

DÁIL ÉIREANN

AN COMHCHOISTE UM

FEIDHMIÚ CHOMHAONTÚ AOINE AN CHÉASTA

JOINT COMMITTEE ON THE IMPLEMENTATION OF THE GOOD FRIDAY AGREEMENT

Déardaoin, 4 Iúil 2019

Thursday, 4 July 2019

The Joint Committee met at 3 p.m.

Comhaltaí a bhí i láthair/Members present:

Fergus O'Dowd,	Gerard P. Craughwell,
Maureen O'Sullivan,	Frank Feighan,
Brendan Smith.	Niall Ó Donnghaile.

I láthair/In attendance: Senator Mark Daly.

Teachta/Deputy Declan Breathnach sa Chathaoir/in the Chair.

Brexit, the Good Friday-Belfast Agreement and the Environment: Discussion

Vice Chairman: At today's meeting we will discuss Brexit, the Good Friday-Belfast Agreement, the environmental issues arising and possible solutions.

I remind members, delegates and persons in the Visitors Gallery to turn off their mobile phones. Members are requested to ensure that for the duration of the meeting mobile phones are turned off completely or switched to airplane, safe or flight mode depending on the device. It is not sufficient for members to put their phones on silent mode as this will maintain a level of interference with the broadcasting system. I also remind members of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person or body outside the Houses or an official either by name or in such a way as to make him, her or it identifiable.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable.

I welcome Ms Alison Hough, assistant lecturer in law at Athlone Institute of Technology and Oonagh Duggan of Birdwatch Ireland. They are very welcome. We will hear their opening statements before going into a question and answer session with members of the committee. I call on them to make their opening statements.

Ms Alison Hough: I am a barrister and law lecturer, based in Athlone Institute of Technology. I was commissioned by the Environmental Pillar and Northern Ireland Environment Link, NIEL, to produce an report on the relationship between the Good Friday Agreement and cross-Border environmental co-operation on the island of Ireland post Brexit. The committee has been provided with a copy of my full submission in writing, and a copy of the report entitled, Brexit, The Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions, published in March 2019. I am grateful to the committee for the opportunity to present the key findings of my research carried out for the report and happy to assist the committee in any way I can.

The Good Friday-Belfast Agreement had at its heart the objectives of peace, prosperity and the protection of human rights on the island of Ireland. Our shared landscape and its ecology are the bedrock of these objectives, the stage on which they are performed, and the medium through which they occur. The drafters of the agreement understood this, which is why they nominated the environment as one of the key areas of cross-Border co-operation. They understood what was at stake if we did not preserve our shared environmental heritage, in terms of the peace process and the economic and social well-being of the people of Northern Ireland and Ireland.

The island of Ireland is a single biogeographic unit. Despite political arrangements, there are no borders in nature, and what happens in the environment of one jurisdiction unavoidably impacts the other. The only way to preserve the environmental integrity of both Northern Ire-

land and Ireland is through a coherent system of environmental management. EU membership provided the ideal context for this, with shared regulatory standards, supranational enforcement mechanisms, a funding agenda designed to encourage co-operation, and a trade agenda which removed the need for a hard border. The EU project shared the objectives of the Good Friday Agreement of peace, prosperity and protection of rights, and in this sense they have a symbiotic relationship. The failure of full implementation of all the provisions of the Good Friday-Belfast Agreement means that the full potential of cross-border environmental co-operation has not been realised, and environmental governance on the island of Ireland is incomplete and fragmentary.

It is likely that Brexit in any form will interfere with Good Friday-Belfast Agreement co-operation and place obstacles in its way, through loss of the features of EU membership mentioned above. In particular, regulatory divergence - or uneven enforcement resulting in de facto regulatory divergence - represents the biggest threat to maintaining the environmental co-operation required by the agreement. However, it is possible that the Good Friday Agreement itself could offer potential solutions to these obstacles. More complete utilisation of the Good Friday Agreement bodies and institutions could assist in preventing regulatory and policy divergence.

My overarching recommendation is that full implementation of the Good Friday-Belfast Agreement be made a matter of the highest priority, and that sufficient resources be directed towards achieving this aim, such as provision of adequate facilities and support to the Good Friday Agreement bodies and institutions. To this end, practical steps, a work plan and a timeline for implementation should be recommended by this committee.

