access to the United Kingdom market. And vice versa”.

None the less, harnessing the power of the state in a careful and selective way on the economic stage is an important and valid ambition. It need not and should not involve massive nationalisation; rather, it should involve targeted and discriminating initiatives.

The CMA and, before its formation, the Office of Fair Trading and the Monopolies and Mergers Commission have always needed unimpeachable independence. Arguably, the addition of state aid to the CMA’s remit reinforces the importance of that. Therefore, it seems all the more surprising that the newly appointed chair of the CMA should be appointed as, initially, a Conservative Life Peer. While the noble Lord, Lord Young of Cookham, clarified on Tuesday that he would sit as a non-affiliated Peer, it should not have needed the Institute for Government and the noble Lord, Lord Newby, to flush this issue out. That is a regrettable start to the new regime at the CMA.

I commend this excellent report to your Lordships and hope that the Government, in addressing the vital issues raised by the committee, will be more sure-footed than they have been to date.

1.02 pm

Lord Aberdare (CB): My Lords, it is a pleasure to serve on the EU Internal Market sub-committee. This report, pace the noble Baroness, Lady Noakes, seems to be a good example of the committee inquiry process working as it should. The committee has a membership of all the talents, with an outstanding chair in the person of the noble Lord, Lord Whitty, and first-rate staff support. It has been supported by a splendid special adviser, Professor Erika Szyszczak, who gets no mention at all in the report, perhaps because the spellchecker could not cope with a name that includes three Zs. The topic is relevant and important. We had input from a range of knowledgeable witnesses and produced what I believe is a constructive and helpful contribution on the issue. We even received a timely and generally positive response from the Government, followed—again within a reasonable timescale—by this debate.

There was broad consensus that the current EU competition system for anti-trust and mergers, with responsibilities divided between the Commission at EU level and national competition authorities in each member state, works pretty well. The UK regime is seen as robust and effective and the CMA is well respected. The transition deal reached by the Government since the report’s publication addresses some of the concerns expressed in the report—for example, over the need to give businesses greater clarity and certainty, and to ensure that they would have to make only one set of adaptations to their systems and procedures. Other issues remain unresolved, such as how competition cases that are live at the point of exit will be dealt with.

[LORD ABERDARE]

I will comment, I hope briefly, on three areas: first, what potential opportunities or improvements might arise from the UK taking back control of its competition policy; secondly, issues relating to state aid; and, thirdly, broad questions relating to the future framework for competition policy across the UK.

Criticisms of the current system for anti-trust and mergers relate largely to delays and bureaucracy, as well as concern about insufficient attention being paid to the concerns of consumers who are, after all, meant to be the ultimate beneficiaries. Several suggestions were made about how to improve the processes of investigation and enforcement after we leave the EU: for example, greater use of interim enforcement measures; setting time limits for parts of the process; focusing more on the actual effects of corporate behaviour than its specific form, as the Commission tends to do; expanding the public interest criteria for assessing mergers; or revising thresholds for triggering action on them. Some of these ideas were also proposed in the sub-committee's earlier report on online platforms, and could be particularly useful to address fast-moving digital markets and issues posed by dominant online platforms, which have been so prominent recently.

Of course, any such changes may need to be balanced against the constraints of seeking to negotiate a comprehensive competition agreement with the EU, which might well include binding commitments limiting the scope for change, so any divergence from EU rules may be relatively small, at least initially, and take place only gradually. There may also be some drawbacks of our leaving, such as businesses having to make dual notifications of mergers, or some reduction of private damages actions based on breaches of competition law, for which, as we have heard, the UK has established itself as Europe's foremost jurisdiction.

What opportunities does the Minister envisage to enhance the effectiveness of our competition regime after Brexit, what may they mean for the arrangements we make for continued co-operation with the EU regulatory regime and the European competition network, and how far and how fast may we begin to divert from the EU regime?

State aid presents a different challenge. It is currently regulated entirely at EU level, with no existing UK regulatory structure. Provisions on state aid are likely to be a required element of any deal with the EU. As the Prime Minister herself said, it would be a serious mistake to try to beat other countries' industries by unfairly subsidising one's own. At the same time, any new structure for managing state aid in the UK must take account of the needs of the UK's own single internal market, extending across the devolved nations, regions and local authority areas and addressing their particular needs and priorities, while avoiding the risk of subsidy races between different parts of the UK, all of which have up to now had to follow common EU rules.

The Government stated view is that,

"the UK should be prepared to establish a full, UK-wide subsidy control framework, with a single UK body for enforcement and supervision, at the point this is required".

They have also concluded that the CMA would be best placed to take on this role. This raises a number of questions, including how the CMA's independence will be assured and whether there is any risk of conflict between its new state aid role and its existing competition function. Above all, how will the interests of the devolved nations and other regional and local bodies be taken into account in defining the new rules and by the CMA in enforcing them? In its evidence, the Welsh Government stated that,

"a UK internal State aid framework needs to be drawn up cooperatively and consensually between the UK Government and the Devolved Administrations as equal partner",

and that:

"The Welsh Government would expect to be involved in the appointment of the board or panel members of any future UK-wide State aid authority, as well as agreeing the terms of reference, ongoing remit and priorities".

Some of those aspirations were taken up in the committee's recommendations. How does the Minister believe that the Government and the CMA should respond to those aspirations?

That leads me to my third topic. It seems unlikely that Brexit will bring major changes, at least in the short term, to the way that competition policy operates in the UK. Looking to the longer term, what form of regime would best meet the needs of the UK's internal market, and what institutional arrangements most effectively deliver it?

The sub-committee recommended that a first step towards addressing these questions should be for the Government to undertake a wide-ranging consultation exercise, gathering views and ideas from the devolved Administrations, regions and local authorities, as well as from businesses and consumers in general. Indeed, as the noble Baroness, Lady Donaghy, mentioned, the LGA in its evidence set out some ideas on how a future UK state aid regime could provide greater simplicity and flexibility for councils to deliver public benefits.

I conclude by asking the Minister what plans there are, if not for a consultation, at least to pursue other ways of identifying opportunities to maximise the potential benefits of a competition regime free of the constraints of the current EU system.

1.10 pm

Lord Wei (Con): My Lords, I, too, thank the noble Lord, Lord Whitty, for tabling this debate and for his very able chairmanship of the committee, and in particular for steering us through the creation of this report. I declare my interests as set out in the register.

Broadly speaking, I am relatively happy with the findings of the report and its recommendations, but with some significant caveats. It is a solid document and I pay tribute to my fellow committee members, our adviser and our officials, as well as to those who contributed evidence to our inquiry.

The topic of competition and state aid as we near Brexit is vital to the country's economy and future as we seek to build new global trade deals and bolster existing relationships. I would argue that this area is one where we ought as a country not just to aim for continuity beyond our departure from the EU, whenever

that ends up being, but to invest and be more muscular in our approach. As a country, I feel that we have not always benefited from the existing regulatory and anti-trust infrastructure through our membership of the EU, and indeed from the state aid framework of which we have been a part. While rational, I feel that it has at times been an obstacle to companies and social organisations making a difference and growing. Yes, the machinery in Brussels and elsewhere has often pursued high-profile cases against larger players from the technology and other industries. However, as we have seen in our previous report on digital platforms, often the investigations initiated occur many years after the issues under dispute, and the fines, relative to the size and turnover of the companies concerned, are not always that punitive.

As a Conservative and a believer in free markets, I feel that for capitalism to function well there needs to be rigorous enforcement of anti-trust measures, as well as the use of lighter-touch yellow card systems, and even an approach that looks at abuses in the area of supply chains. With the status quo, I fear that what may be close to being a monopoly or oligarchy in the UK can be overlooked for many years because it has not reached the scale that would trigger appropriate measures at a European level. We also know from previous research that some larger firms deliberately buy and shut down start-up competitors at just the level below the threshold when such a deal would attract the attention of the competition authorities. So my question to the Minister is: do the Government have plans to make better use of the freedoms that being out of the EU will give them to create a more flexible and vigorous regime for competition regulation and enforcement, in the interests of consumers, and even in the interests of smaller businesses and start-ups?

Some might say that such a regime would incur greater costs, and that we have benefited from the resources and staffing capacity of the EU to pursue some of the better-resourced firms in a co-ordinated way. Indeed, it is true that, as a country, we have the ability to leverage off the machinery of the EU to pursue those firms. But, as I have highlighted, there is a cost to outsourcing our capability—one that is borne by our consumers and our industries, and perhaps even by our wider economy through reduced productivity from less competition. To enable greater innovation and lower costs for ordinary people, I would argue that the CMA and other bodies in this area ought not just to have resources to scale up to backfill the cases in future that the EU will no longer take from us, but have even greater resources to be able to pursue a vigorous approach using both formal and informal methods. That would pay dividends for the country and ultimately be recouped through growth and increased taxes, and through more new entrants local to these isles having access to markets that have been closed off to them.

As for state aid, I can understand the sentiment in the report which seeks to continue the same measures on state aid to avoid a regional race to the bottom. But, like other noble Lords in this debate, I see Brexit as a major opportunity to review the way in which we go about enforcing state aid rules. This is truly an area where we have tended to gold-plate in the past—and I

declare an interest as having been involved in companies or organisations that, historically, have bid for sums from local government or bodies subject to state aid. The picture has been one of delays and paperwork, where the sums involved have been relatively low, such that I am certain that many worthy projects that would have benefited our cities, nation and planet no doubt never saw the light of day because those involved decided against applying, given the trouble involved. Surely, as our cities re-emerge and become powerhouses once again, and with the potential for government departments to procure from more innovative start-ups and social organisations, and thereby reduce costs and improve outcomes, we ought to be using Brexit to streamline state aid, increase the caps and empower procurers to tap into the entrepreneurial energy out there. What plans are there to do this, and do the Government share my concerns that the current system is hampering progress?

I want to use my remaining time to cover one issue raised by the government response to the report in relation to the role of the CMA, indicating that state aid will fall within its remit after Brexit. Given the points I have just made, it seems to me that there ought ultimately to be a separate and independent body altogether, which we might choose to call the PMA, or Procurements and Markets Authority, to carry out state aid and other functions. It would perhaps be empowered to hold to account government and the devolved Administrations, as well as, over time, non-government organisations and businesses, on procurement decisions generally, not just in relation to state aid. It would ideally process state aid applications in a more streamlined manner, and ensure fairness in the government procurement process, opening it up so that more players can have a chance, rather than just those which make the lives of our civil servants more convenient and lower-risk.

It could also have a hand in tackling abuse of suppliers by large organisations, and even play a role in developing best practice in how to manage procurement in the relationship between government and the public with utilities and quasi-monopolies, such as water companies, trains, energy companies, retail banks and large public sector service providers, which is currently a hot topic. Currently, when these bodies fail to deliver, this tends to lead to an argument to nationalise them, which in my view just shifts the monopoly provider role to government, and does not solve the core issue of performance, diversity, and affordability. A post-Brexit PMA could learn lessons from around the world, such as how the Canadians regulate their banks—for example, by increasing the amount of capital they need to hold if they do not adhere to high corporate governance standards—and work with regulators to apply best practice and move away from a targets-driven bureaucratic culture that creates barriers to entry and costly red tape to one that incentivises providers to be responsive and responsible suppliers of services to citizens and government alike.

Would the Government be open to looking at such solutions post Brexit? Such an approach would, in turn, free up the CMA, ideally with a very visible lead prosecutor such as you have in the United States, to go after local instances of oligarchic anti-trust behaviour,

[LORD WEI]

using both formal methods such as through the courts but also informal methods with consumer groups and other whistleblowing mechanisms to bring to light anti-competitive behaviour wherever it may be found. What plans do the Government have in this area, and have they given thought to being a bit more creative in the coming transition?

I believe that, with Brexit, we have a historic opportunity to truly champion a better model of growth for our citizens. It is historic because, if you go back to the era of Peel, Cobden and the abolition of the Corn Laws, we have been a nation that has sought to lower the cost of living for our citizens through lowering tariffs and increasing competition—something that we should be proud of and which formed the basis for the modern incarnation of my own party. But I fear that, in our desire to complete a smooth transition, we may be taking too tentative a path, rather than rediscovering our historic purpose to champion the rights of the needy, the small business, the self-employed, the charity and the ordinary citizen to have a better and sustainable life and to have a greater choice of providers in their lives.

This report has highlighted that it is possible to recreate in some ways what already exists outside the EU, but it also rightly points to the potential to go much further, to be more ambitious and to think more deeply about the role that we want our competition and state aid framework to play to bring about fairness and more of a level playing field for our citizens and businesses alike. This report should be seen as a great start. The question is whether this Government and future ones can build on it to make the most of the opportunities that Brexit will bring.

1.19 pm

Lord Hunt of Chesterton (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Wei, and his remarks about the growth of some SMEs having been deterred by aggressive financial pressures. I also welcome this report of the House of Lords EU sub-committee, under the fine chairmanship of my noble friend Lord Whitty. I am not a member of that committee, but the document we have received is excellent.

Over the years, one has noticed that the UK Government's policies on competition and state aid have varied according to the political parties taking power, unlike in major European countries, where there has been more consistency over the years. My own experience of state funding, research and development has been as a research scientist in various universities, as a director and consultant of technological companies in the UK and in European countries, and as director of the Met Office, which certainly benefited from UK and European state funding, to the great benefit of its technological development. I have declared these interests in the register.

