

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM GHNÓTHAÍ AN AONTAIS EORPAIGH

### JOINT COMMITTEE ON EUROPEAN UNION AFFAIRS

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*Dé Céadaoin, 10 Samhain 2021*

*Wednesday, 10 November 2021*

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Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

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Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
John Brady,	Frances Black,
Dara Calleary,	Niall Blaney,
Jennifer Carroll MacNeill,	Malcolm Byrne,
Rose Conway-Walsh,	Lisa Chambers,
Patrick Costello,	Regina Doherty,
Francis Noel Duffy,	Robbie Gallagher,
Seán Haughey,	Sharon Keogan,
Brendan Howlin,	Joe O'Reilly,
James Lawless,	Niall Ó Donnghaile.
Ruairí Ó Murchú,	
Neale Richmond.	

I láthair/In attendance: Senator Erin McGreehan.

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

## **Exchange of Views on Ireland-Northern Ireland Protocol with House of Lords European Affairs Sub-Committee**

**Co-Chairman (Deputy Joe McHugh):** Apologies have been received from Deputy O'Dowd. In accordance with current guidelines, all documentation for the meeting has been circulated to members using the Microsoft Teams platform.

Today's meeting is a joint meeting involving the Joint Committee on European Union Affairs, the Joint Committee on the Implementation of the Good Friday Agreement and the Seanad Special Select Committee on the Withdrawal of the UK from the EU. I am delighted to be joined today by Deputy Lawless, Vice Chairman of the Joint Oireachtas Committee on the Implementation of the Good Friday Agreement; Senator Lisa Chambers, Chair of the Seanad Special Select Committee on the Withdrawal of the UK from the EU; and other members of these committees.

Unfortunately, due to restrictions on numbers permitted in committee rooms, the other members are joining the meeting online. Due to the cross-sectoral nature of the Northern Ireland protocol, we are delighted to have the opportunity to meet with Members of the House of Lords in joint session and discuss areas of particular concern to our respective committees. On behalf of the committees, I welcome from the House of Lords Sub-committee on the Protocol on Ireland/Northern Ireland, Lord Jay of Ewelme, Chair; Lord Empey; Baroness Goudie; Baroness O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford; and Lord Hain.

Before we begin, I will read a note on privilege. However, before we do that, perhaps the other Co-Chairmen, Deputy Lawless and Senator Chambers, can introduce themselves. I know that Deputy Lawless wants to say a few words on the sad passing of former Deputy Austin Currie, who many members met and knew over the years. We are all thinking of Austin Currie's family. His daughter, Senator Emer Currie, is a member of the Joint Committee on the Implementation of the Good Friday Agreement. I invite Deputy Lawless to say a few words.

**Co-Chairman (Deputy James Lawless):** I thank the Co-Chairman. At the outset, I wish to state that I look forward to today's engagement. It is a timely and constructive engagement. It is a privilege to have the three committees together and to be joined by Members of the House of Lords sub-committee today. I look forward to the engagement. As alluded to by Lord Hain, events are moving quickly, so the engagement is timely. I look forward to constructive engagement. This is exactly how it should be done. Politics is the art of the possible. Connecting, as we are doing today, can only advance that.

As the Co-Chairman said, I wish to mention former Deputy Austin Currie, who sadly passed away overnight. He epitomised much of what the Joint Committee on the Implementation of the Good Friday Agreement and the other committees represented here today are about. He straddled both sides of the island and, indeed, the two islands, in the sense that he served as a Member of the Dáil, a Member of the Northern Ireland Assembly and a Member of Parliament at Westminster. He was one of the few individuals who had that experience and contributed across the island and the islands. He brought that spirit of collegiality and peaceful progress. He was an advocate for civil rights in the early days and progressed through the political spectrum. He made a huge contribution across the island and to politics in general. Sadly, he passed away at his home in County Kildare, which is the constituency I happen to represent. He will be greatly missed. Above all, I extend my sympathies to his family. He is survived by his children and grandchildren. In particular, I extend my sympathies to his daughter, Senator Emer Currie,

who is a member of the Joint Committee on the Implementation of the Good Friday Agreement, and has made a very strong contribution in her short time here. Ar dheis Dé go a anam dílis.

**Co-Chairman (Senator Lisa Chambers):** It is great to engage with the Lords again. We have done so previously at the Seanad Special Select Committee on the Withdrawal of the UK from the EU on Brexit. It is lovely to see them all again today, along with the Chair of the House of Lords sub-committee, Lord Jay. I thank them for making themselves available to us in the Oireachtas to engage on this issue.

I would like to join with my colleague, Deputy Lawless, in extending my sincere sympathies, on behalf of the Seanad Special Select Committee on the Withdrawal of the UK from the EU, to the family of former Deputy Austin Currie, and in particular, to our colleague, Senator Emer Currie. It is a very difficult time for them. To say that Austin Currie led an interesting life is putting it mildly. He also made a significant contribution to public life, which we are very grateful for as a State.

Our meeting today is extremely timely. However, it is worth acknowledging that it is really welcome to have this engagement to ensure that dialogue always takes place, that we speak to one another and that we try to find solutions. There is a lot happening, but that has been the order of the day throughout the Brexit process. It will continue in this vein for quite some time. At the end of the day, we all share some common goals in wanting to ensure that we mitigate the worst aspects of Brexit, protect citizens on both islands and find a solution that is workable for everybody living in the UK, on the island of Ireland and in the EU.

I look forward to engaging with the Members of the Lords sub-committee. It is a pleasure to join with colleagues from the Joint Committees on the Implementation of the Good Friday Agreement and European Union Affairs. We do not often join forces, but it is good to be able to do so on such an important topic. I will hand back to the Co-Chairman, Deputy McHugh.

**Co-Chairman (Deputy Joe McHugh):** I will move onto the note on privilege. All witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable, or to engage otherwise in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if the statement of a witness is potentially defamatory in respect of an identifiable person or entity, the witness will be directed to discontinue these remarks. It is imperative to comply with any such direction.

For witnesses attending remotely outside the Leinster House campus, there are some limitations to parliamentary privilege and, as such, they may not benefit from the same level of immunity from legal proceedings as a witness who is physically present does. Witnesses participating in this committee session from a jurisdiction outside the State are advised that they should also be mindful of their domestic law and how it may apply to the evidence they give.

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 that person identifiable.

For anyone watching the meeting, Members of the Oireachtas and witnesses now have the option of being physically present in the committee room or of joining the meeting remotely via Microsoft Teams. I remind members of the constitutional requirement that they must be physically present within the confines of the Leinster House complex in order to participate in

public meetings. I will not permit members to participate where they are not adhering to this constitutional requirement.

In this regard, I ask members participating through MS Teams that prior to making their contribution to confirm that they are on the grounds of the Leinster House campus.

I call on Lord Jay of Ewelme to make his opening statement. You are very welcome. It is good to see you. It is a pity we are not meeting in person, although I know you tried your best to do that but circumstances did not allow.

**Lord Jay of Ewelme:** I thank Chairman, Deputy Lawless and Senator Chambers and members of their committees. I thank them very much for the invitation to be with them today. We are really glad to be here. First, on behalf of the committee, as a whole, I share the sadness which has already been expressed at the death of Austin Currie. I would like to say that right at the very beginning.

For those members whom I have not met before, my name is Michael Jay. I chair the House of Lords Protocol on Ireland/Northern Ireland Sub-Committee. I have been pleased, in the context of the House of Lords's scrutiny of the impact of Brexit on Ireland and Northern Ireland, to visit the Oireachtas on a number of occasions, and to have met many members, and it is a pleasure to see them again.

The protocol committee includes a wide range of views and expertise both on Northern Ireland and the protocol itself. Our membership includes senior representatives of political parties in Northern Ireland from both unionist and nationalist perspectives, and draws from wider expertise in Northern Ireland affairs in the House of Lords. A range of these voices is represented in our delegation today, and my colleagues will introduce themselves the first time they speak. I should add that Jonathan Caine, Lord Caine, would have been with us today but over the weekend he was appointed as Parliamentary Under-Secretary of State at the Northern Ireland Office and, therefore, has left the committee with immediate effect.

Many members were present when a delegation of our committee participated in a meeting of the Joint Committee on European Union Affairs in June. At that stage our committee was in its infancy, having been set up in April. Much has happened since then and it may be helpful for me to summarise our work over the past five months.

On 29 July, the committee published its introductory report. The chapters of the report set out in turn: the committee's role; the development of the protocol; the economic impact of the protocol, including both the challenges and the potential opportunities it presents; the political and social impact of the protocol; and potential mitigations and solutions. The report acknowledged the difficulties in seeking to uphold seemingly contradictory principles underlying the protocol, namely, avoiding a hard border on the island of Ireland while at the same time maintaining Northern Ireland's place within the UK internal market. It acknowledged mistakes both by the UK and EU which had led to a mutual breakdown in trust.

