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

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

Membership of the Committee on the Withdrawal of the UK from the EU



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Cathaoirleach's Foreword

The Brexit referendum of 2016 resulted in a decision by the U.K. to withdraw from the E.U. thereby ending a deep relationship between both going back to 1973. The impacts of this decision continue to be felt by citizens and businesses today and this will continue for some years. The relationships between the E.U. and U.K and Ireland and the U.K. have been altered significantly and it will take some time before we realise the full impact of this change.

The Committee held a series of public hearings from October until December 2021 with relevant stakeholder groups. These meetings were to follow on from those previously held from December 2020 to June 2021. The Committee also continued to develop its relationships with other inter-parliamentary bodies through meetings and deliberations with the U.K. House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, Northern Ireland Executive Committee, and the E.U. Commission. These engagements, in particular, allowed the Committee to provide an international perspective to its deliberations and fed into its findings and recommendations.

Across the period of the Committee's activity, it sought to give a voice to those impacted by Brexit and to provide practical solutions, some of which were provided by our witnesses. It was a core objective of the Committee to be a platform for community groups, businesses and citizens who were most impacted and allow them to tell their story.

A common theme throughout our engagements with the various stakeholders and the submissions received from witnesses to the Committee was the need to eliminate the uncertainty around the implementation of the Protocol on Ireland and Northern Ireland. This uncertainty is having a chilling impact on business both in the short and the long term, with many potential investors waiting to see what might happen. It should be noted that the various business representatives were generally positive, in the main, on the real and potential benefits that the Protocol provides, while acknowledging the need to resolve any impediments to trade. Both the EU non-papers and the British Government Command Paper also acknowledge this.

The issues that persist around the protocol are ultimately solvable if there is political will. Negotiations continue through the Joint Committee and there have already been significant improvements to the operation of the protocol since it began operation. There is a basis to conclude negotiations and give certainty to the protocol which ultimately could see huge benefits for the people and businesses of Northern Ireland.

The Committee acknowledges the concerns raised by citizens and elected political representatives in Northern Ireland regarding the implementation of the Trade and Co-Operation Agreement and the Withdrawal Agreement, in particular the Protocol. The concerns are genuine and must be addressed. These concerns have been articulated by the Committee to the Irish Government and the EU and have been reflected in the Committees recommendations.

Having acknowledged these concerns, the Committee believes ultimately that they can only be addressed through trust and cooperation between both sides and a willingness to agree solutions. The Committee hopes that current negotiations deliver a resolution in recognition of the importance of maintaining a good relationship between Ireland and the U.K. and the U.K. and the EU.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearings to give evidence, those who received the Committee Members as visitors and who assisted in the preparation of this Final Report of the Committee. I would also like to thank the staff of the Committee Secretariat who assisted in the preparation of this report."



Senator Lisa Chambers
Cathaoirleach – December 2021

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Background

The Committee was established in late 2020 with a primary focus to look at the impact of Brexit and in particular the implementation of the Withdrawal Agreement and the Trade and Cooperation Agreement. The Committee looked at the following themes:

- Trade flows and customs
- Infrastructure at Ireland's ports
- The Rules of Origin
- The Protocol on Ireland and Northern Ireland
- Citizens' Rights in Northern Ireland Post Brexit
- Mutual Recognition of Qualifications
- Education and Research
- Cross Border Healthcare
- Data Flows
- Future Relations Between Ireland and the U.K. and the EU and the U.K.

The Committee published its interim report in July 2021 making a number of key recommendations across the themes covered. The Committee re-commenced public hearings again in September 2021, building on the work of the interim report and refining its focus to address remaining gaps in the Committees work which then informed the Final Report. The areas focused on were:

- The Protocol on Ireland and Northern Ireland.
- Dispute Resolutions Mechanisms within the Withdrawal Agreement and the Trade and Cooperation Agreement.
- Cross Border Health Care; a New Statutory Scheme.
- Supply of medicines in Ireland post Brexit –
- Relationship Building North/South and East/West; interparliamentary Engagement.
- The Democratic Deficit in Northern Ireland
- Current Economic Outlook and Changes in Trade Flows.

- The Work of EU Commission Vice President Maroš Šefčovič and the Joint Committee
- The Work of the Department of Foreign Affairs on Brexit.

EU-UK Trade and Cooperation Agreement (TCA)

Below is a timeline of events surrounding the decision of the UK to leave the EU with respect to the EU – UK Trade and Cooperation Agreement.

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

¹ [EU Commission infographic on UK referendum – new TCA](#)

<u>21 July 2021</u>	The UK published its command paper on the Protocol
<u>13 October 2021</u>	The EU Commission Non Papers – Vice – President responds to UK command papers

The TCA provides for quota-free and tariff-free trade on all goods which have originated in the UK and the EU. It also protects the EU Single Market and Ireland's position within, as well as providing a constant set of provisions for areas such as aviation and road haulage, co – operation on cross – border law enforcement, energy links, trade in services and goods. This TCA alleviates any risk of a “no deal” Brexit scenario and ensures a level playing field for all parties. It consists of a Free Trade Agreement, an overarching governance framework and a close partnership on citizens' security.

The EU – UK Trade and Cooperation Agreement was signed on the 30th December 2020 and was applied provisionally on the 1st January when the Brexit transition period ended. It formally came into effect on 1st May 2021 after being ratified by both sides.

Protocol on Ireland and Northern Ireland

On 31st January 2020, the UK left the EU after the Withdrawal Agreement (WA) was agreed by both parties. This was followed by a transition period which lasted until 31st December 2020. At the end of this period, the EU-UK Trade and Cooperation Agreement (TCA) came into effect, which provides zero tariffs and quotas on goods from a number of key areas. The Northern Ireland Protocol came into effect on January 1st, 2021, and forms part of the Withdrawal Agreement. This protocol is a result of Brexit negotiations between the EU and the UK. This protocol meant that there would be no new checks on the goods that would be crossing the border between Northern Ireland and the Republic of Ireland.

The aims of the protocol are to:

- Avoid a hard border between Northern Ireland and the Republic of Ireland

- Facilitate unencumbered access for Northern Ireland goods to the Great Britain market
- Ensure the integrity of the EU's single market for goods

The Protocol also affords a consent mechanism which would allow the NI Assembly, four years after the implementation, to vote on whether to continue the application of the Protocol or to discontinue. If voted to discontinue, the Protocol would not apply after a further two years. The Assembly have the ability to vote on the continued application on relevant Union law every four years thereafter.²

The Protocol has ensured that Northern Ireland remains in the EU's single market for goods, when England, Scotland and Wales have left the EU's single market, as a result of Brexit. This means that goods will flow from NI to the ROI as they always have before Brexit, with no customs checks, tariffs, or new paperwork. Northern Ireland is in a unique situation, with dual access to both the EU single market, as well as the UK internal market.