Recently, I have also been a member of the House of Lords Science and Technology Select Committee, which received evidence from larger companies about how smaller UK companies—SMEs—were making limited use of state aid from the European Commission. The larger companies were concerned about what will happen to these smaller companies, which are of course

part of the chain feeding into the large companies. There was general criticism of the policies of the coalition Government, which withdrew funding from regional development agencies in 2010. There has really been no proper substitute for that—and this does not come from me, a Labour person; it was a big company commenting on this. There has since been some return to regional development agencies, with limited funds available to local enterprise bodies. Perhaps they will be expanded in future.

The question is: what will happen after Brexit and will the funding and organisational arrangements be as effective as possible? It would be interesting to hear from the Minister how the UK will collaborate with the European Commission on state-aided funding and competition. The most significant statistics about the levels of state aid are given in the House of Commons briefing paper, which other noble Lords have referred to, including my noble friend Lord Whitty. Some 0.35% of capital is used by the UK on state aid, 0.62% in France and 1.22% in Germany, which shows that other European countries are using state aid more readily and extensively than the UK. The UK could expand its state aid to industry, whether in or out of the European Commission, as my noble friend Lord Whitty emphasised. But how should state aid be applied most effectively for industrial and technological strategies and/or for general development in the UK—for the economy, infrastructure and the environment?

Very noticeable—though other noble Lords have not mentioned it—is the wording of the Government's response to recommendation 17, and I suggest that noble Lords read it. It shows, surprisingly, the continuing government ambivalence about state aid, which may be relevant in future:

“Rather than propping up failing industries or picking winners, the Government is keen to create the conditions where successful businesses can emerge and grow in all industries and sectors”.

The most reverend Primate the Archbishop of Canterbury was here earlier; perhaps he would have been able to exactly parse this very subtly worded remark. Nevertheless, the deprecatory remark of “picking winners” still seems part of government thinking. It is not seen that way by other European countries. By contrast, in France and Germany, there is total enthusiasm for support for all kinds of industry, including those that might be in danger on a national basis and those that might be “winners”. As my noble Friend, Lord Chandos said, there was a famous French case of supporting the yoghurt industry. It was laughed at in Britain by the *Financial Times* and elsewhere, but has in fact proved very successful. The other important feature, which, again, other noble Lords have not emphasised, is that state aid in France, Germany and Spain, as I have seen, is strong and differentiated between the national, regional and even sub-regional levels. You can see how it works. For example, in Toulouse, there was a local campaign to develop industry, with a target of hiring 10,000 engineering technicians and others as it was developed.

In its policy of standing by, the UK has seen the decline of certain of our major industries, such as electrical engineering, and the leadership role in Airbus—the UK is now a contractor, whereas it used to lead it with France and Germany. Big elements of the

manufacture of steel rails, on which we were a world leader, now happen in the Netherlands. As the noble Lord, Lord Wigley, emphasised, state aid is vital in the devolved regions. The UK Government seem unable to understand the implications of their policy. The House of Lords Select Committee on Science and Technology has been studying industrial strategy in relation to life sciences, and its report was produced a couple of weeks ago. The Government have stated their aim of developing new and large pharmaceutical companies that will have many billions of pounds' turnover—that is their ambition—over the next 20 years. But how will those winners be chosen or evolve if the Government do not believe in “picking winners”, which surely should be strategically developed through collaboration between industry, the National Health Service and research? Foreign pharmaceutical companies are always impressed, as they reported to our committee, with the research, but are not so impressed with the UK being the place for economic investment.

In developing the UK's future energy supply, state aid will be essential and done in collaboration with state-aided and private companies in other countries. There should be no hesitation in identifying critical areas: wind energy, fission and fusion. These are also consistent with the necessary global environmental goal of reducing carbon emissions, which is a very strong aim of the Government and supported by all the major parties. I declare an interest in this area.

I note that the Government have in the last few months chosen certain companies and technologies for their large and smaller state-aided investments in these areas. However, no one is quite clear how these decisions are being made and how they will be made in future. That is the big question about state aid: who decides who receives it? That remains an imponderable, and I look forward to the Minister's reply to that.

The other feature is that there will be other vital strategic uses of state aid, which must surely include the development of new industrial products allied to government regulation and overseas aid. Most recently, that applies in particular to the changes in the use of disposable plastics, with enormous volumes now going to the oceans, with unknown health and environmental consequences. This is a remarkable new environmental danger that has emerged in the past two years, and the Government are now gripping that problem. However, tremendous investment will be needed to find solutions in this area. Regrettably, at a recent EU meeting—literally last week—the European Commission, working with industry and environmental organisations, failed to agree on an industrial, commercial and regulatory basis. But that will be the place where this enormously important issue will be discussed. The question, which goes back to my earlier remark, is how the UK will be involved in such strategic issues, because as sure as eggs is eggs, that is where the big issues will be decided. That is an example of where state aid should be applied urgently, as we discussed last week at a meeting of the All-Party Group for Polar Regions. This is also an example of how the UK will have to continue to work with the EU on all the big issues of science, economics and government.

1.29 pm

Lord Stevenson of Balmacara (Lab): My Lords, I start by thanking the whom we must call “the master of the universe”, my noble friend Lord Whitty, for his skill in bringing forward a committee report which I think meets the test of committee reports which I have observed over the years. I do not think that any particular measure for that test has as yet been defined, but if a report is good enough to bring not only those who participated in it but others to the debate, that is obviously a tick; if it gets a quick response from Ministers, that is another tick; and if the combination of the report and the ministerial response produces a good debate then you have a winner. I think that “master of the universe” should be the routine accolade for those who chair these committees and are able to fulfil ticks in all three boxes. In passing, as others have mentioned, it is quite unusual to get a quick response from any department, and I congratulate the noble Lord and his department on producing one. To get one which allows an early debate is a double win.

My noble friend Lady Donaghy said that she thought you could read this report on a number of levels. First, it is an analysis of a series of problems thrown up by the decision to exit the European Union. Secondly, it is a disquisition on where this country has got to in its own measured way in coming up with a set of procedures for the complex area of dealing with companies and how they operate, and in a sense the report also fulfils that. Thirdly, it reveals the way in which we have failed to grapple with some of the deeper issues surrounding the whole policy area of state aid and state companies, and the questions of why and under what conditions mergers should be allowed. Fourthly, it is also about consumer choice. Both this country and the EU have been very bad at making sure that consumers are involved in these matters and that they are the ultimate beneficiaries of the policy choices made. I am grateful to my noble friend for that because, without that point being made, some of this debate might not have had quite the resonance that it should.

I have only three major areas that I want to cover. One is whether we will be able to work with our European colleagues—currently our partners—in the future. There is also the narrow question of whether the references in our current law explicitly linking us to the jurisprudence of the European Commission and the European Court of Justice will continue in some form or other. It is not clear from the current Government's present position whether that is the case and they are struggling to get out of that. A measure of success in terms of Brexit seems to be whether any policy announced or to be announced will continue to be covered by ECJ jurisprudence. Even if that is not the case, it is quite clear from this report that there will be a continuing need to keep in step with our colleagues, not least because there will be mergers involving companies which trade either to or from the European Union and we will need to have some regard to the jurisprudence.

Emerging leaks about the withdrawal agreement and transitional agreement seem to suggest that the European Court of Justice will continue to have a direct role, at least until the end of the transitional period in December 2020. Can the Minister indicate

[LORD STEVENSON OF BALMACARA]

whether this might be a longer-term issue, with particular reference to competition and the need to work closely with our European partners?

There is then the question of how we will manage the divergence that will inevitably set in once we separate from the European Union. The divergence will partly be statutory and will therefore presumably be under our own control, but it will also partly emerge from judgments of courts and statements in cases that come before various authorities, whether in this country or in others. However, we will also have to adapt to the fact that it might be necessary to have a more flexible approach to many of our industrial sectors—certainly the ones that feature heavily in our industrial strategy—than would perhaps be the case with some of the more traditional ones. We will be diverging in an evolutionary way but there might need to be a bit of revolution about that, particularly as we get a sense of how these new technology companies and the new sectors that emerge from them work in practice.

In a sense, this may be a problem that we cannot solve today or have any views about, but it would be helpful if the Government could confirm for us when they can that this is an issue that they are on to and to which special attention will be paid. In passing, I notice, for instance, that we are now getting some frameworks for the future EU-UK partnership, and I have here the one on data protection. It is quite interesting that we are now making policy by spreadsheet rather than by papers—this is a series of slides that you can riffle through in a matter of seconds, although it is supposed to tell you the entirety of our negotiating position. It is a funny way of going about it, but will there be one on the question of how competition law will be developed? It is not mentioned in either of the two reports that have come out, one of which is on science and research and the other of which is on data protection, but it is alluded to in both of them. It would be helpful if the Minister could share his thoughts on that.

The divergence that may come naturally because of the way in which the two bodies will separate, or will come organically because we need to move far faster and more smartly on those sectors that will cause us more trouble in this area, may or may not have a link to the third thing—the question that I mentioned at the beginning about how our overall policy will change. It should and could change towards a consumer focus—I hope that will be the case—but, as I will come to in a minute, the CMA has no consumer representatives on its board, so how will it access that new consumer interest? There have also been calls for a move towards a more prosecutorial approach to competition enforcement—that increasingly comes out as one reads the papers around this—and perhaps towards a more economics-focused, effects-based approach to competition decisions rather than simply market power. I would be grateful if the Minister could share some thoughts on that.

We had quite a few contributions in this debate about whether the move away from the one-stop shop under the EU merger control will have an effect. Clearly, it will have an effect. We are still in the shadow

of the unfortunate circumstances of the Cadbury-Kraft and recent GKN-Melrose mergers, where public interest has not been seen to be either effective or enduring in how it was used to analyse and treat these mergers. My narrow point is not that work is not going on here—I know that it is. As my noble friend Lord Whitty mentioned, we have already passed in your Lordships' House measures that have relaxed the shares element of merger analysis and changed the conditions under which the targeting company has to fulfil a certain share of the market amount. At the moment, these are narrowly confined to defence and security issues, but there is read-across to media and to the other exemption, which is financial stability.

In both these situations, the Government have hinted that they are still thinking about additional strategic considerations, such as economic, social or environmental policies. Can the Minister give us any more information about that? The last time he was asked, I think he said that something would be coming out soon. "Soon" is an elastic word, and I have not yet heard whether it will be before the Summer Recess or whether we are talking about Christmas. It would be helpful to know that to inform the debate. Has what we have seen recently been a ground-clearing exercise for that, or are we still waiting for more substantial thoughts on it?

Finally, on the question of institutions, it is clear that the Government have recognised that more work will be going to the CMA. It is good that they have increased the budgets so that it will be able to cope, particularly with the Brexit-related work that will come forward in the next year or two. However, as others have said, that was done before the recognition that a state aid authority is required and the CMA would be best placed to take on that role. However, three important points have been made, and the noble Baroness, Lady Noakes, was the first to make them. The whole issue, including state aid, raises the question of the independence of the CMA. We have to be clear that that will change, including changes to the way in which people are appointed, with particular reference to the chairman, which we also talked about. The model here might well be the ICO. Although that is clearly an agency created and supported by the Government, stress is placed in all the funding documents and in the legislation we have just seen—the Data Protection Bill—to ensure that the independence of the ICO herself is not in any sense threatened. I would be grateful for a response from the Minister on that.

The wider question here is whether we can see any problems. The idea is that the CMA is focused on third-party mergers, and in some senses anti-trust cases, and state aid, which will of course involve issues that will affect the Government both nationally and locally. Whether that requires additional independence is an issue on its own merits and is not to do with the organisational structure or, indeed, membership of the board of the CMA.

On state aid and the devolved institutions, the announcement that the CMA will be the state aid authority is interesting given what happened in the recent debates on the EU withdrawal Bill, as mentioned by the noble Lords, Lord Wigley and Lord German,

and others. It will pour petrol on a large fire and will be a real problem if we do not sort it out. It is clear that some of the powers returning from Brussels will go straight to the devolved Assemblies and Parliament. The powers will include trade and the possibilities of state aid, and therefore they will prosecute this issue with considerable vigour. If it is already decided that the only agency able to make decisions on such matters is a UK-wide one, under what conditions does that follow the devolution structures? If everything that should be devolved is devolved when it is not specifically reserved, the Government will have to be agile in their arguments to ensure that people understand—even if they do not accept it initially—the case for the CMA being the state aid authority and a UK body.

Even if that is the case, the questions raised by the noble Lord, Lord Wigley, and others about how we set the formal structures around which these negotiations can take place are only the beginning of a huge discussion about what is effectively creating a federal state in the United Kingdom. This is not small beer. It is a matter of significance with which we need to grapple, and it will not help if decisions are taken piecemeal about elements of it—even though they are important elements—without having regard to the wider issues. This may be above the pay grade of the Minister—he is smiling, so he has obviously got prepared remarks—but I put on record that this issue needs a great deal more attention and discussion, and I look forward to hearing his response.

1.41 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I thank the noble Lord, Lord Stevenson of Balmacara. I will not say what my pay grade is in terms of what I can and cannot comment on in my response to this debate.