At around the same time as the report was published, the UK Government published its command paper: Northern Ireland protocol, the next steps. This was followed by the publication last month of the four Commission non-papers on the operation of the protocol. Our work during the autumn has primarily focused on scrutinising the issues highlighted in these papers. In September we heard evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland on the operation of Article 2 on rights of individuals,

a vital issue that is often in our view overlooked amidst the political focus on trade issues. We wrote a detailed letter to the Secretary of State for Northern Ireland last month on those issues. In October, we held an evidence session with representatives of the pharmaceuticals industry on the impact of the protocol on the provision of medicines in Northern Ireland. This is an issue of universal concern to all citizens, regardless of community or political affiliation. We will shortly write to Lord Frost summarising our concerns.

Meanwhile our key work in scrutinising EU law applying to Northern Ireland under the protocol continues. We have now written more than 50 letters to UK Government Ministers on the various regulations, directives and delegated Acts brought forward over recent months that will apply to Northern Ireland. Last week, we held a seminar on perceptions of a democratic deficit under the protocol, whereby EU law applies to Northern Ireland without its consent, and on ways to enhance Northern Ireland's voice and influence in relation to the protocol. We heard from a wide range of business representatives, academics and parliamentarians from across the political spectrum, sharing perspectives from Westminster, Stormont, Brussels and Dublin, and we were delighted that Oireachtas colleagues were able to join us at that meeting. That engagement was a demonstration of our firm commitment to continued interparliamentary dialogue with all those with an interest in the protocol and in Northern Ireland.

Today's meeting is another welcome opportunity to strengthen engagement between the Oireachtas and Westminster, and between our committees. I very much hope that we will be able to build on this engagement in the coming months, including, as the public health situation improves, by meeting in person, both in Dublin and in London. We look forward to answering members' questions about our work, but before we do so, let me finish my opening remarks by quoting the final conclusion from our introductory report:

Addressing the issues of conflicting identity that first Brexit, and then the Protocol, have brought to the fore seems an insoluble problem. That was also true of the political situation in Northern Ireland during the Troubles. But through a slow and painstaking process led by political leaders in Northern Ireland and successive governments in London and Dublin, the peace process took root and flourished, leading to the Belfast Good Friday Agreement and the subsequent steps towards a powersharing arrangement. This process took time, patience, dialogue, and most of all trust. The same is true in addressing the problems that Brexit and the protocol present for Northern Ireland. 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.

**Co-Chairman Deputy Joe McHugh:** I thank Lord Jay for that presentation. We will try to be as systematic and as organised as possible with three committee chairs. We will start with the Joint Committee on European Union Affairs. I will call members of this committee, which I chair. We will move to Deputy Lawless's committee and Senator Chambers will facilitate the members of her committee. We will be quite ruthless and rigid about this. Members will have four minutes and I will call two members at a time. Members can decide whether they want to direct their questions to Lord Jay or to specific Members of the House of Lords. We will leave it up to Lord Jay to decide if it is a general question. I call Deputy Haughey who will be followed by Deputy Howlin.

**Deputy Seán Haughey:** I thank the Chair and welcome our friends from the House of Lords. It is nice to see them again. I join with the other speakers in conveying my sympathy to

the family of Austin Currie. I was listening to Colm Eastwood on the radio this morning. He outlined how Austin Currie and the SDLP adopted peaceful protest to bring about change, they adopted dialogue, and that is a lesson that all of us have taken on board, having regard to the peace process.

I thank the House of Lords sub-committee for the work it has done. It undertook painstaking work and consulted widely. Its report is diplomatic. It stated the UK approach has had shortcomings in transparency, clarity and readiness while the EU approach has had shortcomings in balance, understanding and flexibility. That is very diplomatic indeed.

As we speak, all the talk in the Irish political system is about the possibility of the UK triggering Article 16. I would plead with the House of Lords sub-committee to use its influence to ensure that does not happen. I hope it is a negotiating tactic. The Taoiseach informed the Dáil last week that such a move would be irresponsible, unwise and reckless and would certainly damage EU-UK relations and British-Irish relations as well. The consequences of that would lead to some sort of retaliation by the EU whereby the whole Trade and Cooperation Agreement could be under threat and a trade war would result. That is in nobody's interests. In 2022 we would be back to the possibility of a no-deal Brexit. That is the worst case scenario. I ask the Members of the House of Lords sub-committee to please do everything they can to ensure that Article 16 is not triggered on the UK side and to try to ensure that the UK side, in particular, would use the mechanisms and structures in place in the withdrawal agreement to deal with the issues which have arisen and which are well documented. That is my plea.

I will conclude with a question on the European Court of Justice. That seems to have come in from the sidelines. Nobody was expecting that this was an issue for the UK side and, indeed, for the DUP. In the sub-committee's conversations and discussions, was the European Court of Justice and the role it plays in interpreting and dealing with the Single Market an issue? Is that an issue now? From an Irish point of view we do not believe it is an issue, but we believe it is an academic concept. It has nothing to do with the practicalities that businesses in Northern Ireland are facing. Vice-President Šefčovič has come forward with constructive proposals, practical solutions, and the mechanisms are there to deal with the problems outlined. Does the House of Lords sub-committee see the European Court of Justice as an issue? Lord Jay's conclusion was fantastic. It was very positive and constructive. We have dealt with big issues before in regard to Northern Ireland and we can do so again on this occasion.

**Co-Chairman Deputy Joe McHugh:** I thought by saying I would be ruthless, I would get compliance. Lord Jay has 14 seconds to answer Deputy Haughey but I will allow a bit latitude out of respect to the Deputy. I remind members that many people wish to speak today, so they should be specific in their questions.

**Lord Jay of Ewelme:** I thank Deputy Haughey. On the last point, the European Court of Justice certainly has had more salience in the last few weeks than it had before. Few will of course claim that it was mentioned earlier on, but it was mentioned earlier on much less forcefully than it has been in recent weeks. I do not think there is any conclusion one can reach other than that it is now a major issue for the British Government. Exactly how it will be resolved, I cannot say.

I agree with Deputy Haughey very much on what he said about the risks of Article 16 being triggered, and the response to Article 16 by the European Union potentially leading to rather complicated negotiations with the prospect of a no-deal at the last stage. That is one end of the spectrum. The other end of the spectrum, which we cannot rule out, and I certainly would not

want to rule out although I must say the prospects are not looking brilliant at the moment, is for a negotiated settlement to be reached between now and Christmas or over Christmas. I do not think we can rule that out, but as Lord Hain said earlier, we have just heard that Lord Frost will be making a statement in the House of Lords at about 11.45 a.m., so we have to wait and see what he says then.

Would any of the House of Lords sub-committee like to add anything to what I have just said?

**Lord Hain:** I greet colleagues in Dublin. It is very good to talk to them. If Lord Frost announces the triggering of Article 16 that will be a very aggressive and bombastic move by the British Government that I fear has been coming for a while. We are going to need to work together with parliamentarians across the Irish Sea to try to cope with the fall-out because it will be significant. I do not know what he is going to say but it seems to me that his negotiating stance under the Prime Minister, Boris Johnson, has pointed to triggering Article 16 and a confrontation which is not designed to solve the problem, but to appeal to the Conservative Party's Brexit base, which is a total and radical departure, if it proves to be the case, from the close relationship of trust that was painstakingly built over decades between Dublin and London. Given the tangled history of the two countries and the two centres, to destroy that trust is very serious indeed. That trust is already badly damaged. If this transpires, we must do our best to rebuild trust and strengthen it between ourselves in parallel with what is going on from London.

**Co-Chairman Deputy Joe McHugh:** I thank Lords Hain and Jay for their contributions. That certainly gives a sense of the immediacy and the significance of today's statement and the role that we will have to play as parliamentarians. I call Deputy Howlin who will be followed by Deputy Richmond.

**Deputy Brendan Howlin:** Good morning colleagues in both jurisdictions. It is true to say that we meet in challenging times. I also offer my condolences to the family of Austin Currie who has been a champion of civil rights and a significant political activist on both sides of the Border. The House of Lords sub-committee has proven to be a very important, and probably now an increasingly urgent, line of communication and of sanity between the two Parliaments. I hope we can deepen those lines of communication. Echoing what Lord Hain just said, I am deeply concerned about the triggering of Article 16 of the protocol, which was meant to be a safeguard clause in the event of something unforeseen happening and that there would be time to fix it. Obviously the issues have already been addressed over the last number of weeks and months by the Šefčovič team, so the strategy behind triggering it is something that is baffling for us. If Article 16, as is widely rumoured now, is to be triggered possibly today or, if not, within the next day or two, what is the strategy? What do our colleagues in the House of Lords believe the next move will be? Things will move backwards rather than forwards once that happens. More saliently, what can we do in the event of that happening to seek to stop the backward movement in relationships and the consequences of such a move, and to restore what Lord Hain so properly underlined, namely, the basis of 20 years of discussion that brought peace to the island of Ireland and an acceptance of one another's good faith? If that is fundamentally fractured how do we as parliamentarians begin to redress it?

**Co-Chairman Deputy Joe McHugh:** I thank Deputy Howlin. I will hand over to Deputy James Lawless after this. My next two contributors are Deputies Richmond and Ó Murchú. Deputy Lawless will be first. I call Lord Jay.