I have set out ten detailed recommendations, the first of which is that coherence of environmental regulation and management between Northern Ireland and Ireland be prioritised in the negotiations on a future relationship to safeguard Good Friday-Belfast Agreement co-operation. The second recommendation is that common frameworks be developed between the UK, Northern Ireland and Ireland in order to safeguard agreement co-operation. Third, an independent environmental regulator should be established, having responsibility for Northern Ireland, as part of the terms of any future relationship to ensure the conditions required for continued environmental co-operation are safeguarded in the absence of EU enforcement in this area. The fourth recommendation is that funding streams for cross-Border co-operation continue to be guaranteed after Brexit. Fifth, should an Executive form in Northern Ireland, the North-South Ministerial Council should be re-established as a matter of priority and utilised as a vehicle for discussing policy and regulatory alignment on environmental matters falling within devolved competence. The sixth recommendation is to ensure the British-Irish Council be allocated sufficient resources and that it prioritise maintaining common environmental policy between Ireland and Northern Ireland, in order to safeguard environmental co-operation. Seventh, the British-Irish Intergovernmental Conference should be more effectively realised by allocation of a greater budget, a website, increased secretariat, more frequent meetings and any other resources needed to render it functional, and that maintaining common environmental policy be added to its remit. The eighth recommendation is that the Irish Government should emphasise the importance of any future Northern Ireland Government re-establishing the consultative civic forum to provide important policy input on environmental policy from civic society. The ninth recommendation is that the all-island consultative forum required by strand two be established as directed by the Good Friday Agreement. The tenth recommendation is that a Good Friday Agreement mechanism, a treaty body, be established on a legislative basis with responsibility for monitoring implementation of the agreement, interpreting its meaning and with a function of continuously mapping North-South co-operation.

Ms Oonagh Duggan: I thank the committee for inviting me. I am representing the Irish Environmental Pillar. The Environmental Pillar is comprised of 26 independent environmental non-governmental organisations, NGOs, working together to represent the views of the Irish environmental sector. The work of our members covers a broad range of areas including habitat conservation, wildlife protection, environmental education, sustainability, waste and energy issues, as well as environmental campaigning and advocacy. Given the island of Ireland is a single biogeographic unit, we collaborate closely with our colleagues in Northern Ireland. This is especially true when it comes to Brexit. The report about which Alison Hough spoke was jointly commissioned by the Environmental Pillar and the Northern Ireland Environment Link, NIEL. NIEL is the networking and forum body for organisations interested in the natural and built environment of Northern Ireland. The close collaboration between the Environmental Pillar and NIEL is evidence of the extraordinary transformation we have seen since the Troubles ended. Peace is not to be taken for granted and is reinforced daily by the contacts and interactions that occur across communities. These interactions are often framed in and by our shared and common environment. Brexit cannot be allowed to threaten this.

Cross-Border co-operation on the island of Ireland is embedded in the legislative framework of EU membership, the *acquis communautaire*. This framework has been the driver of environmental improvements on the island of Ireland, facilitating cross-Border co-operation between both governmental and non-governmental organisations on a broad range of environmental issues. The issue of maintaining an open border has dominated Brexit discussions and there is every indication that it will continue to play a central role when discussions move on to the next phase after 31 October. An open border with aligned policies on either side is key to facilitating continued co-operation. Similarly, a no-deal Brexit poses a severe risk to the environment on the island of Ireland.

Businesses in Northern Ireland could be placed at a competitive disadvantage if faced with cheaper imports from outside the EU and could seek greater flexibility in the implementation of the environmental rules protecting shared species, habitats, and water bodies, with damaging implications for the island. Any dilution of standards in Northern Ireland could see corresponding pressure for dilution or weaker implementation south of the Border. Birds do not know what a border is. I work for BirdWatch Ireland and we are acutely aware of this. At present, the European Commission and the European Court of Justice provide oversight and enforcement of the EU environmental rules. A no-deal Brexit would mean the UK would no longer be subject to any of these mechanisms, with insufficient time to put new arrangements in place to replicate their function. This would be even worse on the island of Ireland as there is no independent environment agency in Northern Ireland and no functioning Northern Ireland Executive to put one in place. This lack of a controlling body could mean looser implementation of environmental rules and an inability to prevent runaway cross-Border pollution.

There are several shared protected nature sites, or Natura 2000 sites, on the island of Ireland. These sites are protected by the birds and habitats directives and are supported by a range of other directives, including the Water Framework Directive and directives focused on environmental assessment, tackling wildlife crime and assessing environmental liability. With no deal, these sites could be severely undermined without a clear way to continue the protection and monitoring currently in place.

These are only some of the environmental risks posed by a no-deal Brexit. There are more which can be foreseen, but also many that are hard to predict. While the Good Friday Agreement includes the environment as an area of co-operation with a defined mechanism for doing

this, it remains untested. In the short term, the risks are best addressed by avoiding a no-deal Brexit and ensuring that the commitments to the environment included in the withdrawal agreement, such as the level playing field, are not jeopardised. In the long term, the best scenario for the environment on the island of Ireland would be dynamic regulatory alignment of environmental standards, meaning that EU and UK standards evolve in tune with each other upwards; we sincerely hope not downwards. Any future relationship must include this alignment and should describe robust mechanisms for effective oversight and enforcement.

