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**Roghchoiste Speisialta an tSeanaid um an Ríocht  
Aontaithe do Tharraingt Siar as an Aontach Eorpach**  
Tuarascáil Eatramhach ar Éifeachtaí Brexit  
Iúil 2021

**The Seanad Special Select Committee on  
the Withdrawal of the UK from the EU**  
Interim Report on the Impacts of Brexit  
July 2021





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do Tharraingt Siar as an Aontach Eorpach**

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**Seanad Special Select Committee on the Withdrawal of the UK from the EU**

**Interim report on the impacts of Brexit**

**July 2021**

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## Cathaoirleach's Foreword



“The Brexit referendum and the ensuing withdrawal process represents an extraordinary period in relations between the EU and the U.K. and indeed Ireland and the U.K. The four years that followed the UK’s vote to leave the European Union was a period of intense negotiation, with several extensions to the UK’s official withdrawal.

The Trade and Cooperation Agreement that will inform the future relationship of the UK and the EU was reached on the 24 December 2020. Not all aspects of the future relationship were thoroughly worked through and many outstanding issues remain. The Committee commenced its work in late 2020 and agreed that the impact of the post-31 December 2020 arrangements on various sectors would be central to its Work Programme.

The Committee sought to provide a platform for businesses, communities and civil society groups to discuss the impact of Brexit and the operation of the Trade and Cooperation Agreement. The intention of the Committee was to provide an in-depth and detailed analysis of the issues impacting people and businesses on the island of Ireland.

The Committee further sought to engage in inter-parliamentary relationship building and held a number of meetings with political representatives from Northern Ireland, the EU and the U.S. to gain an international perspective to the Committee’s work.

The Committee held a series of public hearings from December 2020 until June 2021 with relevant stakeholder groups. While it was clear that the withdrawal of the UK was going to have serious repercussions for Ireland, the Committee sought to identify the everyday issues affecting citizens and businesses across the island. Significant issues were identified throughout Committee engagements, some of which were only brought to the fore in the months following Brexit. These included impacts on trade flows and customs checks, mutual recognition of qualifications, education, health, citizens’ rights and data flows. In addition, particular issues arose surrounding the rule of origin and mixed origin products on the island of Ireland and surrounding the Protocol on Ireland and Northern Ireland, both of which continue to present difficulties in ongoing negotiations.

Six months into the operation of a new trading environment and a significantly altered political landscape, here is a better understanding of the true impact of Brexit and the issues flowing from the Trade and Cooperations Agreement that still require work. The Committee cannot overstate the need for a proactive, collaborative response to the implications arising from Brexit by all relevant parties to ensure a strong future relationship between the UK and the EU and the UK and Ireland.

The Committee has, in this Interim Report, provided solutions-focused recommendations and looks forward to its return in the Autumn where it will re-commence its examination in order to produce its final report by 31 December 2021. I commend this Report to Seanad Éireann with a request that the report be debated as soon as possible.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearings to give evidence for the Interim Report of the Committee. I would also like to thank the staff of the Committee Secretariat who assisted in the preparation of this report.”

*Lisa Chambers*

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Senator Lisa Chambers  
Cathaoirleach – July 2021

## **Establishment of Special Committee**

The Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union was established by a motion in Seanad Éireann on 16 October 2020 to:

- monitor Ireland's preparedness for all possible outcomes following the withdrawal of the United Kingdom from the European Union;
- examine the impact of the withdrawal on trade connectivity to the rest of Europe, in particular from potential blockages to the landbridge;
- analyse the impact of the withdrawal on the Irish economy and society in the immediate post-transition period;
- and engage with stakeholders, relevant institutions and elected representatives in the European Union, Great Britain and Northern Ireland, and the United States of America.

The Committee held a series of meetings with stakeholders between December 2020 and June 2021. Key findings of these hearings and the Committee's summary position and recommendations are included in this Interim Report. The Committee will recommence the stakeholder process in the Autumn and issue a final report not later than 31<sup>st</sup> December 2021.

## **Background and previous reports**

The 25<sup>th</sup> Seanad established a Special Select Committee on the Withdrawal of the United Kingdom from the European Union on 23 February 2017, to consider the potential consequences of the decision and the implications for Ireland. In particular, that Committee was to consider the following:

- the implications for the Irish economy of hard and soft exit scenarios;
- relations between the State and Northern Ireland;
- the citizenship rights of all the people of Northern Ireland;
- the Common Travel Area and the Border: movement of goods, services and people between the State and Northern Ireland and between Ireland and Great Britain;
- agriculture and fisheries;
- transport, energy and communications;
- welfare, health and education;
- and to such other related matters as the Committee may determine.

The Committee of the 25<sup>th</sup> Seanad published its final report entitled Brexit: Implications and Potential Solutions in June 2017.

On 4 July 2018 the Committee was reconstituted to consider the withdrawal negotiations of the UK from the EU and the implementation of the recommendations made by the previous Committee report in 2017. The Committee published a Progress report in December 2019 outlining the significant developments in the withdrawal negotiations between the EU and the UK. The Committee was dissolved on 31<sup>st</sup> December 2019, at which stage, the date for the withdrawal of the UK from the European Union was extended on three occasions. The work and reports of the previous Committee informed the work of the new Committee of the 26<sup>th</sup> Seanad.

The Withdrawal Agreement was signed on 24 January 2020 and came into effect on the 1 February 2020. A transition period followed that allowed time to negotiate a new partnership for the future relationship of the EU and the UK. Negotiations concluded on the 24 December 2020 and the transition period ended on 31 December 2020 with the UK no longer having access the EU's Single Market and Customs Union. The Committee commenced its work in late 2020 and agreed that the

impact of the post 31 December 2020 arrangements on various sectors would be central to its Work Programme.

### EU-UK Trade and Cooperation Agreement (TCA)

Negotiations on the TCA formally began on 2 March 2020 with nine formal rounds of negotiations taking place from March to October 2020 after which, negotiations intensified until final agreement on 24 December 2020. The TCA consists of a Free Trade Agreement, a close partnership on citizens' security and an overarching governance framework.

Timeline: From UK referendum to the new TCA <sup>1</sup>	
<b>23 June 2016</b>	UK Votes to leave the EU in national referendum
<b>29 March 2017</b>	UK triggers the formal withdrawal process based on Article 50 of the Treaty on the European Union
<b>19 June 2017</b>	Formal negotiations on the UK's withdrawal begin
<b>17 October 2019</b>	EU and UK negotiators agree terms on UK's departure – the Withdrawal Agreement
<b>1 February 2020</b>	The Withdrawal Agreement comes into force and the UK officially leaves the EU.
<b>2 March 2020</b>	Formal negotiations on the EU-UK Trade and Cooperation Agreement commence.
<b>24 December 2020</b>	Trade and Cooperation Agreement agreed.
<b>31 December 2020</b>	Transition period for the withdrawal of the UK ends.
<b>1 January 2021</b>	The UK no longer has the rights or obligations of being an EU Member State and the EU-UK TCA applies.

The TCA provides for tariff- and quota-free trade for goods originating in the UK and EU, protects the EU Single Market and Ireland's place in it, and provides a stable set of arrangements for international connectivity, including aviation and road haulage, co-operation on cross-border law enforcement, energy links, trade in services as well as goods and a range of other important areas such as UK involvement in EU programmes. It also mitigates the risks of a "no deal" scenario and the damaging implications that the introduction of costly tariffs could have had on imports and exports between Ireland and the UK. Following the TCA, the ESRI, with the Department of Finance, estimates that Brexit could reduce GDP by approximately 2.6% in ten years, which is a significant improvement of the projected reduction in the no-deal scenario. While this is a relatively positive outcome, there are still a number of negative implications for stakeholders including both households and businesses and these are set out in the body of this Report. The TCA was provisionally applied from 1 January 2021 and formally entered into force on 1 May 2021.

### Protocol on Ireland and Northern Ireland

The unique circumstances of Ireland and Northern Ireland in relation to Brexit was recognised throughout Brexit negotiations with strong emphasis given to protecting the Good Friday Agreement and the gains of the peace process and avoiding a hard border on the island. The special arrangements for these circumstances are set out in the Ireland and Northern Ireland Protocol, concluded in December 2020.

<sup>1</sup> [European Commission infographic](#)

The Protocol aims to provide a solution that:

- avoids a hard border between Ireland and Northern Ireland, thereby enabling the smooth functioning of the all-island economy and safeguarding the Good Friday (Belfast) Agreement in all its dimensions;
- ensures the integrity of the EU's Single Market for goods, along with all the guarantees it offers in terms of consumer protection, public and animal health protection, and combatting fraud and trafficking.<sup>2</sup>

The Protocol also provides for a consent mechanism which, after four years, will allow the Northern Ireland Assembly to vote to continue the application of the Protocol or to discontinue its application. In the latter case, the Protocol would cease to apply two years later. The Protocol is unique to Ireland among Member States and the operation of the Protocol and the practical issues arising for stakeholders was identified as core to the work of the Committee and related engagements with stakeholders are summarised in this Report.

## Committee Engagements

From December 2020 to June 2021, the Committee held a series of public engagements with relevant stakeholders as set out in Table 1 below. Links to the official transcripts of the engagements are also set out below.

**Table 1: list of public engagements with stakeholders**

<u>Date of hearing</u>	<u>Witnesses</u>
<a href="#">02 December 2020</a>	Simon Coveney TD, Minister for Foreign Affairs
<a href="#">16 December 2020</a>	Michael Russell, Cabinet Secretary, Member of Scottish Parliament Congressman Richard Neal, Chairman of US Congressional Ways and Means Committee
<a href="#">02 February 2021</a>	Colin McGrath MLA, Chairperson, Committee for the Executive Office, Northern Ireland Assembly Martina Anderson MLA, Committee for the Executive Office, Northern Ireland Assembly Emma Sheerin MLA, Committee for the Executive Office, Northern Ireland Assembly
<a href="#">09 February 2021</a>	Dr. Pat Ivory, Director of EU & International Affairs, Ibec Neil Willoughby, Senior Executive, European Affairs, Ibec Paul Kelly, Director, Food Drink Ireland (FDI)
<a href="#">15 February 2021</a>	Glenn Carr, General Manager, Rosslare Europort Barry Kenny, Corporate Communications Manager, Iarnród Éireann Eamonn O'Reilly, CEO, Dublin Port Company David McArdle, IRHA Treasurer John Nolan, IRHA Secretary
<a href="#">22 February 2021</a>	Dr. Alan Barrett, Director, Economic and Social Research Institute Dr. Martina Lawless, Research Professor, Economic and Social Research Institute
<a href="#">01 March 2021</a>	John O' Dwyer, Deputy Commissioner, Data Protection Commission Nicola Coogan, Assistant Commissioner, Data Protection Commission
<a href="#">08 March 2021</a>	Muiris O'Connor, Assistant Secretary General, R&D and Health Analytics Division, Department of Health

<sup>2</sup> [EU Commission Protocol on Ireland and Northern Ireland](#)

	Jonathan Patchell, Principal Officer, International Unit, Department of Health Emma-Jane Morgan, Principal Officer, Eligibility Policy Unit, Department of Health Catherine Donohue, General Manager, Commercial Unit, Acute Hospital Services, HSE Mark Regan, CEO, Kingsbridge Private Hospitals, Sligo & Belfast Damien Quigley, National Support Officer, Permanent Defence Force Other Ranks Representative Association Martin Bright, Deputy General Secretary, Permanent Defence Force Other Ranks Representative Association
<a href="#">10<sup>th</sup> March 2021</a>	Seanad Special Committee attended the Northern Ireland Assembly Committee for the Executive Office
<a href="#">22 March 2021</a>	Neill McDonnell, CEO, Irish Small Medium Enterprise Association (ISME) Damien Roche, Managing Director, Northern Ireland Retail Consortium (NIRC) Stuart Anderson, Senior Policy Advisor, Confederation of British Industry (CBI) Ken Nelson, Chairman, InterTradeIreland Kerry Curran, Assistant Director Strategy and Policy, InterTradeIreland
<a href="#">29 March 2021</a>	Julie Sinnamon, CEO, Enterprise Ireland Rowena Dwyer, Policy Planning & Gov. Relations, Enterprise Ireland Giles O'Neill, Brexit Unit
<a href="#">19 April 2021</a>	Dáithí O'Ceallaigh, Chair of the Institute of International and European Affairs UK Group
<a href="#">26 April 2021</a>	Simon Harris T.D., Minister for Further and Higher Education, Research, Innovation and Science
<a href="#">10 May 2021</a>	Gerry Harrahill, Commissioner, Director General of Customs, Revenue Commissioners Celine O'Neill, Principal Officer, Brexit Policy Branch, Revenue Commissioners Joe Ryan, National Director National Services, HSE Anne Marie Part, Assistant National Director for Environmental Health, HSE Louise Byrne, Head of Brexit & International Trade Division, Dept of Agriculture, Food and the Marine Hazel Sheridan, Head of Import Controls (Operations) Division, Dept of Agriculture, Food and the Marine
<a href="#">17 May 2021</a>	John McGrane, Director General, British Irish Chamber of Commerce Paul Lynam, Director of Policy, British Irish Chamber of Commerce Cillian Molloy, Policy Associate, British Irish Chamber of Commerce
<a href="#">24 May 2021</a>	Daniel Holder, Deputy Director, Committee on the Administration of Justice Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission Sinéad Gibney, Chief Commissioner, Irish Human Rights and Equality Commission Geraldine McGahey, Chief Commissioner, Equality Commission for Northern Ireland
<a href="#">31 May 2021</a>	Gerry O'Sullivan, Head of International Education, Higher Education Authority

	<p>Dr Aileen Marron, Erasmus+ Programme Manager, Higher Education Authority  Tim Conlon, Heady of Policy &amp; Strategic Planning, Higher Education Authority</p> <p>Jim Miley, Director General, Irish Universities Association  Nora Trench Bowles, Head of Lifelong Learning, Skills and Quality, Irish Universities Association</p> <p>Dr Jennifer Brennan, Director of Research Development &amp; Innovation, The Technological High Education Association</p> <p>Paul Hannigan, President, Letterkenny Institute of Technology  John Andy Bonar, Vice President for Research, Equality, and External Affairs, Letterkenny Institute of Technology</p> <p>Dr Michael Mulvey, President, Dundalk Institute of Technology  Dr Sheila Flanagan, Vice President for Academic Affairs and Registrar, Dundalk Institute of Technology</p>
<a href="#">08 June 2021</a>	<p>Barry Andrews, MEP  Ciaran Cuffe, MEP  Colm Markey, MEP  Maria Walsh, MEP</p>
<a href="#">14 June 2021</a>	<p>William Lavelle, Head of the Irish Whiskey Association  Conor Mulvihill, Director, Dairy Industry Ireland  Dr Mike Johnston, Chief Executive, Dairy Council for Northern Ireland  Barry Aughey, General Manager, Aughey Screen</p>
<a href="#">15 June 2021</a>	<p>Mairead McGuinness, Commissioner, Financial Services, Financial stability and Capital Markets Union, European Commission</p>

## Key themes

Prior to the UK's withdrawal the Committee held two engagements to ascertain levels of preparedness for Brexit and the mitigation measures for the impacts of the various scenarios while negotiations were ongoing. Following the UK's withdrawal on 1 January 2021, the Committee continued its work in identifying the impacts of Brexit and the following key themes emerged as areas where significant implications have arisen as a result of the UK's withdrawal from the European Union:

- Trade flows – impacts on haulage, businesses and households; Trade infrastructure;
- Protocol on Ireland and Northern Ireland;
- Mutual recognition of qualifications;
- Education and research
- Health – cross-border health implications;
- Data Flows – North and South and East/West;
- Citizens' Rights;
- Future relationship between the UK and the EU and the implications this may have for Ireland.