**Lord Jay of Ewelme:** I agree with the last point that has just been made. That is why we emphasised the crucial importance of trust. If that disappears, then that would make the resolution of the issue of the protocol in the interest of everybody in Northern Ireland very much harder. The restoration of trust is crucially important for us.

I cannot give an answer as to exactly what would happen if Article 16 was triggered, nor do I know what the Government strategy would be. It would depend on how it is triggered. Will it be one article? Will it be Articles 5 to 7, the trade articles? Will it be those articles plus something else which is triggered? I imagine that a response from the European Union would depend on exactly which articles have been triggered by the British Government. I will ask other Members of the House of Lords sub-committee if they would like to comment. I see Baroness Ritchie has her hand up.

**Baroness Ritchie of Downpatrick:** I thank Lord Jay, Deputy Howlin and the Co-Chairman, Deputy McHugh. I would like to convey my condolences to Anita Currie and her family on the passing of Austin. Mr. Currie was the political icon of my generation in terms of his fight, and our fight, for social justice, equality and access to social and affordable housing in the 1960s and 1970s.

It is clear that Lord Frost and the Prime Minister are intent on triggering Article 16 even though all the evidence shows it will create political instability. It strikes me that the Democratic Unionist Party, DUP, constantly talks about wanting to create political stability, but its encouragement to Lord Frost and Boris Johnson will create political instability. It is interesting that last week we took evidence at our committee from Professor Peter Shirlow of the University of Liverpool and he, along with others, produced a report which showed quite clearly that triggering Article 16 will cause that political and economic instability in the North. We all know, and Lord Hain referred to this, that according to the Good Friday Agreement, both the British and Irish Governments are co-guarantors and are supposed to act impartially in the execution and implementation of the agreement. That applies to whichever party is in power in the UK. It is important that our sub-committee holds Lord Frost to account. I agree with Lord Hain that our House of Lords protocol sub-committee and all the Oireachtas committees represented here today need to work very closely together to build a bulwark against this. Not only will this cause political instability in the North, it will cause economic instability on the island of Ireland, which is something that none of us wants to see happening. Through the membership of the EU and through the Good Friday Agreement, we were able, with a seamless border, to build sound political relationships and a sound economic base.

**Co-Chairman Deputy James Lawless:** Thank you Baroness Rithchie and Co-Chairman, Deputy McHugh. I will take the Joint Committee on the Implementation of the Good Friday Agreement part of the session. The committee normally takes different groups in a particular order. The first group will be the Sinn Féin Party. I will invite Deputy Conway-Walsh, who has indicated. There will be two slots in this round for Sinn Féin. If the next speaker wants to make himself or herself known, he or she can come in after that. As per previous directions, speakers have four minutes, which includes responses. I ask everybody to try to stick to the times because we have a busy meeting this morning.

**Deputy Rose Conway-Walsh:** Good morning everybody. I thank Lord Jay. As others said, this meeting is timely. At the outset, I want to extend condolences to our committee colleague, Emer Currie, on the passing of her father. This morning I listened intently to Manufacturing NI when it spoke about the protocol and how the protocol was serving it and serving to mitigate the harshness and negativities of Brexit. It is baffling to us in that nobody across the

island, except for a few unionist voices, is calling for the protocol to be abolished. We know there is no alternative to the protocol. Trying to abolish the protocol at this stage is reckless and at odds with widespread public opinion. We welcome what the EU has done in terms of dealing with some of the problems that were becoming transparent with the protocol in relation to sanitary and phytosanitary, SPS, medicines and all of that. We believe that there were workable solutions and that there is an openness there to find other working solutions.

We want the joint committee, the mechanism there to be able to solve these problems, to be reconvened. As Lord Hain said, we await the announcement that will be made by Lord Frost this morning. It is absolutely reckless and, if this is not sorted out, we are under no illusion as to the chaos this will cause across the island, between the islands, to the relationship between the islands and in terms of the US and the trade agreements with Britain. Nobody wants that. I concur with the words Lord Hain used in calling the move of triggering Article 16 aggressive and bombastic. It is not designed to find a solution. At this stage, we just wonder what is wanted and what the end game is. Are we solution focused? I am glad everybody at this meeting is solution focused. It is important we send out a unified voice from here. I hope Lord Frost will listen to the people across this island and acknowledge the good work that has been done over the years, both with the Good Friday Agreement and with successive agreements.

I will leave it at that. I do not have a specific question other than to ask what else can we do in order to provide the stability and certainty that is needed across the island? Everybody here is willing to play his or her part.

**Co-Chairman Deputy James Lawless:** We will go to the Lords for answers. There are about 20 seconds left, so we will give a little bit of latitude in deference to the Lords. I ask the next speaker to make his or her points in the four minutes to allow time for responses. Lord Jay, do you wish to answer the question or delegate it to another Member, as appropriate?

**Lord Jay of Ewelme:** I will ask Baroness O'Loan, as I think her hand is up. Baroness O'Loan, are you there?

**Baroness O'Loan:** Yes, I am Lord Jay.

**Lord Jay of Ewelme:** Would you like to comment on that?

**Baroness O'Loan:** A fundamental fracture would result from this situation, which is how Deputy Howlin described it. It is very important to acknowledge that the people of Northern Ireland are not complaining about the protocol. They are finding ways to make it work. The evidence which we have received is consistent in those terms. We have heard much evidence about problems, particularly on the pharmaceuticals or medicines front but generally people are working very hard. The full impact of the protocol is not yet being felt because we have these emergency measures in place. Evidence shows that there is a greater level of North-South trade now. One figure I saw showed a 44% increase in North-South trade. It is very important that we are able to continue that.

The question of the European Court of Justice is one which could be resolved. Lord Thomas of our committee has suggested a possible route through that. I cannot understand why the voice of the people of Northern Ireland is not heard when the general assumption is that this must be worked through.

**Lord Jay of Ewelme:** I thank Baroness O'Loan. I would like to add one point at this stage because I do not think that all the Members of the sub-committee are present, but I know Lord

Empey intended to be here. I would like to put on record their view that the protocol, and the way in which the protocol is being implemented, risks causing unrest in Northern Ireland. That is a real concern for them. I need to put that on the record because they are not present. I do not know whether Lord Empey is with us.

**Co-Chairman (Deputy James Lawless):** I am not sure if Senator Ó Donnghaile is next or who the second Sinn Féin speaker in this part of the meeting is.

**Deputy Rose Conway-Walsh:** If there is not another speaker here from Sinn Féin, maybe I could have another minute.

**Co-Chairman (Deputy James Lawless):** This is the Sinn Féin block. After we come back around, it moves on to the other parties. Perhaps that makes sense. Deputy Conway-Walsh can get a little longer in that case since she will be taking two slots, as it were. If Deputy Conway-Walsh wants to take up two minutes, we will take replies to that. That makes sense.

**Senator Rose Conway-Walsh:** I will not take up the two minutes.

As a party we want to find solutions even at this late stage because the consequences are so dire for this. We want to find solutions at this stage to protect businesses and to bring about stability. We must remember that the protocol has provided opportunities across the island and across the North in terms of both foreign direct investment and trade. Those opportunities and the possibilities under the protocol will only widen and develop as we go on, and benefit all communities across the North. That is important to remember. I am reluctant to go down the road of talking about what will happen if Article 16 is triggered because that would suggest that we are accepting it. At this stage, I would just like to get across the point that we want to find solutions and that we will work with everybody for the stability and certainty of all communities and businesses, including agri-industry. Farmers across the North are expressing real concerns to us around what may happen. We must remember that the protocol is not the problem. Brexit is the problem and there is no alternative to the protocol. I will leave it at that.

**Co-Chairman (Deputy James Lawless):** I thank Deputy Conway-Walsh. That concludes the slot for the Joint Committee on the Implementation of the Good Friday Agreement for now. I will yield to my colleague, the Co-Chairman, Senator Chambers, for the next committee to contribute.

**Co-Chairman (Senator Lisa Chambers):** I thank the Co-Chairman, Deputy Lawless. I will now hand over to some of my colleagues on the Seanad Special Committee on the Withdrawal of the United Kingdom from the European Union. First, I call Senator Malcolm Byrne.

**Senator Malcolm Byrne:** I thank the Co-Chairman, Senator Chambers, for the opportunity to engage.

I have a general question which arises out of whatever happens today. It is clear that there has been a breakdown in trust between the Irish Government and the European Union on one side and the British Government on the other. I ask the members of the House of Lords subcommittee what they think we can do as parliamentarians to help to rebuild trust on both sides.

My second question is slightly removed from the protocol. At present, the UK Government is reviewing the data regime that operates. As the House of Lords subcommittee will be aware, the European Commission has granted an adequacy judgment with regard to the data regime in the UK. Concerns have been expressed to the Seanad Special Committee on the Withdrawal of

the United Kingdom from the European Union that if the UK interferes in some way with what would be seen as data privacy rights, that data adequacy judgment at EU level will be either suspended or terminated. That would have a direct impact on all sorts of organisations and businesses. The Data Protection Commissioner here, for instance, indicated that there could be up to €1 billion more in costs for Irish business if that adequacy judgment is dead. I am conscious that 19 November is the closing date for submissions on the UK Government's review and I am curious as to whether the House of Lords subcommittee has considered that issue, which, on top of any decisions around the protocol, could have quite serious impacts on business. I will leave it at that to allow time for answers.