Dynamic regulatory alignment of environmental standards between Northern Ireland and Ireland post Brexit would support continued environmental co-operation and policy coherence on the island of Ireland and ensure a level playing field, reducing the risks of environmental dumping across an open, frictionless border. With regard to alignment to support continued co-operation and policy coherence, the challenges associated with fostering close North-South co-operation following decades of conflict should not be underestimated. As Alison Hough has described, the Good Friday-Belfast Agreement has created “a framework for mutual co-operation and interdependence” of which environmental co-operation is an important element. The agreement has facilitated North-South co-operation on environmental issues and, as we have heard, there is more that could be done to utilise the structures created by it.

North-South co-operation is heavily reliant on a common EU regulatory framework, the *acquis*. The common framework makes it easier for both sides to work together and to align. The recently-made-public mapping exercise conducted by the UK and EU negotiators identified over 100 areas of co-operation that could be affected by a divergence in standards, including water quality, flood risk management, air quality and nature-biodiversity protection. The exercise concluded that North-South co-operation relies “to a significant extent, on the common European Union legal and policy framework” and identified regulatory divergence between Northern Ireland and Ireland as “the biggest single risk to its continuation and future development”. Maintaining this co-operation post Brexit, which is largely dependent on a combination of political will and “the driving force of EU legislation”, will undoubtedly be challenging. In her report, Alison Hough concludes that a high degree of regulatory alignment would be “the ideal context” for maintaining North-South co-operation on environmental issues post Brexit. To reiterate, close North-South co-operation is essential to securing environmental benefits on the island of Ireland, through regulatory coherence and managing any transboundary impacts. We encourage the committee to advocate for continued coherence in the cross-Border legislative framework.

All sides in the Brexit negotiations committed to maintaining an open border post Brexit, including continued frictionless trade in goods and free movement of persons. In the absence of alternative solutions, the backstop has been designed to guarantee that this continues. The backstop allows for frictionless EU market access without compliance with all EU rules. In order to avoid the need for regulatory checks along the Irish Border, under the terms of the backstop Northern Ireland will be required to stay aligned with some Single Market rules, namely, those for which compliance would otherwise be physically checked at the Border in areas such as technical regulation of goods and agricultural standards. This raises the issue of Northern Ireland being at risk from environmental dumping and EU rules being undermined. Businesses in Northern Ireland could gain a competitive advantage over businesses in Ireland by becoming an attractive destination for access to both the EU and UK markets, while only having to comply with a subset of the EU’s Single Market rules.

To reiterate, to avoid a competitive disadvantage on either side of the Border, Ireland must

ensure the environmental laws are aligned, including having in place effective and robust means of enforcement. This means Ireland advocating within EU co-ordination in the course of any negotiations with the UK about a future relationship. Under the terms of the backstop, Northern Ireland will be required to align with some rules in return for maintaining an open Irish Border. There will be some additional checks on goods moving from Great Britain to Northern Ireland, but no additional checks on goods moving in the other direction. This could undermine the level playing field on the island of Ireland, which could be addressed if Northern Ireland was to dynamically align with all EU environmental rules. If we are to avoid environmental harm and damage to the island of Ireland, there must be dynamic alignment of rules on either side of the Border. This is not just a matter of protecting the environment, it is about maintaining the peace, prosperity and protection on the communities who enjoy and share that single island environment.

Vice Chairman: I thank Ms Duggan and Ms Hough.

Senator Frank Feighan: I, too, thank Ms Duggan and Ms Hough. We have talked a great deal, almost *ad nauseam*, about Brexit and it is nice to see there is environmental co-operation. As sometimes that can fall down and it has not been part of the political discourse on both sides, I thank the delegates for providing their reports.

Ms Hough recommended that the British-Irish Intergovernmental Conference would be more effectively realised by the allocation of a greater budget, a website, increased secretariat and more frequent meetings. Is she saying the budget is not enough?

Ms Alison Hough: I am assuming the budget is not enough given the lack of a visible presence of the institution and the lack of a dedicated website. I can only assume that is down to budgetary constraints. I did not have access to the exact figures.

Senator Frank Feighan: That is an issue we have been raising because we feel it is not meeting often enough and is not reaching its potential. Ms Hough also referred to a consultative civic forum.

Ms Alison Hough: Yes.

Senator Frank Feighan: Most of my colleagues and I agree with Ms Hough that it is badly needed. I am not a negotiator in Stormont, but I believe it could be a way out. I am not saying it would be another house but it could be another forum that would deal with some issues.

Ms Alison Hough: Yes.

Senator Frank Feighan: We had great success here on many difficult issues and that could be a success also.

Ms Duggan referred to the several shared protected Natura sites. Where are the sites? What is the location of one or two of them? Is there one in Carlingford?

Ms Oonagh Duggan: They are in Carlingford and at Lough Foyle. There is also the Slieve Beagh special protection area for the hen harrier in County Monaghan. There is a lot of blanket bogland in the Slieve Beagh area in which the hen harrier nests. As it is an Annex 1 species, it is afforded a high level of protection. Unfortunately, however, it is declining. We can see the potential for farmers with grazing land on the Northern side of the special protection area. It could lead to the lack of an ecosystem approach to protecting the peatland habitat for the hen harrier.