Article 16

Article 16 of the Northern Ireland Protocol will allow either party to suspend elements of the Protocol if it is leading to “serious economic, societal or environmental difficulties”³ that are likely to persist, or if they cause a diversion of trade. However, these measures must be limited in scope and duration to only what is absolutely necessary to fix the problem. If either party decides to trigger article 16, there is a specific process that they must follow, which is outlined in annex 7 of the Protocol and are as follows:

1. The triggering party must first notify the other side through the Joint Committee immediately.
2. Both sides must immediately begin discussions to try and come up with a solution that is accepted by both parties.

² [EU Commission – Protocol on Ireland and Northern Ireland](#)

³ [The Protocol on Ireland and Northern Ireland](#)

3. The triggering side cannot implement anything for one month after step 1 if no solution is found unless the negotiations have concluded before this month time frame.
4. The party that has triggered article 16 must then notify the other side immediately about what measures they are implementing and all other relevant information.
5. The safeguarding measures must then be discussed in the Joint Committee every three months within the context of ending or limiting the scope of them.

However, annex 7 of the Protocol states that the proposing party can implement these safeguarding measures immediately if “exceptional circumstances requiring immediate action exclude prior examination”

The Protocol also states in article 16(2) that if the measures put in place create a disparity between the rights and obligations under the Protocol, then the other party may take rebalancing measures proportionate to the situation. The 5-step process above must also be followed when restoring the balance.

Committee Engagement

In October and November 2021, the committee held a number of engagements with relevant stakeholders in public session. Official transcripts of the engagements are attached below.

Table 1: List of Public Engagements with Stakeholders

<u>Date of Hearing</u>	<u>Witnesses</u>
12 October 2021	• Ms. Maeve Collins, Director General, European Union Division, Department of Foreign Affairs • Deirdre Farrell - Director, EU-UK Unit, European Union Division, Department of Foreign Affairs • Karl Gardner - Director, EU-UK Unit, European Union Division, Department of Foreign Affairs

<u>19 October 2021</u>	• Muiris O'Connor, Assistant Secretary General, R&D and Health Analytics Division, Department of Health • 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 • David Delaney, Chairperson, Medicines Ireland • Padraic O'Brien, Vice-Chairperson, Medicines Ireland
<u>20 October 2021</u>	• Sinead McLaughlin (SDLP) Chairperson, NIEC • Pádraig Delargy (Sinn Féin), NIEC • Emma Sheerin (Sinn Féin), NIEC • Pat Sheehan (Sinn Féin), NIEC • Diane Dodds (Democratic Unionist Party), NIEC • John Stewart (Ulster Unionist Party), NIEC
<u>2 November 2021</u>	• Professor Alan Barrett, Director, Economic and Social Research Institute • Professor Martina Lawless, Research Professor, Economic and Social Research Institute
<u>10 November 2021</u>	• Lord Jay of Ewelme, House of Lords • Baroness Goudie, House of Lords • Baroness O'Loan, House of Lords • Baroness Ritchie of Downpatrick, House of Lords • Lord Thomas of Gresford, House of Lords • Lord Hain, House of Lords
<u>15 November 2021</u>	• Maroš Šefčovič, Vice-President for Inter-institutional Relations and Foresight, European Commission

24 November 2021

- Simon Coveney TD, Minister for Foreign Affairs
- Karl Gardner - Director, EU-UK Unit, European Union Division, Department of Foreign Affairs
- Ms. Maeve Collins, Director General, European Union Division, Department of Foreign Affairs

Key Themes of Interim Report

- Trade flows – impacts on haulage, business 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

Key Themes of Final Report

- Future relationship of UK/EU and UK/IE
- Dispute Resolution Mechanism
- Cross Border Healthcare Directive
- Supply of Medicines in Ireland
- The Protocol and Article 16
- Trade Flows – North/South and East/West
- Democratic Deficit in Northern Ireland
- Data Adequacy

1. Future Relations

The decision of the UK in 2016 to leave the EU has had profound effects on relations between Ireland and the UK and the EU and the UK. These effects have had implications across all facets of the relationships.

The Committee extensively reviewed these relationships through engagements with various parliamentarians from Ireland, Britain, US and EU, as well civil society bodies and NGO's. The record of these engagements can be found in the interim report of the Committee, which was released in July 2021. The recommendations of the Committee can be found in the recommendations section of this, the final report.

The Committee returned to reviewing and examining the future relationships for its final report as it is an area of national and international significance. The Committee heard from several witnesses including from members of the House of Lords Sub Committee on Protocol on Ireland/Northern Ireland, EU Vice President and the Minister for Foreign Affairs and Defence.

Currently the relationships between Ireland, UK and the EU are being impacted by the ongoing negotiations on the implementation of the Protocol arising from the Withdrawal Agreement. The UK's referencing the activation of Article 16 has not helped the negotiations and has brought tension to the various relationships. The activation of Article 16 would suspend parts of the agreement and risk a major escalation in tensions.

Minister Coveney in his deliberations with the Committee, as recently as last month, stated he would like to see positive future relation between the EU and UK. In order to achieve this, parties must work together in a spirit of partnership and trust.

“When trust is compromised, progress is threatened and the recent UK approach to the protocol has unfortunately called that trust into question”.

“I believe the remaining issues can be resolved, however, to do so we need to get a much more positive, much more stable and much more trusting EU/UK relationship”.

The EU Vice-President in his meeting with the Committee stated that as regards the Protocol he wanted to develop a future relationship with the UK that would lead to positive developments:

“This is the best answer I can give at this stage because we still think that energy spent, especially political energy, should be focused on positive developments on the future. This is our primary focus in our discussions with the UK.”

During discussions with the Lords, it was acknowledged that relationships between the UK, EU and Ireland had been put under pressure. Lord Jay commented:

“There is therefore an urgent imperative for all sides to make concerted efforts to build trust by recommitting themselves to that process of dialogue, repairing the damage caused to relations across these islands during the past five years, in the interests, as the protocol rightly acknowledges, of communities in both Ireland and Northern Ireland.”

The Committee’s interactions with various parliamentarians during the preparation of its final report deliberations was very much appreciated in arriving at its recommendations.

The Committee is of the belief that interparliamentary work that has previously existed between Irish and British bodies should be maximised to enhance the future relationship between Ireland and the UK and this is reflected in its recommendations.

2. Dispute resolution

The Committee engaged with officials from the Department of Foreign Affairs in relation to the Dispute Resolution Mechanism for the Trade and Cooperation Agreement (TCA) and the Withdrawal Agreement (WA) between the United Kingdom and the European Union. These agreements reinforce the UK’s withdrawal from the EU and establish the basis for their new relationship.

The officials informed the committee that these agreements outline in what way the parties should engage where difficulties or areas of conflict arise. Both agreements

are overseen by various technical committees whose functions to try and resolve any dispute which may come to light. The Governing Committee for the TCA is the Partnership Committee, and the Governing Committee for the WA is the Joint Committee. Both overarching committees are led by Commission Vice-President Šefčovič and Lord Frost, representing the EU and the UK respectively.