**Lord Jay of Ewelme:** On the first question of what can parliamentarians do, this kind of exchange is extremely important, as, indeed, was the seminar we had last week, as I mentioned in my opening statement, with representatives of all political parties from the DUP on the one hand to Sinn Féin on the other. Having that kind of seminar with everybody represented is important and gives the sense that it is possible to have rational sensible discussion about these issues and it does not have to be adversarial. To be honest, that is important for us, as parliamentarians, to be able to do.

On data adequacy, we have not looked at data adequacy but we have recognised it as one of the many issues which could seriously affect businesses in Britain.

I am glad to say that Lord Thomas has joined us, and Baroness Goudie. Do they want to say anything at this point? Are they there?

**Lord Thomas of Gresford:** I apologise for being late.

**Lord Jay of Ewelme:** Very good. I am very glad you are there, Martin.

**Baroness Goudie:** I agree with previous speakers that the trust must not be broken by any of the countries. I feel strongly that we must try to not just get thrown out but the European Court of Justice, ECJ, situation must be solved as well. Whatever the outcome of today's statement, we need to take it with calmness and try to negotiate, but that not everything be thrown out. There is not enough consultation by Lord Frost's team with all of the members and we ought to perhaps look at some other ways of being able to discuss these issues without it just being on the television, the newspapers and what have you. We need to have proper calm discussion.

**Lord Jay of Ewelme:** I thank you, Co-Chairman.

**Co-Chairman (Senator Lisa Chambers):** I thank the House of Lords subcommittee members for that response. I call Senator Joe O'Reilly.

**Senator Joe O'Reilly:** I thank the Co-Chairman, Senator Lisa Chambers, for the opportunity to contribute to this excellent engagement. I am delighted that we are having this exchange with Lord Jay of Ewelme and his colleagues. As has been repeatedly pointed out, this relationship, this exchange and our interaction will become all the more important as the days progress. It is a good step in that direction.

I would have thought that Commissioner Šefčovič made huge efforts in his overtures earlier. Even at that, he had left the door open to negotiation. It is regrettable if this has to come out of the negotiations and if there have to be dramatic or nuclear options.

I presume our colleagues in the Lords are more than aware that the business community and civic society in Northern Ireland want to work the protocol, see the potential to trade North-South and are doing so in a big way, and see the potential to trade east-west. The hard-headed business people are on a different page altogether. That is very clear. If they, as the Lords, could use their influence to convey that concept and that awareness more to the people who are making the decisions, it would be helpful.

Does the House of Lords subcommittee think that Lord Frost and his team and the Premier have done a proper cost-benefit analysis of this exercise? Let us assume that today is about triggering Article 16. Let us assume that is what will happen but let also hope that it is not. Maybe there will be some sabre-rattling and something short of triggering Article 16. Assuming it is triggered, however, do they think a proper cost-benefit analysis has been done on the subsequent implications for the UK in a trade war, a breakdown of the trade agreements and possibly tariffs, etc.? Could this escalate into something that would dreadfully, and potentially in a horrendous way, affect our respective peoples? That is basically my question. As everyone else has asked the House of Lords subcommittee members, what can we collectively do and what can they do to prevent this potential disaster? I thank the Co-Chairman again for the opportunity to speak.

**Lord Jay of Ewelme:** I do not know whether a full cost-benefit analysis has been carried out. I suspect what is very much in the minds of British politicians, particularly Lord Frost at present and the Prime Minister, is more a political calculation as to the effects of what they may or not do rather than a full cost-benefit analysis. That is my personal view rather than the view of the committee. Lord Thomas has particular views about the European Court of Justice. I do not know whether this is the time for him to mention those or whether we wait for another question.

**Lord Thomas of Gresford:** I would be grateful if I could get into the feel of the meeting a bit more.

**Lord Jay of Ewelme:** Does Lord Hain have any thoughts at this stage?

**Lord Hain:** I thank Senator O'Reilly for his question, which is right to the point. I do not think a cost-benefit analysis was ever done on Brexit by those advocating it let alone on the protocol. It was very revealing that, in direct language, Lord Frost talked about the protocol having been signed under duress. Boris Johnson in his own way said something rather similar. He has indicated that when he signed it, he did not really mean it and always intended to abandon it. That is what we are facing. This is about political-identity politics rather than trade, and Brexit has always been about that.

On what could be done at your end, the European Union Commission statement about mitigation measures and how changes could lighten the impact of the protocol, was very important. It was, in a sense, an opening negotiating stance. It is important to keep going down that road. If there has been a criticism of Brussels and maybe Dublin, although that would not be as fair, it is to constantly communicate in person with businesses and the unionist community, especially, in Northern Ireland, to make it clear that nobody wants a fight over this, that 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 matters 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 that we had prior to Brexit.

We are here as a result of a distinct decision taken by Boris Johnson, Lord Frost and the Conservative Government. It is about divergence from the European Union and that means Northern Ireland, by definition, remaining in the Single Market and customs union. Unless London attempts to revisit that issue - I do not think it can be revisited - there will be increasing divergence and increasing convergence to the Republic. That is the British Government's trade policy on Northern Ireland. That is the context in which we should encourage the most active engagement from Dublin and Brussels with citizens in Northern Ireland. It should be explained that nobody wants a fight from that direction even if a fight is picked from London and practical measures can be taken to ease some of the undoubted difficulties, obstacles and bureaucratic problems that came with the protocol because it was rushed in at the last minute in order to "get Brexit done". The more constrictive, more open to dialogue and engagement Brussels and Dublin can be, the better, frankly, and I would encourage that.

**Co-Chairman (Deputy Joe McHugh):** We will move to the next couple, Deputy Richmond followed by Deputy Ó Murchú.

**Deputy Neale Richmond:** It is the first time that Deputy Ó Murchú and I have been identified as a couple, a new adventure for both of us. More important, I welcome our guests again. It is disappointing that we have to do this remotely, but we are all familiar with each other. From the outset, I would like to associate with the condolences to the family of Austin Currie, particularly our colleague, Senator Emer Currie.

I would like to raise a few issues that can be teased from the points raised by our guests. The first one, on which a couple of them have given their opinion, is whether they believe invoking Article 16 at this point is justified. That is one point that is often lost: just because the British Government potentially believes it is justified, does not mean the European Union will agree with it, and there will, no doubt, be legal challenges and arbitrations in that area. Second, I wish to elaborate on some of the points Lord Jay referred to on whether Article 16 is to be invoked. The manner and reasons for why it might be invoked will be extremely important. Given that Lord Frost is due to speak in a couple of hours' time, do we have any indication as to the areas that have already been identified that this is the problem? It has been mentioned that the European Commission presented a very generous and comprehensive set of proposals. Hopefully, Lord Thomas will be able to intervene in relation to the issues raised on the European Court of Justice, ECJ. From a practical point of view, as alluded to by other colleagues, this is something that is not coming up in discussions on the ground. A lot of us have individual and collective engagements with the business, civic and, indeed, political communities across this island. The ECJ never comes up. I believe it is a non-issue.

I refer to Lord Hain's point on North-South engagement. My question is not for him to answer. Perhaps, if Lord Caine was still on the committee he would have been the person to answer. What, if any, engagement is the British Government having on the ground formally with the business community and the trade associations in Northern Ireland? In his opening remarks, Lord Jay referred to the democratic deficit in the European context. That is acknowledged and members from all three Oireachtas committees have identified potential solutions. From a British point of view, throughout the Brexit negotiations, there was many issues raised by the devolved administrations and the lack of engagement they were receiving from Whitehall. To what extent is there such a democratic deficit from the representatives of the Assembly or, indeed, the Executive Committee of the Assembly with Whitehall?

**Co-Chairman (Deputy Joe McHugh):** I hand over to Lord Jay.

**Lord Jay of Ewelme:** I thank Deputy Richmond. There is a question about the ECJ that is very much Lord Thomas's field.

**Lord Thomas of Gresford:** I have looked at Article 257 of the statute and it gives power to create separate specialised courts as a chamber of the European court. There is only one at present and that deals with the civil service. It seems the machinery is there for creating a new court within the overarching Court of Justice of the European Union, CJEU, structure which could be manned by three or four judges from the EU on the 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, of course, hold the balance. That would have a number of consequences. The objection of the UK Government is that the CJEU can determine causes that may arise between the UK and the EU under the protocol, and it is, of course, the judge and function of one side. What the British Government has said about that is that it is not going to have an arbiter that is within the scope of one side of the problem but not of the other. My idea of a separate chamber in the CJEU would give that overarching feeling so that the decision of that arbitration body or specialised court would be, essentially, one of the CJEU, while - according to my plan - also having equal representation for judges from both sides. A new structure would be needed and that would require much negotiation. What is the alternative? It would be the setting up of an *ad hoc* arbitration panel to resolve disputes, a panel sitting somewhere it can find that is suitable, be that in London, Brussels or wherever. That panel would be of a similar structure to the proposal I am suggesting, namely, equal representation from both sides and with a neutral chairman or president. That would be something completely outside the structures of the UK courts and of the CJEU. It seems that what is needed is the will to take something like that idea forward and to make it happen. That is my proposal.