Senator Frank Feighan: I thank the delegates for the reports. The environmental issue is one we overlooked. It is very worthwhile, therefore, that the reports are before the committee.

Ms Alison Hough: It is important that the civic forum has been mentioned because it is one in which issues such as the environment which are not related to the varied identities at play in the political arena in Northern Ireland, can come to the fore outside the dualistic system in the Assembly. The civic forum is an important forum.

Mr. Chris Hazzard: I thank the delegates for the presentation which is extremely timely, not just in the light of Brexit which has been touched on but also in the context of the restoration of devolution and the power-sharing institutions. My first question relates to recommendation No. 3 on establishing an independent environmental regulatory body. Who would establish it? Whom do the delegates imagine would set the terms of reference or fund it?

Ms Alison Hough: Given that competence for the environment has been devolved, it would be done by the Northern Ireland Assembly which, of course, is not operational, but that is where it would have to occur, unless there was an overreaching from the United Kingdom to establish it. That is if we have a dedicated Northern Ireland regulator, but there are alternative models. The UK Government recently proposed an office of environmental protection for England that might be extended to cover the entire United Kingdom. It could potentially have a role in regulation in Northern Ireland, but it would involve centralising competence from Stormont, which might or might not be acceptable. Given the issues in safeguarding devolved competencies, it looks like that it would have to be an Assembly creation involving legislation at Stormont, unless there was to be a UK regulator.

Mr. Chris Hazzard: A great strength of such a regulator would be that the North-South Ministerial Council would build into its work.

Ms Alison Hough: Absolutely.

Mr. Chris Hazzard: Recommendation No. 10 sounds like it is a beefed-up legislative version of this committee.

Ms Alison Hough: Yes.

Mr. Chris Hazzard: It would be almost like a commission or a watchdog.

Ms Alison Hough: Yes.

Mr. Chris Hazzard: There would be much merit in it. Obviously, this meeting is focused on the environment, but the committee has looked at a vast array of areas in which there has not been full implementation of the Agreement. It is a good idea which is worth discussing in putting Stormont back together again.

Ms Alison Hough: Yes.

Mr. Chris Hazzard: The wider context about which I want to ask is that much of this is based on a backstop and there being a soft Brexit, in whatever form it might take, but the reality is it looks as if we are hurtling towards a no-deal Brexit. It is extremely difficult to see how Boris Johnson or Jeremy Hunt would deliver a Brexit that would take the effect of this into account. In that light, if we were to play out a no-deal Brexit scenario, what would be the impact in dealing with some of the issues about which we are speaking? What would we see that was different?

Ms Alison Hough: We do not want to play out a no-deal Brexit scenario as we would be in a very difficult situation in terms of continued compliance with the provisions of the Good Friday Agreement. Presumably, many of the features of a no-deal Brexit such as there being absolutely no trade relationship in place on the date of Brexit would result in there being no option but to have a hard border between Ireland and Northern Ireland which would interfere with a lot of the components of cross-Border co-operation. It would fundamentally break up that co-operation and be a disaster, unless we could get over it by using the Good Friday Agreement mechanisms to put in place lines of communications to ensure continued co-operation in the event that there is a no-deal Brexit. We could be prepared for it.

Ms Oonagh Duggan: One of the worries if there was to be a no-deal Brexit - I hope there will not be - is whether the framework would be in place in Northern Ireland to have new environmental legislation separate from the European framework. It would have to be new. The question is whether it would be in place and sufficient to ensure that if somebody was to dump a load of waste on one side of the Border, the matter would be regulated. What about pollution? We hope we would not see a gap in which people could get around the law. That is a worst-case scenario, but sometimes these things happen. Our concern is there would be a diminution in the legal protection provided for the environment and that there would be environmental problems thereafter.

Mr. Chris Hazzard: I absolutely agree. On a point of information, I am not sure in which part of the report it is stated there is no environmental agency in the North, but there is one. The problem is that, unfortunately, it is not independent. There is one particular party in the North that is very pro-business and pro-farmer and it does not want regulation when it comes to protecting the environment. I agree that having a strong independent environmental agency would provide a much better landscape. That is a matter not just for consideration today but also in the next few months and the time ahead.

Ms Alison Hough: It is worth stating the EU withdrawal Act passed in the United Kingdom provides for initial preservation of the EU acquis. Initially, it would ameliorate the worst effects of a hard Brexit, but the potential divergence is the big concern.

Senator Gerard P. Craughwell: I will quickly make a couple of points because I must leave to attend another meeting. I will follow up on the responses at a later stage.