## 1. Trade Flows and Customs

The Committee engaged with a number of stakeholders in relation to trade and how the UK's withdrawal from the EU has impacted upon trade. It was made abundantly clear that in the weeks immediately following the UK's withdrawal in January 2021, the implications on customs checks and trade flows in and out of Irish ports was significant. Furthermore, during this period, businesses were struggling with the ongoing impacts and challenges of Covid-19. Commissioner Mairead McGuinness highlighted that the Trade and Cooperation Agreement (TCA) "*represents the best possible outcome given the UK's choice of a hard Brexit*" and that within those limits, there is access to the UK market with no tariffs.

However, despite a lengthy negotiation period, the late date of the final TCA greatly impacted preparation for businesses and stakeholders highlighted that for some, there was a "*misunderstanding that an agreement would mean no customs formalities*" and that there was "*a lack of clarity on what the UK formalities would entail after 01 January*".

Mr. Gerry Harrahill, Revenue Commissioner, outlined that the practical impacts of the withdrawal of the UK from the EU are significant for traders. Mr. Harrahill stated that the reality of trading with a third country is such that customs formalities now apply to all goods - irrespective of cost, value or origin - imported and exported to Great Britain, including goods that move through the UK using the transit procedure or via a distribution centre. This has resulted in a substantial increase in customs procedures and documentation for goods arriving into Ireland which may also now impose a tariff as well as VAT. All of these procedures must take place before goods are released for circulation. The Committee acknowledged that this presents new challenges for businesses which previously experienced trading within the Single Market.

Committee engagements in the initial weeks of the UK's withdrawal pointed to significant delays on imports to Ireland that arose as a result of the increased documentation and processing with customs that was now required. Several stakeholders highlighted significant levels of additional documentation required for the importing of goods across a range of sectors. This intensified the delays experienced in the immediate aftermath of Brexit. Mr. David McArdle, IRHA, outlined a number of new requirements that hauliers must provide for the flow of goods into Ireland from the UK:

*"Licensed hauliers have to meet a plethora of new protocols and requirements to keep goods moving, including securing some or all of the following: a master reference number, MRN; a pre-boarding notification, PBN; an entry summary declaration number, ENS, for safety and security; a transit accompanying document, TAD; an export safety and security declaration, EXS; customs checks, Department of Agriculture, Food and the Marine checks; and HSE checks."*

Stakeholders also highlighted the challenge of the automated import system (AIS) (of the Revenue Commissioners) for declarations which, apparently, due to the high volume of declarations, was failing regularly in the early weeks of the UK's withdrawal. Mr. McArdle highlighted that the systems for pre-boarding notification, PBN, new requirements for safety and security declarations were not working in the initial weeks and that the inadequacy of these resulted in the systems being overloaded and goods being blocked and delayed. Licensed hauliers had "*borne the brunt of these disruptions*". Mr. McArdle further advised:

*"The IT systems being employed by the Irish authorities are not working and require substantial revision to ensure they can be effective at clearing the backlog of goods stuck in the system and preventing such problems occurring again. The system is*

*being challenged at a time when import and export levels are lower than normal due to pre-December stockpiling. The systems will collapse entirely once trade volumes are restored. It is deeply frustrating that despite the long lead into Brexit, the systems and approaches being operated by the Irish authorities to manage post-Brexit trade are not fit for purpose and are frustrating rather than facilitating trade.”*

The Committee acknowledged, however, that since mid-March the issue with the AIS has been resolved due to system improvement measures that were implemented by Revenue. Furthermore, stakeholders pointed to increasing familiarity with declarations and paperwork as also having an impact on the increased efficiency at ports since the weeks of delays seen in January. However, stakeholders highlighted further issues with IT systems claiming a lack of efficiency in the IT systems between Departments and State Bodies such as Revenue, the HSE and the Department of Agriculture, Food and the Marine. Mr. John Nolan, IRHA advised that critically:

*“The agencies involved also have separate IT systems. For imported loads where the Department of Agriculture, Food and the Marine and HSE are concerned, because Customs and Excise is always concerned, it is necessary to send documentation to three different places.”*

The need for more efficient systems appears to be particularly relevant at Dublin Port where the agencies are not located in the same terminals and therefore a lack of efficient communication network creates further delays. The Committee noted that the IT systems used at Dublin Port are not linked and that, as such, hauliers and agents put the same information onto different systems. This lack of prompt or automatic notification then has a knock-on effect in delaying a truck leaving the port.

The Committee agreed that the development and utilisation of one centralised processing system would allow ports to operate more efficiently and Members acknowledged the stakeholder view that agencies should be relocated to one area at Dublin Port to avoid delays associated with the completion of paperwork. In light of the issues experienced, the British Irish Chamber of Commerce suggested the establishment of a single access window for customs to limit the bureaucratic burden on trade and customs agencies. A single access window or a designated senior point of contact that would offer traders one entity for administrative, customs and licensing requirements and would help to limit unnecessary delays. The Committee agreed that a “one-stop-shop” approach would provide an immediate improvement to paperwork issues at ports. Members also noted that, in the months following this initial phase of delays, Revenue has been and is working on various systems to increase efficiency in this regard and to provide more automated services for those in the haulage sector to improve communications and efficiencies at ports. Ms. Celine O’Neill, Revenue, outlined that:

*“We have a number of developments in train or that have already been released. One of the key concerns from the sector was the manual provision of information. We have developed a number of application programming interfaces, APIs, to allow their computer systems to talk to our computer systems, thereby to reduce the number of interactions and manual interventions. That work is well under way and it is being discussed with the relevant stakeholders.”*

Ms. O’Neill further outlined concerns in relation to confidentiality and privacy concerns and highlighted the requests from the sector and the concerted effort to respond to those requests:

*“One of the big requests from the sector as well was to be able to see the details of the pre-boarding notification, PBN, that has been provided to Revenue so that the haulier will have a record of all of the different declarations that were included in the PBN, so we will be making that available as well.”*

The Committee commended the ongoing improvements to the systems in use at ports and agreed that progress in this regard should be continued to provide more automated services and more efficient trade flows for Ireland in the longer term.

Given the importance of communication in the trade sector following the impacts of Brexit, the British Irish Chamber of Commerce suggested that a UK-Ireland port and transit forum be established for all major stakeholders in the UK and Ireland port and transit sector. A forum would allow for greater collaboration and discussion and provide a platform to address issues of concern. The Committee agreed that collaboration in this regard would provide the best possible outcomes and solutions to ensure that trade flows on the island are maintained to the highest efficiency.

Stakeholders highlighted that increased costs and administrative disruptions are, again, likely to arise when the UK implements its full customs processes later in the year, particularly in the food and drink sector for those products that require veterinary certification. The Committee noted the ongoing negotiations in relation to sanitary and phytosanitary (SPS) products and a veterinary agreement in relation to the movement of such products. Members agreed that achieving an agreement would be a great advantage that could reduce the need for additional costs and administrative requirements. However, the Department for Agriculture, Food and Marine stated that a veterinary agreement would not resolve the issues that have been raised in relation to documentation and custom checks:

*“It is important to note that such an agreement is unlikely to have an impact on the controls that apply to plants and plant products. Nor is it likely to have an impact on the requirement for documentary and identity checks as already described. What it would potentially impact is the frequency of the physical checks required. At present, the EU has a veterinary equivalence agreement with only three of the many countries it trades with, namely, New Zealand, Canada and Chile. The conclusion of a veterinary agreement with the UK depends on the UK Government agreeing to keep its food safety and animal health rules permanently aligned with EU rules, something which, to date, it has indicated that it is not prepared to do.”*

Mr. Paul Lynam, British Irish Chamber of Commerce, highlighted that the main issue around the negotiations for a veterinary agreement is that *“the EU is asking for dynamic alignment for the UK going forward, so it would have to align to future changes regardless of what they may be, while the UK just wants a mutual recognition to be put in place.”* Furthermore, Mr. Lynam advised that agreeing *“a framework going forward on common high standards based on the existing standards that are in place could lead to a veterinary agreement”*.

The Committee were of the view that an agreement would be very welcome and could solve many of the issues going forward in terms of the difficulties with the Protocol. Mr. Barry Andrews, MEP, stated that on the issues of SPS measures and veterinary agreement *“the EU has provided a very good solution whereby there would be a temporary alignment until such time as the UK feels it needs to diverge from the EU’s SP standards relating to food safety and animal health”*. The Committee acknowledged the current uncertainty surrounding the potential for an agreement on SPS goods and the ongoing discussions in this area, and agreed that further examination of this will be necessary in the future engagements of the Committee for reflection in the Committee’s final report.

## 1.1 Infrastructure

The Committee noted that although stakeholders pointed to the digitisation and administrative procedures as the main area for reform, some infrastructural changes or developments are also necessary. The Committee agreed that essential changes to infrastructure should be supported and noted the views of Maria Walsh, MEP who stated that the Brexit adjustment reserve which will be used to support economic sectors, business and local communities, could be used to enable this. While there are some areas that will require additional funding, Mr. McArdle highlighted that small, practical changes could have a significant impact on delays and costs for Dublin Port:

*“As far as Dublin Port is concerned, when goods return to the levels of 2019 and 2020, with the customs formalities, the ferry times should be looked at. Four or five ships carrying 500 or 600 pieces of equipment arrive in Dublin Port in the morning between 5.30 and 6.30. Several hundred trucks work out of the container terminals. That needs to be looked at. The ferry times need to be stretched out by 15 to 20 minutes each way by the four main ferry companies. The container terminals need to look at their opening and closing times to facilitate this too. There are queues from 6 a.m. with trucks trying to get into container terminals to get containers for the morning delivery because they were not able to get in for 5 p.m. Closing at 5 p.m. or 5.30 p.m. in today's world of transport is no good. There should be a later opening time for container terminals.*

*Regarding infrastructure and a green initiative, the way that Dublin Port Tunnel is run needs to be looked at. Every truck has to stop either leaving the tunnel or entering the tunnel. Every time a truck stops at a toll or a barrier, 1 l of fuel is consumed. The tunnel is free for trucks but it is costing us in fuel every day. The entry and exit points for trucks need to be examined. There is no need for barriers. There needs to be an electronic system that allows trucks to run through freely.”*

Mr. Glenn Carr, Rosslare Europort, highlighted that Rosslare Europort has been significantly transformed following Brexit with several new and expanded direct lines to mainland Europe and direct sailings having increased from 3 to 16 each way per week. The Committee agreed that stakeholder evidence showed the demand for these services and that such expansion has played a vital role in ensuring the continuity of Ireland's supply chain in the face of Brexit and Covid-19. Members agreed with the stakeholder view that such services should continue to grow in line with ongoing demand to limit the disruptions as a result of the UK's withdrawal from the EU. Mr. Barry Kenny, Iarnród Éireann, emphasised that adequate infrastructure was needed to enable such services to continue into the future:

*“There is another point about critical connectivity to Rosslare Europort and all major cities and industrial hubs throughout Ireland being further supported by improving road developments. As volumes through the port grow it is essential that the Oilgate to Rosslare motorway and the new port access road are completed so that the additional future traffic can be accommodated and so that Rosslare can be developed to its full potential to support the Irish economy. We must not forget the traffic congestion problems that existed pre Covid-19 and the over-reliance on Dublin and the challenges that brought. Rosslare Europort has proven in recent times how important a strategic asset it is and should be fully supported to deliver all of the plans outlined today.”*

The Committee also noted that significant investment is being made to develop Dublin Port out to 2040 to ensure the port will manage trade to its highest capacity and acknowledged the importance of investment in Rosslare to alleviate pressures on Dublin Port. Mr. Eamonn O'Reilly, Dublin Port Company, highlighted that the ports do not compete with each other but rather are part of the national transport system that meets the demand of what hauliers and customers of ferry lines want. As such, Mr. O'Reilly stated that *"it is very much in Dublin Port's interest to see significant investment and development in Rosslare Europort and to see the investment in roads being made."*

The Committee noted the British Irish Chamber of Commerce view that further opportunity exists for the expansion of Irish ports and agreed that there is strong potential for Cork Port, and other ports, to be designated for greater use. Mr. John McGrane, BICC, pointed out that:

*"Cork Port should be designated as a border inspection post, given the strategic importance of Dublin Port and the elevated importance of Rosslare Europort in a post-Brexit context. There is an opportunity to increase the connectivity of Ireland's other ports as alternative gateways to trade and tourism. It is recommended that this approach be adopted to ensure no port is overburdened as a consequence of Brexit and that all of our national resources can be put to good effect for the benefit of all of the stakeholders involved."*

In acknowledging the increased difficulties at ports, the Committee noted that some of the new systems/paperwork operate under EU legislation, such as the Union customs code, and are subject to the rules within that legislation for trade with third countries. Members agreed that some impediments are likely to remain in the area of trade that did not exist prior to 1 January 2021 regardless of measures that are put in place to offset any impacts from the UK's withdrawal. While the immediate customs impacts on imports seen in early 2021 have been lessening over time, challenges do remain, and the Committee noted that further disruptions on the exports side are likely to follow the implementation of the UK's full customs procedures and checks in late 2021. Mr. McGrane emphasised the need for preparation to avoid a repeat of the initial issues seen in January 2021 at ports:

*"Ireland was bound by the terms of the Union Customs Code from day one: 1 January 2021. It applied the full customs procedures, as is its obligation, to imports and exports. Our point here is that the UK has not effectively fully applied Brexit at this time to anything like the same degree as Ireland was bound to do. As a consequence, we saw significant disruption to supply chains, resulting in empty shelves in some of Ireland's most reputable supermarkets. Thankfully, it seems that most of these challenges have now been overcome. However, it is imperative that Irish exporters and UK importers use the time afforded to them by the UK Government's decision to extend customs easements until this October and, indeed, to January next in certain instances. Otherwise, we could face similar problems again in terms of disruption, as was seen in January and February of this year, as people had to get used to, without adequate preparation, some significant changes in logistics and trade flows as normal."*

While the UK customs process was initially due to start in July 2021, the UK Government announced an extension to the implementation of these import controls which have now been postponed to 01 October 2021, and 01 January and 01 March 2022. Ms. Louise Byrne, Department of Agriculture, Food and the Marine, highlighted that businesses should take advantage of the extended date and prepare for the import requirements and that work is being carried out to ensure businesses are ready for 01 October. Ms. Byrne stated that the Department is engaging with their UK Departmental

counterparts, stakeholders and businesses to prepare them in respect of providing advance notification to the UK's import of product, animals, food and feed system (IPAFFS) as well as export health certifications to the UK authorities.

