M. le président de la Cour,

Mesdames et Messieurs les Membres de l'Institution,

Mesdames et Messieurs,

Dear Ian,

In any professional organisation, people come and go. That is how it is and how it should be, also for our jurisdiction. Even so, some departures are not normal. They can be unwanted and inexpedient. We have such a situation before us today. Unfortunately, as a group we have to implement decisions which were not taken by us, but for us. Your departure is a direct consequence of the decision of the UK to leave the Union. This decision was taken in a democratic manner and must therefore be respected, especially by judges who are responsible for ensuring compliance with the rule of law. The rule of law will be the theme of my modest goodbye speech this evening. A theme that I will address in three different ways.

First, dear Ian, you have a special relationship with the rule of law. During your whole professional life, you have been working to promote this noble cause in your elegant, light hearted, polite yet very determined manner.

During your career as a private practitioner in the UK, Brussels, Luxembourg, Greece, the United States and elsewhere, the law was not only a means to defend *con brio* the interests of your clients, in cases such as Magill, IMS, Glaxo, Microsoft and Chalkor, just to name a few which continue to resonate in our case law. The law and especially European law was and still is a passion that led you to set up your own boutique law firm (Forrester & Norall), speak at numerous conferences and write so many articles. You always had a clear view as to the wider legal context in which cases arise, and in which they are pleaded and decided. Although I do not have any evidence to support my intuition, I am sufficiently confident in saying that you are the type of lawyer who would advise his clients that it could be unwise to bring an action that may well be in the client's short-term interest, but that would ultimately undermine the greater good.

Due process, fairness, checks and balances and, obviously, in depth judicial control are values that you have defended inside and outside courtrooms and regardless of your commercial interests. I can say on behalf of all of those who, like me, had the privilege to listen, work and compete with you, that you were a class apart.

In 2015 you joined our court, a place you quickly made your home. You refer to it as a fascinating place, where law, cultural and legal traditions, and characters from various origins converge. The step to Luxembourg was a natural one to make at that stage of your career. Your experience, enthusiasm and humanity served our Court well, very well indeed. You dealt in a relatively short time span with many cases (80 as a reporting judge and 150 as judge assessor). I selected a few, mostly because they dealt with some fundamental principles.

Let me start with your work in cases dealing with restrictive measures. In *Al-Ghabra/Commission*, T-248/13, and *PKK/Conseil*, T-316/14, you were the reporting judge. These judgments confirmed the importance of the obligation for the EU Institutions to state reasons. Moreover, a judge should be able to verify whether the grounds held against a listed individual are well founded, in particular by having access to the underlying evidence. If the listing of a person at EU level is based on an underlying national decision, the Council must examine whether the facts and circumstances, which led to the adoption of that decision, are still relevant when the EU adopts its own listing decision.

Due process should prevail, even in terrorist cases. As Ian told us repeatedly, due process not only serves the cause of the defendant, but also the interest of the administration, for the very simple reason that procedural safeguards lead to better decision making.

Even though due process is important, it cannot be an end in itself. This is the gist I infer from *1&1 Telecom/Commission*, T-43/16, a case which concerned a complaint filed by a company that considered that the merging parties, whose concentration had been authorized subject to conditions, had not respected their commitments. The letter of the Commission informing the complainant that it did not agree with his position does not constitute a challengeable act. In the absence of a specific procedure foreseen by the legislator, the administration cannot be compelled to take a formal and challengeable position on complaints dealing with commitments. Due process is a great good, but it does not grant judges the power to institute new procedures. The rule of law also applies to the judge.

Obviously, my selection of cases is far too short and imperfect. I focused on restrictive measures and competition cases, but as all judges at our Court, you also dealt with trademark and staff cases. An example is the Philip Morris Brands/EUIPO case (T-105/16). It concerned the way in which the boards of appeal must exercise their discretionary power as regards the production of

new evidence. Even if evidence is not produced on time, the principles of sound administration may compel the board of appeal to accept it nevertheless, if it contains information that may be decisive for the outcome of the case. Here again, due process helps to take better decisions.