Every time I hear the term “hard border” I feel compelled to challenge it. There was never a hard border on the island of Ireland and there will not be following Brexit, regardless of what form it will take. We had a highly militarised Border, where road crossings were controlled and difficult to get through, but, as has been pointed out, wildlife has never recognised the Border and never had any problem in passing from one part of the island to the other. It is something that really bothers me because we keep talking about a hard border. When we meet colleagues from Hungary and Poland, they understand what a hard border is because they look at one every day of their lives. It is important that we put the matter in context.

A very good point has been made, that, to date at least, the Good Friday Agreement has not been exploited from the point of view of Brexit. We could engage in bilateral conversations on the future of the island through the mechanism available under the Good Friday Agreement, but it strikes me that we have got bogged down in the Barnier negotiations, which I fully support. It is stated there will be a backstop and that when the problem is solved, we will speak about everything else. The more we look at what is coming from the United Kingdom the more it seems there will be no agreement on 31 October if Mr. Johnson or the other guy makes it. As

far as they are concerned, the United Kingdom will be out of the European Union and the Irish problem can be sorted out when it leaves. That brings into the question some of the areas mentioned, including regulation. If the United Kingdom has its way, we will be dealing with a third country. This means that it can diverge in regulation. We must remember we are no longer in charge of regulation. Ireland will be part of a collective of 27 countries and the regulations may quickly diverge between the two jurisdictions. That would cause a major problem for us, unless we were to find a mechanism through the Good Friday Agreement to have negotiations with the European Union and the authorities in London and Belfast to reach agreement.

It seems that the Government is quite happy to continue to fund what is happening in the North of Ireland, but I am not so sure the same would be true at Westminster in the event that there is a hard break from the European Union.

The other one is environmental policy. In the event of a hard Brexit, as opposed to a hard border, the British would start disassembling as much as they possibly can of European regulation to meet their own needs. Is that something the delegates have taken time to consider in their own approach - that they might for economic or other reasons decide that the European regulations are too restrictive and they would start releasing? There was talk about fox hunting in England earlier. It is not terribly long ago since people said, "Hang them high", if they wanted to chase foxes. One can see that it would not take a whole lot to move them. I will leave it at that. I thank the delegates for taking the time to come before us. When I saw the agenda was on Brexit and the environment I wondered what it was all about, but the witnesses bring home the real problem of Brexit, which is that it will infiltrate every aspect of life on this island in both jurisdictions. I compliment them on doing that. It is a great day's work by both of them.

Ms Oonagh Duggan: I wish to respond to the final point about why our focus was on the environment and Brexit. I spoke to a friend of mine who lives in Monaghan who works in heritage. She is on the front line. She is involved in protecting habitats and other parts of our heritage in Monaghan. I asked her what she thought and she said that for her peace is based on the maintenance of cultural heritage and that peace happens through normal cultural activities and the re-emergence of place. She highlighted that the natural value of the landscape is now outside of the framework of the historic Troubles. In the past, the bogs were awful places where terrible things could happen and illicit activities occurred. That has now changed with people supporting projects that work to restore upland habitats. A fearful and degraded landscape, which could threaten tourism and development in the Border region, which has suffered already, is what we do not want to happen. The environmental acquis and the level playing field we currently have has allowed us to hang normal life onto that area and to give rise to the normalisation of relations. That was a profound chat with her about her experience in protecting habitats in Monaghan.

I will respond to some of the other points. Deregulation on the UK side is possible. What is coming out of the communication with politicians is that the UK will be very strong on the environment but we have yet to see what will emerge. There have been concerns on some of the draft legislation that has been published so far. Civic society in the UK working in the area of the environment will work very hard and we are looking very closely to make sure there is no reduction in protections in the future.

Ms Alison Hough: I thank Senator Craughwell for his complimentary words on the report. He has hit on one of the real problems with Brexit regarding what the terminology means. What is meant by a "hard border" and what is meant by a "hard Brexit"? They can mean different things in different contexts to different people. In terms of the idea that there was no hard bor-

der and that wildlife was always able to cross, the inference is that it will still be able to cross the Border in the field, if one likes. When I was in Queen's University with some of my colleagues who were working on the Brexit issue, one of them had a photograph of the Border, which was a little drain through a bog in the middle of nowhere. It went through a special area of conservation, SAC. There is no military in the vicinity of the drain or no wall and the wildlife in the area can cross over and back regardless of what we discuss here and what happens with Brexit. The management of that area and the integrity of the area will degrade if the environmental protections on one side of the drain are lower than on the other side. Environmental management does not work if one has a conjoined area divided in that way in a regulatory sense. The real issue is whether the two administrations can come together to have effective environmental management and whether that is even possible if the regulations are put on a bonfire and the standards drop on one side of the Border.

Senator Gerard P. Craughwell: I thank the delegates.