Both the Joint Committee and the Partnership Council can make binding decisions in relation to the implementation and can agree on limited amendments to the agreements, however, these decisions have to be agreed by both the UK and the EU. These committees oversee that the correct political engagement and direction are provided. There are arbitration bodies within both committees who deal with dispute resolution. The way in which this arbitration is carried out differs between both committees.

“A significant difference is that the withdrawal agreement allows for possible recourse to the European Court of Justice. However, in both agreements, non-compliance can lead to suspension of treaty obligations.”

Both agreements have mandated the establishment of separate and independent arbitration bodies.

2.1. Trade Cooperation Agreement

For the EU-UK TCA, the overarching committee is the Partnership Committee, which is led by Commission Vice-President Šefčovič and Lord Frost, for the European Union and the United Kingdom respectively.

The TCA allows for the creation of EU-UK parliamentary assembly, which would include 35 members each from the European Parliament and the UK Parliament. Once this has been set up, they will be up to date of the partnership council's decisions and can make recommendations to them. The Parliament in the EU have agreed their approach, while the UK are yet to decide on their approach. The EU sought a role similar to the WA of the Court of Justice of the European Union (CJEU), but this was opposed by the UK, which means there is no role for the CJEU in TCA dispute settlement. TCA provisions will be interpreted in line with public

international law, including customary rules of interpretation codified in the Vienna Convention on the Law of Treaties.

2.2. Withdrawal Agreement

In the case of the WA, the overarching committee is the Joint Committee, which is also overseen by Vice-President Šefčovič and Lord Frost. Under the WA, if any dispute involves questions regarding interpretation of EU law, the arbitration panel must refer the interpretation to the Court of Justice of the EU (CJEU). This would then mean that the CJEU's ruling will be binding on the panel.

The Protocol on Ireland/Northern Ireland comes under the remit of the Withdrawal Agreement and it also includes elements relating to dispute resolution. The EU has had to begin infringement proceedings against the UK twice for breach of obligations under the protocol. The first of these was eventually dropped after the clauses being breached were removed from the UK's Internal Market Bill. The other is on hold pending more developments in the EU-UK engagement on the implementation of the Protocol. When discussing the Protocol there may be more factors relevant to the dispute resolution stage, which go beyond the role of the Specialised Committee on the Protocol.

The Committee asked the officials from the Dept. of Foreign Affairs about how to overcome a scenario where the UK triggers Article 16 in saying that there have been serious economic and societal impact and the EU disagrees, to which the officials stated the following:

“Let us say one of the parties, we will not say which, decides it is going to invoke Article 16. The first thing that party does is notify the joint committee it is doing this and there are immediate consultations with a view to trying to find the solution. If no solution can be found one side or the other can take safeguard measures, but there is also a dispute settlement mechanism within that which allows the development of an arbitration panel, just to decide on issues that arise within Article 16 as well. Again, as with what Ms Collins was saying earlier, it is a process. It is not that suddenly Article 16 crashes things;

instead it is a process of joint committee discussions and then various options which flow from that as well.”

Through their engagement with the House of Lords, the Committee were able to listen to the Lords views on dispute resolution. Lord Thomas brought up the concept of creating a new court within the overarching Court of Justice of the European Union.

“It seems the machinery is there for creating a new court within the overarching Court of Justice of the European Union structure which could be manned by three or four judges from the EU on one hand and three or four judges from the UK on the other. There would be an independent president presiding at the top who would hold the balance.”

3. Cross Border Healthcare Directive (CBD)

The Committee are aware of the fact that the use of the EU Cross Border Healthcare Directive by Irish patients has grown considerably in the last number of years. The loss of this route of access to healthcare as a product of Brexit posed a real challenge. In order to alleviate this loss of access, the Government took a number of important measures to enable patients to have continued access to private healthcare in Northern Ireland and the UK, and also allow reimbursement of costs by the HSE, provided that the healthcare they are availing of is widely available within Ireland. Firstly, a new Northern Ireland planned healthcare scheme was established on an administrative basis. Secondly, transnational arrangements are also in place to *“enable persons who had a legitimate expectation to continue to access care in the UK under the EU cross – border directive.”*

Mr Muiris O’ Connor from the Department of Health updated the committee on the statistics surrounding patients accessing healthcare in Northern Ireland whether it is through the use of the Cross Border Healthcare Directive or the Northern Ireland planned healthcare scheme. The committee acknowledged that almost 2,000 reimbursements have been made as of October of this year. When establishing the new Northern Ireland planned healthcare scheme, it was decided to be established on an administrative basis and be replaced by a statutory scheme once it has been

drafted. In his meeting with the Committee towards the end of their autumn work programme, Minister Coveney confirmed that the Department of Health were working on putting the Northern Ireland planned healthcare scheme on a statutory footing.

Analysis is being carried out in order to inform the design of this statutory scheme, analysis which will more than likely continue into 2022. Despite this work continuing into the coming year, the administrative scheme will continue until such a time that the statutory scheme is implemented. Officials from the Dept. of Health and the HSE also informed the Committee that:

“... the Northern Ireland Executive has similarly introduced an administrative Republic of Ireland reimbursement scheme, for a period of 12 months, which enables residents of Northern Ireland to access private treatment in this state”.

The Committee acknowledged that the Department are maintaining communications with their relevant counterparts in Northern Ireland to ensure constant understanding of both schemes available to their citizens.

When the UK was in the EU, Northern Ireland accounted for 92% of destinations under the cross-border directive in recent years. So far this year under the cross-border directive, 1,900 reimbursements have been recorded with respect to healthcare in Northern Ireland that commenced prior to 31 December 2020.

“This amount of 1,900 equates to 56% of the total activity under the cross-border directive. The other 44% accessed healthcare in the EU or EEA.”

With respect to the Northern Ireland planned healthcare scheme the number of reimbursements identified under this scheme in quarter one, was 11, this jumped to 144 in quarter two, and 460 in quarter three. This equals €4,000 in reimbursements in quarter one, which increased to €400,000 and €1.6 million in quarter two and three respectively.

Stakeholders highlighted that these numbers show that the implementation of this scheme has continued to ensure patients are provided with access to the healthcare that would have previously been availed of under the CBD.

The Committee acknowledged that the border regions seem to be the biggest users of the Northern Ireland planned healthcare scheme, with the greatest activity being seen, in Donegal, Dublin, Monaghan, Louth, Cavan, Kerry, Cork and Wexford.

“Significant volumes in Cork and Kerry may be attributed to a large extent to organised logistical assistance given to patients accessing healthcare.”