Like other noble Lords, I thank the noble Lord, Lord Whitty, for producing this report. I echo the words of his noble friend Lady Donaghy when she referred to him as a master of the universe for achieving a degree of consensus on his committee, particularly between herself and my noble friend Lady Noakes. I do not think that that is necessarily a difficult matter. More generally, I thank all those members of the committee who have spoken in this debate for their work. I also thank the other three speakers—my noble friend Lord Inglewood, the noble Viscount, Lord Chandos, and the noble Lord, Lord Hunt—who added their wisdom to this useful debate.

The noble Lord, Lord Hunt, reminded the House that in one of his former guises he was the director of the Met Office. I visited him once and I have the photographs to prove it. However, that was 23 or 24 years ago. We were both somewhat younger then and I do not know what colour my hair was in those days—I think probably darker than it is now.

As I have said, I thank the committee for producing this report. I thank the noble Lord, Lord Stevenson, for reminding the House that on this occasion the Government responded to it in a timely manner. I hope that has been useful to the debate. I am also grateful to the House authorities for ensuring that the debate took place at a convenient time.

This brings me on to the comments made by my noble friend Lady Noakes. She asked about the future role of the EU Committee and its various sub-committees. I obviously cannot comment on that matter—that is certainly, as the noble Lord, Lord Stevenson, would put it, beyond my pay grade. But I noted what the noble Lord, Lord Lea of Crondall, who is not in his place, said about that matter in his intervention. It is for the House authorities to take those comments on board. However, from a purely personal point of view I hope that we will continue to receive valuable reports such as this one because they provide a useful basis not only for debate but for the Government to set out their position; on this occasion it is their position on competition and state aid.

We take competition seriously. As all noble Lords would agree, competition encourages enterprise and efficiency and it benefits the consumer, who we must always keep at the forefront of our consideration, by lowering prices and increasing choice. Moreover, it improves international trade. It is a key mechanism for raising productivity and growth and for delivering an economy that works for everyone, which is a core aim of our industrial strategy that we set out late last year and are busy implementing at the moment. I think that we can also all agree that the United Kingdom has led the way globally in the field of competition law and enforcement, and that we have one of the strongest competition regimes in the world. Our law is transparent and its enforcement is based on economic reasoning which is carried out by the Competition and Markets Authority, an independent and specialist body that is recognised internationally.

I want to say a little about the authority later in response to some of the comments about governance made particularly by my noble friend Lady Noakes and the noble Lord, Lord Aberdare, because it is an important issue. We estimate that last year the CMA delivered in direct financial benefits some £18.60 to consumers for every £1 it spent, and I shall say a little more about the enhanced resources available to it.

I shall start with our EU exit and competition. We are committed to preserving the strengths of our competition regime during our exit negotiations with the EU and thereafter. Beyond the changes that are necessary to ensure that the regime is fully operational as soon as we have left the EU, we do not plan to make any fundamental changes. My right honourable friend the Prime Minister has set out our clear objectives for the exit negotiations with the EU. I shall make a point that has been made repeatedly at the Dispatch Box by others: the negotiations are ongoing and noble Lords will not expect me to be in a position to comment on them in detail. The aim is to restore our control over UK law, ending the jurisdiction of the ECJ, ensuring a smooth and orderly exit from the EU, preserving free trade with European markets without being a member of the single market and striking new trade agreements with other countries. We will continue to work closely with the CMA and sector regulators to meet those objectives while also preserving the strengths of our competition regime.

On competition law and state aid, perhaps I may make it absolutely clear again to the noble Lords, Lord Whitty, Lord German and Lord Wigley, and all

[LORD HENLEY]

other speakers who have mentioned this, that we will continue to be engaged with the devolved Administrations on these issues. Obviously it is not for me to speak for the devolved Administrations—the noble Lord, Lord Wigley, smiles, but he would not expect me to do so—but on the government side we can make it quite clear that we have already been having what can be described as meaningful discussions with the devolved Administrations. We have found significant common ground. For example, all the devolved Administrations believe that a UK-wide common framework is necessary, and we will continue to develop that regime. We will continue to engage with the devolved Administrations; for those who mentioned local authorities, that will be true for mayoral authorities and others as well. Dare I say it, the noble Lord, Lord Wigley, was being unfair when he said that there was a glaring failure to engage. I want to repeat that we are engaged and will continue to engage. I hope that we can make progress on that remit. The question of whether we go down the route of a joint ministerial committee—as the noble Lord, Lord German, suggested—and whether that is an appropriate mechanism should be dealt with in those discussions as a matter for future work.

We are also attentive to the views of business groups, legal professionals and academics. I think it was the noble Lord, Lord Whitty, who put in a plea for his and my learned friends; he was right to do so and we acknowledge their expertise. We are grateful to legal professionals and academics, including those who gave evidence as part of this inquiry. We plan to carry out further engagement in the future as we develop the legislation necessary to implement our departure from the EU.

A number of questions were asked about our priorities, both after we leave the EU and on competition. First, I should set out—as I think everyone will agree—that it is important to establish clarity on arrangements with the EU on the important separation issues, such as who has jurisdiction over live cases and new cases relating to pre-exit conduct. That will be crucial to delivering certainty and stability for businesses, enforcement authorities and consumers.

Secondly, it is important to ensure that the CMA has access to the financial resources and people it needs to take on the additional case load that we expect once we leave the EU. The CMA was recently allocated an extra £23.6 million to make essential preparations for its expanded role following the UK's exit from the European Union. That money is not purely for the exiting work, as implied by the noble Lord, Lord German, but for the extra role that we are asking the CMA to take on in relation to state aid. We are confident in the CMA's readiness to meet the demands and exploit the opportunities that will arise from our exit. We are confident that it has sufficient resources. We announced that money in the spring Budget and, as part of the Autumn Budget, the CMA was given an extra £2.8 million—as announced in the industrial strategy—to increase its enforcement activity. That will further enhance its impact on increasing competition in markets and cracking down on businesses that breach competition law.

Thirdly, the Government are keen to ensure that the CMA and its EU partners can continue to work closely together to avoid outcomes that may harm consumers. To do so, we aim to negotiate a strong, ambitious future co-operation agreement with the European Commission on competition matters. I assure the noble Lord, Lord Whitty, that we hope that it will continue with its strong record of co-operation with the national competition authorities through the European competition network. Obviously, our future relationship with that network will depend on exit negotiations with the EU.

Perhaps I may touch briefly on some of the points raised by the noble Baroness, Lady Donaghy, about the competition review, what form it will take and whether we would listen to the views of stakeholders. As I am sure the noble Baroness remembers, it is a statutory review required by the Enterprise and Regulatory Reform Act 2013 and it will lead to a report to Parliament. The noble Baroness asked when the consumer Green Paper would be published. I can assure her that it has already been published: it was on 11 April, so it is waiting for the noble Baroness to read and it will take account of a wide range of stakeholder reviews.

I acknowledge the committee's request for further clarity on state aid. The regulation of state aid is an important pillar of competitive markets, but there is currently no domestic equivalent to the EU regime, unlike for competition. The committee will therefore have to accept my apologies that the Government were unable to clarify their position before the time of the government response to the committee's report. Since my honourable friend Margot James gave evidence before the committee, which I think was late last year, the Government have developed their policy further on how state aid will be managed after we leave the EU. I want to take the opportunity to provide as much certainty as possible on this point, as requested by the noble Lord, Lord German, and others.

For the duration of the implementation period after we leave the EU, the UK will continue to apply the EU state aid rules, and the European Commission will be responsible, as now, for approving and monitoring aid. This will give businesses and public authorities that grant state aid certainty and continuity immediately following our exit from the EU. Longer-term decisions on the UK state aid regime are subject to further discussion with the EU as part of our negotiations on our future economic partnership, so I shall not comment on that.

It is right that a responsible Government work for all scenarios. This is without prejudice to future negotiations. The Government's view is that the UK should be prepared to establish a full, UK-wide subsidy control framework at the point at which this is required. In line with this objective, the EU state aid rules will be transposed under the withdrawal Bill, as is the case for EU rules more broadly under the Bill. The transposition of the existing rules will apply to all sectors, including agriculture, fisheries and transport, and will replicate any existing exemptions from state aid rules.

To ensure the regime is operable, the Government have concluded that, at the point at which an independent UK state aid authority is required, the CMA would be

best placed to take on this role. That reflects its experience and understanding of markets as the UK's competition regulator, the independence of its decision-making from government and its excellent international reputation.

The EU has indicated the importance of state aid in its negotiating guidelines. We know that it is an area in which it would like to find common ground. As my right honourable friend said in her Mansion House speech:

“If we want good access to each other's markets, it has to be on fair terms”.

Competition and state aid are areas in which we may accept binding commitments to remain in step with the EU.

My noble friend Lady Noakes raised a number of points about the CMA's independence and about the appointment process in relation to the new activities that the CMA is taking on. One of the reasons that we selected it for this job was because of the very independence that it already has, as it is independent of the Government in its decision-making. My noble friend also raised a good point about appointments. The Government are considering those matters, specifically in relation to that new state aid function. I stress, however, that the strategic note to the CMA that my noble friend commented on is not binding but just sets out our priorities.

My noble friend Lord Wei said that he was looking for a new body. I think the CMA is a relatively new body as it is. We are asking it to take on new roles and I think that, from my noble friend's point of view, it might be better to let it bed down in what it is doing, and doing very effectively, and leave such other matters as considering its future for another day. I believe I have touched upon the resources available to the CMA and that it is generally agreed that it has sufficient funds to do the job. We hope that, in taking on its new job, it will be able to continue to achieve what it has.

On the question of state aid, as I did on competition, I stress that we will continue our negotiations with the devolved Administrations to make sure that the new framework with the CMA works for the whole of the UK. We are committed, as always, to securing the best outcomes for businesses and consumers from EU exit.

We are grateful to the noble Lord, Lord Whitty, and his committee for its report, which has helped test the rigour of our thinking, dare I say, and identified areas for further consideration. If there are other points that I have not addressed in detail, I will, as always, write to noble Lords. I am grateful to the noble Lord—I hope his throat is up to it when he comes to respond—for bringing this to the House and allowing the Government to respond to it.

2.02 pm

Lord Whitty: My Lords, I thank the Minister for those remarks. We definitely look forward to the competition review which is promised. I will keep my remarks reasonably short, if only to protect my throat.

I think there has been a reasonable degree of agreement around the Chamber, as there was on the committee, which I shall try to summarise. The principles of the

European approach to competition and state aid will continue, with some degree of co-operation and alignment—quite what, we know not yet, but no doubt the negotiations will make that clear. We also have the opportunity to refine that and make it more relevant, and perhaps to look at related issues, such as public procurement, in the new era.

I take the point that the independence of the CMA, particularly given its enhanced role, is very important. Clearly, and particularly in relation to state aid, getting some degree of consensus and structure with the devolved Administrations and local government is vital. I think the issue of how broad the public interest criteria are will not go away, as my noble friend Lady Donaghy said, and there will be arguments from various sides as we go on, but it will be within UK control to decide, politically, how we manage that.

A number of principles were established by the report and have been largely underlined by this debate. I will treasure the new accolade that has been given to me by this House and will point to that accolade in *Hansard* to my grandchildren, I have no doubt. I repeat my thanks to all members of the committee.

The noble Baroness, Lady Noakes, raised an important point at the beginning, and I imagine the House will have to return to it. My own view is that, at the moment, the structure of the committees is coping with moving from focusing on scrutiny to the outcome on Brexit—keeping an eye on the outcome of those negotiations and holding Ministers to account. It may be that the structure is a bit clunky, but that is an important role. For when we get to the end of those negotiations and we are in the brave new world post Brexit, the House has already set in train a means of looking at the committee structure—which is above my pay grade, let alone the Minister's—and I hope that the noble Lord, Lord McFall, will present us with some proposals on that front in the coming months.

Meanwhile, in relation to competition, state aid and mergers, we will expect some new kinds of cases and new markets which we will have to address as the UK, but the continuity is as important as the new freedoms. With that, I thank the House.

Motion agreed.

UK and the Western Balkans (IRC Report)

Motion to Take Note

2.05 pm

Moved by Lord Hannay of Chiswick

To move that this House takes note of the Report from the International Relations Committee *The UK and the Future of the Western Balkans* (1st Report, HL Paper 53).

Lord Hannay of Chiswick (CB): My Lords, I have been asked by the noble Lord, Lord Howell of Guildford—who is no doubt present in spirit if not in flesh on this occasion—to introduce the International Relations Committee's report to your Lordships in this very timely debate on that report and on the future of the west Balkans. Alas, the noble Lord,

[LORD HANNAY OF CHISWICK]

Lord Howell, is abroad in Japan and China on engagements which were scheduled before the date of the debate was fixed.

Why do I say that it is a timely debate? The report, which was published in January and to whose recommendations the Government have since responded in broadly positive terms, was always intended to be a kind of curtain raiser for the next summit meeting of what is called the Berlin process, which brings together the European Union and those west Balkan countries that have not yet become members: Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. That meeting will take place in London in July so it is very good that the Government will hear the views of the House well ahead of that summit and that we will have the opportunity to hear about the Government's objectives and preparations for the meeting.

Why do the countries of the west Balkans matter to the UK and we to them? They matter to us because three times in the past 100 years or so, instability in the Balkans, tensions between the countries of that region and meddling by outside powers have led to hostilities in which the UK found itself involved—in terms of blood and treasure. Our report does not suggest that those tragic events are in imminent danger of being repeated but it is clear that neglecting the countries of the west Balkans and the challenges they pose to Europe as a whole is a risky approach. There have been signs in the recent past of just that neglect since the region dominated our foreign policy in the early 1990s, during the wars of the Yugoslav succession.