Deputy Brendan Smith: I welcome the presentations. The delegates are also welcome. Ms Hough's statements were very much to the effect that not having functioning political institutions in Northern Ireland at this time is a great tragedy. Unfortunately, we cannot have the North-South Ministerial Council without the Executive and Assembly functioning in Northern Ireland. The council provided for Ministers both North and South to work in plenary session twice a year and then in sectoral format between the relevant Departments in dealing with issues on a day-to-day basis. That was practical co-operation concerning the issues that were highlighted in Ms Duggan's presentation as well. That is where such issues could be dealt with, planned for and resourced. The system made provision for Departments to jointly pursue funding with the EU for cross-Border projects. It is a significant loss not to have the North-South Ministerial Council and, by definition, the Executive and the Assembly at a time the entire island needs a common voice in Europe on the issues that will adversely impact us because of Brexit. I very much welcome the presentations. At the start of her contribution, Ms Hough referred to how forward looking the Good Friday Agreement was in respect of having the environmental co-operation and the protection of farmers as one of the 12 areas of co-operation, and that two of the six North-South all-Ireland implementation bodies, Waterways Ireland and the Loughs Agency, have a significant environmental remit.

The civic forum was not operational even when the Executive and the Assembly were *in situ* because the political parties in Stormont did not agree to have it constituted. If it had existed at some stage, I believe that it would have a major contribution to make to civic society, be it through trade unions and business and civic society representative organisations. That is missed as well at present, at a time one needs as much co-operation and working together as possible, not just within Northern Ireland but on an all-Ireland basis.

One issue that, unfortunately, has not gone away is the damage that can be caused to the environment on a North-South basis due to illegal smuggling, illicit trade and fuel laundering. It is regrettable that there is not an independent environmental protection agency in Northern Ireland. An organisation with such a remit must be a stand-alone agency free of a department to ensure it could rigorously implement the applicable regulations and legislation on the protection of the environment. Previously, when the environmental pillar was before the committee I outlined the threat to the food industry and other sectors due to the dumping of sludge and other illegal dumping. If the waterways are contaminated, that can have a negative knock-on effect on grassland and natural food production areas. The good name and provenance of the Irish food industry on an all-Ireland basis could be damaged if difficulties arise due to illegal dump-

ing and such deplorable behaviour that, unfortunately, has affected parts of the country in the past. An Garda Síochána, the Revenue Commissioners, the Environmental Protection Agency and various local authorities along the Border, and their counterparts in Northern Ireland, have worked to try to eliminate that. At times, good progress has been made but only recently there have again been unfortunate incidents of illegal activity. Apart from the illegal activity itself, there are implications for the good name of industry, the environment, food production and other production systems.

The contributions of both delegates were very much based on the need for the political institutions and the all-Ireland political institutions to work together. The North-South Ministerial Council has great potential and I hope it will be operational in the future. I very much welcome the contributions of both delegates. The delegates pointed out very clearly the considerable and negative impact that Brexit could have on all aspects of living in this country. The British talk about “global Britain”. I do not agree with the terms they use but I hope that Britain, as a big trading country, will not dumb down its standards. Trade with the international community will be secured and protected only if the people who are buying products know that proper environmental standards are being adhered to where they are sourced. The standards have been built up throughout Europe painstakingly and have represented a major imposition on primary producers, be it farmers or others, but this is the reason Ireland can sell food throughout the entire world. Those with purchasing power in other countries know our products are produced and processed to very high standards. This needs to continue in all parts of the island. I thank our guests for their presentations.

Ms Oonagh Duggan: I hope the Deputy does not mind if I respond on a point he made in respect of the mapping exercise and what is covered therein. The mapping exercise was published only a few weeks ago. We have not had a lot of time to study it in depth.

Deputy Brendan Smith: Is Ms Duggan referring to the areas of co-operation?

Ms Oonagh Duggan: Yes, the areas of co-operation, North and South. The birds and habitats directives are not included, nor is biodiversity protection. We are concerned that such matters might be overlooked. This would have implications, especially in regard to agriculture. In Ireland, the birds and habitats directives are implemented and are an important part of ensuring that agricultural standards meet environmental standards. They are not included as an area under North–South co-operation.

Water quality is included as part of the North–South Ministerial Council’s remit but river basin management planning under the water framework directive is not. As a result, here are a few anomalies that really need to be studied. I hope we will have an opportunity to do so at some point. It is a concern that there are some items not mentioned. They are not mentioned in the protocol as part of the backstop. We want to ensure that they are and that the Good Friday Agreement and its processes will continue to work. With or without Brexit, the process should be reinforced to include some of these topics, which are important on an all-island basis. It is important that they be part of a focus in the future discussions.

Ms Alison Hough: The Deputy is entirely correct that the North–South Ministerial Council is really where it is at in terms of North–South co-operation. The environment, in particular, is an important part of the remit of the council. Since the environment is an area of devolved competence, the role is even more important. We are somewhat bereft of a really important opportunity owing to the absence of the Executive and, therefore, the North–South Ministerial Council. This is why it is even more important to go back to the drawing board and try to think

originally about what we can do with what we have left in terms of the other institutions of the Good Friday Agreement, which were neglected because the council was so effective in covering these areas. Can we examine the other bodies and beef them up in terms of replacing the avenues of co-operation and dialogue that have been lost and are sorely needed?

