

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓTHAÍ AN AONTAIS EORPAIGH

JOINT COMMITTEE ON EUROPEAN UNION AFFAIRS

Dé Máirt, 9 Feabhra 2021

Tuesday, 9 February 2021

Tháinig an Comhchoiste le chéile ag 10 a.m.

The Joint Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Dara Calleary,	Regina Doherty,
Francis Noel Duffy,	Michael McDowell.
Marian Harkin,	
Seán Haughey,	
Brendan Howlin,	
Ruairí Ó Murchú,	
Neale Richmond.	

Teachta / Deputy Joe McHugh sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: We are in public session. Apologies have been received from Deputy John Brady. I propose that we go into private session to deal with housekeeping matters.

The joint committee went into private session at 10.03 a.m. and resumed in public session at 10.10 a.m.

Northern Ireland Protocol (Article 16): Minister of State at the Department of Foreign Affairs

Chairman: I welcome the Minister of State at the Department of Foreign Affairs, Deputy Thomas Byrne, and his officials to the meeting today. Following events surrounding the Northern Ireland protocol, the committee welcomes the opportunity to engage and ask questions about the sequence of events that ultimately led to the European Commission triggering Article 16 before it made a U-turn on that decision.

As members of the Joint Committee on European Union Affairs, we feel we have a twofold responsibility in this regard: first, to ask questions at a Government level as to what happened and how it happened and, second, we must have accountability at a Commission level. We want to ensure what happened does not happen again and that we can have public trust and confidence in the protocol's procedure in the future. We look forward to the engagement today. The Minister of State will get a feeling and a sense from the members as to where they are on this issue. Last week, however, there was a certain anxiety and obvious desire to deal with this issue. We appreciate the Minister of State being with us today.

Before we begin, members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I also remind members that they are only allowed to participate in this meeting if they are physically located on the Leinster House complex. In this regard, I ask that all members confirm they are on the grounds of the Leinster House campus prior to making their contribution to the meeting. For anyone watching this meeting online, Oireachtas Members and witnesses are accessing this meeting remotely. Only the Chairman and the necessary staff essential to the running of the meeting are physically present in the committee room. Due to these unprecedented circumstances and the large number of people attending the meeting remotely, I ask that everyone bear with us should any technical issues arise.

I now call the Minister of State, Deputy Byrne, to make his opening statement.

Minister of State at the Department of Foreign Affairs (Deputy Thomas Byrne): Gabhaim buíochas leis an gCathaoirleach agus le baill an choiste as an gcuireadh chun teacht anseo inniu. Tá áthas orm aon eolas atá agam a scaipeadh.

This is my first appearance before the committee since the trade and co-operation agreement was reached between the EU and the UK. I will first speak briefly on that before I talk about the issue of the protocol, which is obviously of huge concern not only to the committee but to Government as well.

The EU-UK Trade and Cooperation Agreement is the framework for the relationship between the European Union and the UK into the future and complements the withdrawal agreement, including the protocol on Northern Ireland. Like any international agreement, it is the product of compromise and give and take. Neither the European Union nor the UK has got everything it would have wanted but there is much to recommend it.

The agreement provides for zero tariff, zero quota trade in goods of EU or UK origin. This is a major priority of the Government and is vital for sectors such as our agrifood industry in particular which would have been devastated by tariffs. It provides robust safeguards to ensure there is a level playing field between EU and UK businesses to protect Irish businesses and our future prosperity. It provides for close co-operation with the UK in the energy and transportation sectors, which are essential to making our economy work. It allows for close co-operation between the police and judicial authorities in Ireland, which is essential to effective policing on the island of Ireland. I pay tribute to Mr. Michel Barnier and his team in the European Commission for their tireless work in securing the agreement.

Separately, and as the committee will be well aware, the Northern Ireland protocol came into effect on 1 January 2021. It plays a vital role in protecting the Good Friday Agreement and the gains of the peace process, including a key priority of the Government to avoid a hard border on the island of Ireland, as well as protecting the integrity of the Single Market and Ireland's place in it. It ensures that Northern Ireland traders continue to have access not only to Great Britain but also to the EU Single Market of 450 million consumers, access that is unique and vital for all-island supply chains.

For Northern Ireland, and indeed for businesses across the island, adapting to the changes is undoubtedly a challenge. It is important, however, not to lose sight of the overall purpose of the protocol, what it is for and the role it plays in providing as much certainty as possible under the difficult circumstances caused by the UK leaving the European Union. After four years of painstaking negotiations, it is clear there are no easy alternatives to the protocol. It is clear that the European Union and the United Kingdom will have to continue to work closely together, particularly in the first weeks of the protocol's operation, as traders adjust to the new rules in place. Every effort will need be made within the framework of the protocol to iron out any challenges that emerge.

It is very unfortunate that the protocol got caught up in the issue of the European Union vaccine procurement last week. It is entirely regrettable that the Commission did not consult us in advance of the ostensible decision it contemplated with regard to invoking the protocol's safeguard clause. The decision was, rightfully, rescinded shortly after the Taoiseach spoke to President von der Leyen on the Friday evening in question.

The European Union has a legitimate aim, on behalf of all of us, of protecting vaccine supplies. Ireland will continue to work closely with the Commission on this issue. However, that is entirely separate, and should be entirely separate, from the operation of the protocol. We will be working with the Commission to review this matter and to continue to ensure that the protocol and its political context are properly understood. All sides must now redouble their efforts to make the protocol work for Northern Ireland and all its people and businesses. It is important to take a calm and measured approach based on trust and pragmatism to any issues that arise in regard to its implementation.