**Lord Jay of Ewelme:** I thank Lord Thomas for that contribution. I will make a small point concerning one of the original questions posed by Deputy Richmond. I was quite struck when we had representatives from the pharmaceutical industry in front of us a few weeks ago that it was clear there was and continued to be close consultation between that industry, at least, and the UK Government. There is, therefore, engagement with the Government in Northern Ireland and about Northern Ireland affairs. I will pass back to the Co-Chairman and I will ask Baroness Ritchie to answer the next question.

**Co-Chairman Deputy Joe McHugh:** I thank Lord Jay. We will go straight over to Deputy Ó Murchú.

**Deputy Ruairí Ó Murchú:** I welcome the Cathaoirleach and all his team from the House of Lords committee. I also add my voice to those expressing condolences to the family of Austin Currie, and particularly to Senator Emer Currie. Austin Currie made a long contribution to political life. I would not always have agreed with him, but that is for another day. In fairness, though, when we consider his involvement in the Caledon housing protest, that showed up housing inequality and the sectarian nature of the Northern State. We should recognise all of that.

To a degree, we are repeating ourselves. In fairness, I could not necessarily disagree with what Deputy Richmond said. We are all assuming that at 11.45 a.m. we may get this indication from David Frost of the triggering Article 16. We all know that the article is sometimes sold as more than it is, but it is an integral part of the protocol. The protocol itself was necessary to mitigate Brexit. It would also be hard to disagree as well with Peter Hain in the sense that none of this was costed or about logical and sensible moves. To a degree, then, we are where we are and we should always look for solutions. That is fine. I refer also to the European Commission

and Commissioner Maroš Šefčovič's direct engagements with businesses in the North. In that regard, I welcome having been able to speak in last week's meeting on the democratic deficit. As Margaret Ritchie has pointed out, Professor Peter Shirlow said that business interests even across unionism are just interested in getting on with the job and significant moves have been taken to mitigate some of the difficulties in respect of the protocol.

The major problem we have now is not just the issue of the ECJ being thrown in, but that Lord Frost has also said that the former Prime Minister, Theresa May, should never have agreed to a backstop in 2017 and that the EU Withdrawal (No.2) Act, also known as the Benn Act, hamstrung the British Government. In other words, he is stating that the British Government signed up to something it had no intention of adhering to. We are all second-guessing now what the actual strategy of the British Government is. I am not sure that anyone could give me an answer regarding the strategy of David Frost or Boris Johnson. I half hope that Dominic Cummins is correct and that Boris Johnson changes his mind ten times a day. He has shown that tendency at times.

We are in a serious situation. To an extent, the British Government is playing the orange card. An element of political unionism has always had difficulties in this regard and they see many things as the rocky road to unity. Sometimes that concerned cross-Border initiatives on just simple things like roads and other necessities. I am just putting that observation out there. We are not in the 1980s now, and we do not have that element of unionism which has a difficulty with the political trajectory. As I said, businesses are interested in business being done and in finding solutions. We must work together, and I am all into positive solutions. We are working with a British Government, however, that is basically promising to do something which will prove that it is not possible to trust it.

From a republican perspective, we would say that the British Government sometimes agrees with every intention of rowing back on the agreement. Even if it intends to get us to point B, it will take us there via the most circuitous route possible. Everything I have seen to date has shown this. It is therefore incredibly difficult to see what the solution in this context is. Let us be absolutely clear, though. David Frost has also thrown back out old arguments about there being no reason to worry about the Border on the island of Ireland and that, at the end of the day, technological solutions were possible. That has proven not to be the case, and, as far as I and the majority of people on this island are concerned, that is a no-go area and we cannot revisit it. We will see. I would be delighted if someone could give me an answer regarding what is the strategy of Boris Johnson and David Frost and what their endgame is.

**Co-Chairman Deputy Joe McHugh:** Now that the Deputy's time is up, I am faced with the dilemma of deciding whether to let someone in to answer or to move on. I will make an exception to the rule because the Deputy is a nice guy, and I will hand back to Lord Jay.

**Lord Jay of Ewelme:** I am sorry that the unionist members of the committee are not here to address some of the points made. I will let Baroness Ritchie respond instead.

**Baroness Ritchie of Downpatrick:** I thank Lord Jay and the comhchathaoirleach. To respond to the question from Deputy Ó Murchú, I would be the last person to understand or appreciate the strategy of the British Government. I imagine, though, that it is making a political calculation that is all to do with trade policy between the UK, the EU and further afield in regard to making trade deals. The island of Ireland comes further down their Richter scale, so to speak. That is deeply unfortunate, because, from a personal perspective, I believe, and the committee has taken umpteen pieces of evidence about this aspect, that the actions of the British Govern-

ment will cause untold damage on the island of Ireland. That will especially be the case after we were all able to collectively negotiate the Good Friday Agreement that brought about peace, prosperity and a sound economic base.

The issue of the ECJ is undoubtedly another red herring. Lord Thomas, in fact, has given evidence of alternative ways of dealing with this aspect. While I was on the way to the airport on Monday, I think I heard the Minister for Foreign Affairs, Deputy Coveney, saying quite clearly on “Morning Ireland” that there has been little or no engagement between the British Government and the EU, and that the British Government has not responded to those proposals in the four non-papers that dealt with the mitigation measures.

Having talked to people in the North, I would have to say that the business community is quite pragmatic about the protocol. They have said that, in fact, and it can be heard if one listens to Seamus Leheny of Logistics UK or Aodhán Connolly of the Northern Ireland Retail Consortium, NIRC, both of whom gave evidence to us last week, or any others. They are very pragmatic. They want to get on and do business and they want everything to work out successfully because the majority of people in the North did not want Brexit.

However, it is interesting to note that the protocol offers real benefits to the North. There has been full and free access to both the Single Market for goods and to the rest of the UK internal market. If anything, the British Government should be trying to work with the EU to utilise those benefits for all of us to try to mitigate the many problems that may have arisen and try to create all the possible trade opportunities. That relates also to a question asked by Senator Joe O’Reilly as well. There are benefits there. They are quite well-documented. I can think of one relating to Dale Farm. It won a contract to supply whey concentrate to Arla Foods, a major European dairy company. This has been attributed, at least in part, to the protocol. Dale Farm said it would have been a challenge without the protocol. Thus the evidence is there within the business community, which is particularly pragmatic and just wants to get on with it.

As to any threats from Lord Frost, I would think he will not say he is triggering Article 16 today. I do not want to be a commentator on what he might say but that, apparently, is the situation.

**Lord Jay of Ewelme:** I think Baroness Ritchie is wise to hold fire on what Lord Frost will say until we have heard what he says in an hour or so’s time.

**Co-Chairman Deputy James Lawless:** I thank Lord Jay. I will take up the baton again for the Joint Committee on the Implementation on the Good Friday Agreement. We will hear from Senator McGreehan, followed by Senator Blaney.

**Senator Erin McGreehan:** Everyone is very welcome to our committee. It is very nice to see them. As other speakers have said, we are in very difficult and dire times. Once again, we in the Houses of the Oireachtas are awaiting with anticipation what the UK Parliament is going to do because its decisions impact on us fundamentally. That is not right and we must get beyond a stage where we are in suspense over the whims of a British Government. It is infuriating to see history repeating time and time again. My question to the members of the House of Lords sub-committee, who are very well-respected, is how can they work for citizens on this island. There are international agreements which have been agreed to by this island, the EU and indeed by the members of the House of Lords’ own government. We must have those agreements upheld. The protocol was there for a reason. It was negotiated by the UK Government. The majority of the citizens in the North and this island support that. The protocol is working for

businesses.

Another question is whether the British Government is actually that serious about Brexit after all. Brexit is not done. The UK Government says it wants it done. Apparently, it is not going to trigger Article 16 today and that is good news. However, we are again kicking the can down the road. In the opinion of our guests, how far does the UK Government want the EU to go in order to make a new agreement, upon a new agreement, upon a new agreement on what the situation on this glorious island could be?

**Lord Jay of Ewelme:** I thank the Senator for that. Does Baroness Goudie want to comment on that point?

**Baroness Goudie:** I agree entirely with what the Senator said. There seems to be no care for Ireland and what is happening. An issue we have not mentioned too much is the implementation of the Good Friday Agreement and how it should align with the protocol. I have mentioned it previously and my colleagues sometimes get a bit tired of my mentioning it but I really feel we must work on a link between the two before it is too late or it will all get forgotten. That said, the Good Friday Agreement can never be forgotten and it is there to be implemented but Ireland has a great role to play in trying to implement this along with other colleagues. If necessary, that should include other countries such as America, which was involved in the agreement, but maybe also another country from the EU that fully understands the issue.