Why do we matter to them? Britain, as a member of both NATO and the European Union, has played an important role in stabilising the region, but the referendum decision to leave the EU has left a clear impression, expressed to us by our interlocutors in the region when we were taking evidence, that we are turning our backs on that role. So if the Government's claim, which I welcome, that:

"We may be leaving the European Union, but we are not leaving Europe,"

is to mean anything, this impression needs to be countered—with policy commitments, not just words.

It was that conclusion that led us to make the main recommendation of our report that the Government should,

"use the occasion of the Western Balkans Summit to set out in detail, and for a substantial period ahead, the contribution that Britain is prepared to make ... to support stability, democracy, the rule of law and prosperity",

in the region. The Government's response, which was not the original response that they gave to the report but was contained in a subsequent exchange of letters, including one from Sir Alan Duncan to the noble Lord, Lord Howell, was that the,

"Western Balkans summit in July will be the moment that the Government set out in detail the nature and the scope of the UK's long term support for the Western Balkans as we approach our departure from the EU".

That commitment—which, as I say, was very welcome—was extracted not without a certain amount of difficulty but in terms that do not brook of any disagreement.

The Government also made it clear that the commitment,

"will include taking forward initiatives ... to tackle corruption and serious and organised crime",

in the region, as well as advancing the objectives our report set out with respect to,

"stability, democracy, the rule of law and prosperity".

The Government's response is thus clear and positive, and all the more welcome for that. We look forward to it being given effect in July and we will no doubt wish to discuss it later as we debate the west Balkans, as I hope we will in the future from time to time, to demonstrate that we have not taken our eye off the ball.

All the evidence we took underlined the continuing importance for all the countries in the region of making steady progress towards their objective of EU membership and, in the case of Macedonia, of NATO membership too. The Commission's renewed emphasis on the west Balkans in its latest strategy paper, which was published in the winter but after our report came out, is therefore very welcome and very much in line with our own thinking, as were the conclusions of last week's summit meeting in Sofia. This underlines the importance of our own and the EU's efforts after Brexit being carefully dovetailed and working together. We also very much hope—I add this as a specific point—that the ongoing talks between the Governments of Greece and Macedonia will clear the latter's way to joining NATO at an early date. I hope the Minister will be able to confirm that our own Government will give strong encouragement to the achievement of that objective.

We also noted the link between economic prosperity and long-term stability in the region, and therefore the value of using the summit to boost the UK's trade with the western Balkans, which, it has to be said, is not very substantial. To this end, the Government need to ensure that the liberalised trade arrangements currently in place with the western Balkans through the EU can be maintained after Brexit. We remain concerned that the Department for International Trade has yet to get a grip on this issue. I am not sure how often the peripatetic Dr Fox has visited the countries of the western Balkans; perhaps the Minister could enlighten us on that. They are rather closer than some of the places where Dr Fox spends a lot of his time. To explain why this is important, the transitional arrangements that have been provisionally agreed mean that we will continue to give duty-free access to the countries of the west Balkans for their exports to us for the 21-month period after we leave. Yet there is no commitment on their part to reciprocate, so we could be in a situation where our exports are not so dealt with in free-trade terms. Can the Minister tell us what is being done to ensure that it is not the case?

Should we be concerned about foreign meddling, which, as I mentioned, has been pretty endemic in the Balkans, probably for the last several hundred years but certainly the last 100 years? So often in the past, that has contributed to tension and conflict. There are certainly no grounds for complacency now. Reports of Russian arms supplies to the Republika Srpska in Bosnia and Herzegovina are particularly worrying. The Russian role in the region as a whole seemed to us largely that of a spoiler, designed to impede the progress

of countries in the region towards membership of NATO and the EU, but handicapped by the fact that Russia does not really have a very appealing alternative to offer those countries.

Considerable vigilance is clearly also needed with other countries. President Erdoğan's inclusion of Sarajevo in his election barnstorming last week is another example of a potentially destabilising intervention. The role of others—China and the Gulf states—seems rather less problematic and less potentially destabilising but, even if I say that, we need to face up to the scope for sectarian tensions within the region, which should not be overlooked.

The main causes of concern in the region are as much homegrown as they are imported, so while I have spoken a bit about the meddling that goes on, we need to recognise that there is a long list of failures: the failure to make more progress in Bosnia and Herzegovina under the Dayton agreement; the difficult relationship between Serbia and Kosovo; the undermining of truly democratic institutions by symptoms of state capture; the inadequacies in the strengthening of the rule of law and respect for human rights; the prevalence of corruption and serious international crime networks; and the poor prospects for economic growth. That is quite a long list. All these are problems with which the countries of the west Balkans will need help from their European partners if they are to overcome them, but that will be achieved only if the countries of the region themselves generate the political will to do it.

If the report from your Lordships' committee has shone some light on a region that has tended to drift away from being on the list of our principal foreign policy preoccupations, that will be a reward for the hard work of all members of the committee, several of whom I am glad to see will be contributing to this debate. I offer my thanks and the thanks of the chair to our clerks and our specialist adviser for the work they have put into this inquiry. Only sustained effort by the Government over a lengthy period will ensure that we are not, yet again, as we have been three times in the past, bitten on the ankle by developments in the Balkans. I beg to move.

2.17 pm

Baroness Helic (Con): My Lords, it is an honour to speak in a debate on this subject in which the noble Lord, Lord Ashdown, will take part. I pay tribute to his work and legacy as high representative in Bosnia and Herzegovina. His tenure represents the high-water mark of international engagement in the western Balkans and, indeed, elsewhere in the world. It is no exaggeration to say that had he not left in 2006 the situation in Bosnia would be vastly better than it is today, and I hope that the Government will heed his advice when he speaks today. I declare an interest as stated in the report, and I thank the International Relations Committee and its clerks, advisers and staff for their role in our inquiry. I also thank the noble Lord, Lord Hannay, for his invaluable insights during the proceedings and the work of the committee.

The subject we debate today is not only the future of the western Balkans, but the future of stability in Europe as a continent as a whole and ultimately our

own security in the United Kingdom. Twenty-five years ago, the wars in the former Yugoslavia claimed hundreds of thousands of lives, created millions of refugees and came to an end only after a decisive investment of diplomacy, military intervention and humanitarian aid. I pay particular tribute to members of the British Armed Forces who gave their lives to bring peace to the Balkans. Our country can be proud of what it has contributed in stabilising that region.

As someone who has worked in foreign policy for many years, who was born in what used to be former Yugoslavia, who has friends in most countries in the region and who visits it frequently, I wish I could be more optimistic about its future. Our inquiry's report is effectively a warning about the consequences of years of neglect and misguided thinking in EU policy towards the western Balkans, and dangerous trends in the region that could have a significant impact on the long-term interests and security of the UK and the transatlantic alliance. It is a call for urgent and sustained preventive diplomacy from our country and our allies. I believe the Government share many of the committee's assessments, but I am not convinced that our commitment and engagement yet reflect the full gravity of the situation or that the EU as a whole has a united view, understanding and clear plan of action. I hope this will change and that our country will play a decisive role in that.

As things stand, since 2008 we, the EU and our allies the United States have progressively withdrawn our forces and our attention from the western Balkans, not because we have completed the task of stabilising the region—far from it—but because of the belief, justified in certain cases, that other issues demanded more attention from us: first Afghanistan, then Iraq, then the spread of international terrorism, and perhaps now Brexit. These competing priorities have driven the western Balkans down the agenda of the international community at a time when other negative trends and influences are on the rise in the region. The EU policy in particular has been grounded in hope, not reality, and in wishful thinking rather than coherent strategy.

I do not wish to overlook the progress that has been made in the region. Croatia is a member of the EU and NATO, Serbia is an EU accession country, Montenegro and Albania are NATO member states and Brussels is committed, at least on paper, to EU accession for other countries in the region. However, that is a narrative impeded by unresolved issues in a region that is being captured by nationalists in suits who have swapped the guns of the 1990s for the iPads of 2018 and public relations companies, in an environment where corruption is eating societies and democratic institutions from within. To be specific, the frozen conflict between Kosovo and Serbia has not been resolved and remains a political flashpoint. I hope the Minister will give a clear assurance today that Britain will not agree to the changing of Kosovo's borders or indeed any revision of borders in the Balkans. The issue of Macedonia's name has also yet to be resolved and, as a result, Macedonia's future remains hostage to Greek and Macedonian nationalists. In Bosnia and Herzegovina secessionists remain committed to the dismembering of the country, which, I deeply regret to say, continues with tacit political support and sometimes

[BARONESS HELIC]

even encouragement from some leaders in Belgrade and Zagreb—one reason, I regret, why Croatia was not a focus of our committee's inquiry.

There has been little progress in changing Zagreb's and Belgrade's goals in Bosnia since the Milošević and Tuđman days. Even now, Croatian politicians and their proxies in Bosnia in particular use the EU to drive through their destructive policies, while Serbia uses proxies in Bosnia in support of Russia to do its own work.

Lord Lea of Crondall (Lab): I thank the noble Baroness for allowing me a short intervention to ask her a short question about the federation. Is she saying that the people running Republika Srpska really are not playing ball with the federation and that the Bosniaks still have the fears that they did on that point?

Baroness Helic: The evidence that we have seen over the last 15 years points to the fact that certain leaders of small entities in Republika Srpska are hell-bent on breaking the country and seceding. Certain changes in their internal laws and steps that have been taken over the last decade point in that direction.

I am not arguing that the UK is responsible for everything that happens in these countries—far from it—but it has a fundamental national interest in preventing, with our allies, any part of the western Balkans from becoming a source of future conflict or instability. In our report we also document that, where the EU and the US have stepped back, other actors have stepped in, as the noble Lord, Lord Hannay, mentioned: Turkey, China, the Gulf states and, above all, Russia.

In January this year, the *Guardian* reported, and it was confirmed, that:

“Russian-trained mercenaries are helping to establish a paramilitary unit serving the Serb separatist leader in Bosnia”.

This comes a year after Russian intelligence was implicated in an attempted coup in Montenegro, in which mercenaries planned to storm the parliament, assassinate the President and prevent the country joining NATO. Luckily, they failed, the plot was discovered and Montenegro became a NATO member in June 2017.

Russia is also one of the major drivers for the rise of the far-right in Serbia. A few weeks ago, Radio Free Europe reported that 30 Serbian minors were sent to an “international military patriotic camp”, where they were taught to,

“navigate their way through woodland, handle weapons and prepare for war”,

by instructors from a Russian ultranationalist group. We should be under no illusion but that Russia's aim is to roll back what progress has been made in the Balkans and block any further EU or NATO engagement in or enlargement to the country.

In short, the western Balkans have become a playground for some of the least welcome influences, whether measured in terms of illegally imported weapons, the spread of fake news and disinformation, an injection of Chinese cash that feeds corruption, or the recent introduction of religious teachings that are entirely alien to the Balkan Muslim tradition—courtesy of Gulf money. These are the most corrosive possible

influences for a fragile region and its young and untested democratic institutions, and only the European Union, NATO and our allies acting together can counteract that.

I welcome the fact that the Prime Minister has been clear about the threat posed by these destabilising influences in Europe and the Balkans. I also welcome her visit to Macedonia—the first by a UK Prime Minister since 1999—the increase in UK ODA spend in the region and our commitment to the over-the-horizon reserve force.

I hope that, as we leave the EU, the UK ODA-eligible funds currently committed to the western Balkans through the EU will remain committed to the region. I should be grateful if my noble friend can give that assurance. I also hope that he will assure the House that our military commitment will be sustained to underpin the diplomatic and political investment made in the region as an important element of deterrence.

Of course, I greatly welcome the Government's commitment to the July summit here in London and its stated goals, but I put it to my noble friend that we have not yet galvanised our EU partners to respond to the full scale of the challenges emanating from the region. Sadly, we will lose some of our ability to directly influence EU policies towards the western Balkans after our exit from the Union, so the summit is our big opportunity to inject the urgency and direction that has been lacking for many years. As our excellent diplomats at the FCO work on preparing the summit, I urge my noble friend to do everything he can to make this a course-changing moment. In particular, I call on the Government to use the UK's soft-power tools to break the news disinformation that has been unleashed by Sputnik and Russia Today in the region. We need more, not less, BBC News in the western Balkans, amplified through the linear service.

I also welcome the work done by the UK on Bosnia's map, and I encourage the Foreign Office to persevere. There are some among our NATO allies who are, sadly, more concerned about Russia's reaction than the right of a sovereign country to apply for membership and the right of the alliance to objectively assess it. This is misguided. Russia has never been a Balkan power. While there are understandable Orthodox Christian links between Serbia and Russia, religion has been used as a convenient justification and excuse to undermine stability and what progress has been made there.

I conclude with a historical reflection. The western Balkans summit will take place on the anniversary of the Srebrenica genocide. In July 1995, Bosnian Serb army units attacked the eastern Bosnian town and murdered more than 8,000 Muslim Bosniaks—mainly boys and men. Twenty-three years later, as we prepare for the western Balkans summit, I ask my noble friend to urge all its participants to demonstrate that events like Srebrenica are truly behind us; that those on whose behalf those crimes were committed will disown them; and that those who have suffered will be able to forgive them. Above all, I hope that we will all resolve not to allow the repetition of any such crimes and violence in Bosnia, in the region or elsewhere.