The Committee agreed that while the ongoing engagement between customs agencies and businesses is vital to ensure adequate preparation for any future impacts, businesses must also take the initiative in streamlining processes around the accuracy of documentation. Several stakeholders emphasised that inaccurate customs documentation creates delays at ports and the Committee agreed that businesses have a significant role in creating an efficient process by ensuring accuracy and simplifying truck loads. Ms. Hazel Sheridan, Department of Agriculture, Food and Marine stated that:

*“Now that businesses are becoming more familiar with what needs to be checked and which agency needs to carry out the checks, perhaps they could consider streamlining and simplifying their trucks. That is not easy to do in the early days because these are complex supply chains but going forward, it would help to speed up the transit of trucks through the port facilities. Another step that businesses can take to streamline the process is related to getting documentation in advance and ensuring it is accurate. That, too, will help to speed up the processes. Every load we deal with that has problems slows down everything, so there is a very important role for businesses in that regard.”*

The Committee emphasised the importance of maintaining a post-Brexit trading relationship with the UK and noted that a huge proportion of work has been achieved by those working in the ports and haulage sector to limit the implications of the UK's withdrawal on Ireland's trade flows. While improvements continue and work is ongoing in this area for customs agencies and those working in the sector, the Committee agreed further examination will need to be given to this area in the Autumn sessions in light of the UK Government decision to extend the implementation date for the introduction of custom checks.

## **1.2. The Rules of Origin**

The Committee agreed that the full impacts of the UK's withdrawal from the EU will take time to fully come to light and that new information and discussions are ongoing. This is evident following the emergence of the unforeseen issues with the rules of origin, an area which the Committee intends to examine further for its final report. The Committee acknowledged the complexity of the rules of origin on trade that moves through the UK and the costly tariffs associated with this and noted that, in relation to costs, the burden of difficulty will fall primarily on SMEs. The Committee also acknowledged the stakeholder view that some businesses are likely to avoid the customs procedures and rules of origin by transporting goods direct to and from continental Europe to Ireland due to the costs associated with transporting via the UK or from UK distribution centres. Mr. Damien Roche, NIRC, outlined that these costs were of major concern for importers:

*“If a shipment is bought in Germany by a UK company distributor and an Irish company buys from that UK distributor - something the company may have been doing for more than 30 years - then the shipment loses its country of origin status although it has come from Germany, Italy or France. The Irish company that buys the goods from the UK distributor has to pay the full rate of duty as if the shipment had come from China, America, or Australia, even though the country of origin stamp on the product is from Germany, Italy or France. The company has to pay the full rate of duty. The officials in Revenue in Rosslare cannot understand why that is*

*the case. The answer given is that it is preferential treatment and it has been lost by the exporter in transition from the European Union to the UK. I cannot understand how, simply because a shipment came through a wholesaler in the UK, it cannot hold its European Union origin status. The position is that because the customer in Ireland has bought it from a UK distributor, the customer has to pay the full rate of duty again.”*

The Committee noted that while businesses prepared for the introduction of new customs rules and documentation, the issues around the rules of origin were largely unanticipated and have proved to be far more challenging than expected. In the earlier months of the UK’s withdrawal, Mr. Paul Kelly, Food Drink Ireland, highlighted the significant impact the rules of origin were having on the food and drink sector and therefore, the Irish consumer. The Committee noted that flour is a major concern in this regard:

*“There is no industrial milling capacity in the Republic of Ireland and all flour for the plant bakeries is imported. The majority of that comes from Britain. The specification for much of the flour we import has a Canadian wheat content in excess of 15%. This exceeds the tolerance level in the rules of origin and the full tariff of €172 per tonne is imposed, which is equivalent to a 50% price increase on a tonne of flour. Second, many companies have evolved supply chains that stretch to the Continent and utilise British distribution hubs to serve the Irish market. This model reflects the most cost-effective way for many companies to serve the small and physically distant Irish market, but under the rules of origin, they now face paying a full tariff on goods despite them originating in the EU. To date some of the more immediate solutions, such as returned goods relief, are complex and costly to administer.”*

The Committee acknowledged that such issues could significantly impact the average consumer - for example, where the cost of bread would increase due to the tariffs paid on flour that exceeds the tolerance level in the rules of origin – and Members agreed that an examination of Ireland’s manufacturing capabilities could be looked at as a potential solution to such issues. However, the Committee agreed that more practical solutions to the rules of origin issue would be necessary as the issue affects many other areas of trade.

The Committee agreed that a number of all-island, cross-border sectors are disproportionately affected by the rules of origin issues particularly companies in the dairy and whiskey industries. Mr. Colm Markey, MEP highlighted that much of the concern lies in produce that is manufactured and/or processed between both jurisdictions, north and south of the border. Mr. Markey further advised that:

*“The problem arises when these products are exported to third countries. If the product is sourced entirely in the Republic it is classed as of EU origin and benefits from lower tariffs as a result of EU trade agreements. Likewise, the same product sourced in Northern Ireland qualifies for UK trade agreements. But, where the product is sourced on both sides of the border, its status is not clear and it may qualify as neither and therefore be subject to higher tariffs, thus undermining the idea of an all-island economy.”*

Mr. William Lavelle, Irish Whiskey Association stated that goods that are affected include those that are produced primarily in this State but have some level of northern Irish input. In many cases, this could be on the processing side, such as whiskey that is distilled in Northern Ireland and matured or

bottled over the Border. The Committee noted that these mixed origin goods lose their EU originating status under all EU trade agreements with international markets and significant tariffs are imposed for trade with countries outside of the EU and UK, potentially making companies unviable. Mr. Lavelle stated that the Protocol on Ireland and Northern Ireland needs to be protected as it protects the cross-Border supply chains from tariffs and checks. However, it was also highlighted that, due to the rules of origin issues, supply chains are struggling with exports to certain countries and this could have a significant impact on the shared island economy:

*“In real terms, Irish whiskey produced completely in this jurisdiction has a 0% tariff going to South Africa. South Africa is a top-ten market. Northern Irish whiskey produced 100% in Northern Ireland has a 0% tariff, under the UK agreement. However, if there is a blend of whiskey from distilleries North and South, or if there is whiskey distilled in the North and matured in a bonded warehouse over the Border, that attracts a tariff of 154 cent per litre.”*

The Committee acknowledged the difficulty the rules of origin impose on the whiskey industry and noted that 96% of Irish whiskey was exported in 2020. In relation to the dairy industry, the Committee noted that over 90% of dairy on the island of Ireland is exported with an export value of 6.5 billion euro. Mr. Conor Mulvihill, Dairy Industry Ireland, highlighted the importance of recognising that milk across the island is mixed for various purposes including butter, cheese, infant formula, specialised and medical foods. As a huge proportion of milk moves from North to South of the border and vice versa for processing, it loses its originating status. While the Protocol protects these products in Ireland, the UK and the EU, the Committee noted the issues in relation to the dairy industry’s large area of global exports.

Dr. Mike Johnston, Dairy Council for Northern Ireland, stated strong support for the Protocol, and that notwithstanding that there are elements of the Protocol that need to be fixed, it has allowed trade flows and the movement of goods to continue by and large. Dr. Johnston highlighted that all-island mixing, processing and manufacturing of dairy products have existed for more than 20 years and are facilitated by the Good Friday Agreement.

The Committee noted that the dairy industry is quite unique and that Northern Ireland does not have a facility for segregating milk and that to provide such a facility would require significant investment. Due to the lack of processing capacity, around a third of the milk produced in Northern Ireland is transported South of the Border for processing and manufacturing into a range of products which are then sold on to various third-country export markets. The Committee agreed that the percentage of exports that could incur additional tariffs as a result of the rules of origin “*anomaly*” is very high for the Irish dairy and drinks industry. Dr. Johnston echoed the views of witnesses from the Irish Whiskey Association and Irish Dairy Industry stating that:

*“We need the political will and political decision to say that a mixed-origin product that is manufactured in the Republic is designated as an EU product. If we get to that stage with that political decision having been taken, it then becomes a case for civil servants within the Commission. Hopefully, they will then work with the industry throughout Ireland to determine which free trade agreements, FTAs, we need to tackle first. Then we can see if we can get a plan together.”*

Mr. Colm Markey MEP highlighted that a further issue could arise in relation to products of mixed origin whereby a product that is not eligible for third country trade agreements may also not be eligible for “*intervention-type supports if needed*” in the future as the product may not be “*European produce*”. The Committee agreed that clarity is needed in relation to this so that solutions can be worked towards.

The Committee acknowledged the need for a solution to the difficulties that have arisen for companies that manufacture mixed origin produce and agreed that a new approach to the rules of origin for such industries may be necessary. The Committee noted that representatives from the whiskey and milk industries called for the European Commission to consider new rules of origin that protect cross-border supply chains on the island in all future EU free trade agreement negotiations and reviews of existing free trade agreements. However, Commissioner McGuinness stated that changing the rules of origin would be “*problematic*”.

The Committee also noted that the European Commission “*stated that they do not intend to review any existing EU trade agreements on the back of Brexit*” and that in the case of current negotiations for an EU-Australia agreements the Commission have proposed the same rules of origin as they have the past 40 years and “*and do not take account of Brexit and the realities of the Irish all-island economy.*” The Committee noted that the UK Government have expressed a willingness to protect their ‘export with EU inputs’ and have agreed that EU inputs continue to have UK originating status and, as such, protect cross-border supply chains on the island. In light of this, Mr. Lavelle highlighted that the Irish Government needs “*to champion*” the need for reform of the rules of origin at EU level to protect the all-island economy and encourage its growth. Mr. Colm Markey, MEP emphasised the need for greater engagement to resolve the issue and stated that:

*“At the moment, it would seem that the UK Government are doing more to sort out this issue than the EU and I believe that the Irish Government must take a lead in ensuring that the EU takes a pragmatic approach when negotiating new trade agreements or reviewing existing ones.”*

Mr. Ciarán Cuffe, MEP, emphasised that a lack of willingness to engage has created a bigger problem in relation to the SPS and mixed origin products and that solutions can be found. Mr. Cuffe expressed concern that legally binding agreements are being undermined and that engaging with and collaborating on the implementation of the measures within the agreements will allow for meaningful progress to be made in relation to these issues and future free trade agreements.

The Committee agreed that many of the issues arising out of the rules of origin could be resolved practically with time and with collaborative work. However, Enterprise Ireland highlighted that the solution to the issues associated with the rules of origin will not be straightforward and will require investment to support companies that are impacted by Brexit. The Committee agreed that identifying how businesses can be supported to meet the challenge of supply chain adjustments will need to be examined further.

In light of the many challenges facing the trade sector on a broader scale, the Committee agreed that greater engagement between the EU institutions, the UK and Ireland will be required on an ongoing basis. The Committee noted that within the TCA there is an infrastructure of committees to resolve issues arising in relation to trade. Mr. Barry Andrews, MEP, stated that of 19 committees under the Joint Partnership Council, 10 of those are specialised trade committees. However, the Committee noted that an SPS committee which could help to resolve the ongoing negotiations around issues with SPS checks “*has not even been convened, never mind formed properly.*” Furthermore, the Committee noted the views of Dr. Johnston who advised that the establishment of a forum to actively consider the issues around the rules of origin would be welcome.

## **2. The Protocol on Ireland and Northern Ireland**

The Protocol on Ireland/Northern Ireland has been an area of mixed views politically and has been the subject of ongoing negotiations between the UK and the EU since the UK’s withdrawal on 31

December. The Committee agreed that the Protocol is of critical importance to the shared island economy and noted the stakeholder view that the full value of the Protocol has yet to be seen until it is fully implemented. While the Committee acknowledged the political issues with the Protocol, Ms. Emma Sheerin, MLA, stated that without Brexit there would be no Protocol and that *“rather than going over old ground, we are better to recognise that we are where we are and to try to see how we can minimise the difficulty and the impact on the local communities that we represent.”*

Mr. John McGrane, British Irish Chamber of Commerce, highlighted that the Protocol, while not perfect, offers businesses in Northern Ireland the ability to maintain trade on all sides, as well as potential for further business development, though a pragmatic and collaborative approach to the Protocol is necessary to ensure best outcomes:

*“For the Northern Ireland protocol to work, North–South co-operation is essential. To this end, we would urge all participants to be proactive in all North-South bodies such as the North-South Ministerial Council. We would also maintain our view that if UK–Ireland trade is to grow and prosper, it is important that the British-Irish Intergovernmental Conference, meets regularly and that business and civic society have an opportunity to feed into these important dialogues. I might mention, through our board membership of a wonderful organisation called the British-Irish Association, an apolitical, community-focused organisation chaired by our good friend Hugo MacNeill, that we look forward to being central to the bringing of business to the conversation, in ways that are perhaps overdue - for ideas, pragmatic engagement and investment, that business should be rightly asked to bring in the resolution of political challenge.”*

The Committee agreed that one of the most important benefits of the Protocol is that it avoids a physical border on the island of Ireland. However, the Committee acknowledged that the border in the Irish Sea between Northern Ireland and Britain that now exists is not the ideal outcome and acknowledged the views of Mr. Doug Beattie, MLA, who highlighted that the Protocol, from a Unionist standpoint, damages the Good Friday Agreement:

*“...even when you fix all the small issues, the fact remains that, within our country of the United Kingdom, we have a border. Fixing the small issues is not going to fix that. I say that as someone who voted Remain. I voted Remain and wanted to remain, but I have not stopped being a unionist just because I did not get my way. I am still a unionist, and it is the union of Northern Ireland and Great Britain that makes up the United Kingdom. Somebody has put a border in between the two. You are therefore absolutely right: we will not rest until the Protocol is gone and got rid of. Even the vote in four years does not allow us to get rid of the Protocol. It allows us only to get rid of articles 5 to 10 of the Protocol, for something else to be reinserted two years after that. That will be in 2026.*

*It is about trying to come up with something that better meets the aspirations of people in Northern Ireland, regardless of what community they come from. There are alternatives out there, but those have not been looked at. I am concerned that people thought that they were just too difficult and thus got rid of them, because they were too worried about violence along the border. They were not worried about violence in Larne, Ballymena or anywhere else, just along the border. That is my concern, but you are right: until the protocol is gone, unionists probably will not stop shouting.”*

The Committee recognised that there are starkly differing views in relation to the Protocol on Ireland and Northern Ireland particularly among the Unionist community and the Republic, and Members noted the Unionist view that “North/South cooperation is being damaged” by a Protocol that is not supported. However, the Committee noted the stakeholder view that while there is disagreement with the Protocol in the political realm, viable alternatives have not been presented and Commissioner Mairead McGuinness highlighted the need to envisage what the implications would be without the Protocol being in place and it must be acknowledged that trade flows will no longer carry the same benefits as they had pre-Brexit.