I welcome that a call took place last Wednesday between the Vice-President of the European Commission, Maroš Šefčovič, Michael Gove, the Chancellor of the Duchy of Lancaster and

Mr. Šefčovič's opposite number in the UK, and the First Minister, Arlene Foster, and deputy First Minister, Michelle O'Neill, of Northern Ireland. In a joint afterwards, the EU and the UK described the discussion as a constructive one and stated they had agreed to work intensively to find solutions to outstanding issues. This approach is best managed through the established mechanisms and communication channels to address practical issues around the operation of the protocol, including the specialised committee on the protocol and the withdrawal agreement joint committee. Vice-President Šefčovič and Chancellor Gove agreed to meet again this week in London and to keep in close contact as this work progresses. EU-UK channels must remain the primary recourse for addressing any issues that arise in the interests of stability, clarity and sustainability. Unilateral approaches to working through issues are unhelpful, no matter what the source.

The committee will also be aware that certain staff working at border control posts at the ports of Larne and Belfast were advised not to present for work on 2 February owing to concerns arising from intimidation and threats. I condemn the intimidation of port staff and the menacing threats that have appeared as graffiti in Northern Ireland. I welcome that the PSNI is actively engaged and taking appropriate measures. I also welcome the confirmation that Larne council staff have returned to their duties. All staff should be able to carry out their work safely and political leaders should make every effort to reduce tensions.

The Government is closely engaged with its counterparts in the Northern Ireland Executive. We are also listening carefully to business representatives on this and other issues. We have been consistent in our position that we want the protocol to work as smoothly as possible for the people of Northern Ireland and people and businesses across the island of Ireland. Trade volumes between Ireland and Great Britain remain low but they are gradually increasing. We had 61 inbound movements on 1 and 2 January. The figure reached its peak so far this year with 1,344 movements on 3 and 4 February.

The Government understands that new controls have created challenges for many traders. We will continue to help traders and hauliers to make the adjustment. The changes are not temporary. It is important that we all work together to adapt to the new trading environment. A range of advisory, upskilling and support services remains available. Over €9.4 million has been allocated under our ready-for-customs grant that provides funding of up to €9,000 per eligible employee. It is also very important that, in line with its border operating model, the UK will introduce new checks and controls on imports from the EU in April and June. We are working with our exporters to help them prepare for these changes.

No new controls apply on direct continental routes, which are proving very popular. Freight volumes on these services are up 100% on last year. We now have daily direct services to France, which was a key ask of the haulage sector. In January there were 62 roll-on roll-off freight sailings in a typical week, which is up from about 26 such sailings last year. We have 36 sailings to northern France per week as well as sailings to Spain, Portugal, Belgium and the Netherlands.

Brexit means change in the short, medium and long term. Ireland will need to respond to the challenges and opportunities that this brings by playing a leadership role in shaping and developing our common European Union. The relationship between Ireland and Britain is always close and special but our home is at the heart of the European Union. I am very happy to take questions.

Chairman: Go raibh maith agat Aire Stáit Byrne. Gabhaim buíochas leis an Aire Stáit as a

theachtaireacht agus a óráid. Deputy Calleary will be first to contribute.

Deputy Dara Calleary: Go raibh maith agat, a Chathaoirigh. Gabhaim buíochas leis an Aire Stáit as a chuid oibre go dtí seo. I have a couple of questions for the Minister of State and a couple of thoughts. He is right to acknowledge the huge work that has gone into getting us to the EU-UK Trade and Cooperation Agreement. It was a massive achievement in very difficult circumstances. The support we as a country have got from the European Commission since the Brexit referendum in 2016 has been immense; it has effectively been hand in glove. The Minister of State is also right to separate the protocol from the triggering of Article 16. I will discuss the protocol later. The support and co-operation from the Commission makes what happened with the triggering of Article 16 on 29 January even more unbelievable and harder to get our heads around. The triggering apparently happened without our knowledge. Apparently it happened without the knowledge of the Irish nominee to the Commission. Given that the European Commission has shown a massive understanding of the sensitives of relationships and of the protocol and the background to it, has the Minister of State learned anything in the intervening period about why it was triggered, who ordered its triggering and why the European Commission saw fit to trigger it without consulting the Irish Government in advance?

The Minister of State referred to the meeting with the Commission and the British Government last week. The meetings were positive. I understand that there is to be a meeting today between European Commission officials and Irish representatives and that proposals to manage this issue going forward are to be tabled. When it comes to our neutrality we have a triple lock. We need some kind of a lock mechanism such that in future Article 16 can never be triggered without the agreement of the Government or without consultation with it. The Minister of State is closer to this than we are and he has seen at close hand the damage done by the triggering, including the damage done to trust. It is being reported on RTÉ today that we will get some sort of vague comfort blanket assurances that this will not happen again, that there will be consultation with the Government around legislation and that if there is a problem, it will be put through Commissioner McGuinness's *cabinet*. Instead, we should have something substantial, an actual formal process that would involve the Government in a formal way rather an *ad hoc* one. I genuinely think the damage done by this triggering has been so immense that we now need a process to ensure it does not happen again.

On the protocol, I absolutely condemn the violence and threats being issued to people doing their jobs in the last few weeks. It brings us back to a much darker time. On the general matter of EU-Britain trade, we are currently running at volumes that are around 50% of what they were this time last year. Revenue has declared 1.8 million custom declarations in January alone, which is more than the total for 2020. Who in the Government is co-ordinating the response so that we will be ready when trade returns to full volumes? Can the Minister of State say we will not have any major difficulties or delays with goods going to Britain and coming in from there when trade is hopefully restored to full volumes? The lower volumes at the moment are presumably due to Brexit stockpiling before December and to the pandemic. Who in the Government is going to co-ordinate this to ensure there is no disruption to supplies either between here and Britain or the reverse in terms of the food industry, etc.?