Apart from your judicial work in individual cases, I would also like to pay tribute to you, dear Ian, for your role at our plenary sessions. Your witty, wise and appeasing interventions will be dearly missed. I know that this holds true for us all, but in particular for me since the 27th of September of last year. You always reminded us that judges should focus on judicial work, also when they gather in the plenary session.

Ian you will be missed.

The second issue relating to the rule of law which I would like to highlight concerns your country, the UK. Brexit is about more than your departure. It also means the loss of a very rich legal tradition, which has contributed to the shaping of the case law of both EU courts. For the General Court this contribution, I submit, has been very important in competition cases, especially competition cases involving fines.

The curiosity of the system of administrative enforcement of the EU competition rules is that the defendant before the Commission becomes the applicant before our Court. It therefore falls upon the party who incurred the fine to show that the Commission's decision was illegal. Obviously, this is a choice made by the legislator, which judges must respect. Even so, judges may seek to accommodate the system to make it fairer. Clearly, all legal traditions seek to promote fairness in administrative proceedings.

In my view however, the common law tradition adds a specific procedural dimension to the concept of fairness: the executive is a party before the judge as any other party. There is no reason why public authorities should, as a rule, benefit from privileged procedural positions, either as an appellant or as a defendant.

This also applies when it comes to issues like access to evidence used in court proceedings. With this idea that public authorities are a party as any other party, also comes the respect for the barrister as an independent representative. She or he defends a subjective cause, but, acting on either side, her or his words should be trusted.

Beyond Britain's contribution to the European melting pot of legal traditions, I would also like to raise another, more general point, concerning your country. I think that all Europeans, British people included, agree that the process leading to the departure of the UK was a highly divisive process gnawing at the very foundations of one of the world's oldest democracies. Even so, despite some attacks against the rule of law, Britain is and remains a democracy where this rule prevails. Losing a partner like that during a moment of our history when other forces seek to set the rule of law aside is unfortunate.

Ian, we will miss your country's legal tradition.

Thirdly, what will Brexit mean for our court? Obviously, we will continue to see Ian and our British friends, but the UK is no longer a Member of the Union. As far as I can see, nothing will change very much in 2020. Title X of the Withdrawal Agreement provides us guidance.

Unlike the Court of Justice, which will undoubtedly be confronted with the interpretation of the Withdrawal Agreement, I expect that the UK's departure will not significantly affect the activities of the General Court in 2020. We are an administrative court reviewing the legality of the acts of the EU institutions. Even if these acts may concern the UK in terms of markets, rules and rights, the defendant will be an EU institution or agency. If a British issue arises in the context of a case brought against the EU, it will be a factual or legal matter, which our decision-making panels will take into consideration when drafting their judgments, but nothing more.

Admittedly, there were will be more to the UK's departure than the mechanical application of the Withdrawal Agreement. In these uncertain times, in which the rule of law is threatened and in which voices reminiscent of our dark past question the role of judges, our Court must be irreproachable in exercising its task. As often mentioned by Ian, in-depth judicial control and a rigorous respect for due process serves the interest of the Union by increasing the legitimacy of its action and conferring on it the moral high ground that allows it to act against those who undermine our common values.

Dear Ian, our Court will continue to serve the rule of law relentlessly.

These were the three points I wanted to mention.

Let me now finish my speech on a more personal note. I know how painful the Brexit process has been for you, our British colleagues at the Court of Justice and all British members of our staff who serve our institution so well. Please know Ian, how painful that process can be for a Dutchman. Ever since the beginning of the European integration process, it has been the policy of my country to get the British on board. It is said that President De Gaulle, who was opposed to the idea of British accession, even referred to the Netherlands, as “la chaloupe anglaise”. It is true that in many respects my country followed the Atlantic route defined by the British.

Now, history takes another course. Even so, whatever will happen, respecting the rule of law, in the UK and the EU, will and must remain our common value.