The Committee acknowledged the difficulties with the Protocol and Mr. Colin McGrath, MLA, highlighted the potential pitfalls going forward for those in Northern Ireland:

*“While the UK may be able to discuss trade deals with other countries on a technicality, we in the North should be allowed to benefit from that because of the connection to the UK. The Protocol means that some of those products and trade impacts will not benefit the North. There will be the potential for some confab there. For example, if there is some form of trade deal with Argentina over meat or Brazil over coffee, those goods might be able to come into the UK, but the question under the Protocol is whether they will be able to move into the North. There is a chance that we may not benefit from trade deals in the future and that may leave us with a deficit.*

*The very valid point was made that if these decisions are to be taken in two, four or six years' time, now is the time to do the planning. We saw what happened in the negotiations when a decision was eventually taken on Christmas Eve which gave businesses seven days to prepare for what was coming. That is no use to businesses. They need binoculars to be able to look a year or two ahead in order to get their systems in place. Therefore, it is incumbent on everyone, when they look at problems and issues in the future, that we start to plan for those changes today.”*

The Committee agreed that, while imperfect, the Protocol and the withdrawal agreement must be protected and that increased engagements between Parliamentary Committees, and bodies North and South, would be greatly beneficial to ensuring the implications as a result of Brexit are minimal. It was also agreed that there is a need to look forward and for the EU and the Governments in Ireland and the UK to be proactive in working together to resolve the difficulties with trade between Ireland and Northern Ireland. Extensions of grace periods have provided additional time for this to help minimise the impacts of Brexit on communities and businesses. Mr. Cillian Molloy, British Irish Chamber of Commerce, echoed the need for collaboration and support on a political level, particularly in relation to businesses trading across Ireland, Northern Ireland and Great Britain. Mr. Molloy highlighted that businesses are committed to the Protocol and making it work and that there is a need to “depoliticise” it and to find solutions to support businesses in the face of the challenges of Covid-19 and Brexit. This view was echoed by representatives from the dairy and whiskey industry with Dr. Mike Johnston stating that businesses in the agrifood sector would be “a lot worse off than they are at the moment” without the Protocol. While the Protocol “needs to be tweaked” stakeholders agreed that there is a need for it to remain.

The Committee agreed that in order to allow businesses achieve their greatest potential in Ireland and Northern Ireland, there is a need to work with the Protocol to find practical, workable solutions to issues and make it more efficient. Mr. Ciarán Cuffe, MEP, emphasised that much of the narrative surrounding the Protocol is not helpful and echoed the need for better engagement and cooperation in relation to the Protocol:

*“It is deeply worrying to hear constant statements from London that the Northern Ireland Protocol is not sustainable and fit for purpose. It is also concerning that, the previously agreed-upon grace periods are extended without any prior notice to the Commission. As seen in March, with the grace period extension of the Sanitary and Phytosanitary (SPS) controls that focus on export health certificates, the movement of goods such as chilled meats, meat products and medicines, parcels, and pet travel from the UK to Northern Ireland. And more recently, this past week's surprise delay of checks on pets travelling between Northern Ireland and the UK extended until October 2021. There may well be grounds for such extensions. However, the lack of notice combined with the unwillingness from the UK to meaningfully engage in a road map to implementation of the Northern Ireland Protocol does not show good faith from our closest neighbour to an agreement they negotiated and signed up to. Such grandstanding only exacerbates existing sensitivities in Northern Ireland that have arisen from balancing the Good Friday Agreement with Brexit and the Northern Ireland Protocol. Perhaps, a little less ideology from the UK government and little more cooperation is needed.”*

While acknowledging the growing political tensions in relation to the Protocol, the Committee noted that the vote on the Protocol in four years could exacerbate the tensions in Northern Ireland and agreed that the Protocol is already being seen as a campaign issue. Commissioner McGuinness highlighted that while increased tensions do exist there is a political responsibility in Ireland, Northern Ireland, the UK and the EU to dampen and “deflate” those tensions through consistent engagement and dialogue. The Committee agreed that while there is a community that does not support the Protocol, it must be acknowledged that a significant proportion of businesses and communities in Northern Ireland do support it and want time to work with and improve it to mitigate the impacts of Brexit.

Mr. Dáithí O’Ceallaigh, Chair of the Institute of International & European Affairs UK Group, highlighted that while there are conflicting views regarding the issues with the Protocol, the issues can be resolved. The Committee noted that there are a number of technical issues in the Protocol and that many of them “*can be resolved technically*” but agreed that there will be further difficulty in relation to health and veterinary standards. Mr. O’Ceallaigh advised that veterinary agreements are in place with the EU and other third countries such as Switzerland and New Zealand and that if an agreement between the EU and UK was reached, it would provide a solution to all the “*problems with regard to food, pets etc to disappear immediately*”.

Commissioner McGuinness re-emphasised the importance of better engagement to fully implement the Protocol and highlighted the challenges faced with the lack of implementation by the UK. The Commissioner stated that there are good agreements and there needs to be flexibility to implement them in order to provide solutions. This was particularly relevant around the area of SPS products and the rules of origin whereby a temporary arrangement could suffice while negotiations go on. While the UK is currently still complying with the SPS framework it was a part of until 1 January, it will diverge. The Commissioner advised that while the Commission respects that the UK may wish to diverge from the standards in the future, a temporary agreement could offer a “*calming solution*” for the tensions currently noted in Northern Ireland and “*give us that space for them to help their businesses and citizens in Northern Ireland, and take the tension out of these checks.*”

The Committee once again noted that discussions around the Protocol and, in particular, the area of SPS checks, are ongoing and agreed that further engagement would be required in relation to this area in the Autumn sessions.

## 2.1 Citizens' Rights in Northern Ireland Post-Brexit

Although much of the focus surrounding Brexit and the Protocol on Ireland and Northern Ireland has been on trade and businesses, the Committee agreed that in exploring the impacts of Brexit, an examination of citizens' rights and the impact on communities in Northern Ireland is an important aspect of the Committee's work. The Committee acknowledged that not all implications as a result of Brexit have yet emerged, with many issues being "masked" as a result of Covid-19 restrictions and Members agreed that there must be collaboration on both sides to protect the rights of citizens in Northern Ireland as further implications arise.

Members of the Northern Ireland Assembly's Committee for the Executive Office highlighted significant concerns regarding citizens' rights in Northern Ireland following Brexit and emphasised that there are many rights that were protected and dependent on EU directives that will no longer apply, for example, the decision of the UK not to incorporate the EU Charter of Fundamental Rights into domestic law. The Committee also noted that the UK Government is undertaking a review of the Human Rights Act and agreed that this is an area that will require consistent communication and discussion between the Governments in Ireland and Northern Ireland to ensure citizens' rights remain protected.

Stakeholders emphasised that the area around citizens' rights is becoming more and more complex as the implications of Brexit become more apparent. The Committee noted that Article 2 of the Protocol on Ireland and Northern Ireland contains provisions that set out the UK Governments "no diminution" commitment for the protection of certain citizens' equality and human rights after Brexit. Article 2(1) of the protocol states that:

*"The UK shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms."*

The Equality Commission of Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC) joint submission to the Committee sets out the rights as mentioned above within the Good Friday Agreement as follows:

- the right to freedom and expression of religion;
- the right to pursue democratically national and political aspirations;
- the right to seek constitutional change by peaceful and legitimate means;
- the right to freely choose one's place of residence;
- the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
- the right to freedom from sectarian harassment;
- the right of women to full and equal political participation;
- the right of victims to remember as well as to contribute to a changed society;
- respect, understanding and tolerance in relation to linguistic diversity; and
- the need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division.

Under the protocol, the commitment ensures that neither the Northern Ireland Assembly nor the Northern Ireland Executive can act in a way that is incompatible with the Article 2 Commitment.

Three Commissions (Irish Human Rights and Equality Commission (IHREC), ECNI and NIHRC) are responsible for advising Government, and the oversight of the implementation of the UK Government commitment.

Stakeholders stated that some of the rights as set out in the protections of Article 2 of the Protocol on Ireland and Northern Ireland are not currently being upheld and that the implications of the UK's withdrawal are now emerging. Mr. Daniel Holder, Committee on the Administration of Justice, outlined to the Committee that the UK is considered to be in default of the non-diminution commitment in a number of areas in the initial weeks following Brexit. These areas included *civil service nationality rules; democratic rights for both EU 26 and Irish citizens in the North; family reunification and the cut-off date for the EU settlement scheme; loss of EU rights and benefits for Irish citizens specifically in the North; and frontier workers.*"

Mr. Les Allamby, NIHRC, outlined that one of the key issues following the UK withdrawal is around UK immigration and nationality law:

*"The British Nationality Act assumes everyone born in the UK (subject to exceptions) is born British and a British citizen. This again does not sit easily with the right to identify as British or Irish or both without, in practice, adverse consequences. The issue came up in the Emma and Jake DeSouza case and was eventually resolved with a short term, quick fix to allow family reunion tied to the UK's EU Settlement scheme which will apply up until 30 June 2021. This contrasts with Theresa May's speech in Belfast on 5 February 2019 where the (then) Prime Minister said 'serious concerns have been raised about how the UK immigration rules treat citizens when exercising their rights under the Agreement to be Irish. The birth-right to identify and be accepted as British, Irish or both, and to hold British and Irish citizenship is absolutely central to the Belfast (Good Friday Agreement). However, in some cases recently, people have encountered difficulties in securing their rights as Irish citizens to bring in family members. So I have asked the Home Secretary, working closely with the Secretary of State for Northern Ireland to review these issues urgently to deliver a long-term solution consistent with the letter and spirit of the Belfast/Good Friday Agreement'."*

The Committee noted the complexity of this issue and acknowledged that the DeSouza case on the right to identify as British or Irish in Northern Ireland remains largely unresolved and noted the deadline for the EU Settlement Scheme on 30 June 2021. Members agreed with the stakeholder view that public consultation to ascertain the full impacts on the daily lives of those living in Northern Ireland would be useful for informing future policy decisions.

The Committee agreed that there are numerous issues that may arise through cross border travel on the island, and stakeholders pointed to issues for permanent residents arising from the removal of the EU free movement law as a result of Brexit. Mr. Holder stated that:

*"One of the issues is the gap created by the removal of EU free movement law as a result of Brexit. There have been attempts by both states to plug that through what is termed, and what is a post-Brexit invention, the reciprocal rights of the common travel area. That was more to deal with the situation of Irish citizens in Britain and British citizens in the EU within the State, rather than the equality of treatment provisions in the Good Friday Agreement, which are much more extensive in ensuring equality between Irish and British citizens and which has been underpinned by EU law. One of the adverse effects of the exercise of codifying things and the common travel area agreement rights is that because of the way it has been done it*

*is largely restricted to British and Irish citizens, which means others who are permanent residents in the Border counties do not fit into those arrangements. I cannot recall off the top of my head whether it does, but if the memorandum of understanding, MOU, provides for continued arrangements for cross-Border schooling, there are hundreds of children who cross the Border yet there is an attempt within the MOU to restrict that to British and Irish citizens. The question is then, what about everyone else? What about Polish kids who live in Donegal and attend school in Derry, etc? How is that underpinned?"*

The Committee agreed that local journeys encompass more than just British and Irish citizens and that it is necessary to resolve such practical issue that threaten free movement rights. Members acknowledged that there is, as of yet, a lack of transparency on the implications on freedom of movement on the island of Ireland and that clarity would need to be sought in relation to this.

Mr. Holder highlighted concerns around free movement and immigration within the Common Travel Area and emphasised the potential heightening of these concerns as time goes on with the UK's intention to introduce an electronic pre-clearance requirement - similar to the US ESTA system – for travelling into the UK, including Northern Ireland for all EU and non-EU non-visa nationals. While the electronic travel authorisation (ETA) system would not apply to British or Irish citizens, Mr. Holder highlighted the impracticalities that may arise for other nationalities living in Ireland whereby:

*"An EU citizen or non-visa national such as a Brazilian residing in Donegal who up until now has been able to freely enter across the land border will no longer be able to do so, although the Border will be invisible because there will be no checks as such or at least none are planned to date. If such a person was captured by an in-country check, he or she could unwittingly find himself or herself in irregular status and could face arrest, detention and deportation, which are some of the most serious sanctions available. A number of MPs have raised the issue of how it is intended that this system will apply in the common travel area but there has been no response we are aware of from the UK Government. Certainly nothing in the policy paper that was published today deals with the specific circumstances of local journeys across the land border."*

The Commissions stated that while the UK Government has excluded the common travel area and Irish citizens from the ETA arrangement, there is a real threat to the freedoms of those non-UK or -Irish citizens living in Ireland. The Committee agreed with stakeholders that is an area that will require further examination due to the conflicting challenge of an open border on the island while the UK Government is tightening borders. The Committee noted that the ETA has not yet commenced and agreed that greater public engagement would be welcome to raise awareness of the potential issues for the public and Government and representative bodies.

The Committee noted the view that following the UK's withdrawal from the EU, the Common Travel Area now requires strengthening from a legal point of view and acknowledged the lack of legal standing within the memorandum of understanding under which the CTA is governed. While Members expressed concerns regarding the inflexibility of a legally binding treaty, Ms. Sinéad Gibney, IHREC, re-emphasised the need to strengthen the CTA in legislation and stated that:

*"It is a set of agreements that we believe are not strong enough for what we are currently facing. As the Brexit process has unfolded and we have seen threats to the rule of law, it underpins that we need a very clear legislative footing for the common*

*travel area. As the Chairman identified, the other issues relating to that are the challenges faced by those citizens in Ireland who are not UK or Irish citizens and are, therefore, not covered by the common travel area, and the threat to their freedoms. That is definitely an area of concern. Along with the cross-Border movement, the other issue I would raise is the potential for racial profiling.”*

The Committee agreed that underpinning the CTA in legislation would offer clarity and avoid uncertainty in the long term. Members also expressed concern regarding the increased incidences of racial profiling taking place on the border and agreed that the strengthening of race equality laws and greater protection against racial profiling is necessary.

Stakeholders outlined a further issue that is arising out of the UK’s withdrawal in relation to voting rights for those EU citizens resident in the North and, indeed, Irish citizens. Mr. Holder highlighted that it was flagged to the Commission that resident EU citizens will no longer have the right to vote in local council elections and Northern Ireland Assembly in England and Northern Ireland, a right which existed under EU law. In Scotland and Wales EU citizens will continue to have the right to vote. Mr. Holder also stated the potential impacts for Irish citizens:

*“A query has arisen whether Irish citizens who have always had rights to vote in UK referendums could lose those rights as a result of the common travel area reciprocal arrangements. That is something which has been brought forward. For Irish citizens, there was an indication at the beginning of the Brexit process that political and other EU rights would be retained, but that has not happened. In terms of referendums, Irish citizens, separate to other EU citizens, have had a right to vote in Westminster elections and referendums. When one looks at the memorandum of understanding on the common travel area that the two Governments signed, reference is only made to Westminster elections and not referendums. That obviously raised a few eyebrows. How could Irish citizens not be allowed to vote in referendums when that had always been the case? A number of parliamentary questions were submitted in Westminster about that. The response of the British Government was surprising. It would not confirm that Irish citizens would continue to have a vote in referendums. In fact, it argued that it was not reciprocal because British citizens resident within the state were not entitled to vote in referendums.”*

The Committee noted that it is the “*gift of Ireland’s Government as opposed to the UK Government*” to give Irish citizens living in Northern Ireland the right to vote in EU elections. Members also expressed concern that a significant proportion of citizens in Northern Ireland would suffer from a lack of representation in the EU institutions in spite of retaining Irish and EU citizenship. The Committee agreed that further clarity is needed with regard to the position on voting rights and agreed that further consideration of the issue in relation to referendums would be required.