Chairman: I thank the Deputy. If it is agreeable to the Minister of State, to do justice to the range of questions the members have, I will take them on an individual basis. I therefore ask for his indulgence in relation to replying specifically to the questions. That will potentially allow for members to come in a second time as well. The Minister of State may now reply and Deputy Howlin will follow.

Deputy Thomas Byrne: That is probably a better approach. Deputy Calleary has asked some very important and fundamental questions on various aspects of this.

On the question of Article 16 being triggered, while we might not be as shocked now two weeks on, the reaction Deputy Calleary shows today is similar to the Government's reaction on the day, namely, one of complete shock and surprise. It is absolutely the case that we had no knowledge of what was being planned. We had spent the previous weeks being asked about Article 16 from another perspective, and quite rightly pointed out that this was a pretty standard safeguarding clause in trade agreements and was not designed to eliminate the protocol or be used except in the most extreme circumstances. It came as a complete surprise to us when we saw that it was invoked. In my case, I saw it on social media at 4.30 p.m on the Friday while I was out for a walk. I was a bit shocked. It went against everything we had been considering and planning for over the previous weeks when this was an issue. It has caused continued consternation and has been deeply unhelpful.

On the how and the why the article was triggered, these are questions for the European Commission. Clearly, it should not have happened. There was a commercial dispute with AstraZeneca. We stand in solidarity with the Commission on that and on the vaccine purchasing arrangement. Article 16 should not have come into that at all, however. As soon as the Taoiseach was informed of this by his chief Sherpa he was immediately on the phone to Ursula von der Leyen. There was ongoing engagement in the early evening, but the Taoiseach will have to speak for himself on that because he was the one making the calls. There was subsequent engagement with Boris Johnson. We continue to engage with the Commission and other member states, at my level, at the Minister for Foreign Affairs' level, at the Taoiseach's level and at ambassadorial level.

The point of concern for the moment, and which Deputy Calleary has hit upon, relates to how will we ensure this does not happen again. The Government wants an early warning system to be put in place. Whatever meeting is reported today, there are also ongoing meetings. I will have a range of meetings with my counterparts too. There is a view, which is a risky view, that yes the Commission made a mistake and has acknowledged the mistake and that everything has been resolved. Clearly, that is not the case because the consequences of this matter are continuing. We must apprise our colleagues around the EU of the lasting consequences of what has happened around the protocol, and that when one action is taken it inevitably provokes an opposite reaction. Members may have seen press reports where our ambassador gave a full-blooded account of the consequences of invoking Article 16 to other EU ambassadors at a meeting of the Committee of the Permanent Representatives of the Governments of the Member States to the European Union, COREPER, last week. I have also done this with my colleagues, as has the Minister for Foreign Affairs, Deputy Coveney, and the Taoiseach in his interactions.

This has not been good and we want an early warning system. I am not sure about a formal process, as Deputy Calleary referred to, but engagement is ongoing to make sure that it does work. Before my time in the role, a great deal of work was done in recent years to keep the Commission and the other member states apprised of the actual situation on the ground in Northern Ireland. We cannot assume prior knowledge. We were lucky with Michel Barnier in that he had a long history in the context of the various roles he has held. He was a Minister for agriculture and for foreign affairs and then he was in the Commission when the PEACE programme funding was first put in place. Mr. Barnier had a deep knowledge of the situation in Northern Ireland but this may not be the case for everybody else, which would be natural. That is one of the first points. We must make sure that people know what the situation is like on the

ground, that it is not simply something that can be put in writing between the EU and Britain and that there are many complicated aspects to it. Whatever meeting is reported today, I will not come here and describe this as a key, crunch meeting. There is ongoing engagement under way and we may not have a resolution on it today. It is safe to say that people are fully aware of the significance of what has transpired.

I will now turn to the Deputy's point on trade volumes and the concern about co-ordination. A group comprised of representatives of all Departments meets on a daily basis to examine all of the issues around trading goods, particularly between Britain and Ireland. We are also, as I am sure are members, engaging with hauliers and logistics companies and their concerns are being fed into the system. I compliment officials and Government agencies on taking on board some of the concerns. People at the coalface and on the front line of importing and logistics need to get things done. Much of this work is time sensitive. They have brought many issues to our attention and I encourage them to continue to do that. The numbers show that some trade has moved from the land bridge to the direct routes. We can see that by volume. It is not possible to do an exact comparison but some trade has moved. Numbers on the Ireland-Britain route are down but they have increased dramatically on the direct continental routes.

I mentioned in my earlier contribution that Britain has not yet introduced checks to the extent that we have. Businesses will have to start preparing for this and Government will be trying to help them prepare for it through the various schemes. Businesses need to be aware that things are going to get more difficult. It is important to remember that checks are taking place for a reason. This is our contribution to the European Union Single Market and customs union. The Single Market was created to avoid red tape and border checks. Britain decided to leave the Single Market and that has inevitably resulted in checks raising their heads again. They are not temporary. This is an obligation we have to take seriously because our economic prosperity and the protection of our public health and safety depend on it. The Single Market is essential to our economy. That is an important message. We do not want these checks but they are essential to our membership of the Single Market. Revenue has introduced some easements to help the situation and that may continue but these are not exemptions or free passes. We have to implement the new arrangements in the most practical way possible.

Chairman: I thank the Minister of State. The maths in terms of timing are not good.

Deputy Thomas Byrne: My apologies. The Chairman should have cut me off.

Chairman: If we keep going with the current strategy some members will not get in. With the agreement of members, we will try something different. I have no doubt Deputy Howlin has a number of questions. I suggest he engage in a questions and answers session with the Minister of State as that might lend itself to the answers being more direct.