Ms Catherine Donohoe, representative for the HSE informed the Committee on the nature of services being accessed through the Northern Ireland planned healthcare scheme. These services have continued in the same way as done through the cross-border directive in that orthopaedics, ophthalmology, ear nose and throat, as well as gynaecological services are the main services accessed. 90% of the patients availing of these services are doing so because of the waiting times in Ireland. The schemes however do not cover everything, they cover what is publicly available within Irish legislation. So, for example, long term care, public vaccination programmes and enzyme replacement would not be covered by the schemes.

Stakeholders also provided the Committee with an update on PDFORRA since their last engagement.

“In regard to PDFORRA, since PDFORRA established its medical assistance scheme, 327 of its members have availed of treatment under the medical assistance scheme; 227 of these medical interventions were under the cross-border directive and, to date in 2021, 100 have been under the Northern Ireland Planned healthcare scheme.”

4. Supply of Medicines in Ireland

Stakeholders from Medicines for Ireland (MFI) have assured the Committee that there have been no noteworthy shortages of medicines in Ireland as a result of Brexit, which was also confirmed by the Minister for Foreign Affairs at the Committee’s final engagement of the autumn work programme. The industry has been preparing for the results of Brexit for a significant amount of time, which resulted in millions of euros having been invested in production facilities in Ireland,

as well as in India, Hungary, France, and Germany, to change the productions lines, the packs, and the coding on the packs.

“... we have invested significantly in the shipping routes and the logistical efforts. Millions and millions of euro have been invested by our industry to ensure that in Ireland, hopefully everybody on the call today, and all of our friends and family, generally speaking, have experienced no shortages. We have come a hell of a long way.”

Despite this positive information from MFI, they also let the Committee know that there is still remaining uncertainty with regards Northern Ireland. While NI only accounts for 3% of the UK market, it is still an important factor for the Committee to consider.

The witnesses made the Committee aware that there are still uncertainties revolving around licensing issues. Even though a reduction in checks, as proposed by the EU Commission, would be welcomed, it also carries a negative impact of the medicines industry:

“It would appear that the Commissioner’s proposals will call on almost every professional person receiving medicine in Northern Ireland to have what is called a wholesale distributor’s authority licence”

According to Mr. Padraic O’Brien from MFI, the impact of Brexit for their members in Ireland was significant. There was a huge amount of time, energy, and money that MFI members have exhausted in order to ensure that the supply to Irish patients post Brexit continues. Pre Brexit, the demand could be pooled and products for both markers would be able to come from one batch, which can no longer happen.

“Given that the supply of medicines is such a regulated industry, as it should be, the impact of Brexit for our members in Ireland was profound. The decentralised procedure, DCP, is at the centre of the discussion for Northern Ireland and it had equal effect for MFI members who accessed the procedure known as share packs. For all intents and purposes, we could pool our demand with the UK in order to supply Irish patients. A share pack contained

all the regulatory information to satisfy both the UK regulator, then the Health Research Authority, HRA, and the Irish regulator, the Health Products Regulatory Authority, HRA... That situation can no longer continue post Brexit, which means we had to perform all the regulatory tasks to make that happen.”

When asked by the Cathaoirleach, Mr. David Delaney of MFI, informed the Committee on the topic of a medicines reserve. He acknowledged that MFI took steps to invest a great deal in the data on moving medicines around Europe for use in ICUs. As this work was being carried out, MFI worked alongside Directorate – General (DG) Competition in Brussels in order to get clearance for specific medicines, which turned out to be successful.

“We engaged with DG Competition on whether, at an Irish and European level, we could share among our members the data around the... 15 ICU medicines used for the treatment of Covid patients, the information on supply and commercial availability of the medicines and the APIs to try to ensure that we have enough of these medicines in every European country.”

The above had the potential to be a breach of competition law or it could have ended up being a commercial problem for members of MFI, but DG Competition returned with the verdict that that information could be shared.

One of the proposals that came from an independent economist in Brussels, was the idea of a national medicines reserve, not unlike an oil reserve. This concept is still being thought about from a logistical perspective, especially in terms of what would happen to medicines if they are not used after a year or two, or where they would be warehoused.

“The concept of a national medicines reserve could be something that is worthwhile, particularly for small countries like Ireland. It could work. We discussed this with some policymakers in Ireland as Covid was evolving over a year ago. We were alerting the policymakers to the fact that a lot of the generic medicines might take six to ten months to make, but the biological medicines take two years to make. While we could decide in the morning to

establish a national medicines reserve, in terms of Covid a year ago, we really needed to try to make quick decisions because a lot of the HSE-type organisations across Europe were instigating huge tendering processes, essentially creating their own mini-medicines reserves, in particular in the UK, although it is not called a medicines reserve.”

In his engagement with the Committee, EU Commission Vice President Maroš Šefčovič stated that he is confident that more issues on medicines can be solved if his UK partners engage with them.

“Our legislative approach is ready and I can put it on the table this week. However, I still want to do it by taking a joint approach with the UK. If the UK has any additional realistic elements, we are ready to adjust it and to present it. We can solve the issues of market authorization, batch testing, regulatory functions, cancer drugs, or veterinary medicine”.

The House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland (the Lords) communicated to the Committee on its examination of the potential impact on the provision of medicines in Northern Ireland arising Protocol. The examination took place in October 2021 and heard from representatives of the UK pharmaceutical industry.

The Lords heard that the Protocol did pose difficulties in the provisions of medicines, the difficulties related to areas such as certification, licences, marketing authorisation and supply of over-the-counter medicines. The representatives also stated that difficulties arising from the implementation of the Protocol caused their industry uncertainty around planning decisions, which in the pharmaceutical industry tend to be long term.

The pharmaceutical representative informed the Lords that the EU's non-paper on medicine delivered by the EU Vice President in October 2021 was to be welcomed as the proposals were a positive step although they recognised further work by both sides was needed to resolve issues such as centralised products, mutual recognition and decentralised procedures and wholesalers' licences. It was also felt that the non-paper reflected a significant move of position by the EU with worthwhile concessions

being made. The pharmaceutical representative believed that the non-paper reflected their industries concerns.

As regards the threat of unilateral action to remove medicines from the Protocol the Lords heard that there would be undesirable consequences for the pharmaceutical industry given its interdependence on the EU and would have long term implications.

5. The Protocol and Article 16

In the Committee's engagement with officials from the Department of Foreign Affairs, they provided it with useful insight into what the triggering of Article 16 would mean for both parties:

"It is important to note that invoking Article 16 does not immediately suspend the protocol or allow either party to dispense with it. It starts a process of engagement with a view to finding a commonly acceptable solution engagement".