### **3. Mutual recognition of professional qualifications**

Although the EU-UK Trade and Cooperation Agreement mitigated many of the potential impacts of a no-deal Brexit, stakeholders pointed to wider implications on the services side that have been overlooked by the Agreement, including the mutual recognition of professional qualifications. The Committee agreed that this area is not only an economic and academic issue but also a citizens’ rights issue.

Minister for Further and Higher Education, Research, Innovation and Science, Mr. Simon Harris T.D., outlined that prior to Ireland and the UK joining the EU there was mobility of professions. The EU

developed a series of directives to support freedom of movement, one of which was in relation to professional qualifications:

*“As professionals moved from one member state to another, it ensured that their qualifications as listed in this directive were recognised, which facilitated labour mobility and the provision of service. That last point, provision of service, is very important as it brings the EU Single Market into play and the EU Commission has sole competence in this area. In parallel, the number and type of professions increased over the years. Essentially, where there is a regulation to determine entry for any profession or trade, these also fell within scope of EU directives. For example, Ireland has regulated entry into the security industry which limits any person working as a security guard. A QQI Level 4 qualification is an essential requirement, among other things. This trend of expanding qualifications has resulted in some 190 professions in Ireland being regulated by 44 competent authorities or regulators.”*

From 1 January 2021, however, the mutual recognition of professional qualifications (MRPQ) no longer applies between Ireland and the UK. The Committee agreed that this is particularly relevant for Ireland and the area of cross-border employment with Northern Ireland. Mr. Neil Willoughby, Ibec, highlighted that the protection to work live or study in either jurisdiction still does not give the automatic right for professional qualifications to be recognised. Stakeholders stated that there was an expectation that the MRPQ would have been facilitated under the protections in the protocol and common travel area though this has not been the case. Mr. Willoughby stated that:

*“...the recognition of professional qualifications is governed under the TCA rather than under the protocol. This means there is a limitation in the fact that the Irish and British Governments cannot have a bilateral, catch-all, comprehensive agreement whereby all British qualifications may be recognised in Ireland and vice versa. Where that creates a problem, it will have to be done on a sector-by-sector basis. Each professional body will have to do that separately and we are in a situation where that can be highly fragmented.”*

Minister Harris outlined that negotiations around the MRPQ did take place throughout the Brexit negotiation period and that, to counter the discontinuation of this, a working group of Government Departments ensured that their regulators put processes in place to guarantee that Irish and UK professionals could continue to have their qualifications recognised in either State. Minister Harris highlighted that professions are adapting using various measures that work for them in the absence of an overall framework:

*“Some of it, around the safe pass in the construction industry, has required legislative change in the Oireachtas. Others have required memoranda of understanding. Some have required - the Senator referenced nursing - regulators changing their understanding of third party recognition. The Medical Council did that and the Teaching Council also did that. As of today, this is working well. We have that working group, which has already met three times this year and is continuing to monitor the situation well.”*

The Department for Transport provided a clear example of this following the practical impacts the discontinuation of the MRPQ had on train drivers for cross-border services:

*“Until 1st January 2021, all cross-border rail services were defined as international rail passenger services between two EU Member States and, as such, were subject to EU legislation in relation to railway safety and the regulation of rail services within the EU. As the UK is now a ‘third country’, however, the train driver licences, Railway Undertaking licences and safety certification that had been previously issued by the UK rail regulatory authority are no longer recognised within the EU. In order to ensure a seamless continuation of these cross-border rail passenger services after 1 January 2021, therefore, the NI railway undertaking, Translink, applied for and was granted a rail operator licence and railway undertaking safety certification by the Commission for Railway Regulation (CRR), the national safety authority in the State responsible for issuing such licences and certification in accordance with EU law.”*

However, the Committee noted the stakeholder concern that the approach of Irish and UK regulators varies in line with their professions and that a fragmented approach to the recognition of professional qualifications could create issues in the future. Mr. Willoughby outlined that since neither the TCA nor the Protocol provides for rules on recognition of qualifications:

*“This means that professional qualifications can only be recognised on an Ireland-UK or EU-UK in a piecemeal fashion. Positively, I understand that as of now the Irish and UK governments have supported regulator-to-regulator recognition via 10 agreements in various sectors. However, as Ireland and the UK cannot have a bilateral comprehensive agreement whereby all British qualifications may be recognised in Ireland and vice versa, this could lead to barriers for individuals and businesses which may be more visible as Covid-19 restrictions lighten. It remains that the framework providing for the new EU-UK relationship is imperfect in this area and may lead to barriers for workers and businesses.”*

### **3.1 Education and Research**

The Committee agreed that in addition to professional qualifications, there are concerns around the impacts on higher education and research post-Brexit though Members acknowledged that the full implications of this are yet to be seen due to Covid-19.

While the Committee agreed that there is some negative fallout in the aftermath of Brexit for higher education, there is also significant opportunity arising particularly on cross-border, shared island basis. Mr. Paul Hannigan, Letterkenny Institute of Technology, highlighted that cross-border institutions (Letterkenny IT, Dundalk IT, Ulster University, North West Regional College, Donegal Education and Training Board) have been working collaboratively as part of a cross-border further and higher education alliance to facilitate student flows and engagement around industry research. The Committee agreed that increased and consistent engagement between bodies in the higher education sector and the political realm is essential to mitigate any impacts arising from Brexit.

The Committee noted that the UK rejected the opportunity to opt into and maintain participation in the Erasmus+ programme meaning that Irish students and staff will not be able to pursue mobility in the UK. While the impacts of this will not be immediately visible as the UK have extended the programme until 2023 as a Covid-19 measure, the Committee agreed that the implications for students and staff in Ireland will be significant. The Higher Education Authority outlined that:

*“The Erasmus pattern is in two particular areas: study visits, where students will enrol in another university or a higher education institution; and traineeships. One hundred and twenty-nine students went in 2019 to 38 different universities in the*

*UK. That relationship is managed under an inter-institutional agreement. That is a significant measure of the co-operation that exists between our higher education institutions and those in the UK and is indicative also of the trust and co-operation that has been ongoing for 33 years. That will be a significant loss, when it happens in the post-2023 period, for our sector.*

*Equally, the 210 students going to the UK for traineeship, and almost 50% of them going to London, are drawn heavily from a number of institutions. Many of these traineeships are in the areas of hotel management, the hospitality sector, catering, culinary skills, construction, fashion and design. This is valuable experience for every student to have on their CV and it gives connectivity with the world of work in a leading city of the calibre of London, which has the world headquarters of many leading organisations in the various sectors.”*

The Committee noted that while the UK is no longer part of the programme, 20% of the money allocated to countries within the programme can be used for “intra-European mobility” which allows students and staff to be sent to partner countries such as the UK. While the UK will receive a budget to support student and staff mobilities in this regard, it will not sustain the level of mobility that has been ongoing since Erasmus began.

The Committee noted that the Erasmus+ programme was also quite significant to students of Northern Ireland and acknowledged that more than 600 students go on the programme annually. Mr. Gerry O’Sullivan, HEA, highlighted that uniquely, nearly two thirds of students from Northern Ireland undertook a traineeship in Dublin. This contrasts with the European pattern where a similar percentage of students undertake study visits as opposed to traineeships.

While concerns had been raised in the immediate aftermath of Brexit in relation to Erasmus students in Northern Ireland, Minister Harris outlined that the Irish Government has taken action with regard to the Erasmus programme to ensure that students in Northern Ireland are minimally impacted and can still fully avail of the programme:

*“As colleagues will be aware, the Government has decided that arrangements should be made to enable students of relevant institutions in Northern Ireland to have continued access to mobilities under the Erasmus+ higher education programme post Brexit. While a number of options were presented to the Commission, it was finally agreed that this Government decision would be achieved by the temporary registration of a Northern Ireland student with an Irish higher education institution. During this period of registration, this would facilitate a Northern Ireland student's mobility in a higher education institution in another member state that has an existing agreement with the Northern Ireland higher education institution to which the student belongs. Once the mobility was complete, the student would return to his or her parent higher education institution in Northern Ireland, along with the required certification and other academic documentation. The Northern Ireland higher education institution would recognise the period of study abroad as it would now under Erasmus+. Officials in my Department have been working intensively with higher education institutions, North and South, to put the structures in place following the Government’s decision.”*

The Committee commended the decision to extend the Erasmus Programme to students in Northern Ireland and also noted the introduction of the UK’s Turing Scheme which is set to replace the Erasmus programme in the UK. Members agreed that consideration should also be given to a

collaboration with the UK's Turing scheme from the outset to maintain the higher education relationships with the UK. Mr. O'Sullivan stated, however that there are gaps in the programme compared to Erasmus:

*"The UK Turing programme has been developed by the UK in response to the fact it is outside the Erasmus programme. There are significant differences between this programme and what the UK enjoyed under Erasmus, namely, it only supports outbound students from the UK. There is no reciprocal dimension so no inbound supports are provided and it does not cover the area of staff mobility. Institutions in the North of Ireland and other parts of the UK have applied for inclusion under that programme and the decisions will be made known before the end of the summer."*

The Committee noted that a similar programme to the Turing Scheme could be established to enable Irish students to go to the UK beyond the limits of the Erasmus programme and agreed that the continuation of a mobility pattern to the UK would be preferable. Furthermore, the Committee agreed that there is a need for greater encouragement of Irish students to study or work in another European country and Members noted that a review of the accessibility of the Erasmus programme is underway.

The Committee noted that the Irish Universities Association had recorded a 40% decrease in applications to study in the UK from students in EU countries while initial data has also shown an increase in applications to study in Ireland. The Committee agreed that there was potential for a significant influx in applications to Irish universities from the continent following Brexit and that this could also impact the accessibility of college places for Irish students as well as exacerbating the issue of student accommodation in terms of cost and availability. However, Mr. Jim Miley, Irish Universities Association, highlighted that while initial data shows an increase in applications to study in Ireland from other EU countries, capacity constraints may limit the potential to absorb those students. The Irish University Association went on to highlight that:

*"Irish student numbers, as we know, have increased and will grow by at least 20% over the next decade. This has placed additional pressure on an already strained system in which, as a result of underinvestment, student-staff ratios have risen significantly, and facilities require urgent upgrading. Brexit has also given rise to challenges for universities from a cost perspective. As we know from the rest of the economy, the cost of building materials has risen by in the region of 15%, which means a potentially significant impact on university building projects that are already under way."*

The Committee acknowledged the challenges with the inflation of costs of building materials and agreed that this will have a major impact across the economy, and that this issue will need to be resolved universally not only in relation to universities. The Irish Universities Association stated that further examination of improving universities is needed in order to compete with UK universities that are putting in the effort to retain their share of the international student market and emphasised the importance of rankings in the international market and therefore the need for a more sustainable funding model for Irish higher education:

*"In contrast to a sudden and significant drop in EU applications to study in the UK, there has been a 17.1% increase in application to study in the UK from students in non-EU countries around the world. This highlights the challenges facing Ireland in seeking to maintain its attractiveness as a destination of choice for international students from the rest of the world."*

*IUA universities account for over three-quarters of the international students in higher education in Ireland. This 20,000 strong cohort of students generate tuition fee income of c. €250m per year and generate €400m in total export earnings to the Irish economy. It will require a concerted effort to maintain the competitive position of Irish universities in attracting international students post-Brexit and post-Covid-19. International student fee revenue is particularly important in that, given the significant cumulative reductions in state funding to the university sector over the last decade, this income is used to cross-subsidise the costs of Irish students. Without the income from international students, the universities will be unable to offer the same quality and experience to our domestic students.”*

The Committee acknowledged the significant underinvestment of Irish universities and the challenges arising from this. Mr. Miley highlighted that while there is a focus on how to attract international students to Irish universities, there is already a capacity issue for domestic students that must be addressed and that a major aspect of this is in relation to staffing:

*“Apart from the funding challenge we have endured in the system over the past decade, we are also subject to the employment control framework, which essentially means that the sector cannot hire additional permanent staff. In 2008, there were 19,300 core-funded - that is, funded through the State grant - staff in the system overall looking after 155,000 students. In 2020, 12 years later, we still had the same number of core-funded staff and they were looking after 213,000 students in the system. That is what the system has done. The fact that we are still producing high-quality graduates and top-notch research is a huge testament to the quality of the staff and the management in our universities and institutes of technology, but we pull the thread very thin. We really welcome the signal from the Government that it will address this matter this year but we now need the voice of this committee in pushing for that funding challenge to be met on a sustained basis over the next decade. If we do that and loosen the strings around the number of permanent staff we can have, I think we will be able to meet those capacity challenges.”*

While the UK opted out of the Erasmus programme, it will remain in the Horizon Europe research programme under the EU agreement with the UK. The Higher Education Authority highlighted the importance of maintaining this link with the UK as 70% of peer reviewers are UK-based academics and the Committee noted the potential to enhance research co-operation between Ireland the UK. Mr. Paul Lynam, British Irish Chamber of Commerce highlighted that, as a result of Brexit, there is a greater interest in collaboration between Irish and UK universities, research bodies and institutes and the Committee acknowledged that further resources would be necessary to underpin additional programmes, similar to Horizon Europe, for collaboration in this space.

The Committee noted that Ireland’s Government budget allocation for research and development (GBARD) has consistently fallen below 1% where the EU average is 1.3% and noted that a sustained investment of c. €350 million per year was needed to ensure that Ireland’s research system competes with top research in Europe. Dr. Jennifer Brennan, THEA, highlighted that the underinvestment in research in Ireland hampers our ability to compete in research programmes:

*“One of the things which we have not done in the past which we should probably take more advantage of is the ability to match different EU funds together. It is possible to take EU Structural Funds and Horizon Europe funds, for example, together and use them to fund different of projects, which is something that we*

*have never really done in Ireland. There are some particular investments around things like what are called the seal of excellence, where a project is deemed to be fundable at European level but there may not be sufficient budget there for it and it can then be funded at national level, if such funds at national level can be found to do so. Overall, we need to increase our investment nationally, particularly in infrastructure and attracting talent. The national development plan review is a very good opportunity for this and we, of course, look forward to the new research and innovation strategy. As we get better as a country in research and innovation, we will only see a knock-on improvement in our ability to be able to compete in Horizon Europe and in the other EU funds. We cannot continue doing more with less or to increase our performance if we do not have that underlying investment at national level.”*

The Committee agreed that the underinvestment in higher and further education and research in Ireland was a significant issue and acknowledged other challenging aspects to attracting researchers such as the cost of accommodation, childcare healthcare and education and employment opportunities for the families of researchers. However, stakeholders agreed that dedicated funding could help drive research and collaboration for attracting talent to Ireland. Mr. Lynam suggested that a UK-Ireland bilateral research fund be established to facilitate collaboration and examine ways to meet the full potential of this area:

*“This would be a fund where the UK and Irish Governments would commit, proportionately, resources to research collaboration across these islands. Within that, we would see numerous different measures. The Senator will be aware of the North-South research centre agenda and the idea of creating a North-South hub but we are thinking also in terms of supporting early career researchers, mobility grants, which are important, and placement programmes between the various different jurisdictions. We have seen, with some success the joint professorships that were put in place, and we think they could be expanded further. We saw the successful Science Foundation Ireland, SFI, and Oxford one, between UCC and Oxford. There is progress to be made on various different fronts there.”*

The Committee agreed that there is huge opportunity for the higher education and research sector and that a greater focus must be given to investment, smaller projects and greater collaboration between both jurisdictions.