**Lord Jay of Ewelme:** I thank the Baroness. I have two quick comments on the Senator's questions. Is the British Government serious about Brexit? It is absolutely serious about Brexit. Is there any chance of Brexit being reversed? In my view there is not. We absolutely must accept that.

The second point that we have stressed, and that we continue to stress, although it is not completely straightforward with the British Government, is the importance of the rule of law and the observance of it. That is a hugely important part, traditionally, of British foreign policy and attitudes towards international engagement. That is an important point to stress. That is what I have to say in answer to those two questions.

I think Lord Thomas's hand is up and he is ready to answer the next question.

**Co-Chairman Deputy James Lawless:** Very good, Lord Jay. He is ready and waiting and ready and able. I thank Baroness Goudie as well. I call Senator Blaney.

**Senator Niall Blaney:** I very much welcome our UK colleagues from the House of Lords. The dialogue and openness of the conversation is very much appreciated. I too wish to be part of the condolences extended to the Currie family, and especially our colleague on the committee, Senator Emer Currie. I have no doubt she would be very much part of the conversation this morning had she been around. Austin Currie certainly left his mark on Irish politics. He was a giant of Irish politics and someone who never took intimidation seriously and never lost his political will to see progress in Northern Ireland. May he rest in peace.

I very much welcome the openness of Lord Jay's opening statement but there are some elements of it I would like to bring attention to, especially towards the end when he talked about the lead-up to the Good Friday Agreements and the subsequent steps towards power-sharing arrangements. He talked about this process taking "time, ... dialogue, and most of all trust". If the negotiations for the Good Friday Agreement had been in the era of Boris Johnson and Lord Frost, I fear we would still be sitting round the table negotiating and renegotiating. That is how

I feel this protocol is taking shape. The efforts to negotiate and renegotiate are demonstrating serious incompetence on the side of the UK Government. I think it was Baroness Ritchie who made reference to the fact we are somewhat a pawn in UK efforts to get trade deals across the world. The protocol is being used as that pawn in efforts to get better deals. However, because the element of trust is being eroded, specifically by the UK Government on deals that have previously been negotiated between itself and the EU and which are now being renegotiated, it is now undermining its own trustworthiness in the eyes of all the other countries we have yet to negotiate trade deals with. I would like to get the views of members of the House of Lords sub-committee on that. Is it something they concur with? The art of negotiation is compromise but trust is an awfully big part of it. The UK Government needs to take that element of it seriously as well as the fact that the Irish economy has prospered since Brexit and that the North-South relationship has prospered from a trade perspective. Until we get back to that element of trust, we are not going very far.

**Lord Jay of Ewelme:** I agree very much with what has been said about trust. I will also ask Lord Thomas to come in here. Trust and compromise are the tenets.

**Lord Thomas of Gresford:** Undoubtedly, this Government has trashed the feeling of trust between all parties. I am not surprised that the EU and its member states feel that they cannot go along with anything that he says. I await to see, with horror, whether Lord Frost will use Article 16 in some cack-handed way. I do not believe they have ever understood their own protocol. That is the problem. 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. I have been thinking about that since our discussions at our seminar last week. At some point during this meeting, I would like to pose a possible solution to that, which was never thought of in the context of the protocol, whereby there should be a form of pre-legislative scrutiny by the Northern Ireland Assembly of European Union directives in Northern Ireland. One of the contributors took this point last week and suggested that we have something along the lines of a consent motion that has to go to the Northern Ireland Assembly committee. I looked up the way in which Northern Ireland deals with consent motions in respect of UK legislation and I wondered how it could be adapted. 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 people.

Unfortunately, not only does this Government not understand the protocol, there are measures within the protocol to resolve disputes that they stubbornly refuse to follow. There is arbitration with the European Union but nobody has followed it and nobody has tried it. Until this Government gets a grip on itself and actually works out the protocol, we are going to have these continuous problems. That is one issue. I would like throw out the idea of some form of consent motion or scrutiny of directives from the European Union that affect Northern Ireland before they are made.

**Co-Chairman (Deputy James Lawless):** I thank Lord Thomas. That is exactly the kind of constructive solution-finding that we all need in order to move through these times. I will now hand over to Senator Lisa Chambers from the Joint European on Union Affairs.

**Co-Chairman Senator Lisa Chambers:** I agree with everything Lord Thomas said. He has proposed some very interesting solutions around the ECJ and how that might be able to

facilitate a special arrangement for what we are dealing with, and also how we would deal with what is termed the “democratic deficit” in Northern Ireland, which we acknowledge does exist in the context of the rules that are being made and applied but which do not necessarily have democratic input from the people who are living there. These are very interesting solutions that deserve further exploration. I will hand back to my colleague Senator Malcolm Byrne, who wants to come back in on a question.

**Senator Malcolm Byrne:** I am really enjoying the conversation. I certainly agree with the remarks of Lord Thomas. Coming back to my earlier point on building trust, this issue has come right through all of our discussions. When the UK was in the EU one of the advantages was that it allowed for opportunities for meetings between Ireland and the UK on fringes of other meetings. We must look at more ways of doing that. Lord Jay said that it is important for us, as parliamentarians. We also need to look at ways we can support that among civic society to a far greater extent. With building trust into the future, I am particularly keen on opportunities among young people and particularly young people from disadvantaged backgrounds who do not necessarily understand the protocol but who are being led to believe that this in some way is impacting on their identity. At some stage, I would like us to explore more ways for east-west and North-South co-operation and exchange, especially among young people.

We also need to look at the areas of education and research. In my view, it is an enormous pity that the UK chose to withdraw from the Erasmus programme. I am conscious that the Turing scheme will be up and running. We need to look at ways by means of which we can encourage, to start with, at least as much east-west exchange under the Turing scheme and other programmes, and equally that we encourage greater research co-operation, which is always been in place between the universities on these islands. I am concerned that if the breakdown of trust at a political level continues to manifest itself in wider society, we are going to be back to much more difficult times.

**Lord Jay of Ewelme:** I thank the Senator. There are some very interesting ideas there. I will ask Baroness O’Loan to come in on the aspect of civil society, which we in the committee have concentrated about too.

**Baroness O’Loan:** As I have listened to the debate, I have been encouraged by the willingness to try to move forward. It is very hard to get responses from the Northern Ireland Assembly because of the processes under which it operates. There is not a single voice that comes out of it, nor would one expect that, but a lot of the time we do not get a voice when we look for evidence from the political parties. I was wondering about a meeting of this type, with members of the Northern Ireland Assembly present so that the two Governments are represented, and the area where the democratic deficit exists also represented. That would be helpful because it would provide a public platform on which things could be said in a sense of co-operation and constructive dialogue.

Our committee has a very important role to play in providing accurate information to address some of the misinformation that surrounds the existence of the protocol and the working of the protocol. We did that in the first report, but I believe it is an ongoing necessity because once there is understanding and one has facts that can be demonstrated to be reliable, then one can begin to grow trust with people again. With regard to the community that is disenfranchised - for example, there have been buses burned in the past weeks with the suggestion that this relates to the protocol - there is a huge job to do there around engaging and enabling a dialogue that is constructive rather than bringing young people onto the streets. It is profoundly important that the language used in Northern Ireland particularly, and in Ireland and the rest of

the United Kingdom, is not a language that inflames the kind of behaviour we have seen. In reality, when these things happen they get out of control and terrible tragedies can result. We all have a role to play.

**Lord Jay of Ewelme:** I have one point to make about the importance of the meetings on the fringes. I believe that I attended some 25 European Council meetings in my time in the Foreign and Commonwealth Office. At a number of those, I found that the most important meeting was that which took place entirely *sub rosa* between the British Prime Minister and the Taoiseach. The loss of that informal contact is great.

**Co-Chairman Senator Lisa Chambers:** The suggestion by Baroness O’Loan to try to convene this meeting again and extend an invitation to parliamentarians in Northern Ireland is excellent. The Seanad Special Select Committee on the Withdrawal of the UK from the EU, of which I am the Chair, has engaged with the Northern Ireland Executive committee on this issue only two weeks ago. It would be a good idea to organise that between these committees and the representatives in question.

I might not get the chance to contribute again so I will ask a question on behalf of my committee. Many of the issues have been covered. RTÉ broadcast some interesting reports by its northern editor, Vincent Kearney, this morning. He spoke to Manufacturing NI, which represents most of the manufacturing businesses in Northern Ireland. Crucially, the voice of business was not as strong as it could have been in the run-up to the Brexit referendum and, potentially, in the negotiations that followed. Manufacturing NI’s chief executive, Stephen Kelly, had strong words to say on behalf of its members. He stated that they want the protocol to work, recognise there are opportunities in the protocol, want to get on with business and need the mitigations and simplifications we are all aiming to achieve. He described the protocol as the best of both worlds and said that having unfettered access for sales from Northern Ireland into Great Britain and access to the EU market makes it critical for businesses in the North to grasp the opportunity they have. Is the voice of the business community being heard? At the end of the day, there appears to be a significant opportunity for Northern Ireland and that view is not being adequately represented.