Deputy Brendan Howlin: I am in the Chairman's hands. I confirm I am in Leinster House. It is snowing outside; I hope I will be able to get back to Wexford.

I want to deal with the same two issues from a different perspective. There is no point in underscoring our collective reaction to the decision to trigger Article 16. It went beyond unfortunate and regrettable, but I suppose the Minister of State has to use those words. I am interested in getting behind the process. The Minister of State said that is a matter for the Commission, but it is a matter for all of us to know how the Commission operates. The President of the Commission said this was a decision of the college of Commissioners but we heard from our Irish nominated Commissioner that she was not alerted to it. Does the Minister of State

know how this came about? It is akin to a Government decision being made without members of the Government being aware of it. I am sure that happened in the past, but it should not happen. There is a process. One would imagine that on something as sensitive as this there is a clear process. It undermines my confidence in the decision-making processes for the future. I would like to know how this happened, as I am sure would the Government. Where was the mistake or is there a structural difficulty in regard to all of this? In terms of this not happening again, the utterances of the Commission immediately afterwards did not indicate that would be the case. It basically reserved the right, maybe, to exercise Article 16 again. As I said, I listened last week at the meeting to the EU ambassador to the UK, and he was less than clear in saying this was an action we should not have taken. That is the first question. I want to talk about ports on my second question shortly.

Deputy Thomas Byrne: I have no problem answering that. The President of the Commission herself has taken full political responsibility for this, and I think that is where accountability lies. Again, I am not running away from the question because I am as concerned as the Deputy. However, I cannot answer for the Commission. It is accountable to the European Parliament and the parliamentarians plan to question Commissioners, and maybe the President as well, and she has already addressed people. I am not here to defend the Commission in any way but I cannot be accountable for it either.

All of us, when we see a decision of the European Commission, are entitled to assume that the Commission has decided to do this in accordance with its powers and the way it does business, and we are entitled to assume that the College of Commissioners, in general, is part of the decision-making. As to the exact mechanics in this regard, the Commission will have to explain that, and we are in ongoing engagement with the Commission on that. Obviously, with trade policy, the Commission has the competence and it makes decisions like this, I am told, on an extremely regular basis in terms of safeguarding measures. Unfortunately, it appears to be the case that while the trade experts crossed every t and dotted every i, and made sure there was no possible theoretical escape route, somebody with a political sensibility in terms of the actual reality of the ground, and the lived lives of people in Northern Ireland, was not in the room making that decision. That is fundamentally the problem here.

It is a decision that I certainly hope will not happen again but Deputy Howlin is right that we need to ensure it does not happen again. As I said, we have ongoing engagement and that will need to continue. I strongly encourage members of the committee in their engagement with the Conference of Parliamentary Committees for Union Affairs, COSAC, and with their counterparts not just to say that a mistake was made here but to state that it cannot happen again, because to do otherwise would be to state we are okay when, in fact, we are not okay because we see the ongoing consequences in Northern Ireland. All of us here on this island, as Europeans, need to let our European colleagues know, in whatever capacity, what the consequences are to ensure more people know what the actual situation is on the ground in Northern Ireland.

Fundamentally, she has taken political responsibility and will have to be accountable to the European Parliament. I know the Vice-President of the Commission has been invited before the committee and I sincerely hope he attends and answers its questions. That would be very useful both in terms of accountability and in making sure that all of our Commissioners, who are our Commissioners, are fully apprised of the situation in Northern Ireland, and that would be a tremendous opportunity.

Deputy Brendan Howlin: I will leave further exploration of this until we are talking to the Commission.

On the operation of the protocol in this jurisdiction, the Revenue has already admitted the IT systems it has in place have failed on numerous occasions. It says that 80% of vehicular traffic coming in is green-lighted, which means that one in five vehicles is stopped. That is a very significant volume. I acknowledge not all of that is within our remit, inasmuch as the preparedness of many of the British authorities and companies was not what it should have been. However, we have a real problem in regard to that level of stoppages in a situation, first, where there are already derogations from some elements of the protocol for a period and, second, where the volumes were down to 50% in January. There will be a chaotic build-up if 20% of vehicles are being stopped when it is at full volume. While it is not entirely within our remit, we need to have flexibility within Revenue if its systems are not working. I want to know what the Government wants to do about that.

Second, I listened to Revenue yesterday stating that, because Britain is now a third country, it is applying the standard checks for third countries, with something like 5% or 6% of vehicles being checked at random. It is not as if Britain had not got identical standards to us up to four weeks ago. I am interested in the Minister of State's view on whether that volume of checks is immediately required, with the consequences of delays and frustrations, as we ease this in.

Deputy Thomas Byrne: I thank Deputy Howlin. The Government has put significant time and resources into Brexit preparations. Overall, it has been well managed. We have not had the physical manifestation of delays in the form of traffic but I acknowledge that there are other delays. We will never get to 100% of traffic going through green light channels. That is just not possible. The Single Market was built to avoid this type of bureaucracy, paperwork and checks. Britain has left the Single Market and some checks are inevitably necessary. There will always be some checks. There were checks previously but they were not for customs. One in five trucks is stopped, which goes up on certain days, and shows an increase since the start of the year. I am concerned that it would get to a higher level and am concerned about the future.

There are issues with UK trader readiness, as the Deputy mentioned. There are undoubtedly issues with Revenue's computer system. I understand that it has been rectified. Traders bring these matters to my attention. I am not in Revenue or a Minister for it, but in fairness to it, it responds to these issues, which arise regularly. That caused difficulty and there are no two ways about it. Some volumes have reduced, possibly permanently, because of the direct route through the Continent rather than using the land bridge.

Deputy Brendan Howlin: No thanks to the Irish Maritime Development Office preparing for it, as we have discussed.