2.30 pm

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, it is a very great pleasure to follow the noble Baroness, who has been an inspiration to me. I thank her for her very kind words, but she underestimates the huge advantage I had from an excellent international strategy, some outstanding international partners and, above all—I pay tribute to them here—some very, very brave Bosnian politicians, who were partners to the process of reform in which we were engaged.

I shall touch on that in a moment because I have to say that all that work has been very largely wasted away in the last 10 to 12 years. First, I am privileged to take part in this debate, and to have given evidence as a witness to the committee for its excellent report which I commend to others. I am sure noble Lords will understand if I concentrate for a moment on Bosnia and Herzegovina. Here I have to say, perhaps a little more bluntly than I dared to for the past 12 years, that frankly the last 12 years of international policy in Bosnia and Herzegovina have been a disaster. I shall enumerate why and outline one very profound and extremely dangerous threat that now confronts us.

Over those years—it just happens to be coincidental with my leaving—the international community’s policy changed. For the first 10 years of Bosnia’s existence post the Dayton agreement, Bosnia was the poster boy for post-conflict international integration and rebuilding. We made more progress on that than in any other nation on earth. Then in 2006, the European Union changed its policy. Instead of being involved actively, muscularly from time to time, and using its influence, it engaged some—I know who it was; I will not be ruder than I need to be—fool who decided that this was the moment to withdraw and leave everything to local ownership. Everybody who knew anything about Bosnia knew perfectly well that, from that moment, the centripetal forces that we had generated would reverse. As Bosnia was not yet in a stable state, the centrifugal forces would take effect, and that is exactly what happened. Nationalism has risen; secessionism is more in order; we are now moving towards a definite intent, although a hidden one, to create the conditions in which secession can take place. Bosnia and Herzegovina cannot be broken up, as at least two of the leaders of the nationalist ethnicities are now intending to do, without bloodshed. For reasons I shall give in a moment, the European Union is now an unwitting partner in that. We have got just about everything wrong.

First, I depended utterly on the strong EU-US partnership, which has weakened over time. By the way, I was in Washington for the last four years—four days, not years, thank God!—and was pleased to discover that there was a new mood at a lower level in Washington to begin to work with the European Union on something, and the west Balkans is a primary candidate. I know that that view is understood in the Foreign Office, and I hope that we will take advantage of this moment to put together that strong partnership with the EU in Brussels. I used to say that if we stand together across the Atlantic and stand united, there is nothing we cannot do in the Balkans and in Bosnia. But if we are divided, as we have been, there is nothing we can do.

Secondly, we have abandoned a regional policy in favour of a penny-packet policy—the so-called regatta principle—where we deal with each country individually, and the first to get across the finishing line gets to Europe. That denies you all the regional linkages you can use to get things done. What matters in the Balkans is not what happens, but the connection between the things that happen. If I wanted to move things in Bosnia, I did not just go to Brussels; I went to Belgrade and Zagreb. Playing those linkages is a crucial way of getting policies through. If you want to deal with Republika Srpska’s irredentism and secessionism, go to Belgrade; that is your key leverage. However, we have abandoned that. We have believed, quite wrongly, that Kosovo is the key vital ground of the Balkans. It is not. Kosovo is the modern version of Schleswig-Holstein. It requires time, and only time will solve it. We need only hold the ring and show strategic patience, and Kosovo will solve itself. The powder trails that blow the Balkans up are two, and one is Macedonia—I am very glad indeed to see progress made there, although that is a bit tenuous over the last couple of days—and the second is Bosnia, from which we have withdrawn. As I shall say in a moment, that leads to an extremely dangerous situation in my view.

Thirdly, we have lost our focus in Bosnia. I used to say, and I still believe it to be true, “You cannot save the maiden unless you are prepared to kill the dragon”—and the dragon in Bosnia and Herzegovina is dysfunctionality. We have done everything but address dysfunctionality of the light-level state, which can deliver to its citizens the thing that you want the citizens to have and that build loyalty to the state. So much is going on so many levels of government and so much is vanishing in corruption, and dysfunctional states give the opportunity to disturb, as they are doing, and to cause turbulence. It gives a space in which Russia and, who knows, perhaps Turkey, can play mischief. But if you build a functional state, as we did by creating a single army, intelligence service, customs system, independent taxation authority and judiciary, those are the beginnings of a functional, light-level state. We have done anything but address that; we have stuffed the dragon’s mouth with gold, in the hope that he will behave nicer, and snuck up behind him, saying that this is not about functional change—it is just about economic reform—and hoped that he would not notice. The result is that Bosnia has continued to go backwards, and that has given opportunities to the secessionists and those who would break the place up to make sure that the country is ungovernable.

So here we are now: this is the situation. I know perfectly well, because they have been perfectly open, about what they intend to do. Both the Prime Minister of Republika Srpska and the leader of the Croat nationalist party are following the policies of the President of Montenegro, Milo Đukanović, whose policy and strategy was to make unworkable the relationship with Serbia until we, the international community, gave up patience and said, “Oh, all right, have your independence”. That is the policy that they are following, and they are winning. We are not taking the initiative. We have spent £20 billion in Bosnia and had 22 years of engagement, yet the initiative is with

[LORD ASHDOWN OF NORTON-SUB-HAMDON]
 them not us. They set the agenda and we respond, because we will not tackle the issue of how to build a functional, light-level state. You cannot save the maiden if you are not prepared to risk killing the dragon, and the dragon is dysfunctionality.

We should bear in mind that the European Union has more instruments of leverage and political pressure in Bosnia than in any other nation on earth, with a huge aid programme, an EUSR and a high representative with Bonn powers, although we could never use them again as we did in the past, obviously. And there is a police mission—yet we have lost the agenda. We have now to regain it in Bosnia and Herzegovina. By the way, one of the best ways in which to do that is to isolate the recidivists. I cannot imagine why anybody gives house room to Mr Milorad Dodik, who is determined on splitting up Bosnia and Herzegovina and destroying our policy. Yet we receive him in Brussels and in European capitals and we allow his lobbying organisations space to be represented. Every time you do that, you confer on him the respect of the international community, which reads only one way—that we are more interested in having him in than they are in being in the European Union.

We have been on the back foot for far too long, and now the European Union, which ought to be our primary instrument, is being used as an instrument in the hands of the recidivists and secessionists—unwittingly, because people have not spotted what is going on. Let me explain. We have acceded to the entry of Croatia into the European Union. Every single Croat citizen of Bosnia and Herzegovina is entitled to a Croatian passport. They have no further interest in Bosnia and Herzegovina, because they now get their freedom and citizenship status in the European Union through their Croat citizenship.

In 1995, I sat next to Franjo Tuđman at the 50th anniversary of VE Day. He had drunk a little bit too much white wine, to be honest with you. I asked him at one stage what was the future, and he drew me a map on the back of a menu—it is called a “mapa na servijetu”—of the Balkans. He drew a picture and drew a line down it and said, “This is Croatia, this is Serbia”. “Where is Bosnia?”. “No Bosnia”. Then he drew a little circle around Sarajevo and said, “The Muslims can live there”. I took that map to the International Criminal Tribunal. I told Douglas Hurd about it and released it at the time of the great Croat offensive, which had the effect of alerting the international community. We are now delivering exactly—inadvertently, sleep-walking, through the European Union—the greater Croatia of Tuđman’s dreams.

The Croat president, the other day, turned round to Croat citizens in Bosnia and said, “Just understand that your first identity is Croat, not Bosnian”. As if that were not bad enough, we are now about to do exactly the same with Serbia. Serbia is now at the front rank of reaching the European Union. When it does, every Serb citizen in Bosnia and Herzegovina will have a double passport: a Bosnian passport and a Serb passport. And every one of them will be able to have the full benefits of European citizenship. They will have no interest in the state of Bosnia and Herzegovina, because they do not need it. There will be no price to

pay for obstructing the process of Bosnia, because they have another country to look to. Do we not realise what we are doing? In these circumstances, we are recreating the greater Serbia and the greater Croatia, with the Bosniak Muslims isolated in the middle. That is exactly the situation that started 1992. It will not happen again, because the Bosniak Muslims will not allow themselves to be isolated in the midst of their enemies. It is bound to go to conflict.

Sometimes, we confuse ourselves by dealing with ethnicities. There is no difference between the Croat, the Serb and the Bosniak; the only difference is their religion. Let us look at it, then, in religion terms: the inadvertent result of the European Union’s current policy—unless it changes—is that the Roman Catholics in Herzegovina will get to Europe and have a future there, the Orthodox religion of the Serbs will get to Europe and have a future there, but the Muslims in the middle will be isolated. Has nobody any idea what that means in terms of the geopolitical consequences today? This is a very serious problem that will blow Bosnia and Herzegovina apart. We have to find a solution to this. My own one is that, the moment we introduce or allow accession to Serbia, we should say that the right of full European citizenship applies to citizens who live in Serbia, but that citizens who have their double citizenship and live in Bosnia should not be allowed to get those full rights of European citizenship until Bosnia itself has fulfilled the standards to reach the European Union.

This is a profoundly dangerous situation. We are acting as the unwitting deliverers of the policies of Tuđman, Mladić, Karadžić and Milošević—by mistake; we do not mean to, but we are sleep-walking into it. I simply say that if we hold a European summit, as we are about to do, and we do not begin to address this problem, that summit will not be worth the name of a European summit, because it will have failed to begin the process of turning us away from that very profound danger.

2.43 pm

Lord Balfe (Con): My Lords, at a time like this you realise why it is sometimes unfortunate to be placed in a certain position on the speakers list. I rise to thank the noble Lord, Lord Hannay, for his introduction, only to realise, in comparison with him and our last two speakers, how little I know about the subject beyond a layman’s prejudices. But I will make one or two observations that I hope the Government will take on board.

First, on the subject of NATO, I found the Government’s response frankly disappointing. Under “Euro-Atlantic integration” they say:

“We agree that, providing Bosnia and Herzegovina and Macedonia meet the requirements for NATO membership, their accession would be a welcome step towards greater stability in the Balkans”. I do not have the expertise of the last two speakers, but I must say that I was struck by the sheer complacency of that statement. It is then followed by three paragraphs about Macedonia.

I hope that the Government realise that last October the entity of Republika Srpska made a proclamation of military neutrality that was deliberately aimed against NATO membership and which specifically referred to

military alliances. If we extend NATO membership much further, we are in danger of devaluing it altogether. We are already in a position where Article 5 guarantees are pretty meaningless over large swathes of membership, and, with reference to Bosnia-Herzegovina, I certainly do not see that it is anywhere near being an acceptable ally to allow into NATO.

On Macedonia, in paragraph 43 of our report we say that the Government should support this, with or without the name issue being solved. I am sorry, but there is a thing called the Greek veto, and it will not be solved without the name issue, so we should be doing all we can to support the current talks, which at last look as though they might head in the direction of a solution.

As regards Serbia, I do not see that there is any will or wish in Serbia to join NATO. I was in Belgrade last year and was struck, first, by the number of people who seem to be rather fond of the Russians, and, secondly, by the sheer outright hostility towards the European Union and the West. They have not forgotten the bombing and what happened in the area and still bring it up on many occasions. We need to take that firmly into account. Kosovo, of course, is not widely recognised by a number of NATO and EU members. I agree that in the end that problem will probably solve itself—but it is a problem.

Briefly on EU membership, I agree with the noble Lord, Lord Ashdown, that the EU has made a complete mess of the area. I also agree with Jean-Claude Juncker that there should be no further expansion for a good period of time. The EU has overreached itself, largely because it wished to stabilise the former Soviet bloc countries of eastern and central Europe. It allowed countries into the EU which, frankly, should never be there. The level of corruption which one still finds in Bulgaria and Romania is quite unacceptable to EU values. In the minds of some people, what is clearly needed is a sort of waiting room, not a situation in which we import more conflict and division into the EU. I remind the Minister, although it is slightly off the point in the context of this report, that Croatia and Slovenia, which are EU members, have shown themselves quite incapable of accepting the rule of international law in border disputes. So I do not agree that postponement is not in the UK's interest. However, whether it is in the UK's interest or not, we are in the process of leaving the European Union.

That brings me to another point in the government response. When talking about aid, they say:

“After our exit from the EU, we will have more say over how we target UK funds previously channelled through EU programmes, thereby enhancing the flexibility and impact of our spend”.

What does the Minister mean? Is he saying that the money we have spent through the EU we would not otherwise have spent in the way it has been spent in the past, which is why we need more flexibility—or that we will no longer co-operate with the EU in how we spend our money? Will there no longer be any political co-operation? Or is this just Foreign Office words for saying, “We’re leaving the EU, we’re not going to have much influence, but we’d better put the best show on that we can”? I suspect it is probably the latter.

In closing, perhaps I may make one other point. China is, as I have said on many occasions, the biggest challenge to our values and to what is going on in the West. In paragraph 83 of our report, we quote Timothy Less, one of our witnesses, who said that,

“if China was not willing to put its money into some of these big infrastructure projects, nobody would, and the Balkans would not have the new railroads, ports, roads, factories and other investments which the Chinese are currently financing”.