Lord Thomas spoke about the arbitration process and he is right that it has not been properly utilised. The panel has been established and is there to be used. It provides for a process that can take up to 12 months to adjudicate on issues regarding the withdrawal agreement and the protocol but that has not kicked into action yet. The worst case scenario is that it all falls apart and we end up in a full-blown trade war, which nobody wants. I expect and hope the UK Government does not want that either. Are discussions taking place within the UK Government or the House of Lords on what will happen if that is the path the UK Government takes and on what that might look like for the UK, Northern Ireland and both of our islands?

**Lord Jay of Ewelme:** Stephen Kelly gave evidence to our committee and we were struck by the needs of the business community. Its views have been expressed much more clearly on the protocol than they were over Brexit. That is true in Northern Ireland and in Great Britain. The Senator asked if the business community is being listened to by us or by the government. They are being listened to but whether they are being heard is another matter.

Would anyone like to respond to the question on a trade war? Is Peter Hain still here or has he left to prepare for the questions?

**Co-Chairman Deputy Joe McHugh:** He has left.

**Lord Jay of Ewelme:** Does Margaret Ritchie wish to say anything on that?

**Baroness Ritchie of Downpatrick:** I thank Senator Chambers. The agenda of Lord Frost and the UK Prime Minister is to do with a political calculation about trade matters, and Ireland, North and South, are secondary in all of that. The island of Ireland has somehow become caught up in this war between the UK and the EU, which will not bring any particular benefit. I note that a few days ago the Tánaiste indicated in a radio interview on “Morning Ireland” that there could be unintended consequences if there was a triggering of Article 16 and that there would be a response from the EU. It is much better to have discussion, resolutions and solutions.

Lord Jay will correct me if I am wrong but our committee wanted to consider, from next week onwards, the political implications of what could happen in terms of statements from Lord Frost and the EU to see where progress has been made. Suffice to say, trade wars will not benefit the European Union, the UK or Ireland, North or South. We have to get away from that.

We know that Stephen Kelly from Manufacturing NI said last week that businesses, particularly Manufacturing NI, were pragmatic about the protocol. They simply want it to work for the benefit of the people. They do not want all these political machinations. When I had a meeting with representatives of the pharmaceutical industry earlier this year, the people who provide over-the-counter medicines, they told me they did not want to get involved in the violence that was ongoing in Belfast, nor did they want to get involved in the political machinations of Lord Frost, Boris Johnson or the DUP. They were clear about that and stated that they were just in the movement for solutions. That is where we need to go and the more talking that happens between the UK, Ireland and the North, through the Assembly and the Executive, the better.

**Baroness Goudie:** It is vital that we never stop talking. I emphasise that point because if there is a breakdown in us talking to each other, whether formally or informally, it will be a disaster. We must continue to talk, whatever anybody else says. That includes our committees and anybody else around us.

**Co-Chairman Deputy Joe McHugh:** That message to never stop talking is strong. I am reminded of a taxi driver in Armagh during a particularly difficult time in the peace process who made the exact same point. He said it was a difficult time but we should keep the conversations going and keep talking. We hear that message.

The discussion is a bit of a one-way street, with members here firing the questions at the witnesses. We want to try that in reverse now. Senator Chambers and I will try to direct the witnesses’ questions to members who are interested in taking them.

**Lord Jay of Ewelme:** I will ask a question about something that interests me and that would be useful to discuss. I am not clear on how much of a concern the protocol is to people in Ireland and the constituents of the members. How much of a concern is it in Dublin?

**Co-Chairman Deputy Joe McHugh:** It is a real concern. When Brexit started to dominate the conversation back in 2016, people were saying it would be the preserve of the politicians, the media and the chattering classes and it dominated those three categories. People and businesses got on with things. The message coming from industry and business in Northern Ireland today is that the protocol presents a real opportunity for business in the North. I am a Deputy from a Border constituency and many of our businesses have adapted and sought out new markets. They have been positive and just got on with it.

Triggering Article 16 would be difficult, not just from the point of view of the relationship

between Ireland and the UK but also from the point of view of the relationship between the UK and the European Union. Our big fear is that the gains of the Good Friday Agreement, which has facilitated and allowed people to get on with each other on a cross-Border basis and within Northern Ireland, will be lost. People want to move on with their lives. The strong message coming from today's meeting is that we have a strong duty and sense we have to stand up to the challenge and deal with whatever is coming down the track. Certainly, if triggering Article 16 will be the position and happen, we will be faced with a difficult conundrum.

To answer Lord Jay's question on how constituents on the ground feel about this, sometimes or maybe all the time, our constituents are way ahead of us legislators. However, the sense I have from my constituency is that once Brexit became a reality, the reality is that with it comes trade difficulties. However, the work and effort that went into the protocol was a way of facilitating a real opportunity and it is hoped sense will prevail. I will hand over to Senator Chambers and then Lord Jay can open it up to his colleagues for questions from our side.

**Co-Chairman Senator Lisa Chambers:** Deputy McHugh has well articulated the position. It depends on what aspect of Brexit one is talking about. There is genuine and general concern throughout the country about any instability in Northern Ireland, because we remember what it looks like when things do not go well. When one talks to people living in communities in those counties along the Border, their daily lives would be impacted in terms of travelling back and forth. Businesses and farms are on both sides of the Border. It is a different concern for people living in that space.

People are then concerned about data, which Senator Byrne articulated. Businesses are concerned about GDPR divergence and how that would impact the cost of running their business. Hauliers are also concerned about any further instability or impacts on the trading environment. People in the food and beverage industry are in the most-impacted sector and would have additional concerns if the trading environment which they are just starting to get used to were to change again.

It depends on what aspect of Brexit one is talking about. There is a general concern throughout the country that our relationship, between Ireland and the UK, is strained and has been for some time. It looks as though that will continue for some time. There is a general unease about us not getting along as well as we had been, because we know that is not a good place for us to be in. I hope I have broadly answered those questions.

**Lord Jay of Ewelme:** Would other members of the House of Lords committee like to ask a question, such as Lord Thomas?

**Lord Thomas of Gresford:** One of the reasons given by Lord Frost for implementing Article 16 is divergence of trade in that Northern Ireland, instead of getting its goods from Great Britain, has started to buy stuff in the Republic. What is the view of the Irish representatives about divergence of trade? Is it a problem? I said at our first meeting, if I were offered the position of free access to the UK market and to Europe, as a Welshman, for Wales, I would snap your hand off. There are great possibilities there for Northern Ireland, if somebody grabs hold of the problem and does something about it.

**Co-Chairman Deputy Joe McHugh:** Deputy Howlin will have a unique insight, representing the constituency in which Rosslare Europort is located.

**Deputy Brendan Howlin:** I thank Lord Thomas for the question. With regard to Lord

Jay's question, I had to leave the meeting for ten minutes to do a local radio interview on South East Radio, which Senator Byrne will know is extremely important, representing the constituency of Wexford. I was on the programme to explain what Article 16 was to the good citizens of my constituency and there is a real interest in these matters. A point of concern was the impact of the withdrawal agreement and Brexit on trade patterns between these islands.

The most important one, from a Wexford perspective, was the continued use of the land bridge. The vast bulk of Irish goods going to continental markets have traditionally transited the United Kingdom. It is the simplest way. Short ferry journeys go from my own constituency to Wales. My home in Wexford is closer to Wales than it is to Dublin. Wexford has been affected. Direct sailings from Rosslare to continental ports have more than quadrupled since Brexit. There are a number of new companies, DFDS being one of them, with four ships now going from Rosslare to new ports that had not been served directly from the island of Ireland pre-Brexit.

There is a significant diversion to traffic from the land bridge, because of the uncertainty and difficulties that arose, to direct continental routes. We looked at whether that could be a temporary or a long-term matter. It seems to be very much a long-term settled issue now, because larger ships are being deployed on those routes and dedicated berths have been secured on a long-term basis in places such as Dunkirk, to bring us closer to French, German and Belgian markets, so there has been an impact.

In terms of the concern there would be displacement of goods purchased in Great Britain in Northern Ireland for goods purchased in the Republic, that has happened to some degree. An all-island market has developed, because of the ease of transport throughout the island of Ireland. Part of that is also a consequence of our growing awareness - COP26 is on - of acquiring goods as close to markets as possible.

There are evolutions, but the principal point, made by Lord Thomas and Baroness O'Loan, is there is an incredible opportunity for Northern Ireland, with access to both markets, to serve both markets. That has not been grasped by the political representatives in Northern Ireland, but certainly has been by the business interests, who repeatedly tell us so.

**Co-Chairman Senator Lisa Chambers:** I will have to leave shortly, as I am in the Chamber for 11.30 a.m. However, Lord Frost is correct. There has been a significant change in trade between Ireland and Great Britain and between Ireland and Northern Ireland. The Economic and Social Research Institute, ESRI, was before our committee just last week. It said there has been a 90% increase in imports from Northern Ireland into Ireland, which is a significant change in trading patterns. Is it a bad thing? I do not think it is, but I can see how that might concern some communities in Northern Ireland, because it looks like a significant change and a more unified approach on the island in terms of trade. I can understand why that would worry some, but many people would see it as good. As Chair of the Brexit committee and on behalf of my members, I thank the witnesses for the engagement this morning and I apologise that I have to leave to go to the Chamber to take the Order of Business. However, I look forward to continuing our engagement in the weeks and months ahead.