The absence of an executive has been ameliorated somewhat by the extension of powers of civil servants. Senior civil servants in Northern Ireland have been given extended powers by the United Kingdom to represent and negotiate on behalf of their Departments. They have some of the powers Ministers would originally have had in order to fill the vacuum of power. That, in itself, however, is not a great solution. It is a bad solution to a bad problem. We can only hope that the vacuum will be filled. In the absence of resolution, we need to focus on the other bodies, particularly the British–Irish Council and British–Irish Intergovernmental Conference.

The points made on environmental crime are really important. It was said cross-Border environmental crime is quite bad now when we have full EU membership on both sides of the Border and full regulatory alignment. We have a problem with full, coherent environmental management as things are. How much worse will it be in the event of Brexit, be it a withdrawal-agreement Brexit or, worse, a no-deal Brexit. Things can only get worse from there. Regardless of what is happening with Brexit, we need to reinforce our corporation. There is no effective cross-Border co-operation in the area of environmental crime. We need to consider this. It comes within the remit of the Good Friday Agreement because the environment is one of the areas it covers. This is something we can do something about now in preparation for whatever comes with Brexit, such that we will have our house in order. The Republic needs to work on this as much as Northern Ireland. We talked about the Northern Ireland regulator but there is cross-Border crime emanating from the Republic that we need to tackle. We need to get our own house in order also. We really need to direct more resources towards this. Consider the latest incidents of large-scale industrial dumping taking place around Kingscourt in County Cavan and elsewhere. There are some examples of such bad practices on both sides of the Border. It is really important that we do something about that.

Vice Chairman: Mr. Hazzard indicated that he had a second question. I want to leave time for Deputy Maureen O’Sullivan to contribute at the end.

Mr. Chris Hazzard: One has to be realistic in that there absolutely will be a bonfire of environmental regulations and rights. That has been made clear, even in some of the talk on trade deals with South America. In the context of the United States there will be a race for a cheap food at the expense of some of the regulations, which is really unfortunate. We will have to suffer the consequences.

There has been some lobbying in the North already on the loosening of the nitrates directive and the serious consequences of this. I represent the constituency South Down. Consider the effect of run-off and pollution in Carlingford Lough. Currently, of course, the European Court of Justice has a role in oversight and redress. What will happen after Brexit, especially if there is no deal? Will there be no arena for redress or will the European Court of Justice still have a role if there is increased pollution in Carlingford Lough owing to movement on the nitrates directive? Will north Lough or the county council have a means of redress? Is there any way forward or will it simply be a case of having to suffer the consequences?

Ms Alison Hough: In the case of a no-deal Brexit, the European Court of Justice would lose jurisdiction over what happens on the north side of Carlingford Lough but we are still responsible for what happens on the south. Potentially, pollution from the north side of Carlingford

Lough could result in an infringement for Ireland, incurring fines and liability, etc. I am referring to circumstances in which we lose control over a portion of our environmental integrity.

Mr. Chris Hazzard: Is there a means of redress anywhere, through international arbitration or otherwise?

Ms Alison Hough: As far as I am aware, no. One could characterise the activity, in itself, as a breach of Good Friday Agreement commitments to co-operate regarding the environment. The question one has to ask concerns the consequences of breaching the Good Friday Agreement. The problematic answer is that there are not really any. We have excluded the Good Friday Agreement from the remit of the International Court of Justice and we acceded to it in 2012. So did the United Kingdom, I believe. As a result, it is not something we can take up as a breach of international law. There is potentially scope for action by citizens whose human rights are affected. Citizens are guaranteed human rights under the Good Friday Agreement, both in Northern Ireland and southern Ireland. Citizens in southern Ireland are guaranteed no diminution of rights. This could lead to a cause of action where someone's environmental or health rights are affected by pollution, but this would only be in very specific scenarios. Where somebody has been affected by environmental damage or has missed out on procedural rights or something like that, potentially he or she has a cause of action but it is a human rights-based course of action. Everyone present is probably familiar with the fact that, in litigating the area of human rights, there is a large margin for appreciation for states and how they uphold human rights. It is kind of an outside runner in terms of redress.

Vice Chairman: The final speaker is Deputy Maureen O'Sullivan. I am very conscious that she introduced a document in the audiovisual room some months ago.

Deputy Maureen O'Sullivan: I thank the delegates. It is really important that they are here. They are focusing attention on the outstanding issues, particularly in the context of a no-deal Brexit in the event of a crash-out. The environment has not been considered in that context. The committee has been active in dealing with other outstanding issues in the context of the Good Friday Agreement. It is important that the delegates are here to bring the focus on this. The Good Friday Agreement is recognised internationally. If the environment is one of the areas of cross-co-operation and if an environmental issue arose in the event of a crash-out, would that not take precedence internationally? I was not quite sure what Ms Hough was saying at the end of her contribution. She launched her report in Queen's University. What has been the level of engagement with the political parties in the North on environmental issues? There is no Government in place in the North at present. Is Ms Hough's organisation working with the parties in Northern Ireland on the important issues she has raised?