That is a statement of fact—and the fact of the matter is that China is beginning a foreign policy in the West and we seem to be sleep-walking into it. We have an obsession with Russia but we do not really look at what China is doing. I predict that, in 10 to 15 years' time, we will wake up and find that a lot of Governments, particularly those in the Balkans, will have huge debts to China and will effectively become Chinese, not Russian, proxies in western foreign policy.

The Russians do not have the money or the influence and, above all, they are not particularly liked. The Chinese are playing a very subtle and very clever game. They are not tying any political demands to their loans and they are almost the equivalent of the payday lender: it is easy to get the loan but hard to get out of the dependency relationship. I counsel that the Foreign Office should, with our colleagues, have a very close look at the consequences of Chinese involvement in the western Balkans, Greece and a number of other countries, and at the impact that this could have on common foreign and security policy, in so far as we have any, after we have left the EU.

2.51 pm

Baroness Coussins (CB): My Lords, it is my privilege to serve on the International Relations Committee and to have been part of the inquiry that produced this report, including visiting Kosovo and Macedonia. I place on record my sincere thanks to the clerk, the policy analyst and the special adviser, who were all invaluable in helping to shape and steer our work.

I want to focus on what the report concludes about the role of civil society in helping to achieve and sustain stability across the region and within individual countries, and also on the role that the UK can play in enabling that.

The importance of civil society, in the form of the many NGOs with which we met and about whose work we heard, emerged very strongly in our meetings and evidence sessions, and related in particular to young people and to women. What also came across strongly was how much the UK's role was welcomed and valued, especially in providing technical support and training to help improve a whole range of objectives essential to a post-conflict society, including the rule of law, through training for the police and the judiciary, anti-corruption, the participation of women in public life, and in education.

One example was the meeting we held in Pristina with the Kosovo Women's Network and the Kosova Rehabilitation Centre for Torture Victims. It was striking that both these NGOs represent the interests of all ethnic groups, and that is one reason why NGOs are often so important: they straddle boundaries and obstacles which still impede progress by political parties and traditional structures. In the case of the KWN and the

[BARONESS COUSSINS]

KRCT, the focus is on justice for and the needs of survivors of sexual violence during the war in Kosovo, including domestic violence, and the treatment and rehabilitation of torture victims. They were keen above all that we should understand the frustration they felt about the enormous volume of evidence of cases of sexual violence which is currently held by EULEX—“a Pandora’s box of testimony”, they called it—and which should be bringing perpetrators to justice and some kind of closure for the victims, but on which action is blocked because Kosovo is not recognised by some EU member states, as we have heard. They asked that the UK should facilitate the transfer of this body of testimony to the United Nations, where it might be safeguarded and stand a better chance of being acted on. There was clear recognition that the UK had a particularly credible reputation on this issue, as well as on domestic violence because of our PSVI initiative, and that we could also be expected to offer concrete help in the form of training for judges and other court officials on dealing with violence against women. What specific action is being or can be taken to follow this up and build on our excellent PSVI work in this region, following the review of EULEX?

Similarly, in Macedonia we met representatives of the La Strada programme, where the NGO Open Gate works to combat the trafficking of women—or, in fact, as we learned, mostly children, as the majority of victims are girls under 18 being trafficked for prostitution. We were told that there was a lack of understanding of international human rights standards and case law in this area and, again, that training and support to help to improve the knowledge and skills of relevant professionals would be helpful and could be provided by the UK. Could the Minister say what funding and other kinds of assistance are being provided to Open Gate? Will the Minister undertake to ensure, as the report recommends, that the programme for the western Balkans summit in July in the UK will explicitly include support for, and the involvement of, NGOs and civil society, very much in the same way as was done recently as part of the Commonwealth Heads of Government Meeting? More than just including NGOs in a fringe event, I mean really using them to shape and participate in the mainstream agenda.

As far as young people are concerned, we found that the overriding question is whether they can be persuaded to remain in the region or whether they will seek a better and more prosperous life and opportunities elsewhere. The obvious argument was that a more resilient economy would be a decisive factor in creating the conditions in which young people were more likely to stay, so British investment and trade, currently at a relatively low level, was heartily encouraged. In Macedonia, the Deputy Prime Minister stressed the priority of achieving NATO membership as the key factor that he thought would lead to greater economic investment. I also endorse the need, already expressed by my noble friend Lord Hannay, for Her Majesty’s Government to support and assist in any way that they can the case for NATO membership for Macedonia.

We met the National Youth Council of Macedonia, which represents the interests of 15 to 29 year-olds and has good links with the British Youth Council. Its

members were strongly committed to remaining in their country, but we met others in Kosovo aged 13 to 17 who did not have strong identification with Kosovo as an independent state, describing and defining themselves either as Albanians or as Serbs but not as Kosovans, and almost all with the vision of leaving to study, work and live elsewhere.

Across the region, though, we saw how important it is for the UK to continue to engage in improving educational opportunities for young people, and the soft power value of investing in training for future leaders—for example, by expanding the Chevening scholarships and encouraging students from the western Balkans to come to the UK for higher education. In this context, even though I appreciate that the Minister is speaking today for the FCO, I ask him if he will undertake to speak to his colleagues in the Home Office on the issue of students and immigration figures. Once again, as your Lordships have found in several other reports from Select Committees, this came up loud and clear in this inquiry too. The Government’s response to the report is regrettably silent on the issue. We recommend that international students should not be treated as economic migrants; it is unnecessary and self-defeating, whether in relation to the western Balkans or anywhere else.

In conclusion, I emphasise the importance of maintaining and deepening the UK’s engagement in the region, and doing so irrespective of our membership or otherwise of the EU. There are many ways in which our historic involvement and our skill set as a nation can offer a positive, even unique, contribution to developing democracy and stability in the region, in our mutual interests.

2.59 pm

Lord Bowness (Con): My Lords, I congratulate my noble friend Lord Howell of Guildford and his committee on this informative review of the situation in the western Balkans—or, as some in the region prefer, I am told, south-east Europe. I thank the noble Lord, Lord Hannay, for his comprehensive introduction to the report. I regret that I cannot bring the insight of my noble friend Lady Helic or the noble Lord, Lord Ashdown, to this subject but I nevertheless believe that the report is timely and that we have cause to be concerned about developments in many of the countries in the region.

As the report highlights, there is an ongoing risk of political, religious and ethnic conflict, nationalism and instability in a number of the countries. The threats and problems are well set out by the committee. The attention Her Majesty’s Government are now paying is welcome but, while they give assurances about our ongoing commitment to the region and support for the aspirations of the countries of that region to be members of the EU, I cannot see how our exit from the European Union will do other than make that more difficult. We intend to be deeply involved and may well try very hard, but we will be doing it from outside the EU.

My noble friend the Minister may refer me to the *Framework for the UK-EU Security Partnership*, which covers a number of the issues that are of concern in this area. However, that seems to be dependent upon

negotiations and largely aspirational—perhaps he will point me to where it is not—and obvious questions will flow. How will we, as a third country, ensure that enlargement of the European Union to include the western Balkans will remain high on the EU agenda? The countries of the region have valued the UK's resolute support for their inclusion into the EU and, despite the reservations of my noble friend Lord Balfe, I still believe that the prospect of EU membership is a driver for reform and the building of democracy in the region.

The new commission's strategy for the Balkans is welcome but we will not be there to follow it through. How will we influence EU decisions over the accession of Serbia, a candidate country? How can it be admitted while it remains at best ambivalent and at worst hostile towards Kosovo, whose own European destiny remains in question while the problem with Serbia remains unresolved and other member states of the EU fail to recognise its independence?

How are we going to deal with the name question of Macedonia, to which reference has already been made? Yes, we have influence in NATO, but where will our influence and voice be in the councils of the European Union? How are we going to influence the European Union on foreign and security policy when Serbia deals with Russia in arms and other matters? These are EU matters over which we will no longer have a direct influence. The Government's intentions are good but, unless something remarkable emerges from the negotiations over our future relationship with the EU, we will lack the ability to directly influence events.

I declare an interest as a member of the OSCE PA—the Organisation for Security and Co-operation in Europe Parliamentary Assembly—one of its vice-presidents and a former leader of our delegation. The western Balkans has been noted for some time by the assembly's special representative in the region, Mr Battelli of Slovenia, as a cause for concern for all the reasons that have been discussed today and in the committee. The only reference to the work of the OSCE in the report is at paragraph 66 where its activities in Macedonia are mentioned. Otherwise the organisation gets no mention. The Government's response is similarly reticent, only mentioning OSCE as one of the partner organisations with which we will work in the future.

Why does this matter? It is somewhat surprising as the OSCE, which is doing much work in the region, has missions or presences in Albania, Bosnia-Herzegovina, Kosovo, Montenegro, Macedonia and Serbia. To give your Lordships some idea of the significance of the OSCE in the region, I cannot do better than refer to its 2017 annual report. I will not try to enumerate all the work of each mission in each country, but it can be seen from the report that the work is varied. It includes helping states to improve their capacity to fight serious and organised crime, helping to prevent the trafficking of people and drugs, helping to build democracy and the rule of law, working with elected officials, school administrators, teachers and parents to reform education systems, monitoring violations of free expression in the media, and supporting judicial and constitutional reform. It does this to a greater or lesser extent in all

the countries I have referred to. I shall give just one specific example: the demilitarisation programme saw the destruction of more than 90 tonnes of unstable conventional ammunition in Montenegro. The OSCE works to improve democratic procedures and to safeguard human rights through the work of its Office for Democratic Institutions and Human Rights as well as through its representatives for freedom of the media and for national minorities.

I am aware of the difficulties experienced in the OSCE, despite the dedicated work of our permanent representation in Vienna under the guidance of our ambassador, Sian MacLeod. The need for consensus and the obstruction of the Russian Federation makes the work difficult, but I ask the Minister to confirm that, despite the difficulties in its operation, HMG recognise the existence of the OSCE as a vital partner in the region, that they recognise that greater demands are being made on the resources of the organisation—particularly in Ukraine, which is not the subject of our debate today—and that our zero-budget approach may not be appropriate in these new circumstances. All the issues that the OSCE deals with are of concern, and expressed to be so in both the report and the Government's response.

In the new global United Kingdom to which we aspire outside the European Union, the OSCE, stretching as it does from Vancouver to Vladivostok and encompassing 57 participating states, is an organisation we should support and perhaps ensure that its work is better known. The ministerial council meets only once a year in December. After a number of requests from the British delegation, in 2010 the Foreign Office started to issue a Written Ministerial Statement after that meeting, which was the only communication with Parliament about the OSCE's work. I am therefore very disappointed that no such Statement was issued after the last Vienna ministerial meeting last December. Will my noble friend the Minister confirm that the practice will be reinstated, since if the Government do not attempt to inform Parliament about the work of the OSCE, its profile will remain low, even below the radar of parliamentarians, never mind the wider world?

3.07 pm

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Lord, whose views I share. I will touch on some of those as regards the UK's position on Brexit before I turn to my own remarks. It is certainly not my place to answer on behalf of the committee or on our report, but I can assure the noble Lord that our valued colleague on our committee, the noble Baroness, Lady Hilton of Eggardon, shares service in the OSCE parliamentary assembly. She raises the role of the OSCE on a regular basis. When I accompanied her on our split committee visit to Bosnia-Herzegovina and Belgrade, the contribution made by the OSCE was frequently raised by her with those we met.

If the entire western Balkans were one country, its gross domestic product would be about €96 billion, the same as Slovakia and barely over half that of Scotland, while the population would be less than that of Romania. The host of last week's EU western

[LORD PURVIS OF TWEED]

Balkans summit, the Prime Minister of Bulgaria, Boyko Borissov, asked whether the region represented the “big fear” and whether it is threatening the European Union. Donald Tusk drily responded by saying:

“When it comes to troubles per capita, the western Balkans are much bigger than, for example, Germany and France together”.

During the committee’s deliberations, one witness commented from the sidelines that at the moment we are suffering from a capacity issue within our foreign services. The number of crises that can be managed by our diplomats and officials is now almost at exhaustion. As said by my noble friend Lord Ashdown, given that lives are not regularly being lost, it is understandable—but depressing, in a way—that the eye has been taken off the ball somewhat.

However, the complexities are such that we should continue to see this as not simply a historical lesson, but one for our modern age. I witnessed them quite clearly and reflected them from the thrust of what my noble friend Lord Ashdown has said in previous contributions and writings. I saw first hand a situation where the Government of one country believe that they are the legitimate Government of citizens of another country. That is no different from what we have seen in parts of north Africa and the Middle East. There are common issues—not least those that were debated in the Chamber yesterday on Northern Ireland—and common factors that require us to address this in a much more assertive way. For allowing us to navigate some of these complexities, I pay tribute, as other committee members have done, to our clerking staff, witnesses and specialist adviser, Professor Kenneth Morrison; his knowledge and understanding helped us greatly.

In advance of the inquiry’s commencement, I read my noble friend Lord Ashdown’s diaries of his time as a high representative. Listening to his contribution today, as well as that of the noble Baroness, Lady Helic, it was clear in my mind that we are now at the start of the third phase after the conflict. There was considerable progress in the first decade, there was a decline in the second and we are now at the pivotal stage of making decisions in the third. If President Juncker is correct that the Commission may well be looking at the entry of Montenegro and Serbia at the end of its next period in 2025, it will be doing so on the 30th anniversary of the tragedy. As other committee members have said, and as the underlying warnings in our report’s conclusion suggest, we cannot take this decade of success for granted. Indeed, I hope that the Minister will respond positively to my noble friend’s clear warnings.