#### **4. Health – Cross-border Health Directive (CBD)**

Although the TCA protected many of the health rights that existed before, a major implication of the UK’s withdrawal from the EU is the discontinuation of access to healthcare in the UK through the EU Cross-Border Healthcare Directive. Under the CBD a person who is entitled to public health services in Ireland may choose to access those services in another member state of the EU or EEA. The person accessing treatment will then be reimbursed the cost of the treatment in Ireland, or the cost abroad if it is less. This scheme became defunct as of 1 January 2021. Some transitional arrangements remain for patients who had treatments booked prior to December 2020.

To address the loss of access to the CBD, the HSE has implemented a temporary 12-month scheme, the Northern Ireland Planned Healthcare Scheme. The Department of Health highlighted that the scheme provides for continued access and reimbursement for the cost of healthcare obtained from private providers in Northern Ireland until 31 December 2021. The Committee commended the implementation of the temporary Northern Ireland Planned Healthcare Scheme and noted the

Government intention to underpin the scheme on a legislative basis. However, Mr. Mark Regan, Kingsbridge Private Hospital, highlighted the need for such a scheme to be implemented without delay to ensure best clinical outcomes for those awaiting treatment and to avoid the potential travel costs associated with travelling to access treatment in mainland Europe should there be a delay in extending the scheme on a permanent basis.

The Committee noted that travel expenses are not covered by the scheme and that the vast majority of people accessing the service did so in Northern Ireland. Accessing treatment within the island of Ireland minimises the cost of any additional travel. Mr. Muiris O'Connor, Department of Health, outlined that:

*“Since its introduction in 2014, the cross-border directive has provided access to health services in Northern Ireland, in particular for persons in this State. In 2020, almost 7,850 CBD reimbursements were made in respect of treatments accessed in the UK, which represents 90% of all treatments accessed by Irish residents under the CBD across the EU. Of those cases accessed in the UK, 98% of the treatments were accessed in Northern Ireland. These are treatments obtained from private providers.”*

Additionally, the Committee noted that any financial shortfall in the cost of accessing treatment outside of the State falls on the patient and not on the HSE. Such a shortfall is in relation to the procedure cost only as travel is excluded from the scheme and is generally minimal. However, Mr. Regan emphasised that:

*“It is crucial to note that the scheme is used predominately by those with little or no disposable incomes and by those who cannot afford private healthcare in any fashion. The majority of the patients will use bank or credit union loans to cover the cost of surgery while they await that refund from the State. The average age is between 50 and 75 years, and many of them will rely upon relatives to support them in the journey to Belfast. This last point is of particular note when one considers that if the scheme is not passed into Irish law before December this year, they will be forced to travel to mainland Europe if they wish to avail of this type of scheme. This has implications for increased cost, which is not refunded, and would be an additional burden to the family to support the patient travelling through an airport system.”*

The Committee agreed that upfront payments for accessing treatment is a major disincentive to patients, particularly the elderly, and that a reworked scheme that allows for access to treatment without an upfront payment must be considered when moving on from the current interim scheme. In addition, Mr. Regan outlined that an area for improvement in the scheme could be around the financial shortfalls:

*“The shortfalls are a problem whereby patients gather the information on what they believe will be a shortfall and get approval from the HSE. When they have the surgery, however, they may find that the shortfall is slightly different. That is due to the coding that is used. Both institutions in the North and the South use different coding systems to describe the surgery. Perhaps there should be a tightening up of that whereby if one gets a pre-authorisation for a given code and that surgery is carried out, then that is locked in after the surgery so the patient does not get a shock when he or she comes out of surgery. That is what we have tried to do for the past five years in Kingsbridge in Belfast in order to make sure that there are no*

*shocks. We want this scheme to be used as it is. It is not a money-making racket or about charging people more. It must be done morally and properly, and we must try to make it a free flow of information throughout.”*

In addition, Mr. Regan outlined that a lack of awareness of the scheme was a major barrier to patients in seeking treatment at an earlier date, with many patients not trusting that the scheme is legitimate. In light of the evidence heard throughout engagements, the Committee agreed that an examination of the CBD and current scheme should be conducted to ascertain whether improvements could be made for a potential long-term scheme that is underpinned by legislation. Members agreed that a streamlining of the system could also address concerns around the issue that patients can purchase private healthcare in Northern Ireland and be reimbursed but cannot do so in the Republic.

The Committee heard extensive evidence that the PDFORRA medical assistance scheme (PMAS) that facilitated prompt treatment of Defence Forces personnel has been significantly impacted by the discontinuation of the CBD. For several years, the enlisted personnel serving in the Defence Forces who had suffered injuries were unable to continue service due to the extended waiting lists for medical treatment in the public health system with delays in treatment risking their position in the Defence Forces. Mr. Damien Quigley, Permanent Defence Force Other Ranks Representative Association, outlined the establishment and function of the scheme:

*“Unlike commissioned officers, enlisted personnel are not provided with free private medical care and are not in a financial position to pay for expensive private health treatment. In the foregoing circumstances, PDFORRA established the PDFORRA medical assistance scheme, PMAS, as a not-for-profit company limited by guarantee to facilitate members who required prompt medical treatment. This was to ensure their continued service in the Defence Forces or indeed on overseas service with United Nations. The scheme facilitates members in securing medical treatment, mainly in Northern Ireland, under the European Union cross-border healthcare directive.*

*The financial model used is based on the member who needs treatment seeking sanction from the HSE to receive the treatment and borrowing the necessary finance from the ANSAC Credit Union. These loans are guaranteed by PMAS. Once the treatment has been received the individual will get a refund of most of the costs from the HSE. Where the refund does not cover all the costs the member receives money from the PMAS fund to cover the shortfall. The PMAS fund was initially established by a loan of €150,000 from PDFORRA and is maintained and added to through member subscriptions.”*

The scheme proved to be highly successful and membership of PMAS has reached just under 3000 members. Stakeholders agreed that the scheme was fundamental in ensuring careers were maintained and outlined the PMAS plan to formally increase staff and expand membership to family members. The Committee commended the PMAS scheme and noted that with the temporary nature of the current interim scheme, it is difficult to provide certainty for such an expansion to be implemented. Members therefore agreed with the view that, if the new Northern Ireland Planned Healthcare Scheme is to be underpinned by legislation, it must be done as soon as possible and should not be left until December when the scheme expires.

Members of the Committee also raised questions around the supply of medicines and medical devices and potential shortages as a result of Brexit. Stakeholders stated that the supply of medicine

was an area that was of high concern in preparing for Brexit as many of the medicines supplied to the island of Ireland come from or through the UK. Mr O'Connor highlighted that compounded chemotherapy products (a highly nutritious medicine/food for patients unable to eat) were a particular concern due to Ireland's dependence on the UK for such items. The Committee noted that the buffering of stock in the pharmaceutical supply chain ensured that a 12-week supply was maintained. Mr O'Connor further set out that:

*"We are feeling much better about medicines now. There has been significant rerouting of medicines as has been the case with many other goods. Many of our shelf medicines are coming direct from Europe now. This is much more secure and bureaucratically tidier for suppliers. We are also looking at our own capabilities in compounded goods. This is important and a matter on which we are working and building up capability with the HSE."*

Mr. Barry Andrews, MEP, highlighted that the difficulties around the SPS checks within the Protocol for Ireland and Northern Ireland also extend to the provision of medicines in Northern Ireland. The Committee noted that a grace period is in place until the end of 2021 but agreed that reports of potential medicine shortages and increased prices in Northern Ireland are concerning. Mr. Andrews emphasised that in order to avoid political tension around this, flexibility on all sides is needed to resolve the issue quickly. Commissioner McGuinness highlighted that while the EU is committed to absolute continuity of the supply of medicines to Northern Ireland, there is also a need for the UK to *"demonstrate that it is committed to full implementation of the protocol. There must be a joint endeavour on both sides."*

## 5. Data Flows

The Committee heard extensive evidence that the potential for a divergence in the data protection regimes between the UK and Europe could significantly impact Ireland and stakeholders emphasised the importance of maintaining a free flow of data, particularly for international trade and co-operation.

The Committee noted that the terms of the TCA provided for an interim provision relating to data transfers. Mr. John O'Dwyer, Data Protection Commission, outlined that this provides that:

*"...for a specified period up to 30 April 2021, which can be extended up to 30 June 2021 unless either party objects, transfers of personal data to the UK will not be deemed transfers to a third country for the purposes of EU law so long as the UK does not materially alter its data protection law regime during that period. As a result, for this specified period personal data can continue to be freely transferred from the EU to UK-based data importers and the UK law enforcement authorities without any requirement to implement additional safeguards that would otherwise be mandated under chapter 5 of the GDPR and chapter V of the LED."*

The Committee agreed that this interim period allowed time for an "adequacy decision" to be approved by the European Commission which would allow business to operate in line with the GDPR legislation. Mr. O'Dwyer stated that:

*"Article 45 of the GDPR provides that a transfer of personal data can take place to a third country or an international organisation where the European Commission has decided that the third country, a territory or one or more specified sectors within that third country or the international organisation in question ensures an adequate level of protection. Such transfers shall not require any special specific"*

*authorisation. Similarly, Article 36 of the LED provides for transfers between law enforcement authorities in EU member states and law enforcement authorities in a third country deemed to have an adequate level of protection. In practice, an adequacy decision means the European Commission has decided that a third country or an international organisation ensures an adequate level of protection for data transfers...*

*...The effect of such a decision is that personal data can flow from the EU to that third country without any further safeguard being necessary. In other words, the transfer is the same as if it was carried out within the EU."*

The Committee noted that the European Commission published its draft adequacy decisions relating to the UK on 19 February 2021 and that, following procedure, it was expected that the decisions would be adopted before the end of June 2021. However, in April 2021, the European Data Protection Board (EDPB) raised a number of concerns in the publishing of its opinions on the draft adequacy decisions which led to MEPs voting that the Commission should amend its draft before adoption.<sup>3</sup> Stakeholders advised that the absence of such an agreement on the sharing of data between the EU and UK would have serious implications for citizens' rights. Mr. O'Dwyer highlighted that significant implications would arise should the European Commission fail to adopt the adequacy decisions before the end of the transition period:

*"...any organisation in Ireland transferring personal data, whether in the form of using a cloud storage provider in the UK or outsourcing payroll processing to a Northern Ireland-based service provider, for example, will have to themselves implement additional safeguards to their personal data transfer operations. These may be in the form of EU-approved standard contractual clauses or, for public bodies, may involve the conclusion of a binding administrative arrangement between authorities in Ireland and the UK. Given the amount of trade and movement between Ireland and Northern Ireland and Ireland and Great Britain, the volume of personal data transfers between the jurisdictions is estimated to be significant. As a result, the administrative and cost burden for all Irish organisations required to create their own compliance arrangements in accordance with chapter 5 of the GDPR, regarding commercial transfers, would be considerable."*

The Committee acknowledged that the potential administrative and cost burdens for Irish businesses and organisations would be significant but noted that the EDPB was finalising guidelines for businesses following a public consultation in 2020 should there be no adequacy decision. However, the Committee noted that the EU Commission adopted the two data adequacy decisions on the 28 June that will facilitate the flow of data between the UK and the EU and include safeguards in case of future divergences. The Committee highlighted that should the UK move away from GDPR that Ireland must be prepared for that eventuality. Mr O'Dwyer stated that:

*"We are starting from a very good place as the UK has implemented the GDPR in full in its national legislation. It is probably the closest we will ever have to a third country that has a good data protection regime. It has the legislation and the redress mechanism in the sense that people can bring cases to the Information Commissioner's Office, ICO, which is the equivalent of our organisation in the UK. The UK has a full complaints and judicial procedure in that regard. That is all built in*

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<sup>3</sup><https://www.europarl.europa.eu/news/en/press-room/20210517IPR04124/data-protection-meps-urge-the-commission-to-amend-uk-adequacy-decisions>

*so it is starting from a good place. If it does start to diverge and if the UK Government decides to change the legislation or to dispense with the ICO for some reason, mechanisms are built into the adequacy decision that allow the European Commission to suspend that decision in whole or in part. Those kinds of protections are built in. In addition, there is a sunset clause. The adequacy decision will expire after four years unless renewed. It will not continue in force after those four years but, because of that sunset clause, must be proactively renewed. This allows a review to take place in four years' time which will see what the situation in the UK and in UK law is at that time. There are also measures that may be taken in the interim if the UK begins to diverge.”*

The Data Protection Commission highlighted that they have been preparing and engaging with organisations should the adequacy decisions not work out as planned and the Committee noted that the biggest implications will fall on smaller companies that do not have the resources to pay experts to put mechanisms in place:

*“We have met companies in the Border region that say they have been dealing with UK companies in the North for the last 20 years for their payroll and that those companies are only up the road. We say that up the road is still across the Border and that they need to take that into account. They say they have always dealt with those companies, that there has been no problem and that it is just up the road. We are saying to them that if there is no adequacy decision, up the road is across the Border and dealing with those companies will be an international transfer to a third country, with all that goes with that. They need to put the various safeguards, whether standard contractual clauses or other mechanisms, in place. A standard contractual clause is probably one of the most obvious mechanisms for most companies. There are serious issues for companies to consider. These are things that they do not normally think of because they do not think they deal in personal data.*

*When people talk about data transfer, they automatically think of the Facebooks, Googles and Twitters of this world but it is happening in thousands of companies every day of the week.”*

The Committee agreed that any divergence in data protection will present significant difficulties for cross-border business and also healthcare with regard to the sharing of medical information. Mr. Muiris O’Connor highlighted that diversion of data protection regulations would have a significant impact in the area of health:

*“On data, we are all holding our breath. The data adequacy agreement, in my assessment, is absolutely vital for the UK in terms of its ability to interface with Europe as neighbours. I would absolutely hope for a data adequacy decision whereby the European Union would deem the standards of data protection in the UK to be equivalent as they are now. Much of it depends on the UK's inclination to maintain that equivalence. Medicine is a very serious example of where deviation from regulations would give rise to difficulties in the future and give us real headaches. We await hopefully the adequacy decision on data, as well as the longer-term inclinations of the UK - it should be remembered that it is a major pharmaceutical exporter - to maintain alignment with European regulations and standards for medicines. We are watching this very closely. I will be able to give a fuller response as it unfolds.”*

In addition, Mr. Les Allamby, NIHRC, highlighted that divergence in data protection laws could create serious issues around cybersecurity and human rights and urged the Committee to be cognisant of movements in this policy area:

*“It is one of the things we very much need to keep an eye on. There are a number of cybersecurity issues. One is the Five Eyes, which the UK is part of with other governments, which is around national security and which is separate from the arrangements. The UK has implemented EU law to date in terms of the recent directives. How we move forward, particularly as the EU develops laws around these issues, is very important. I am very conscious that developments in technology and digital law issues often leave human rights behind to catch up in their wake, and the EU has been pretty good at trying to move forward quickly. We know some of the issues from Schrems and other cases. It is important to see where we go from here. I do not think the EU has been behind the curve to date, but the UK may diverge as the EU develops and that will cause quite a big issue.”*

The Committee agreed that consistent reviews in the area of data would be necessary to ensure any potential impacts are limited. Dr. Alan Barrett, ESRI, highlighted the need to monitor the developments around data protection in the UK for the coming years so that Ireland can fully be prepared for any outcomes. Dr. Barrett stated that data protection is an area that evolves all the time and that it will be necessary to take account of future divergences and case law to mitigate the impacts of this. The Committee noted that third countries usually converge with an EU standard and that it will be important to ensure there is *“not mass surveillance for security purposes of EU citizen’s data by the UK”*. The Committee agreed that further examination of data flows would be necessary for the final report of the Committee to allow further evidence surrounding the data adequacy decisions to emerge.