The triggering of Article 16 does not automatically get rid of the Protocol in the slightest, triggering it initiates a specific set of steps, which are outlined above under the topic of Dispute Resolution within the Withdrawal Agreement. It is a safeguard option, there for either party to invoke, but only if the Protocol has or is leading to "serious economic, societal or environmental difficulties that are liable to persist or to diversion of trade". Officials from the Dept. of Foreign Affairs also told the Committee:

"It is not that suddenly Article 16 crashes things; instead, it is a process of joint committee discussions and then various options which flow from that as well"

Minister Coveney also confirmed the above to the Committee and said that Article 16 is not designed to deal with all issues relating to the Protocol, but instead is supposed to be used as a temporary measure to resolve issues either party have raised. Minister Coveney also provided the Committee with the opinion that if the UK Government do breach the Protocol and/or activate Article 16, then the EU will have no choice but to respond robustly. This is an important area as the TCA and the WA are linked, which means that if the British Government set aside elements of the WA, then the EU will not be able to implement the TCA.

The Minister outlined to the Committee why he believed that Northern Ireland was better off with the protocol.

“Northern Ireland has this unique opportunity to access a very large UK single market, but also a much larger EU single market.”

“There is potentially a pull factor into Northern Ireland in terms of foreign direct investment – if the protocol was stable and predictable you could access both markets from Northern Ireland”

The Committee heard from the ESRI regarding the purpose and intended use of Article 16 where they conveyed to the Committee that Article 16 is not supposed to be used as a way to get rid of the Protocol altogether:

“There are ways in which Article 16 can be called into place with limited targeted restrictions on individual products or sectors. Triggering Article 16 is more a continuum than a kind of nuclear button. Obviously, anything that took a very real extreme position and that took Northern Ireland out of the EU customs area would open--- the worst fears we had during the initial Brexit discussion...”

The Committee also engaged with the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland (the lords), where Article 16 was also discussed. The Committee was curious as to whether Lord Frost and his team have done a proper cost-benefit analysis of the triggering of Article 16, which Lord Hain responded:

“I do not think a cost-benefit analysis was ever done on Brexit by those advocating it let alone on the protocol”.

Lord Hain also gave the opinion that if Lord Frost does announce that he will trigger Article 16, that it will be “a very aggressive and bombastic move by the British Government”. The EU Commission Vice President did not want to speculate with the Committee on what the consequences of triggering Article 16 would be because they would be significant for Northern Ireland, as well as being serious consequences for the EU – UK relationship.

During the Committee meeting with the NIEC, it was stated that there was not uniform support for the existence or implementation of the Protocol. Mrs Diane Dodds, MLA told meeting that:

“If the Protocol has done anything in Northern Ireland, it has isolated and marginalised unionism and many people from the unionist community”.

The Committee acknowledges the statement of Mrs Dodds, MLA, but the Protocol is a consequence of the Brexit process and is the outcome of protracted negotiations and was subject to agreement by both the UK and EU.

The Committee acknowledges Vice President Šefčovič is concerned about the rhetoric and actions of the UK with regards to the implementation of the Withdrawal Agreement, in particular the Protocol on Ireland and Northern Ireland. The Vice President relayed to the Committee that the EU was and is working relentlessly to find solutions to the problems created by the UK deciding to leave the EU.

The EU have made it clear that the Protocol would not be renegotiated after the UK Command Paper in July called for a full renegotiation. The Vice President reiterated this to the Committee and also said that the Protocol represents the compromises by both the EU and the UK after long and difficult negotiations. He believes that solutions can be found within the framework of the Protocol, and the EU Commission put forward a package of bespoke solutions in October, which addressed the main issues raised by the citizens and businesses of Northern Ireland.

The Committee acknowledged that if the UK do engage with the EU, then the Vice President is positive that all of the issues can be resolved – medicines can be resolved in a durable manner. The Vice President also disclosed that if the UK have any additional, realistic elements, the EU are ready to adjust.

The Lords discussed the Protocol, and in particular Article 16 with the Committee with Lord Hain stating the following:

“... make it clear that nobody wants a fight over this ... there are solutions to it. However, if one looks at the strategy and policy of London, it is divergence from the European Union in almost every respect. That means Northern

Ireland will diverge from the rest of the UK, insofar as the Single Market and customs union are concerned. Otherwise, London would have signed up in the first place to a closer degree of alignment which would have permitted much freer trade of the kind we had prior to Brexit”.

Lord Hain wants the UK and the EU to keep going down the road of negotiations to find solutions rather than fight over the issues.

The Committee are aware that trust has now become an issue within the negotiations of the Protocol. Lord Thomas of Gresford commented on trust in saying that this UK Government have without a doubt destroyed the feeling of trust between all parties. Vice President Šefčovič also agreed that there has been a reduction of trust between the EU and the UK, and he looks to rebuild this trust.

Minister Coveney portrayed his view that the biggest problem within these negotiations is trust. Minister Coveney told the Committee that it is now the UK's turn to give, all of the concessions and flexibility have come from the EU, and the EU are now concerned that if another concession is made, it will be banked.

6. Trade Flows

The Committee engaged with witnesses from the Economic and Social Research Institute who provided the Committee with insights into the impact of the EU-UK Trade and Cooperation Agreement which were that the direct impact of Brexit has resulted in a 36% decline in aggregate EU import from the UK and a fall in exports to the UK of 24%.

“The time path of the Brexit impact shows that the reductions in both directions of trade were particularly sharp in January and February followed by some recovery in March. The subsequent effects from April to July have been relatively stable.”

For Ireland in particular, the ESRI have estimated that Brexit has directly impacted imports to Ireland from the UK by a 45% reduction. On the other hand, the ESRI informed the Committee that in their estimations, little of the reduction in exports from Ireland to the UK in the last year, can be solely accredited to Brexit.

The Committee acknowledged that the food and beverages sector have experienced substantial falls in exports to the UK that can be directly attributed to Brexit, with an approximate 25% reduction for food exports and over 40% reductions in beverages exports for just the first half of 2021. The ESRI provided the Committee with statistics on the changes of imports and exports because of Brexit:

“The effects of Brexit in the first half of 2021 have, therefore been quite asymmetric, with a much larger change in imports than in exports. The share of Ireland’s imports from the UK was 33% in 2015 before the Brexit referendum and is now just 12%. The share of the UK in Irish exports has fallen from 14% to 8% in the same period. The uneven impact on imports rather than exports can be explained by the immediate introduction of customs requirements from the EU side but a more gradual phased – in approach on the UK side.”

This then means that the full extent of the impacts and risks suffered by Irish exporters, associated with Brexit, are not clear yet, as more changes to customs requirements are due to be introduced by the UK in January and July 2022. Despite the fact that trade between Ireland and the UK has declined since Brexit, on a more positive note, trade between Ireland and Northern Ireland has experienced a considerable increase.

“When we look at how Brexit has impacted trade, we find clearly that all of the decline in Irish-UK trade since January 2021 is driven by Great Britain. In contrast, trade between Ireland and Northern Ireland trade has increased considerably. This increase has been primarily on the side of imports from Northern Ireland, which have grown by close to 90% as a result of Brexit. In 2015, Northern Ireland accounted for approximately 1.5 per cent of both total Irish imports and exports. This year, the share of Northern Ireland has gone up to 5% of total Irish imports. The food and beverages sectors have shown particularly large increases in the shares of imports originating in Northern Ireland.”