I felt that we had two broad themes in the inquiry. The first, which was addressed to me recently by Dr Kate Ferguson of the charity Protection Approaches, is that the last period has been about the inadequacy of our response to not just a post-conflict scenario but a post-trauma one. We are living through that trauma now in the wider Mediterranean and Middle East region. The complexities that we are failing to address now will grow even greater.

Our report’s conclusions broadly endorse the often-quoted observation of my noble friend Lord Ashdown that the Dayton agreement was good for a cessation of

violence but not for creating sustainable governance. We have seen limited progress over the past 20 years, primarily in the first decade where there was economic growth and the establishment of tax authorities and other representative bodies. Even though that was as painful as my noble friend indicated, those bodies were nevertheless established and started to function, along with elections and peace.

In the context of world-leading levels of youth unemployment—Bosnia has the highest levels in the world—we are also seeing the state capture of institutions, which is not seen anywhere else on the continent or in the world, and organised crime with tentacles that reach as far as the UK, north Africa and beyond. Only two places in the world have negative development, and one of them is in Europe. Visiting that place allows us to say that the current level of action is not sufficient. As other committee members have indicated, and as is clear in our report, the troubles per capita to which Donald Tusk referred include those associated with state capture, where we continue to see powerful individuals and small groups of individuals monopolise control of state institutions, political parties and state-owned enterprises. On our visit, we saw clearly their malignant influence on the media and the private sector, too.

With 62% youth unemployment in Bosnia and Herzegovina, the brain drain of young people and the level of pessimism outlined by the noble Baroness, Lady Coussins, one of our more depressing findings was that it is arguably in the elite’s interest that this is not addressed. The state capture thrives on the inadequacy of policy responses which might undermine it, hence the inherent tensions in the debate on EU membership and whether they are in a position where they are likely to meet the requirements of the *acquis* or whether our intervention levels are now sufficient to allow them to do it. We need to support those at high levels within the western Balkans who see this clearly as a way of developing their own countries.

We met an official from one of highest levels in the Serb Government who said that they need membership of the European Union to save them from themselves. This was a *cri de coeur* from very serious people who I believe are genuine in their view that European Union membership is critical to the future of their nations. There is a degree of self-awareness there which is undermined by the lack of functioning architecture, as my noble friend Lord Ashdown indicated.

It was therefore no surprise that we saw the Sofia priority agenda agreed last week at the EU western Balkans summit. The top two priorities were tackling corruption and rule of law. However, experts with far more knowledge than me found some of the language used at the summit by key European Union partners slightly confusing. The official summit communiqué expressed,

“unequivocal support for the European perspective of the Western Balkans”.

Let us compare that rather delphic phrase with the declaration of the first EU western Balkans summit in Thessaloniki in 2003, which provided clarity in stating:

“The future of the Balkans is within the European Union”.

President Macron referred only to “anchoring” the western Balkans to Europe. Chancellor Merkel called for a clear membership “perspective”. If I may refer again to my noble friend Lord Ashdown’s diaries—I doubt that it will do book sales any good, because I borrowed it from the House of Lords Library and my noble friend chided me for not buying it—it is clear that what was of assistance in the first decade was there being a British Commissioner, a British Secretary-General of NATO and a British high representative able to communicate freely with authority at every step. That is not there at the moment. Also worrying is the lack of clarity, even from last week. We hope that the UK position can be very clear.

However, how can the UK position be clear on espousing the benefits of European membership when our narrative is almost exactly the reverse? Of course, the United Kingdom has a role in supporting good governance, in security, in transparency in the operation of the media, in fighting corruption and in all the areas in which it can lead—no doubt the Minister will say that is a critical part of the agenda. But how can our fundamental narrative be with regard to the EU as the key driver—on chapter 23 of the acquis, on judiciary and fundamental rights; on chapter 24, on justice, freedom and security—when we are saying that it is not sufficient for the United Kingdom’s future? I hope that the summit will be a success, notwithstanding Britain’s current position in our debate on Brexit.

Finally, the two Members in this debate who have the deepest knowledge and experience, as other Members have said, perhaps gave the most pessimistic view of the future. I see it not necessarily as pessimism but as a realistic warning based on their life experience and their professional judgment. It is not pessimism because both outlined key actions that can be taken to address the situation. I hope the Government will respond and that—with others, particularly the young people we met at the round table and in evidence we received on our committee visit—in the third phase of the post-trauma recovery of this European crisis, the actions taken in London in July will herald a more beneficial third decade than was the second.

3.20 pm

Lord Collins of Highbury (Lab): My Lords, I thank the noble Lord, Lord Hannay, for introducing this excellent report. It shows the value of the Select Committee’s ability to focus on areas that we have perhaps not been giving sufficient focus to because of all the other crises that we face in the world at the moment. It has certainly been an excellent debate. I believe the committee is right to press the Government to continue to play a leading role in the western Balkans even after the UK has left the EU.

While Brexit makes it more difficult, as we have heard, to project a common message across the region, it is essential that the United Kingdom and the EU 27 do so, particularly in light of the increased activity of Russia and others. The report echoes the sentiment of many who believe:

“The Government must not allow our leaving the EU to be presented as a rejection of those values and standards”, that are required by EU membership, difficult as that is. I absolutely agree with that analysis.

Witnesses to the committee were uncertain as to the current role played by the US. The noble Lord, Lord Ashdown, highlighted this. I too ask the Minister what plans the Government have to engage with senior officials in the US Administration to re-establish American support for the reform process across the western Balkans?

The committee found that while witnesses had different views on the danger posed by Russian interference in the region, Moscow’s,

“effect has been to slow progress towards good governance and the region emerging as fully democratic”.

The Government have taken a tough stance on Russian interference in other parts of the world but have said relatively little in relation to its activities in the western Balkans. I hope that today the Minister will be able to reassure the House that where Russia’s involvement in the region goes beyond what is appropriate, the UK will use all available diplomatic avenues to challenge such behaviour.

Like the noble Lord, Lord Bowness, I believe there is huge value in the EU accession negotiations providing safeguards on democracy, rule of law and freedom of expression. We are on a journey here—the noble Baroness, Lady Helic, reminded us of the terrible journey the Balkans have been on—and we need to make sure that the end destination is about the rule of law, freedom of expression and democracy. I also agree with the focus of the noble Baroness, Lady Coussins, on civil society. It is extremely important that we encourage states to meet their requirements and that local society is able to put pressure on their Governments. Here, I acknowledge the work of the Westminster Foundation for Democracy, which has done so much in the Balkans. I hope the Minister will be able to reassure us of the Foreign Office’s ongoing commitment to fund projects there. Civil society is important, not just political parties but, for example, women’s groups and trade unions; actually, human rights are often more protected by those groups than by political parties.

As the report notes, Croatia’s influence in the region is not entirely positive. I had the welcome opportunity to have a preview of the speech of the noble Lord, Lord Ashdown, when I listened with huge interest to the “Today” programme and heard him articulating what he has said this afternoon. But when John Humphrys challenged him on the answer to this complex and multifaceted situation, the noble Lord was not able to give an immediate, straightforward response, because, as he acknowledged in the debate, there is not a simple answer to these complex issues. They are not simply about sectarian communities or religion—they are far more complex. But I agree completely with his conclusion in the debate that the progress to EU accession should not be focused on only two of the countries in the region. We need to look at the Bosnian situation.

Last Thursday, EU leaders and the leaders of the six western Balkan partners agreed the Sofia Declaration, in which the partners aligned themselves with reaffirming their support for EU membership aspirations. Donald Tusk stated very clearly:

“I don’t see any other future for the Western Balkans than the EU ... there is no plan B. The Western Balkans are an integral part of Europe and they belong to our community”.

[LORD COLLINS OF HIGHBURY]

We need to translate those words into a much clearer programme of action, particularly setting out that road map for accession. At the summit Theresa May restated,

“the UK’s desire to work with European allies to promote greater stability, security and prosperity across the region”.

Are we certain that the UK is unconditional in that commitment? Of course, the Prime Minister has used Britain’s security capability as a bargaining chip in the Brexit negotiations, and still refuses to rule out a no-deal outcome, undermining the promises made in her Munich speech and during her recent visit to Macedonia. I hope the Minister will take this opportunity to reassure countries in the western Balkans, and our EU and NATO allies, that the Government do not want a no-deal outcome and that there are no circumstances in which the UK would withhold co-operation on matters relating to security.

Obviously, NATO is an important part of the security architecture. Unlike the noble Lord, Lord Balfe, I believe it is promising that many of the western Balkan nations are either members or prospective members. However, the situation in Serbia, which does not seek NATO membership, and Kosovo, which, as we have heard, is not recognised as a state by some NATO members, requires a level of diplomatic management that we are not accustomed to seeing from Boris Johnson. As the noble Lord, Lord Hannay, said, it is welcome that the western Balkan summit on 10 July will have a greater focus on security and tackling corruption and organised crime, compared to the previous Berlin summit. However, does the Minister agree that it is important that this becomes a regular theme of such summits, rather than a one-off initiative?

It is also promising that the Government’s response recognises the importance of bodies other than the EU, including the UN Security Council and the OSCE, which the noble Lord, Lord Bowness, referred to. While the Government point to the UK’s involvement in EU missions in the region, it is not clear on what terms, if any, the UK will continue to participate in such initiatives after Brexit. Clarity on this issue is absolutely essential. I hope that today the Minister will give us a bit more clarity, and a clear commitment to long-term support for the countries of the region.

3.31 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I join all noble Lords in thanking my noble friend Lord Howell for tabling this debate and for his committed work as chair of the International Relations Committee. On the same basis I add my thanks to the noble Lord, Lord Hannay, for introducing this debate in such an expert manner. This is an ongoing issue in debate and discussion. I also thank all members of the committee for producing a report which was thorough and useful. It raises questions, some of which I hope I can shed further light on.

The report, *The UK and the Future of the Western Balkans*, drew attention to an important issue which impacts our own continent. I therefore agree with my noble friend Lady Helic that this is a particularly

timely debate, coming soon after the EU western Balkan summit in Sofia and, of course, the Prime Minister’s visit to Macedonia last week. As my noble friend said, this was the first visit by a British Prime Minister to the region in almost 20 years and was made in the context of current developments on the ground, which were expertly and, may I add, poignantly reflected upon by the noble Lord, Lord Ashdown. In some respects, there is the hope of positive outcomes but I share the point made about the reality by the noble Lord, Lord Purvis. There was a reality in the contributions this afternoon, particularly from the noble Lord. This has also been a timely opportunity for noble Lords to contribute ahead of our own western Balkans summit in London in July, which I will come on to in a moment.

The committee’s report states that the western Balkans remains,

“of great and continuing importance to the UK”,

and that:

“We have significant interests in supporting stability and prosperity in the region”.

Let me assure noble Lords that the Government agree with this assessment. The UK’s commitment to the western Balkans is long-standing and has not been without sacrifice. Since 1992, as my noble friend Lady Helic reminded us, 72 UK service personnel have lost their lives bringing peace to the region. I know that all across your Lordships’ House will join me today in paying tribute to them for their sacrifices.

Let me also join in the tributes to those here today, most notably the noble Lord, Lord Ashdown. Like the noble Lord, Lord Collins, it was part and parcel of my morning drive-in to hear his dulcet tones draw attention to this important issue on Radio 4. In acknowledging his work and contributions, I also acknowledge the vital work of my noble friend Lady Helic, in particular her sterling work, along with my noble friend Lord Hague, on the initiative on preventing sexual violence in conflict, which I am now proud to lead. I know that the noble Lord, Lord Robertson, is not in his place but I also wish to acknowledge and put on record our thanks to him for his work in this important area. All noble Lords whom I have mentioned have played a vital role in bringing peace and stability to the region, and we have seen their continued commitment today.

We recognise there has been some concern in the region—it has been expressed in your Lordships’ House today—that the UK’s departure from the EU might lessen our commitment to the western Balkans. I assure noble Lords that that is simply not the case. The Prime Minister herself pledged in her Munich speech in February that the UK would remain,

“just as committed to Europe’s security”—

a point raised by the noble Lord, Lord Collins—

“in the future as we have been in the past”.

I assure the noble Lord, Lord Hannay, and my noble friend Lady Helic that the Prime Minister took the same message to last week’s Sofia summit, reassuring EU and western Balkans leaders of the UK’s continuing commitment to promoting prosperity, security and stability in the years ahead. That commitment, and

the continuing importance of our strategic role in the region, is best illustrated by our forthcoming western Balkans summit.

I first wish to look at the key challenges that face the region. Many noble Lords rightly focused on the important issue of security. I share many of the views expressed by noble Lords on the threats facing the region or emanating from it, whether terrorism and violent extremism or serious and organised crime, including the trafficking of people, drugs and firearms. These are as much a threat to the UK as they are to the region, a point well addressed by my noble friend Lady Helic. That is why we are at the forefront of work with the EU and other international partners to address those challenges.

We have launched an expert-level UK-western Balkans security discourse, which is shaping our security engagement with the region. The first meeting explored ways to increase co-operation against corruption, promote criminal justice reform and combat money laundering. The second, in March, which I am delighted to say was opened by my noble friend Lady Helic, focused on how to increase our co-operation to counter violent extremism.