## **6. Future relations**

The Committee noted throughout engagements that while the UK is now officially withdrawn from the EU, future negotiations between the UK and the EU in relation to various policy areas will be ongoing for some time to come. Mr. Barry Andrews, MEP, stated *“the political alignment perspective between Ireland and the UK, whether we like it or not is gone”* as a result of Brexit, and that a new relationship between the EU and the UK and Ireland and the UK must now be developed.

Mr. Dáithí O’Ceallaigh, IIEA, stated that while there are many opportunities arising from Brexit for Ireland and the island as a whole, there are significant implications for Northern Ireland, particularly due to the limited representation of Northern Ireland views throughout four years of Brexit negotiations. Mr. O’Ceallaigh highlighted however, that there has been great work over the years by British-Irish parliamentary bodies and that should continue:

*“It is important Irish parliamentarians meet and talk as often as they can to their opposite numbers in the UK and, to the extent they are allowed, to their opposite numbers in the North. The Executive is very fragile. It did not exist for almost all of the Brexit negotiation, which meant that the political power went from Belfast to Westminster, and to a very specific group in Westminster which was not representative of all of the different views in Northern Ireland. Irish parliamentarians should try to meet and talk as often as possible to their opposite numbers in Britain and in Northern Ireland.*

*For six years, from 2001 to 2007, I was the Irish ambassador in London. The Good Friday Agreement was not a final agreement. It was an overall agreement and there*

*were many pieces in it that had to be dealt with before it was concluded. During the six years that I was in London, the two Governments were exceedingly close together. It did not mean that they always agreed, but they were determined together to try to provide peace in Northern Ireland. They did so on the basis that what they were trying to do would have to be acceptable to both sides. That is what has been missing over the past four years.”*

In order to ensure representation in the EU, Mr. Andrews highlighted that the proposed joint parliamentary assembly must allow for a specific group for Northern Ireland Assembly and MEPs to have regular engagement on this. In addition, Mr. Andrews pointed to the joint consultative working group under the specialised committee under the withdrawal agreement which could include Northern Ireland academics and other representatives when it commences monthly meetings. The Committee agreed that representation of Northern Ireland voices is essential for ensuring the best outcomes in relation to the UK’s withdrawal.

Several MEPs highlighted the EU’s difficulties with the UK unilaterally extending the implementation of its full customs procedures and the Committee agreed that measures and conditions of trade agreements must be implemented as agreed to ensure, in so far as possible, the continuation of Ireland’s special relationship with the UK post-Brexit. In the weeks prior to the UK’s withdrawal, Mr. Michael Russell, MSP, outlined the importance of communication between Government bodies and pointed to a need for greater collaboration in the future:

*“On the relationship issue, it is important that the Scottish Parliament and the Oireachtas be in communication. This is one of the ways in which we can do it. We can give evidence to committees, but we can also make sure that committees, for example, can sit in joint session and can also undertake investigations and can meet each other in circumstances in which there can be meaningful dialogue in this connection. We do that with a range of bodies and I would like to see that happening here. Senator Byrne and the committee members are very welcome to visit Scotland and we hope they will do so when it is possible.”*

The Committee noted that the need for collaboration on a political level was echoed throughout Committee engagements. Commissioner McGuinness highlighted that, in order to limit the implications of Brexit, there was a need for better dialogue and that the public discourse focuses too much on the problems rather than the solutions.

However, the Committee also acknowledged the impacts of Covid-19 restrictions on negotiations and agreed that the restrictions only added to the challenge of achieving agreements post-Brexit and noted the view that interparliamentary group meetings are unlikely to recommence before the Autumn. The Committee agreed that structures such as the British-Irish Intergovernmental Conference can help to address the issues facing Northern Ireland and that further inter-parliamentary structures may be required to encourage collaboration between Irish and UK Governments. Mr. Barry Andrews, MEP, emphasised the importance of Northern Ireland representation in the EU and stated the need for greater dialogue between Belfast and Brussels to work through the issues arising post-Brexit and reduce tensions for the future benefit of the all-island economy. Mr. Andrews further advised that some citizens have felt “voiceless” throughout the process and that:

*“One avenue for dialogue could be the creation of a dedicated parliamentary structure between the Northern Ireland Assembly and the European Parliament in recognition of the fact that Northern Ireland will continue to observe many EU rules,*

*despite lacking representation in the EU. The need to make the Protocol work for all communities in Northern Ireland is crucial given that the Northern Ireland Assembly will vote on the continuation of the Protocol in under four years' time."*

The Committee agreed that cross-border connectivity is crucial for maintaining and nurturing the Ireland-Northern Ireland relationship and Members agreed that developing road or rail link infrastructures on a cross-border basis would enable greater access to higher education institutes and employment on both sides of the border. The Committee commended the announcement of the Strategic Rail Review which will *"examine the role and potential of rail on an all-island basis with input from relevant transport authorities in both jurisdictions"*.

Mr. McGrane highlighted that the concept of the North-South or Dublin-Belfast economic corridor is a concept that remains valid on the Island and stated that *"it should be relaunched until it is done"*. Mr. McGrane advised that the British Irish Chamber of Commerce have worked closely with colleagues in DCU, the Northern Ireland Chamber of Commerce and others to promote the North-South/Dublin-Belfast economic corridor:

*"We are completely agnostic on where the jobs could be made to happen on this island and across these islands. They will most likely be made by people from some part of these two islands, whereas foreign direct investment may come and go because of taxation and other changes such as working from home. It is the people from this broad patch of earth that will promote the well-being of this broad patch of earth, and that North-South, Dublin-Belfast corridor has every potential if we can just get some investment into it in the weeks and months ahead."*

Mr. Barry Aughey, Aughey Screens, highlighted the need to focus on rebuilding a more *"equitable and equal society"* in the aftermath of Brexit and Covid-19 and stated that the provision of a high-speed rail project for the North-West region would bring *"investment, jobs and opportunity and address social issues and bring communities together."* Such a project would provide an estimated travel time from Dublin to Letterkenny of 46 minutes as opposed to the 180 minutes by car.

The Committee noted that there is currently no rail infrastructure or motorway in the North-West and agreed that, historically, there has been a significant lack of investment in the North West. Furthermore, the proposal for the rail project offers the potential of rejuvenating towns and villages across the region while providing a more balanced economy across the Island. The Committee agreed that such a project would require significant investment from both public and private sectors as well as funding on an EU level and noted that the private sector *"believes in the scope and ability of the project"*. In terms of cost, Mr. Aughey outlined that:

*"It is proposed that the Irish and UK Governments should both get involved. It is proposed that each Government would provide between 10% and 15%, so that would be capped at 30% at most. It is also envisaged that European structural funds will help to subsidise some of the cost. The rest will be driven by the private sector. In doing so, it is believed that this can be delivered in a timely and cost-efficient manner."*

*The estimates involved were calculated between 2019 and 2020. The net figure is €9.362 billion, a substantial amount. It covers the construction of the tracks, railway stations or terminals, the trains and the train sets, design and planning, consultation with the public, and professional fees. It is likely, given the current environment, that that cost is now outdated and therefore low. I run an engineering*

*business in Monaghan and since January there have been three price hikes for steel. It is likely that the figure of €9.362 billion is low now. It is the result of work that we have done to date.”*

Mr. Aughey highlighted that in order for the project to gain momentum there is a need for the North-West corridor to become a committed policy with focus and drive from both jurisdictions. Mr. Aughey further advised that with better investment in the region, the area will populate and, in turn, provide a firm basis for business investment. The Committee agreed that a well-connected rail network in Ireland would allow people to reach places of work and education more easily and that further investment in property and living around rail-lines would automatically follow suit. Furthermore, Members agreed that the potential for boosting economic growth and encouraging people to live beyond urban centres such as Dublin would not be possible without providing the infrastructure needed to facilitate living in such areas.

## Recommendations and conclusions going forward from evidence presented to the Committee

### *Trade Flows and Customs*

1. The Committee acknowledges the increase in customs documentation as a result of the UK's withdrawal from the EU. In light of this, the Committee recommends a review of the paperwork required for customs and ports to ensure duplication is avoided. In addition, the Committee recommends an immediate move towards the digitisation of paperwork be implemented to include automation where possible to ensure speed and efficiency is maintained at ports.
2. The Committee notes that many of the standards and regulations that require documentation in the trade sector fall under an EU competency and that it may not be feasible to limit the paperwork associated with these. As such, the Committee recommends that engagement between relevant bodies in Ireland, the UK and the EU take place to examine these issues and ascertain areas that can be reviewed on an EU level.
3. In light of the evidence highlighting a lack of consistency in the use of the AIS system by relevant Departments and State agencies at ports, the Committee is of the view that a centralised system for communication be developed and implemented for use. All agencies at port should use this centralised system only, for the purpose of communicating with relevant authorities. Training should be provided to staff to facilitate the use of the centralised system and to ensure that efficiency at ports remains a priority.
4. The Committee recommends that the technological developments as outlined by Revenue, the Department of Agriculture, Food and the Marine and the HSE be implemented without delay and full training to staff be provided to ensure consistent communication between all bodies and those working in the trade sector.
5. In light of the UK Government decision to postpone the implementation of full customs procedures and checks until 1 October 2021, the Committee agrees that the area of trade and customs flows will be revisited in its Autumn sessions for inclusion in the final report of the Committee.
6. The Committee recommends the establishment of a single access window that would facilitate greater efficiency for traders at ports and limit the delays associated with the administration and customs requirements. This access window would provide traders with a single entity for such requirements. A senior point of contact is another option that could be allocated to larger traders for this purpose.
7. In light of the impact on the trade sector the Committee agrees that greater collaboration of the major stakeholders in the UK and Ireland port sector is needed. To encourage this, the Committee recommends the establishment of a UK-Ireland port and transit forum to facilitate information exchange and discussion around the logistics and best practices for trade.

8. The Committee recommends that a review of ferry times and terminal opening times be conducted when goods return to 2019 levels following covid-19 to facilitate efficient trading through Dublin Port.
9. The Committee recommends that an examination of the port tunnel barriers be conducted with a view to a move to an electronic system to reduce fuel consumption and truck emissions at ports.
10. The Committee recommends that further consideration should be given to the potentials for Cork Port such as the creation of a border inspection post. The Committee agreed that the development of Cork Port is an opportunity to increase Ireland's connectivity and would be a benefit to all ports on the island.
11. The Committee notes the UK extension to the implementation of its full customs procedures. In light of this, the Committee is of the view that businesses should take the opportunity to prepare for the potential customs delays that may arise from October 2021. Relevant bodies are available to facilitate preparation and should ensure active communication with businesses to encourage this participation. In addition, the Committee urges businesses to prioritise adequate training for all staff to ensure accurate documentation/certification is provided to avoid delays in trading.
12. The Committee recognises the disproportionate impact of costs for SMEs as a result of Brexit, as well as the impact of Covid-19. As such, the Committee recommends an examination of the supports and stimulus packages for businesses following the dual challenge of Brexit and Covid-19.

### ***Infrastructure***

13. The Committee agrees that all relevant agencies situated at ports (Revenue, Department of Agriculture, Food and the Marine, HSE and other customs agencies) should be situated in one area/terminal to limit unnecessary delays at port and to encourage a more cohesive approach by agencies and to free up space at ports. The Committee therefore recommends that an examination of relocating such facilities at Dublin Port be carried out and that a move be implemented as soon as is practicable.
14. The Committee commends the expansion of Rosslare Europort and the new direct routes from continental Europe and is of the view that, following the recent demand-led transformation of the port, the port continues to be developed and that further resources be allocated to facilitate further necessary routes/sailings. Further development of the port will alleviate pressure on Dublin Port and congestion on surrounding motorways such as the M50. To facilitate this expansion, the Committee recommends that the motorway and link road to Rosslare be completed without delay to improve connectivity with Rosslare port.
15. In light of the evidence heard throughout engagements, the Committee recommends that, following the easing of Covid-19 restrictions, a visit to the Ports be arranged prior to the Committee's final report.

### ***The Rules of Origin***

16. In recognising the unanticipated impacts of the rules of origin, the Committee recommends that an examination be conducted of the potential supports available to mitigate the impacts on those sectors and businesses most affected. An examination of the planned supports from the Brexit adjustment fund could help to inform this process.
17. In light of the issues arising in some sectors as a result of the rules of origin, the Committee is of the view that an examination of the feasibility of Ireland's manufacturing and processing capabilities be conducted as a potential solution to such issues. Incentives, such as grants, for the manufacturing of produce in Ireland should be examined.
18. The Committee recognises the challenges that have arisen for cross-border sectors that are disproportionately affected by the rules of origin issues. The Committee agrees that a solution must be reached in order to protect the shared all-island economy and the businesses that contribute to it. Recognising that decisions around 'rules of origin' are made at an EU level and the ability of the Irish Government to make changes is limited, the Committee recommends that the Government advocate for flexibility around the 'rules of origin' for products that originate in Northern Ireland and wish to maintain EU and Irish status. The Committee therefore urges the Government to ensure that the EU considers new rules of origin which protect cross-border supply chains in all future trade agreements and in reviews of existing agreements insofar as is possible. The Committee agrees that further examination of this issue will be required for its final report following further negotiations in relation to the rules of origin.
19. The Committee is of the view that a more flexible interpretation of the rules of origin is needed in order to protect cross border supply chains on the island of Ireland where products of mixed origin with components from Northern Ireland and Ireland want to maintain EU and Irish status. The Committee notes in particular the difficulty being experienced by Irish milk products producers where milk from Northern Ireland is being used in Irish milk products.
20. The Committee further recommends that the Government seeks to amend the rules of origin to allow for mixed origin products from the island of Ireland to maintain EU status in any new trade agreements that the EU enters into with third countries and also recommends that the Government seeks to introduce this flexibility around rules of origin into existing trade agreements when they come up for review.
21. In light of the ongoing negotiations in relation to the SPS checks issue, the Committee recommends that further examination of the issue be conducted in the Autumn for reflection in the final report of the Committee.
22. The Committee recommends greater engagement with the EU Parliament to discuss issues arising for the all-island economy from the UK's withdrawal.