While the increase in Irish imports from Northern Ireland is noteworthy, it does not balance the decline in trade with Great Britain. Dr Martina Lawless from the ESRI enlightened the Committee with respect to the increase in Northern Ireland trade. Trade from Northern Ireland has increased by 90%, which is a large increase, but it is a 90% increase of the 10% of trade from Northern Ireland, which means it does not make up for the trade falls from the UK, which is a much larger economic partner.

The witnesses outlined what they believe to be the positive aspects of the Protocol for the business community in Northern Ireland:

“... Northern Ireland is uniquely placed in that the terms of the protocol allow it to continue selling and increase its sales not just into Ireland, but all of the EU, where firms previously may have been sourcing things from Great Britain, while also maintaining its market access to the latter. If the protocol works, as everybody would hope it does, that should put Northern Ireland businesses in a really strong position to attract extra investment and sell into both markets.”

The witnesses conveyed to the Committee that although they have a great deal of updates on the impact of the EU-UK TCA, they do not have entire picture as of yet, as the data is collected in a different way for internal flows.

“The one gap we have in our data analysis is, because trade between Northern Ireland and Great Britain is internal and not international, it is not reflected in these numbers. We cannot say that some of this trade that has increased from Northern Ireland to Ireland is because trade has fallen between Northern Ireland and Great Britain. We do not know that is the case at all nor to what extent trade from Britain to Northern Ireland has changed. As the data are collected in a different way for these internal flows, it will be into the early part of next year, when the annual surveys of Northern Ireland businesses are completed. We can get some small sense from transport statistics available on a more up-to-date basis, but they do not tell us precisely what values are being imported into Northern Ireland. We have the trade movements. One needs to add up where the trade is going. We have three or

four of the angles, but we do not have the connection between Northern Ireland and Great Britain to fully see whether overall trade has changed or just been reallocated across the different routes.”

The Committee asked the question on whether or not the increase in North to South trade would have occurred in the same way without the Protocol. Dr. Lawless, ESRI, communicated to the Committee that it was clear that trade would not have grown at the same rate if the Protocol had not been in place. The Committee acknowledged that the impediments to trade between Ireland and Great Britain can be associated with the new costs of data and customs procedures, which are a result of Brexit.

Contrary to the above effects, Northern Ireland businesses are in fact protected by the Protocol to the negative effects of Brexit.

“That is very much an increase in trade that would not have occurred if the protocol were not in place; in fact, it would have been quite the opposite. Northern Ireland trade would have fallen significantly if the protocol was not in place to maintain the access of Northern Ireland to both the EU and UK markets.”

The witnesses informed the Committee that all of the changes in trade from Northern Ireland has been in terms of Northern Ireland selling more to the Republic of Ireland and EU markets instead of Northern Ireland having to buy more from those markets. This shows that Northern Ireland can and is trading efficiently in both directions, which backs up the idea that Northern Ireland can flourish with regards having access to both economic areas at the same time. It is in an extremely unique position.

Witnesses from the ESRI commended work that had been done to prepare for the eventuality of Brexit:

“The smooth transition to this quite dramatic change in trade relationships with a very major trading partner is testament to the level of preparation and planning that was put in place.”

The Committee attended a meeting of the Northern Ireland Executive Committee (NIEC) in Stormont, Belfast, who were vocal with their concerns surrounding the impact of Brexit on their citizens. Ms McLaughlin, MLA, Chairperson, Northern Ireland Executive Committee highlighted a positive impact that the protocol has had on a business, stating:

“One of the local business leaders was talking about his business and how it had seen a 16% increase in business in the past couple of months. He is involved in a printing company, and the increased orders were a result of the protocol. He spoke of its value and of how it was bringing him more customers.”

The NIEC touched on the subject of small businesses in Northern Ireland and the fact that 90% of the Northern Irish economy is comprised of micro and small businesses, a number of which have faced administrative and bureaucratic issues.

The Committee also briefly spoke about how the drinks industry have similarly seen benefits surrounding the protocol, after overcoming the initial teething problems.

In relation to trade flows in the Republic of Ireland, Minister Coveney provided the Committee with an update. He stated that the majority of goods, 80%, coming from the UK are now green routed. There has also been a significant increase in traffic between Dublin and Rosslare port and a reduction in use of the land bridge. As well as that, there has been a 40% reduction of Northern Ireland product coming through Dublin port, instead it has been rerouted through Belfast.

The Minister also stated that he believed that any future EU Trade Agreements should include Northern Ireland goods as they are of EU standard.

7. Democratic Deficit in Northern Ireland

One of the key issues put forward by Ms McLaughlin, MLA, to the Committee was that the majority of citizens in Northern Ireland feel that the withdrawal of Northern Ireland from the EU is being done to them when they have no voice or say through lack of representation. Northern Ireland citizens feel that they do not have a voice at the centre of negotiations. This democratic deficit that now exists in Northern Ireland

has been recognised by the Committee and the question was asked on how to address this. At the present moment, Northern Ireland citizens do not have MEPs sitting in the European Parliament, arising from this the current mechanism to raise their concerns is through the various committees and the Joint Committee. The Joint Committee and the subcommittees that now feed into it are supposed to provide the voice for Northern Ireland when/if an issue arises.

The Committee noted the view put forward by Mr. John Stewart, MLA, who stated the following with regard to the democratic deficit:

“According to the most recent poll, nearly 50% of the country have concerns about the Protocol ... I have never heard the Taoiseach or Tánaiste speak for unionism or about the massive concerns among unionist people here about how the protocol is being imposed without any democratic input or say from the people of Northern Ireland.”

Mr. John Stewart, MLA, also raised the topic of the democratic deficit, and he highlighted the unionist view that the Taoiseach or Tánaiste are not speaking for the unionists in Northern Ireland as well as how the protocol is being imposed on them without any say or democratic input from the people of Northern Ireland.

“I put it to anybody in any other part of Europe, including the Irish Republic, that, as a true democrat, they could never accept being a rule taker under the jurisdiction of a foreign court without any democratic say. I find that completely unacceptable. I have not found anybody who offers anything more than lip service to that issue, it is important to get that in the record”.

The Committee acknowledged this view and agreed that Northern Ireland citizens should have a voice to represent them but also stated that the Irish Government is a voice for all people on the Island of Ireland during negotiations on Brexit related matters between the UK and EU. However, the Committee does not see a way for this to be completely rectified as of yet.

The committee have acknowledged that the democratic deficit that Northern Ireland is now experiencing was unavoidable by the time negotiations surrounding the

withdrawal were complete. In order to avoid a hard border on the island of Ireland, which was a priority for the Irish government, the protocol was the only way to go.