Deputy Thomas Byrne: We were all aware of possible problems with the land bridge. Internally, I challenged the view that the market would respond. It has responded so far, which is welcome. Any shipping company which has provided more routes has seen significant amounts to transport. When we talk about one in five, the vast majority of checks are documentary. The stops involve paperwork. Much of that paperwork can be rectified. That will take some getting used to, with companies getting used to the new procedures and finding it difficult to get customs experts, which is why there is Government support. UK trader preparedness is also an issue. It was at 85% in Dublin over the weekend. We keep that under review. It was at 70% a few weeks ago. It is a slow increase but it is increasing.

Revenue is willing to listen to people and when issues are brought to my attention or the Deputy's attention and the officials find out about them, they try to find solutions. In one case where there was a customs delay, Revenue helped out so that it could move more quickly, but

if animals have to be checked, they have to be checked. There will always be stops and checks. That is the unfortunate reality of Britain's decision to leave the European Union and the Single Market.

Deputy Neale Richmond: I do not want to repeat the points made by Deputies Howlin or Calleary but I strongly agree, especially about an early warning system. Is the damage caused by this really appreciated by the European Commission and the Minister of State's colleagues in the EU? There is lasting damage. In the days after this happened, people leapt at the opportunity. Everybody makes mistakes but how one learns from them is the most important thing. Moving on from Article 16, my next concern is twofold. Does the Minister of State think that the British Government is now in danger of pushing this too far? We see extra demands and a consistent underlining that it is now prepared to trigger Article 16. If one looks at the albeit typical British newspapers, they are demanding a renegotiation less than six weeks since the trade deal was agreed. A British minister on national radio this morning accused the EU of being unreasonable and changing its position. I am very worried that less than six weeks in, people are damaging the house of cards.

My final question comes back to the protocol which the Minister of State referred to briefly in his intervention. To what extent is engagement taking place between the Government and the Northern Ireland Executive in relation to the operation of the protocol? Are there any opportunities that may be pushed up to Michael Gove and Maroš Šefčovič when they have meetings? I am quite worried by some Northern Irish politicians demanding that all North-South relations in this area be cut off. I do not see what that achieves. I would really appreciate the Minister of State's take on those three related but quite worrying issues.

Deputy Thomas Byrne: That first question about the damage caused by this and whether it is fully appreciated is quite useful. That is a point I have been making. Many people said yes, put up their hands and said that a mistake was made and that it has been acknowledged. Some people said we should move on but obviously we cannot move on when we see the particular situation on the ground in Northern Ireland. As I said already, it is up to all of us, in whatever interactions we have with our interlocutors in Europe, to make sure the situation and the damage done is if fully appreciated by them. The solution then is to have this early warning system which will presumably ensure that this could not possibly happen again. Nobody will want this to happen again but the important point it is to make sure that it does not happen again. With colleagues, I am certainly making it very clear that damage was done and that it continues to be lasting.

There is on going contact between Britain and the European Union, in particular between the Minister, Deputy Coveney, and Michael Gove. In Northern Ireland, there has been much engagement. By the way, there has been a North-South Ministerial Council since this happened. There is ongoing political engagement as well in relation to Northern Ireland. We were getting many calls about Article 16 before all of this happened and, indeed, its invocation was suggested at very high levels in Britain in January.

The important point to remember is that the protocol is a legal agreement between Britain and the European Union and its function is basically to make the best possible job out of a bad job, which is Brexit, for the island of Ireland. Even the attempted invocations of Article 16 a couple of weeks ago, did not eliminate the protocol. It did damage but it provided for a very limited arrangement there. That is what Article 16 is there for. Anyone who is going to invoke Article 16 needs to realise doing so will not eliminate the protocol. The protocol is there to avoid the hard border on the island, to make sure people and goods can move freely, and that

Northern Ireland remains part of the Single Market of the European Union.

There is very close contact with the British Government at all levels. Late last year Vice-President Šefčovič and Michael Gove, in terms of their plan to implement the protocol, showed their good working relationship and that they are practical people who will get the job done. They need to be given time to agree flexibilities that will help the protocol to work more effectively for all people of Northern Ireland. It is not about Article 16. It is not about getting rid of the protocol or replacing it. The protocol is there and will remain, but it is about working to make sure it is as flexible as possible within its terms. I am confident we can do that. It will not make everybody happy but we do not have a winner takes all system in Northern Ireland. It is a complicated system where we try to make the best possible arrangements to make sure that each community can benefit to the fullest extent from the arrangements entered into.

Senator Michael McDowell: I have a couple of questions about the statement by the President of the European Commission, Ursula von der Leyen, that she takes full responsibility for what happened. The problem is that it is saying there is a veil to be drawn over this, in that she takes full responsibility and nobody should pierce the veil or ask for further transparency.

Is the Irish Government going to insist on knowing exactly what happened and who made the decisions? If it is going to do that, will it be kept in competence? Will we, as parliamentarians, be told exactly what the process was that led to this?

While we can say it is unfortunate and regrettable, to use the Minister of State's language, it is also inexplicable. If one considers Article 16 and the seventh annex to the protocol, it is very clear it had no application. As the Minister of State's statement says, it is a separate matter. It had no application to an attempt to stop vaccine being exported through Ireland. Is it the case that whoever made this decision did not read and did not understand the extent of the protocol? If that is the case, we are left in a situation not merely in which damage was done but the operation of protocol is in the hands of people who do not understand it. I ask the Minister of State to comment on that.

I appreciate the Irish Government's position is that negotiations on the protocol between the UK and the EU is a bilateral process. It is not a multilateral process in which we step in or out. However, it seems that since we have a very clear national interest in this matter, we should have a *de facto* presence in the process of negotiation between the vice-president with responsibility for trade and the UK Chancellor of the Duchy of Lancaster, Michael Gove, and their officials, so we can see for ourselves that what is being negotiated is reasonable and not damaging to us.