I recently attended a presentation on environmental issues. The presentation in question was interesting because two opinions were put forward. One was to the effect that in the absence of a Government in the North, certain things are happening which should not be happening but that when the Executive was in place, these appeared to be happening. I will cite some examples. One relates to the River Faughan and the Sperrin Mountains in the context of illegal dumping, water issues and the extent of the mining and quarrying taking place there. In that regard, I refer, in particular, to a Canadian gold mining company and what it is bringing into the area, namely, a cyanide processing plant, mercury smelting and an explosive store, not to mention the impact this has on the local population and the archeological sites in the area. There is a perception that what is happening is being facilitated by the absence of an Executive in the North and that there do not appear to be any calls from political parties to put a stop to it.

The second example concerns a pig factory in Limavady. An incredible number of pigs and sows are kept on the farm and this has an impact in terms of slurry, etc. It appears that an environmental impact assessment was never carried out. In the absence of there being an Executive in place in the North, was it easier for these things to happen? The perception is that when there was one in place, it was not turning its attention to those issues. How seriously are environmental issues being taken on board with or without an Executive in place?

Ms Oonagh Duggan: On the advocacy work undertaken by us in Northern Ireland, because, as the Deputy rightly said, we had a launch in Belfast and the Northern Ireland Environment Link does that for the main part. There has been considerable engagement with people there on an informal basis, with the Departments and also with MEPs in London. There has been a great deal of communication. They are also working on what is happening with the new environmental regulations. We are keeping an eye on both sides because new environmental laws are being developed within the UK in the common frameworks. They are also working on that. That is ongoing but I cannot comment on how well this work is being taken on board in Northern Ireland but perhaps I can come back to the Deputy on that matter.

I do not have as much information as the Deputy on the two cases she mentioned concerning the River Faughan and the pig factory in Limavady. There was a recent court case where an Irish environmental NGO raised the issue of there not having been any transboundary consultation on a large industrial farm. It might have been a pig or poultry farm and, if I remember correctly, there was no assessment of the transboundary impacts of ammonia from that site. There have been instances where the law has not been implemented well enough. That was a good example of an environmental NGO stating it had to put its foot down. I am aware of a proposal for a large marine renewables plan for Wales. They could not rule out significant impacts on approximately 20 Irish Natura sites, special protection areas and special areas of conservation and we were concerned as to whether they had been transboundary consultation. In that instance, it turns out there was but we have stay on top of these developments to make sure that people are talking. The important point is to have the mechanisms for communication open, a structure whereby people who know about these matters are supposed to be talking to each other, and that it is important. That is my experience in that regard.

Vice Chairman: I take the opportunity to pass on Deputy Crowe's apologies for his absence.

In addition to the delegates who made the presentation made to the committee, it is important to acknowledge the various participants in the compilation of the report, namely, Mr. Donal McCarthy, Dr. Thomas Muinzer, Dr. Ciara Brennan, Dr. Viviane Garvey, Professor Colin Harvey, Professor David Phinnemore, Professor Owen McIntyre and Dr. Roderic O'Gorman, together with Michael D'Arcy and officials from the Department of Foreign Affairs.

The presentations made today bring home the difficulties posed by Brexit and some of the insurmountable issues involved. We all recognise that we can deal with the movement of people and goods if there is a will to do so. I was reminded of the words of the song, "Only Our Rivers Run Free". As Senator Craughwell stated, wildlife knows no boundaries and neither do air or water. If we consider the issues of concern that arose in the past, we must have regard not only for national and transnational interests but also for international interests, whether these relate to Selafield, water - in the context of the *Betelguese* accident many years ago - the transmission of disease through wildlife, be it the spread of tuberculosis via deer or the incidence of Lyme disease and other topical and very much live issues that are the subject of debate. People need to realise that these are not just all-Ireland problems, they are problems for both islands. That

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is the focus we must have and the Environmental Pillar report has very much facilitated this.

I reiterate what Deputy Brendan Smith said in respect of the illegal dumping of tyres to fuel, the issues relating thereto and the need for organisations to co-operate regardless of Brexit. We had a presentation earlier on the issue of smoky coal. We are seeing the movement of its impact from the North to the South right and it is causing massive issues in terms of our air quality and environment. The delegates have brought home to many of us who may not have been as aware of the environmental issues the importance of dwelling on those alongside the movement of people and goods, for which I thank them. I wish them well in the future and the very best in their good work on behalf of all the citizens of this island and beyond.

The joint committee went into private session at 4 p.m. and adjourned at 4.10 p.m. *sine die*.