Another member of the NIEC, Mr. Pat Sheehan, MLA, stated:

“The North clearly voted against Brexit. Our voice was heard and then ignored in that context.”

In the Committee’s engagement with the NIEC, it was made clear that there is absolutely no unionist support for the Protocol in Northern Ireland.

“... not one unionist Member of the Assembly supports the protocol. We have not arrived out of the blue from another planet; we are reflective of the society that we represent. If you take nothing else back today, I want you to take back the reality that not one unionist in this House supports the protocol”.

Mrs Diane Dodds, MLA, referred to the democratic deficit and how the protocol is damaging to Northern Ireland and its democracy.

Mrs Dodds stated the following:

“We are in a single market with laws, yet we do not have any say on those laws, and those laws will be arbitrated on by the European Court of Justice. I want Northern Ireland to belong fully and absolutely to the United Kingdoms’ internal market, but the protocol has created a barrier to trade between GB and NI... The protocol is damaging to Northern Ireland democratically. It is damaging to Northern Ireland constitutionally. I accept that there are different allegiances in Northern Ireland, but it is wrong that one part of the United Kingdom... is not treated the same in respect of goods.”

The Lords also contributed to the discussion on the democratic deficit felt by the citizens in Northern Ireland in their engagement with the Committee, with Lord Thomas of Gresford saying:

“They negotiated it, but they did not understand it, and it leaves so many strands. Although we may not agree with the unionists, they have a point when they say that the protocol leaves a democratic deficit whereby laws are being

made that affect the people of Northern Ireland and they have no voice at all in the formulation of those laws”.

Although the democratic deficit has not been resolved yet, the Vice-President and the EU Commission are working to assist the citizens in Northern Ireland in a way that their perspectives on ongoing or future legislation can be presented.

In September the Vice-President and various officials visited Northern Ireland and the Border region where they met and held meetings with the leaders of civic society, business representatives and politicians to discuss outstanding issues arising from the Brexit process and the Protocol. The Vice-President has stated that the visit had a huge impact on him and the thinking of his officials and emphasised the political responsibility of listening to voices of those whom he met. He acknowledged that peace should never be taken for granted and the need to resolve the outstanding issues, highlighted to him by the people of Northern Ireland.

The Committee recognize that the Vice President is fully aware of the sensitivities around the issues arising from the implementation of the Protocol in Northern Ireland. The Vice-President stated:

“We listen to the calls for better participation of the Northern Ireland Stakeholders in the dealings on the protocol through the consultation working groups and through the special consultations we are ready to do for Northern Ireland where they can present their unique perspective on ongoing or future legislation and where we would have this special way of communicating with them”.

Through their engagement with the Lords, the Committee acknowledged that as a possible way to overcome the democratic deficit, Lord Thomas of Gresford suggested some form of pre-legislative scrutiny by the Northern Ireland Assembly of European Union directives in Northern Ireland.

“It seems that if there were a committee of the Northern Ireland Assembly that considered directives before they were made and gave advice to the assembly as to whether to consent to it, one would thereby have brought in a

democratic element to the passing of legislation that will affect people in Northern Ireland”.

The Committee notes the unanimous agreement of the European Council in April 2017, that the north of Ireland would automatically re-join the EU in the event of a successful unity referendum under the terms of the Good Friday Agreement.

8. Data Adequacy

Mr Muiris O'Connor from the Dept. of Health made members of the Committee aware of the data adequacy decisions that the EU Commission adopted for the UK on June 28th, 2021. These decisions allowed free flow of personal data from the EU to the UK to continue *“so long as it benefits from an essentially equivalent level of protection to that guaranteed under EU law.”*

Not long after this decision was made, the UK government announced a consultation exercise in order to see if the approach would allow for adjustment or for it to be liberalised.

Representatives from the Dept. of Health conveyed their concerns to the Committee, and they hope that the UK is not going to deviate from the norms of the framework of this decision, which has been adopted well beyond the EU, as it would fundamentally impact health, banking, made trade and commerce aspects, and service – to – service co-operation. Mr Muiris O'Connor relayed the following to the Committee:

“We made hundreds of data-sharing agreements. All organisations, on a cross-border basis had to do these data sharing agreements as a fallback in case the adequacy decision did not come through. I do not want us to go back there. The adequacy decision is what supports best international co-operation in health and right across other areas”

The Lords have informed the Committee that data adequacy has not been one of the issues that they had examined, however they do recognise it as one of the many issues that may seriously affect businesses in Britain.

Data adequacy was also discussed in the Committee's engagement with the NIEC when the Committee asked for the witnesses view on the UK Government's decision to look at carrying out a review of the data protection regime that will operate in the UK, as it would have serious implications for businesses.

In reply to the Committee queries on data concerns Mrs Diane Dodds, MLA, acknowledged that there are issues:

"Data adequacy is a huge issue, but it is largely a services issue that is outside the scope of the protocol. Have you considered that within the bounds of your report?"

Senator Byrne in reply to Mrs Diane Dodds, MLA stated:

"I agree on the data flow issue, which is outside the protocol, as an area of cooperation. Colleagues will worry that I have now found somebody with a similar concern to me on that. It has serious practical implications for businesses on these islands. For example, a small business that operates in Monaghan but has its payroll done in Armagh will have significant problems if there is a change to the data adequacy regime. When our Data Protection Commissioner came before the Committee, their office reckoned that divergence could cost businesses in the South up to €1 billion in extra administration and paperwork"

Recommendations

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. 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.
6. 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
7. 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.
8. 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.
9. 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.
10. The Committee notes that full customs procedures have not yet been implemented by the U.K on goods coming from Ireland. The Committee is of the view that businesses should make preparations for when full customs procedures are in place so as to mitigate against any potential additional delays to trade.

11. 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.
12. The Committee was informed that goods produced in Northern Ireland are of the equivalent EU standard for the same type of goods. Arising from this the Committee recommends that in future trade negotiations of new trade deals and in renegotiations of existing trade deals undertaken by the EU, that Northern Ireland produced goods should be recognised as EU goods.

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.
14. The Committee commends the expansion of Rosslare Euro port 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.

The Rules of Origin

15. 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.

16. 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.
17. 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.
18. 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.
19. 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.

20. 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

21. 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.
22. 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.
23. Acknowledging that there are differing views and perspectives on the Protocol in Northern Ireland, the Committee is of the view that the Protocol could be transformative for Northern Ireland in a positive way and its full value has yet to be realised. The Committee agrees that certainty is needed around the protocol in order for Northern Ireland to fully reap the benefits.
24. The Committee recognises the extensive engagement between the EU Commission, through its Vice – President Maroš Šefčovič, with the citizens and businesses of Northern Ireland, resulting in the publication of the EU Non-Papers. The Committee agrees with the EU Commission that the solutions proposed in these papers remove the vast majority of barriers to trade identified by businesses in Northern Ireland; with 80% of checks removed. The Committee is

of the view that the EU has made significant concessions on the Protocol in the interest of reaching an agreement.