There should be transparency and that the Irish public and the European Parliament are entitled to know what happened. There must be some mechanism so that people who are in charge of any process involving the Irish protocol understand when it cannot, legally, be deployed. If the same people who invoked Article 16 are conducting the trade negotiations, Ireland needs the maximum transparency for the Irish Government, either with a *de facto* presence or some form of immediate consultation on the process of negotiations to make the movement of goods between the UK and Northern Ireland as transparent as possible.

Deputy Thomas Byrne: Senator McDowell raised important questions and some of them can be answered relatively straightforwardly. It is a bilateral agreement between Britain and the European Union. However, we are fully part of the implementation committees, the joint committee and the special committee, on the protocol. Added to that, there is ongoing, significant

contact, not only between Ireland and the European Union at all levels, including the Minister for Foreign Affairs, Deputy Simon Coveney, the Taoiseach and the President and vice-President of the Commission, but also between Dublin and London. That is absolutely ongoing. We have a formal role, as every member state does, and member states will often take our particular line on Northern Ireland issues.

Regarding the Senator's second question, I have said publicly that whoever did this did not fully appreciate the political situation in Northern Ireland. There are no two ways about that because they would not have done it had they known. There are discussions on an ongoing basis to make sure that, not only do we put the hands up and say it cannot happen again, but that it actually cannot happen again. The Government is involved at all levels in discussions in relation to that.

Regarding President Ursula von der Leyen's statement that she accepts full responsibility, that is an important political declaration. On whether we insist on knowing who exactly made the decision, I do not know the answer to that. There certainly have been suggestions made, many of them publicly. Ultimately, in the first instance the Commission is accountable to the Parliament and I have absolutely no doubt that the Parliament will be demanding, and is entitled to demand, an explication of what exactly happened. Many of our parliamentarians are already making those particular points.

We have ongoing engagements at the General Affairs Council. We will have discussions and these are questions and points I will be more than happy to put to the General Affairs Council, which will be in two weeks' time. Our ambassador has been extremely forthright at meetings with his counterparts as have the Taoiseach and the Minister, Deputy Coveney. The message has got across loudly and clearly and the most important thing is that it does not happen again.

Senator Michael McDowell: I will ask one supplementary question. I was not saying that whoever made the decision was unaware of the political consequences. It was that it was, legally, completely wrong. The annex and Article 16 are not applicable, as the Minister of State's own statement says, to the moving of vaccines through Ireland into the UK. It simply was an abuse of the protocol and in flagrant breach of the annex which requires prior consultation. That is the point I was making.

Deputy Thomas Byrne: Clearly that did not happen on this occasion and we simply cannot afford for it to happen again. The Senator's engagement here and the making of these extremely strong points will be heard in Brussels and, indeed, in European capitals and will help to have a significant impact on future decision-making.

Deputy Seán Haughey: I am not going to repeat what other speakers said, other than to say that the triggering of Article 16 was a serious mistake with serious political fall-out. What the committee is doing and intends to do at subsequent meetings is to find out what actually happened. We need to learn the lessons from it. I know the Minister said that we cannot really move on from it, but we will eventually. We need to learn the lessons and to move on from it eventually perhaps by, as other speakers said, putting the early warning system in place.

I have two questions and a few thoughts. Problems were always going to arise with the implementation of the protocol for business and consumers in Northern Ireland. It is fair to say that many businesses in Northern Ireland were simply not prepared for Brexit. Trade between Great Britain and Northern Ireland has been disrupted. Supermarkets in Northern Ireland have experienced shortages of time-sensitive goods, such as fresh produce and chilled meats.

Many sorts of horror stories are emerging concerning people not being able to bring their pets into Northern Ireland from Great Britain because of issues with vaccination etc. It is clear in that context that practical and sensible modifications are needed regarding the operation of the protocol in Northern Ireland. Is the Minister of State satisfied that such practical and sensible modifications can be made to sort out these types of problems? Do such possibilities exist? For example, is an extension of the grace period a possibility?

My second question concerns the Northern Ireland peace process, which we are all worried about. The Democratic Unionist Party, DUP, and unionists in general have always seen the creation of a border in the Irish Sea as some sort of step in the direction of Irish unity and the holding of a border poll. Therefore, the sensitivities involved with this issue are clear to everybody. The DUP has not had a good Brexit. The party supported Brexit in the first place and then opposed the deal reached by the former British Prime Minister, Theresa May. The members of that party are of course going to exaggerate the consequences of the Northern Ireland protocol for political purposes. We saw the DUP put forward a five-point plan to have the protocol abolished, which of course is not going to happen. The party is, however, calling on the UK Government to invoke Article 16 and to have the protocol abolished, if possible.

In respect of the threat to relations between Northern Ireland and the Republic of Ireland, I was interested to hear the Minister of State say that there has been a meeting of the North-South Ministerial Council. The DUP had threatened to cease co-operation with such bodies, and that would be a serious issue. We all agree with the call to calm things down because of the sensitivities involved in this situation. I take it that the Minister of State agrees that North-South relations are extremely important, but will he reassure me that things are being done to repair the damage done? We are obviously not responsible for that damage, but we are seriously concerned about this deterioration in relations. We must improve those relations and take positive steps to bring that improvement about.

Deputy Thomas Byrne: The North-South meeting which took place was one of the formal structures on waterways. The North-South bodies are limited anyway, and we would like for there to be more of them. It is important, however, to note that meeting did happen. I share fully the Deputy's concerns regarding North-South relations. It is important to keep everything on an even keel in that respect. This situation has clearly interrupted that endeavour. There are many other threats to the peace process in Northern Ireland, but what has happened has shown us that if something in this vein occurs, then it can cause immediate harm.