No less grave is the threat of Russian interference, a point raised by the noble Lord, Lord Collins. The Government remain deeply concerned that Russia is taking a more aggressive approach in order to disrupt the region's Euro-Atlantic accession path. The Russian-backed attempted coup in Montenegro in October 2016 was a brazen example of the Kremlin's willingness to use force to foment chaos and instability. We have seen Russia acting in the western Balkans but also across Europe in a whole variety of ways. Part of that is about propaganda and the use of disinformation. We have also seen cyberattacks and the very real attack that took place in Salisbury with the use of a nerve agent. We therefore welcome the firm actions taken by our allies, including a number of partners in the western Balkans, as a result of the attack in Salisbury. It is vital that we maintain a common front in the face of this threat, building our resilience and calling out malign behaviour wherever we see it. The countries of the western Balkans can expect the full co-operation of the UK in the years ahead to build and strengthen the institutions needed to tackle this challenge. This is part of our unconditional commitment to Europe's security.

While we certainly do not rule out further Russian interference, we do not believe that it has to be that way. That is why we continue to engage with Russia and to urge it to play a more constructive role in the region. For example, as a member of the Bosnia and Herzegovina Peace Implementation Council Steering Board, we hope that Russia will work with us to stop anti-Dayton and anti-constitutional activities, which, as the noble Lord pointed out, are destabilising. In the meantime, we are intensifying our security and defence engagement in the region, including by increasing our over-the-horizon reserve force for the Balkans from a company to a battalion, as the Defence Secretary announced last November. I hope that will reassure my noble friend Lady Helic. We are also sharing expertise to help increase the region's resilience to cyberattacks.

My noble friend raised the growing influence of Gulf states over the years, whether in commerce or tourism, and we are monitoring those issues very closely. The number of Saudi-funded mosques and schools has increased across the Balkans. I assure my noble friend that, as the Foreign Office Minister responsible for countering extremism, I am monitoring that area very closely.

The second issue, which several noble Lords spoke about in detail, is the importance of stability. Political instability is a key challenge to the future progress of countries of the region, much of it stemming from the unresolved disputes and the continuing legacy of the 1990s conflicts that the noble Lord, Lord Purvis, referred to. The Government, like many here today, remain concerned about the current situation in Bosnia and Herzegovina. I assure the noble Lords, Lord Ashdown and Lord Purvis, and my noble friends Lady Helic and Lord Bowness that, when we look towards accession—issues were raised about Serbia's EU accession in particular—Serbia's EU membership remains some way off, as the Commission's strategy has set out, and it will not be before 2025.

Lord Ashdown of Norton-sub-Hamdon: My Lords, I thank the Minister for those encouraging words. It is of course true that Serbia's accession is five or six years off at best, but he should not underestimate, as I am sure he does not, that people, particularly in places like Republika Srpska, will be responding to the possibility of joining the EU, through Serbia rather than Bosnia, well ahead of events. That is already causing an underpinning to the obstructionism that we see taking place in Banja Luka. So I ask him not to take too much comfort from the fact that it is coming down the tracks at some distance; it is influencing events, and not in a helpful way, even today.

Lord Ahmad of Wimbledon: I assure the noble Lord that when in his contribution he drew the comparison with Croatia, that issue was not lost on me. It is something that I have taken particular note of. It is important, when we talk about accession and the future, that we talk about the nation of Bosnia and Herzegovina.

We also share the concerns about stability in Bosnia and Herzegovina itself. That is why we continue to support the country's Euro-Atlantic accession and remain active in the country. We do not support the redrawing of any borders in the country and consider any attempts to secede unilaterally or abolish any entities to be unacceptable; as the noble Lord, Lord Ashdown, reminded us, that would contravene all previous accords. We continue to urge the country's leaders to reach agreement on electoral reform amendments in order to avoid a constitutional stalemate after October's elections. Divisive rhetoric will only move the parties further from a solution and the socioeconomic reforms that the country needs so badly.

I referred earlier to the initiative on preventing sexual violence in conflict, which was launched in the region, most notably in Bosnia and Herzegovina but also in Kosovo. Since the start of our work in 2013 in Bosnia and Herzegovina, there has been a marked increase in prosecuting conflict-related sexual violence

[LORD AHMAD OF WIMBLEDON]
cases from the 1990s. Bosnia and Herzegovina's courts have now completed 116 cases involving charges of conflict-related sexual violence against 162 defendants. This is more than any other country in the world. As the Prime Minister's special representative on this issue, I am looking shortly to visit Bosnia to assess progress in this regard, and I will be working closely with my noble friend Lady Helic. A couple of months ago I met with a former President of Kosovo who is leading this initiative there. In the interests of stability in the region, we also believe that urgent progress is needed for Serbia and Kosovo to normalise relations. We continue to support the EU-facilitated dialogue to secure a comprehensive and lasting solution that benefits both countries.

My noble friends Lady Helic and Lord Balfe also raised the name issue regarding Macedonia. A solution to that issue would bring enormous benefit to both countries as well as increasing regional security. During her visit last week, the Prime Minister welcomed the progress that is being made in both countries. I assure noble Lords that it is the Government's position that toying with any borders on the basis of ethnicity is dangerous, and we have already seen the tragic consequences of such a policy in the 1990s.

The third element is strengthening the rule of law and governance in the region, which, as we have all acknowledged, still needs much work. Through our political and diplomatic engagement and indeed our technical assistance, we are working to tackle these issues. For example, we have quadrupled our technical assistance to Macedonia this year to strengthen the rule of law and governance, supporting Prime Minister Zaev's ambitious reform programme. My noble friend Lord Balfe and others raised the issue of Macedonia joining NATO. The UK has recently given assistance for further defence reform.

In Kosovo, we launched a new project to support fair and transparent recruitment for senior heads of public institutions. In Bosnia and Herzegovina, we are working with the police and security agencies and with state-level judicial institutions to strengthen their independence, professionalism and efficiency—a point raised by the noble Baroness, Lady Coussins. This should strengthen the fight against terrorism, organised crime and corruption.

We have also increased our programme funding for our defence commitment post Brexit—a point raised by my noble friend Lady Helic and the noble Baroness, Lady Coussins, from £27 million to £40 million in this financial year. I say to the noble Baroness that projects specifically on the rule of law have been bolstered. We continue to raise our concerns about rule of law and corruption with political leaders across the region. We are also working with partners such as the British Council, mentioned by several noble Lords, and the Westminster Foundation for Democracy, mentioned by the noble Lord, Lord Collins.

We will use the London western Balkans summit to work with our partners to address all those issues. The noble Lord, Lord Hannay, specifically mentioned the importance of making it work and asked about the importance of trade and DIT engagement. My right honourable friend the Secretary of State for International

Trade will open the start-up games, which will bring entrepreneurs together on 9 July at the western Balkans summit. The noble Lord also asked about a visit to the western Balkans or any country there. I do not have my right honourable friend's diary to hand, but I shall write to the noble Lord. I assure the noble Lord of my right honourable friend's continued commitment to the important area of the west Balkans.

Let us not forget, as my noble friend Lady Helic pointed out, that the date of the west Balkans summit will coincide with the anniversary of the massacre in Srebrenica. I have visited Srebrenica myself, and it is chilling to see what took place there, but I am also pleased that our Government, and our country, mark this event and, as an initiative, continue to do so.

Looking ahead, we remain of the view that the EU accession process is important to help the countries of the western Balkans become more stable and secure and able to act on a rules-based system. The noble Lord, Lord Collins, and the noble Baroness, Lady Coussins, raised the issue of NGOs at the summit. As someone who, as Minister for the Commonwealth, saw the benefit directly, I can say that we are certainly working closely with civil society and youth groups to develop the summit agenda and will ensure that civil society and young people from the region are well represented and heard by political leaders at the summit. As those details become clearer, I shall certainly feed in noble Lords' contributions in this respect.

We will also continue to support the western Balkans through international organisations. My noble friend Lord Bowness talked about the OSCE. I have attended various meetings. He made some very important points about ensuring that we increase our presence and contributions. We are certainly doing all that. I shall need to write to him on why there was not a WMS after the Vienna meeting; I found his suggestion both sensible and practical. I also assure the House that I will take back to the Home Office the suggestion from the noble Baroness, Lady Coussins, about immigration figures for economic migrants.

In conclusion, the western Balkans matters for UK and European security. That is why we are increasing our engagement with the region. I assure noble Lords that our departure from the European Union will not lessen this commitment, as can be seen by our hosting the western Balkans summit this July.

On a personal note, I give this commitment. I recall the conflict vividly. I remember the contribution of the noble Lord, Lord Ashdown, on the ground, but I also recall it because I visited the region. I had just embarked on a career in the City. I remember visiting one of the camps in Hungary, in a town called Nagyatád, near the border. There I met the chap who was acting as my translator, Ozerad Sükilovic. I remember the name very well. He had been a victim of the Bosnian war. As I worked with him, my immediate intention was to return. I went back twice to that region. Challenges confront us today in Bosnia-Herzegovina and I totally take on board the important points of the noble Lord, Lord Ashdown, about ensuring that there can be no complacency.

As I left on my second trip, Ozerad said to me, “Tariq, you know that engagement and involvement from countries that are part of our continent matter”. He looked me straight in the eye and said, “You know what, above all else, when all is said and done, it is because it gives us hope”. That hope cannot be lost. Therefore, I believe that our expertise, our long-standing relationships and increased bilateral programme and presence mean that we will remain a leading and influential player in the region. We remain committed to supporting stability, democracy, the rule of law and prosperity in the western Balkans now and in the future.

I welcome the immense expertise we have heard in this afternoon’s debate. But, as the noble Lord, Lord Ashdown, reminded us, it is vital that, as we move forward on the important agenda, and look towards building lasting peace, stability and security, we build that peace, strengthen that security and prosperity for all the peoples and citizens of the western Balkans.

3.51 pm

Lord Hannay of Chiswick: My Lords, I thank all those who took part in the debate. I thank in particular the three spokesmen from the Front Benches, who demonstrated very clearly that this is not an issue that divides parties in any way; it is an issue that unites us all and it is a discussion, therefore, about method and process, not about objective. That is very valuable.

I, too, recall the massacre at Srebrenica. I was the Government’s representative on the UN Security Council at the time, and I have to say that it was not our proudest hour. But that is behind us, and we must ensure that it never happens again. I thank all others who participated; it has been an extremely valuable debate. We had two wonderfully expert contributions from the noble Lord, Lord Ashdown, and the noble Baroness, Lady Helic, which did something to convince even the most sceptical that expertise is of value to this House and to the nation as a whole. I am grateful for that and for the coverage by other speakers—the noble Lord, Lord Bowness, on the OSCE angle, the noble Lord, Lord Balfe, on the EU accession angle, and my noble friend Lady Coussins on civil society. It was a very good spread of contributions.

I will make only a couple of small points. First, on the issue of EU membership, which the noble Lord, Lord Balfe, raised, I do not think that it is at all helpful to continually tell the countries of the western Balkans how long it will be before they can join. That is not a message that encourages them to put their backs into the process of the accession negotiations. I thought myself that the contribution made by the President of the Commission when he took up his job and said cheerfully that he could guarantee to everyone that none of these countries would actually join while he was President of the Commission—in which he will be proved triumphantly correct—was not very useful. It is just as bad to tell them that they will be in by a

fixed date before you know that they can complete the process. Somehow we have to find a balance between those two.

Secondly, on the EU angle, I think that we have to be honest with ourselves. If we do not understand that, by leaving the European Union, we are diminishing our influence in this region and diminishing our capacity to affect the thing that matters most to them, which is joining the European Union, we are deluding ourselves. But admitting that we are losing some influence does not mean—I am not criticising the Government here—that we have none left and therefore do not have a job to do. I am very glad that the Minister was so trenchant in what he said about the job that we intend to go on doing. But we are more likely to be effective if we recognise that we are taking a loss of influence, and we will have to work very hard to compensate for that.

The question of EU accession, which we are not well placed either to influence or to propagate, because of our own position, is absolutely essential. It is now understood that some earlier accessions left too many loose ends and did too little to nail down the commitments that were required of the newly acceding countries. Although I do not think that we will have much say in that, I really hope that the 27 European Union members will find ways of facing up to the conundrum that you can get a lot of commitments out of a country before it joins but it is extraordinarily difficult to implement them and bring about their enforcement after they have joined. That is not easily solved, but it does need to be solved.

I conclude by saying that there is no magic solution to the problems of the Balkans or a simple solution to the problem of the dysfunctionality of Bosnia and Herzegovina or to the dispute of Serbia and Kosovo over the geographical limits of Kosovo: there is no simple answer to that. There is only one straightforward answer—that, collectively, the European Union and other European countries such as ourselves must persevere. We must not take our eye off the ball; we must continue to be heavily engaged in this. In that respect, I merely ask the Minister as a final request that, when the Balkan summit takes place and the Government have met the commitment they entered into, to put down a detailed plan and list of all the things that we are going to do over a substantial period ahead, he could send that to the International Relations Committee of this House, which has made it the centre point of the report that we are debating this afternoon. That would be a great help; it would enable us to comment on it and would, I think, maintain the extremely good relationship that has been struck up in the drafting of this report and in its handling by the Government and in the comments on it by the three Front Benches.

With that, I conclude, since I am now the only person standing between this House and the Recess.

Motion agreed.

House adjourned at 3.57 pm.

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