25. The Committee encourages stakeholders to maximise and take full advantage of the benefits and protections of the Northern Ireland Protocol.

Citizens' Rights

26. 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.
27. 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 additions, the Committee notes the significant impact of Brexit on asylum seekers, non – EU migrants and refugees and is of the view that the Irish Government must further assess the full impact.
28. The Committee recognises the unique challenges new border arrangements will have for the Travelling Community. The Committee recommends that further examination of the impacts of Brexit for the Travelling Community must be explored.
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, including asylum seekers 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 welcomes the commitment from the Department of Health to put the Northern Ireland Planned Healthcare Scheme on a statutory footing to allow continued access to cross-border healthcare. The Committee acknowledges the extension of the temporary scheme beyond December 31st, 2021 until the permanent scheme is in place, expected in the first half of 2022.
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.
44. The Committee recommends a public awareness campaign be undertaken to inform citizens of the availability of the provision of healthcare outside the State, with costs being re-imbursed.
45. The Committee noted that a task force is being assembled to examine the issues of waiting lists. Arising from the Covid pandemic, the State has utilised access to care available in acute settings in private hospitals. This access has benefited the patient/citizen. The Committee recommends that this experience should be a factor in any initiatives brought forward to resolve the waiting list issue.

46. The Committee was informed by witnesses that some patients utilising private health service providers had difficulty funding the payment of treatment prior to treatment, therefore delaying treatments, and maybe exacerbating existing medical conditions. The Committee recommends that a review mechanism be put in place whereby patients who have difficulty in sourcing funds prior to treatment can be facilitated with the necessary funds.
47. The Committee was informed by witnesses that the State does not currently have a 'medicines reserve' to draw upon in times of emergency or shortage. Witnesses alluded to the fact that generic medicines might take two years or more. The State has legislation that requires certain goods / products have such a reserve maintained i.e., oil. It is noted that a number of countries are currently examining the need for such a reserve. The Committee recommends that a review of the necessity to have a medicine reserve be undertaken.

Data Flows

48. 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.
49. The Committee recommends that in light of potential divergence in data protection legislation between the UK and the EU and the implications this would have on data flows between Ireland and the UK. The Committee is of the view that this is an area of concern and that the Irish Government must keep this under review.
50. 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.

51. 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

52. 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.
53. 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.
54. 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.
55. 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.

56. 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.
57. 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.
58. 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.

Dispute Resolution

59. The Withdrawal Agreement includes a mechanism for dispute resolution which begins with the Joint Committee and also provides for an arbitration panel and ultimately allows for disputes to go to the Court of Justice of the European Union (CJEU), something which the U.K., since agreeing to and signing up to this mechanism, have now articulated a difficulty with the use of the CJEU. The Trade and Cooperation Agreement provides a similar dispute resolution mechanism but without any recourse to the CJEU.

The Committee heard evidence from a member of the House of Lords that a possible solution could involve using the current machinery of the Court of Justice of the European Union which allows for the creation of a new court within the current Court structure. This new Court, it was suggested, could be manned by an equal number of judges representing the UK and the EU with an independent judge / president and would adjudicate on any disputes that could not be resolved through the other mechanisms provided. The Committee did not investigate the merits either way.

Democratic Deficit

60. The Committee were informed that the TCA allows for the creation of EU-UK parliamentary assembly, which would include 35 members each from the European Parliament and the UK Parliament. The Parliament in the EU have agreed their approach to this, while the UK are yet to decide on their approach. The creation of such a parliamentary assembly, should the UK agree to it, would allow input from elected Northern Ireland UK parliamentarians. This may go some way to alleviating the democratic deficit.

The Committee would encourage both parties to expedite the creation of the parliamentary assembly as soon as possible.

61. The Committee heard from a number of witness and in its engagement with other parliamentarians on the need for some form of engagement process between Northern Ireland citizens and the EU, most likely through the Assembly and the Commission or by representative groups to the Commission directly. The Committee notes in the Commission's non-papers proposals to address this lack of engagement. The Committee hopes for a successful conclusion to negotiations on this issue.

The Committee recommends that existing parliamentary structures arising from international agreements should be utilised and examined to overcome the lack of an engagement process for the citizens of Northern Ireland and the EU.

62. The Committee held discussions with a number of witnesses and parliamentarians in relation how to overcome the democratic deficit of Northern Ireland citizens having no input on EU directives / legislation as they impact on them. A number of proposals were made including one that proposed the creation of a Committee of the Northern Ireland Assembly that considered EU directives/legislation before they were implemented, the Committee could give advice to the Assembly on whether to consent to it.

The Committee cannot make a recommendation on the above, rather it believes it is a worthwhile proposal that should be highlighted, and the reader be made aware of it.

Appendix 1 – 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:

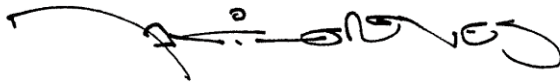
Seannad Éireann has made the following Order:

“D’ainneoin aon ní sna Buan-Orduithe:

That, notwithstanding anything in Standing Orders:

- | | |
|--|---|
| <p>(1) Go ndéanann Seannad Éireann Roghchoiste Speisialta Seanaid um an Ríocht Aontaithe do Tharraingt Siar as an Aontas Eorpach (‘an Coiste’) a cheapadh chun –</p> <p>(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,</p> <p>(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,</p> <p>(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</p> <p>(iv) plé a dhéanamh le páirtithe leasmhara, le hinstitiúidí iomchuí agus le hionadaithe tofa san Aontas Eorpach, sa Bhreatain Mhór agus i dTuaisceart Éireann, agus i Stáit Aontaithe Mheiriceá.</p> <p>(2) Gur 12 chomhalta a bheidh ar an gCoiste.</p> | <p>(1) Seannad Éireann appoints a Seannad Special Select Committee on the Withdrawal of the United Kingdom from the European Union (‘the Committee’) to –</p> <p>(i) monitor Ireland’s preparedness for all possible outcomes following the withdrawal of the United Kingdom from the European Union,</p> <p>(ii) examine the impact of the withdrawal on trade connectivity to the rest of Europe, in particular, from potential blockages to the landbridge,</p> <p>(iii) analyse the impact of the withdrawal on the Irish economy and society in the immediate post-transition period, and</p> <p>(iv) engage with stakeholders, relevant institutions and elected representatives in the European Union, Great Britain and Northern Ireland, and the United States of America.</p> <p>(2) The Committee shall consist of 12 members.</p> |
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| (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 Formhaoirsiú, 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 16th October, 2020, as amended on 18th 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 30th July, 2021, and shall make a final

12 Márta 2021

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 31st December, 2021, and shall, on the making of its final report, stand dissolved’.”

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

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