**Lord Jay of Ewelme:** I thank Senator Chambers. A number of members of our committee would want to leave in a few minutes in order to listen to Lord Frost giving his statement. Baroness Ritchie has got her hand up.

**Co-Chairman Deputy James Lawless:** In terms of the order, the members of the Joint Committee on the Implementation of the Good Friday Agreement are due to come in for the next slot, if Baroness Ritchie or other witnesses wish to direct questions on the protocol and I will see that they can respond accordingly.

**Baroness Ritchie of Downpatrick:** I thank the Lord Chairman. I wish to go down to the Chamber now to pose a question to Lord Frost. I was going to suggest, rather than ask, if we could have future discussions with dedicated committees between ourselves, the Oireachtas committee and the assembly. It would also be better if that was in person because then that could be managed in the sense of having side conversations as well. Perhaps this is a matter for the Chairman, Deputy McHugh's Joint Committee on European Affairs, or perhaps it is the Committee on the Implementation of the Good Friday Agreement, but has any work been done on the benefits of the protocol in business development through the committees' membership from the North? I notice my colleague, Claire Hanna MP, is on the call here and we have not heard from Ms Hanna yet.

**Co-Chairman Deputy James Lawless:** Exactly on cue, and as it happens, Ms Hanna is next on my list and it is a good time therefore to ask her to contribute. I ask Ms Hanna to respond to both the Baroness and, if she has any other general points she wishes to make, she is welcome to do so also.

**Ms Claire Hanna:** I thank Baroness Ritchie for the unscripted tee-up there and the teamwork, and I thank all members for participating.

I would also like to add, first, my condolences to the family of Austin Currie and, in particular, to our committee colleague, Emer. As others have said, Austin was part of that great founding generation of the SDLP who, among other things, created the framework we have for ending what was the centuries-old conflict within these islands. They also created the strands and the framework through which we can manage and improve those relationships both within Northern Ireland, between the North and South, and between Britain and Ireland in allowing them to operate as equals and friends. This is such an important part of what we are doing in general and what we are doing today. That is why it is concerning there is a minority of what I would call the Brexit community who are trying to make that agreement the fall guy of Brexit and who are trying to undermine this agreement to throw the baby out with the bathwater because it is something they have never embraced. Like the European Union, it has a more modern understanding of interdependence and sovereignty which does not fit with the Brexit world view.

As my colleague Baroness Ritchie has said, one of the rule of law departures we have seen in recent years is that agreement commits the Government to rigorous impartiality, and unfortunately I do not think that any fair observer could suggest that is how this process has been conducted.

I wish to reiterate briefly that from the SDLP's perspective, the concerns and the upset of unionism about the protocol are understandable. We argued for many years that borders have a significant symbolic value, which is why we advocated relentlessly for solutions that would not create barriers in any direction. It is a matter of regret the UK Government did not pursue any of those forms of Brexit. We would say, particularly because, unfortunately, political representatives have abstained from this committee, that it is also unfortunate the sectarianising of that decision and its projection onto the EU, the Irish Government and nationalism is not where the fault essentially lies. We understand that feeling of dislocation but it is important to reiterate

that decision was made by the UK Government and it was not about picking a winner or loser and deciding on which of them should triumph but rather it is about the realities of the movement of goods and trades.

I will finish with a question. There have been many astute observers of politics from all political traditions in this island and none of us are really able to discern a rational or reasonable strategy from the UK Government. People have articulated well the desire of the business community to try to make the best of the situation. I ask the Lords what forms of accountability or restraint they think can be applied to the UK Government over the course it is currently on. We know from the Owen Paterson affair that this is not a Government that especially relishes any checks or balances on its very significant power. What influence do our committee members believe the Lords may be able to bring to bear as this strategy plays out or unravels over the coming weeks and months.?

**Co-Chairman Deputy James Lawless:** We are a little tied on time and are due to close our proceedings shortly as I know members have to get back to their respective assemblies. Indeed, we are anticipating statements shortly which will be of interest to us all, but before I go back to Lord Jay and to his colleagues, I wish to invite two final members who have indicated their wish to contribute, namely, Senator Malcolm Byrne and Deputy Ó Murchú. I ask those two members to come in briefly, I will go back to the Lords then, and will hand back to the Co-Chairman, Deputy McHugh, to close the meeting.

**Senator Malcolm Byrne:** I will follow on from Deputy Howlin. There is a pretty clear indication that trade, east to west, in shipping volumes has fallen 29% in the first half of this year in comparison with 2019, and we have literally seen the same level of increase between Irish ports and continental European ports. Wales is losing out in particular.

I will leave it at that but I suggest, and I am sure Deputy Howlin and I could do the following, that in respect of the meeting of these assemblies we talk about, perhaps including our colleagues from Stormont, it might happen in Rosslare, which could be a good central point. When we are arranging this meeting, if Lord Thomas wants to take the ferry across to Rosslare, we will be happy to meet him with his colleagues there.

**Lord Thomas of Gresford:** We would be delighted.

**Co-Chairman Deputy James Lawless:** Very good, and that is a good plug for the connectivity of the south east and of Wexford, in particular. I will call Deputy Ó Murchú to speak now and will hand then over to the Co-Chairman, Deputy McHugh, to close the meeting.

**Deputy Ruairí Ó Murchú:** After that, I feel like I should invite everyone to Dundalk, but I will not do that just yet.

There is probably a fair degree of agreement on this. To follow up on what has been said earlier by Senator Byrne, Deputy Howlin and others, some of the difficulties and some of the changes in trade scenarios have arisen out of necessity and business has made the calls that it was always going to make. There has been a lack of clarity which has continued on with the madness we are dealing with now, and there is an element in which we are in a limbo period as we wait on what David Frost actually says at 11.45 p.m.

It is fair to say when one looks at the entire Northern state when we are talking about trade, it is a tiny entity. It has been shown that it is a failed economic entity. I offer the argument, and the Brexiteers and others have added to this argument, that along with changed demographics,

which is the logic of Irish unity, if we have a continuity of actions and threats like this from the British Government, more people, particularly on the island of Ireland, will find themselves in the united Ireland bracket who were not necessarily there before. We are at that point now of reaching sufficient amount of momentum. The conversation is well started, there is a requirement for planning, and that is the point we are going to reach. That is the only way that we can deal with this absolute madness we are facing. Everybody has commented that nobody knows exactly what Boris Johnson and David Frost's strategy is other than playing high-stakes poker and using Ireland and the North as pawns in that.

On trade, everything will change on the basis of necessity. It is vital we continue these conversations, and whatever happens, we need calm heads. If you are part of the European Commission at this time, it is very difficult to deal with someone who has shown no signs of trustworthiness in negotiations. Other than that fact, you have to deal with the players that are in there. We are in a very serious situation, and it can only lead to one place. Obviously, we ask for calm heads. As I said, there is that little bit of hope that Boris Johnson will have a change of mind, which he seems to have from time to time.

**Co-Chairman Deputy James Lawless:** I thank the Deputy. I will hand back to Co-Chairman, Deputy McHugh, for a final engagement with the Lords and to close the meeting but before I do that, on behalf of the Joint Committee on the Implementation of the Good Friday Agreement, I thank all the participants. Having the three Oireachtas committees and a Lords sub-committee together is an excellent format and, as others said, I hope it can be repeated. Thank you all as it was a privilege to be part of this engagement today and it was very useful. On my behalf and that of my committee, I thank you.

I will now pass back to Co-Chairman, Deputy McHugh.

**Co-Chairman Deputy Joe McHugh:** I do not think Deputy Ó Murchú was filibustering so that we would miss the Lord Frost presentation at a 11.45 a.m.

The tone of today's meeting was serious, as we all know the significance of what lies ahead. I know Lord Thomas put a lot of thought and time into what he believes can be solutions. Ultimately, however, there are very solid EU proposals there at the moment, and we hope the UK will take them on board and avoid a situation which we, as politicians, and particularly our constituents do not want to face.

I would like to thank Deputy Lawless, Vice Chairman of the Joint Committee on the Implementation of the Good Friday Agreement, and Senator Lisa Chambers for trying to do a trilateral chairmanship. Senator Chambers proposed widening this out further to include local Northern representatives, and Baroness Ritchie agreed with her. I also think that would be a very good idea, so we will try to pursue that.

I thank Lord Jay and his team for their time. This is a serious matter but politics is about the art of finding solutions. We face many obstacles and challenges in the days ahead but we all know what we have gained through politics, seeing the likes of Senator Blaney and Lord Hain here today, both of whom I believe co-chaired the British-Irish Inter-Parliamentary Body, as it was 20 years ago. This is not about relationship building among ourselves, but about what we will do to make things work.

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Go raibh míle maith agaibh uilig. Beimid ar ais arís. We will be back again. Guím gach rath oraibh. I wish you all well. Let us keep the conversation going.

The joint committee adjourned at 11.42 a.m. until 9.30 a.m. on Wednesday, 24 November 2021.