***The Protocol on Ireland and Northern Ireland***

23. The Committee acknowledges that there is some opposition to the Northern Ireland Protocol and recommends continued engagement with all parties in Northern Ireland to

try and bring about a solution to the current impasse on the Protocol to the benefit of all citizens on the island.

24. In light of the significant opposition by some politicians and groups in Northern Ireland to the Northern Ireland Protocol the Committee recommends that the Irish Government and the European Union begin preparations immediately for the upcoming vote in Northern Ireland, through the consent mechanism of the Withdrawal Agreement, on the continuation of the Northern Ireland Protocol. The vote is due to take place in the Northern Ireland Assembly four years after the implementation of the Withdrawal Agreement on the 31st December 2020. The Committee is of the strong view that a positive vote to maintain the Northern Ireland protocol cannot be taken for granted.
25. In acknowledging the differing political views arising from the Protocol on Ireland and Northern Ireland, the Committee agrees that the full value of the Protocol has yet to be seen and that in order to address many of the trade issues arising, the Protocol must be fully implemented. In order to achieve this, the Committee agrees that a more pragmatic, collaborative approach to engagement on all sides is required. The Committee further agrees that there are practical solutions to the issues surrounding the Protocol and that greater flexibility is needed to resolve them as negotiations continue in this area.
26. The Committee encourages stakeholders to maximise and take full advantage of the benefits and protections of the Northern Ireland Protocol.

#### ***Citizens' Rights***

27. Following Brexit, the rights of citizens in Northern Ireland have been severely impacted and the Committee agrees that this policy area is becoming more complex as the implications emerge. The Committee notes that some of the rights protected under Article 2 of the Protocol are not being upheld and recommends that a public consultation be conducted without delay to ascertain the full level of impact on the daily lives of those living in Northern Ireland. Such a public consultation would be fundamental in informing future policy decisions.
28. The Committee agrees that there is a gap in relation to equality of rights following Brexit in Northern Ireland and that solutions to this issue must be discussed and implemented without delay. In addition, the Committee notes the impact of Brexit on asylum seekers, non-EU migrants and refugees and is of the view that an examination of this specific area must be conducted for the Committee's final report. Furthermore, the rights of those who live a nomadic lifestyle around the border, including members of the travelling community and roma community, must be taken into account.
29. The Committee agrees that as a diverse island, it is impractical that freedom of movement across the border be limited solely to UK and Irish citizens. The Committee therefore recommends that clarity must be provided around the implications on freedom of movement on the Island particularly in relation to the free movement of non-Irish or non-British citizens who are resident in Ireland/Northern Ireland on a cross-border basis.

Furthermore, the Committee recommends greater public engagement to raise awareness of the potential issues that may arise should the UK Government introduce an electronic travel authorisation system for the border.

30. In light of the increased instances of racial profiling in the policing of the CTA and other challenges arising for the citizens within this area, the Committee recommends that an examination of strengthening the CTA through legislative underpinning be conducted to ensure clarity in the long term and to obviate undesirable practices occurring in the policing of it.
31. The Committee recommends that further clarity be sought in relation to the impacts on voting rights for those in Northern Ireland. In addition, the Committee recommends that the Government examine the potential for ensuring Irish citizens in Northern Ireland have the right to vote in EU elections.
32. The Committee acknowledges that following Brexit a democratic deficit now exists in Northern Ireland with citizens being subject to EU Single Market and Customs rules but having no directly elected member to the European Parliament. The Committee is of the view that the Irish Government must make every effort to ensure the voice of citizens in Northern Ireland is properly represented at EU level.

#### ***Mutual recognition of professional qualifications***

33. The Committee recommends that a standard framework for the recognition of professional qualifications be explored to avoid any long-term negative impacts of the current fragmented system.

#### ***Education and Research***

34. The Committee recommends increased and consistent engagement between higher education and political bodies must continue to mitigate the impacts arising from Brexit.
35. The Committee recommends that consideration be given to collaborating with the UK's Turing Scheme to maintain higher education relationships with the UK. Moreover, the Committee recommends that a similar scheme be established in Ireland to provide a continuation of the mobility for students and staff that has been lost through the discontinuation of the Erasmus programme in the UK.
36. The Committee recommends that an awareness campaign in relation to the Erasmus programme be launched to encourage greater uptake of study and work abroad opportunities.
37. The Committee recommends further investment in the higher and further education sector to meet the increased challenges faced by the sector following Brexit. The Committee agrees that further examination of the potential need for increased capacity in Irish universities will be necessary following the easing of Covid-19 restrictions.
38. The Committee recommends that better investment of the research and development sector is vital if Ireland is to maintain and enhance its strong research links with the UK. The Committee therefore suggests an examination of the Government's budget allocation for research and development be conducted to facilitate Ireland in reaching

the EU average of 1.3%. Furthermore, such investment should allow for additional programmes that can nurture collaboration in the research sector.

39. The Committee recommends that consideration be given to establishing a UK-Ireland bilateral research fund to provide resourcing and facilitate further collaboration in the research sector across the UK and Ireland.

#### ***Health***

40. The Committee recommends that the new, temporary Northern Ireland Planned Healthcare Scheme be underpinned with legislation without delay to continue the facilitation of cross-border access to healthcare beyond 31 December 2021 and to ensure best clinical outcomes for those awaiting treatment. The Committee is of the view that such legislation should be drafted as soon as is practicable and that the Government should not wait until the temporary scheme expires to do so.
41. The Committee is of the view that patients, particularly those in older cohorts who tend to access the Scheme, should not be disincentivised to access care for enhancing their quality of life. As such, the Committee recommends that a reworked scheme for accessing treatment without full payment in advance should be considered when moving on from the current temporary scheme.
42. In reviewing the Scheme, the Committee also recommends that an examination of expanding the Scheme to allow a reimbursement of fees for treatment in private hospitals in Ireland be considered.
43. The Committee recommends that following the implementation of a new scheme on a legislative basis, the PDFORRA medical assistance scheme (PMAS) should be expanded as described in Committee engagements.

#### ***Data Flows***

44. In light of the potential divergence in data protection legislation between the UK and the EU and the implications this may have for data flows North-South, the Committee recommends that a public awareness campaign to inform the public and businesses of the implications for citizens in Northern Ireland/Ireland. Such a campaign would also inform and prepare the public and, in particular, smaller businesses, should there be divergence in the area of data in the future.
45. The Committee recommends the provision of greater public support for the adoption of the EU data adequacy decisions by the Department of Justice. Such decisions are highly significant in avoiding divergence in data protection legislation between the UK and the EU.
46. The Committee also recommends that consistent reviews to monitor developments around data protection in the UK should be conducted over the coming years so that Ireland is fully prepared for any implications that may arise.

#### ***Future relations***

47. The Committee is of the view that good future relations between the EU and the UK and between Ireland and the UK is in the best interests of all citizens and businesses. The Committee acknowledges that Brexit has put significant strain on those relationships and it is essential that confidence building and trust measures between the relevant parties are further developed.
48. The Committee agrees that strong communication is an essential aspect of mitigating the impacts of Brexit and is of the view that the interparliamentary work that has previously existed between British and Irish bodies should continue, and that, following Covid-19, engagement should increase in order to build on and enhance the future relationship of the UK and Ireland.
49. The Committee is of the strong view that the UK Government must implement the Withdrawal Agreement in full, including the Protocol on Ireland and Northern Ireland in order to restore trust in the process and ensure the long term successful implementation of the Trade and Cooperation Agreement and good future relations between the EU and the UK and between Ireland and the UK.
50. The Committee also agrees that it is essential for Northern Ireland voices to be adequately heard in the dialogue around Brexit and recommends that the establishment of a dedicated structure between the Northern Ireland Assembly and the European Parliament be considered, in addition to any other necessary forum, to facilitate full communication and representation of the voices of those most impacted by Brexit.
51. The Committee agrees that there are many potential opportunities for the all-island economy as a result of Brexit and recommends further and ongoing engagement between Irish parliamentary Committees and Northern Ireland parliamentary Committees to explore the future opportunities for the island.
52. The Committee recommends that further examination be given to the potential for a North-South economic corridor that can facilitate trade, employment and education on a cross-border, all-island basis.
53. The Committee also recommends that consideration should be given to a high-speed rail project for the North-West region. Further examination of the project should be conducted with a view to providing greater connectivity for the region, thereby providing opportunity for economic growth and investment.



**Appendix 1 – Membership of the Committee**

**Roghchoiste Speisialta an tSeanaid um an Ríocht Aontaithe do Tharraingt Siar  
as an Aontas Eorpach  
Seanad Special Select Committee on the Withdrawal of the United Kingdom from the  
European Union**



**Senator Eileen Flynn**  
Independent



**Senator Malcolm Byrne**  
Fianna Fáil



**Senator Lisa Chambers**  
Fianna Fáil  
(Chairperson)



**Senator Timmy Dooley**  
Fianna Fáil



**Senator Robbie Gallagher**  
Fianna Fáil



**Senator Roisin Garvey**  
Green Party



**Senator Tim Lombard**  
Fine Gael



**Senator Vincent P. Martin**  
Green Party



**Senator Michael McDowell**  
Independent



**Senator Niall Ó Donnghaile**  
Sinn Féin



**Senator Joe O'Reilly**  
Fine Gael



**Senator Mark Wall**  
Labour Party

## Appendix 2 – Terms of Reference of the Committee



Seannad Éireann  
Leinster House  
Kildare Street  
Dublin 2

Seannad Éireann  
Teach Laighean  
Sráid Chill Dara  
Baile Átha Cliath 2

Our Ref: S13/6 (iv)

Cléireach na Dála,

Tá Seannad Éireann tar éis an tOrdú seo a leanas a dhéanamh:

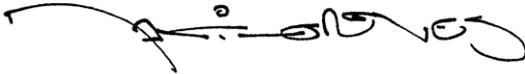
Seannad Éireann has made the following Order:

“D’ainneoin aon ní sna Buan-Orduithe:

That, notwithstanding anything in Standing Orders:

- (1) Go ndéanann Seannad Éireann Roghchoiste Speisialta Seanaid um an Ríocht Aontaithe do Tharraingt Siar as an Aontas Eorpach (‘an Coiste’) a cheapadh chun –
    - (i) faireachán a dhéanamh ar ullmhacht na hÉireann do na torthaí go léir a d’fhéadfadh teacht as tarraingt siar na Ríochta Aontaithe as an Aontas Eorpach,
    - (ii) scrúdú a dhéanamh ar thionchar an tarraingt siar ar an nascacht trádála leis an gcuid eile den Eoraip, go háirithe, i gcás aon bhaic a d’fhéadfaí a chur ar an droichead talún,
    - (iii) anailís a dhéanamh ar an tionchar a bheidh ag an tarraingt siar ar gheilleagar agus ar shochaí na hÉireann díreach tar éis na hidirthréimhse, agus
    - (iv) plé a dhéanamh le páirtithe leasmhara, le hinstiúidí íomchuí agus le hionadaithe tofa san Aontas Eorpach, sa Bhreatain Mhór agus i dTuaisceart Éireann, agus i Stáit Aontaithe Mheiriceá.
  - (2) Gur 12 chomhalta a bheidh ar an gCoiste.
- (1) Seannad Éireann appoints a Seannad Special Select Committee on the Withdrawal of the United Kingdom from the European Union (‘the Committee’) to –
    - (i) monitor Ireland’s preparedness for all possible outcomes following the withdrawal of the United Kingdom from the European Union,
    - (ii) examine the impact of the withdrawal on trade connectivity to the rest of Europe, in particular, from potential blockages to the landbridge,
    - (iii) analyse the impact of the withdrawal on the Irish economy and society in the immediate post-transition period, and
    - (iv) engage with stakeholders, relevant institutions and elected representatives in the European Union, Great Britain and Northern Ireland, and the United States of America.
  - (2) The Committee shall consist of 12 members.

- |  |  |
|--|--|
| (3) Gur cúigear is córam don Choiste.  | (3) The quorum of the Committee shall be five.   |
| (4) Go mbeidh na cumhachtaí a mhínítear i mBuan-Ordú 72, seachas míreanna (2), (3), (4), (5), (6), (7), (8) agus (9) de, ag an gCoiste.  | (4) The Committee shall have the powers defined in Standing Order 72, other than paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) thereof.                 |
| (5) Nach mbeidh feidhm ag míreanna (2) go (6) go huile de Bhuan-Ordú 77 maidir leis an gCoiste.  | (5) Paragraphs (2) to (6) inclusive of Standing Order 77 shall not apply to the Committee.   |
| (6) Nach mbeidh feidhm ag mír (2) de Bhuan-Ordú 84 maidir leis an gCoiste.   | (6) Paragraph (2) of Standing Order 84 shall not apply to the Committee.   |
| (7) Go dtabharfaidh an Coiste tuarascáil deiridh do Sheanad Éireann tráth nach déanaí ná an 31 Márta 2021, agus go mbeidh an Coiste arna dhíscaoileadh ar an tuarascáil deiridh sin a thabhairt. | (7) The Committee shall make a final report to Seanad Éireann not later than 31st March, 2021, and shall, on the making of its final report, stand dissolved.” |



\_\_\_\_\_  
Martin Groves  
Cléireach an tSeanaid.

16 October 2020

c.c. Tom Malone, Committee Secretariat.  
Michelle Grant, Committee Secretariat.  
Brian Hickey, Committee Secretariat.

*Tairiscint:*

*Motion:*

2. “Go ndéanfar, de réir an mholta ón gCoiste um Pribhléidí Parlaiminteacha agus Fomhaoirsiú, Ordú an 16 Deireadh Fómhair 2020, ón Seanad, arna leasú an 18 Samhain 2020, i leith Roghchoiste Speisialta an tSeanaid um an Ríocht Aontaithe do Tharraingt Siar as an Aontas Eorpach, a leasú trí mhír (7) a scriosadh agus an méid seo a leanas a chur ina hionad:

‘(7) Go dtabharfaidh an Coiste tuarascáil eatramhach do Sheanad Éireann tráth nach

That, in accordance with the recommendation of the Committee on Parliamentary Privileges and Oversight, the Order of the Seanad of 16<sup>th</sup> October, 2020, as amended on 18<sup>th</sup> November, 2020, in respect of the Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union, be amended by the deletion of paragraph (7) and the substitution therefor of the following:

‘(7) The Committee shall make an interim report to Seanad Éireann not later than 30<sup>th</sup> July, 2021, and shall make a final

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déanaí ná an 30 Iúil 2021, agus go dtabharfaidh sé tuarascáil deiridh do Sheanad Éireann tráth nach déanaí ná an 31 Nollaig 2021, agus go mbeidh an Coiste arna dhíscaoileadh ar an tuarascáil deiridh sin a thabhairt’.

report to Seanad Éireann not later than 31<sup>st</sup> December, 2021, and shall, on the making of its final report, stand dissolved’.”

– *Senator Regina Doherty.*  
[11th March, 2021]

## Houses of the Oireachtas

Leinster House  
Kildare Street  
Dublin 2  
D02 XR20

[www.oireachtas.ie](http://www.oireachtas.ie)

Tel: +353 (0)1 6183000 or 076 1001700

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