When I said we cannot move on from this, my point was that at this particular moment we cannot accept people just putting their hands up and saying everything is now fine. Clearly, it is not fine right now. Deputy Haughey is correct, though, that we need to move forward. People calling for the protocol to be abolished must realise that is not going to happen, and that is a fact. The protocol is a legal agreement between the United Kingdom and the European Union and it is not going to be abolished. Ultimately, these problems have been caused by Brexit. The protocol exists and is designed to alleviate the problems of Brexit.

Trade between Northern Ireland and Great Britain is about where it was previously. It has not gone down. Some of that is possibly a reflection of trade coming here, and there has definitely been some movement from Dublin to Belfast. It may seem, therefore, that trade is down. In actual numbers, however, it is not; it is at a similar level. It is important to remember that there is a huge amount of trade getting through between Northern Ireland and Britain, as well a lot of people doing works. Even after the threats last week, which were repulsive and are to be condemned, a great number of checks still were happening because much of this is done on a

documentary basis. There are issues, however, that are causing annoyance. They can be dealt with within the structures of the protocol that might help the situation but that does not mean that the protocol is going to be changed. The UK has set out some things it is asking for some of which reflect demands in the North, including businesses there. Modest extensions of the existing grace periods would definitely help reassure the business sector and moderate voices and Northern society broadly that they are being listened to and that we genuinely want to make the protocol work for every section of the community in Northern Ireland. That is important to all of us.

It is not about winners and losers but about trying to make the best possible situation out of what is a very difficult scenario in Northern Ireland at present. I am convinced that if we can get over the current difficulties, recognising that a great deal of trade is happening and that many goods can come in, we can solve some of the issues the Deputy raised. I cannot give any commitments on them but I know some can be resolved. Some cause particular anxiety, such as the issue concerning pets. The Alliance Party proposed a veterinary agreement between the EU and Britain and that certainly is in the range of possibilities in the medium term. It is not something that will provide immediate answers but it is something with which we would have no difficulties whatsoever. We want to make this work and work for everybody.

Deputy Ruairí Ó Murchú: I am in agreement with much of what others have said. The big question in relation to the European Commission is how exactly it happened and in ensuring that it does not happen again. Whatever meetings in which the Government will be involved will be absolutely necessary. It is a case of finding out exactly what happened from the perspective of ensuring that there is no room for a move such as this again. We have all seen its outworkings. I agree with much of what others said that this is Brexit coming home to roost, unfortunately. From a unionist perspective, supporting it was absolute madness. It is the most destabilising thing they could have done from the point of view of the Union. So be it, that is done.

I welcome the Government's engagement on the need to retain the protocol. While we all accept that modifications were necessary and will be carried out, whether it relates to grace periods etc., we need that to be sorted, North and South. I welcome that the Government is taking on board issues brought to it by people involved in supply chain logistics and so on, as the Minister of State noted.

What I think has happened is that unionist politicians have looked at their polling numbers, know they are under pressure and are using tried and tested methods from the 1880s nearly or from the 1980s. If we accept that the Irish protocol and the withdrawal agreement are international agreements that are not going anywhere, it could be another case of leading people up the hill, which is not helpful. Nor is it helpful when one hears about Michael Gove's ultimatum letter or hears Arlene Foster speak of how she has Boris Johnson on side from the point of view of introducing legislation that would negate elements of the Irish protocol, as well as the fact that he might simply invoke Article 16. I have no doubt that the Government has engaged with the British Government on this issue. I would like to think the engagement is robust. I seek an update from the Minister of State on this issue.

Deputy Thomas Byrne: There is a hugely changed political situation in Northern Ireland, and we see from opinion polling that it is changing all the time. There are many nuances of opinion; it is not one side versus the other. I think we can all agree now that there are significant nuances and a broad range of the public there who want to live decent lives, have prosperity and be able to move around the place. The Irish Government will try to ensure the best opportu-

nity for the North. When these issues are solved, and work is ongoing to solve them, Northern Ireland will have a huge opportunity to be part of the Single Market of the European Union. If one's perspective is on the unionist side, Northern Ireland is part of the customs territory of Britain as well. There are therefore huge opportunities there for the economy, and it is up to all of us, but particularly leaders in Northern Ireland, to help drive that forward and to make sure those opportunities are seized.

I cannot get into what questions officials or others have asked many times. The Commission as a body signed off on the measure which included Article 16 and political responsibility rests with the Commission. Ursula von der Leyen has accepted that and there will be accountability to the European Parliament. I accept that there is a point in trying to find out who did what to make sure that we have the right people there, that this cannot happen again and that somebody knows about the situation. When I think of our system, however, which is slightly analogous, if a government were to make such a mistake, that government and its Ministers, not individual officials, would be accountable to the Dáil. The reality is that this was drawn up. Commissioners, who are in regular contact with their counterparts here and indeed with the British Government, did not see fit to take out this provision or to say to themselves, as I did and, as I am sure, all committee members did when we first saw this on social media at about 4.30 p.m. that Friday, "What the - ?" I could not believe it. I would like to think Commissioners would think in that same political way that this is something that just should not have happened. That did not happen and, ultimately, there has to be political responsibility. I know the European Parliament will do its job in that regard, but the lessons are very important too.

I will repeat this. The protocol is there. It will not go away. Nobody has the possibility to remove it. There is no possibility of negating elements of the protocol either. There is the possibility of all of us working together to make sure it works in the most flexible way possible, consistent with everybody's demands that there be no hard border on the island of Ireland. This is really important for the economies north and south of the Border, and we cannot lose sight of this when we talk about checks and customs. It is really important that Ireland protects its place in the Single Market and that no questions are asked about that. It is absolutely central and essential to our economic policy and our economic growth into the future. That is very important, and I think everybody recognises that, but sometimes when we talk about difficulties and inconveniences we can perhaps put to one side the fact that the Single Market is so important and so central to us. The invocation of Article 16 has already happened, almost, and we see the fallout from that, so I think it is very unlikely that that will happen again. The point is that nobody can invoke Article 16 to eliminate the protocol or to change its terms. The protocol remains and always will remain, and there are ways of making sure we all work together to work it as effectively and efficiently as possible.

Chairman: Due to the efficiency of the Minister of State in his answering, we can facilitate a second round of questions, but does Deputy Ó Murchú wish to come in with a supplementary question before I open the meeting up to the floor again?

Deputy Ruairí Ó Murchú: Yes. I appreciate what the Minister of State has said. I will ask just two very quick questions. Is he happy enough that the structures exist such that we can deal with whatever modifications are needed for a better operationality of the Irish protocol? I am very glad he has reiterated what I myself would accept, that is, that the withdrawal agreement and the Irish protocol are international agreements and are not going anywhere. They are absolute necessities. Unionists are doing whatever unionists are doing, but some of the rhetoric and the likes of the letter of ultimatum from Michael Gove are not especially helpful. What has

been our engagement with the British Government from the point of view of dialling down that rhetoric, particularly if it is only a case of fanning flames and it is not actually going anywhere? I accept that the British Government may be looking for modifications. In that regard, I believe there is a difficulty in respect of a customs database to which the European Union is seeking access to facilitate addressing some of these problems.

Deputy Thomas Byrne: The simple answer to the first question on whether the systems are in place to address all these issues is “Yes”. They are there in a formal sense within the withdrawal agreement, the trade and co-operation agreement and the protocol. The Irish Government is fully part of that. Despite the fact that it is directly between the EU and Britain, we are fully involved. Those systems were not used in this particular context. That is part of the problem but there are ongoing engagements between Dublin and London also at a political level, which is very important. When this matter first arose the Taoiseach was in touch with Commission President Ursula von der Leyen a number of times. He then took the opportunity to speak to Prime Minister Johnson. There is still ongoing contact between Michael Gove and the Minister for Foreign Affairs, Deputy Coveney, as well as ongoing contact at official level and on the ground. I am absolutely satisfied that the contact is good. It is fair to say also that Vice-President Šefčovič and Chancellor Gove have shown themselves to be very good at working together in everybody’s interests. I am absolutely confident that will continue.

Chairman: I thank the Minister of State for taking the time to appear before the committee today. I have no doubt he will get a sense from this meeting that this conversation will not finish today. There is an appetite among committee members to ensure we get accountability and transparency. I believe that no single person made a decision of such magnitude and impact. My belief is that a group of individuals came together and that people in the Commission know their identity. For us to have confidence in the Commission into the future, it is imperative that we find out who made this decision of such magnitude because it had consequences. For every action there is a reaction. We only have to think of the time, effort and diligence invested in this by officials in the Commission such as Michel Barnier and his team and the individual countries throughout the European Union which knew of the sensitivity of the Northern Ireland peace process and went out of their way to send ambassadors here. I met the Danish and the Dutch ambassadors in my county. Many other ambassadors went to County Louth and different parts of the Border region over the past four and half years to get a sense of the situation. Individual countries of the European Union understand the importance of the peace process and protecting it. However, this decision, which was made very quickly by a group of individuals on a Friday evening, had drastic consequences that could have had a deeper impact on Northern Ireland. It was a very serious decision. It is very important that we as a nation have confidence in the European Union and have a Commission that is accountable. It cannot be a powerful entity where individuals can be protected. The message in that regard is strong. The Minister of State need not address that again as he covered it to the best of his knowledge.

The Minister of State may not have an answer to this specific question. What assurances can he give that the protocols around strict veterinary distribution practices employed by the Department of Agriculture, Food and the Marine are replicated in Northern Ireland? I have a concern that protocols similar to the very strict regime we have in place, through the Department, for ensuring traceability and quality of produce are not replicated in Northern Ireland. The Minister of State might ask his officials to follow up on that and revert directly to my officials in this committee.

I thank members. Ba mhaith liom m’aitheantas agus mo bhuíochas a ghabháil chuig an Aire

Stáit fá choinne na díospóireachta inniu. B'fhéidir go mbeidh cúpla focal sa bhreis aige.

Deputy Thomas Byrne: An important point, which has been mentioned, is that despite what occurred, which was a major mistake, the European Union and member states have shown extraordinary solidarity with Ireland over recent years. While there was a spectacular mistake two weeks ago, it is important to remember that there has been solidarity. Owing to the engagements we all have with our European colleagues, they are listening to what we are saying now. They are probably listening to the proceedings of this committee also. Anything we say by way of criticism is welcome but it is part of normal accountability in what is a democracy and considering what the EU is. It is our European Union; it is not some administrative structure's European Union. It is the Union of the citizens. I did not want to let the meeting go without acknowledging the solidarity we have all noted over recent years, but that does not in any way take from the requirement of accountability of political leaders.

Chairman: Aontaím leis an Aire Stáit. Leanfaimid i dteagmháil amach anseo agus b'fhéidir go mbeidh seans againn an tseachtain seo chugainn sa díospóireacht le Leas-Uachtarán an Chomisiúin, Maroš Šefčovič. B'fhéidir go mbeidh níos mó freagraí ar fáil ansin. I thank members of the committee.

The joint committee adjourned at 11.22 a.m. until 10 a.m. on Tuesday, 16 February 2021.