

DÁIL ÉIREANN

ROGHCHOISTE SPEISIALTA AN TSEANAID UM AN RÍOCHT AONTAITHE DO THARRAINGT SIAR AS AN AONTACH EORPACH

SEANAD SPECIAL COMMITTEE ON THE WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION

Déardaoin, 25 Bealtaine 2017

Thursday, 25 May 2017

Tháinig an Comhchoiste le chéile ag 10.30 a.m.

The Select Committee met at 10.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Seanadóirí / Senators	Seanadóirí / Senators
Frances Black,	Michael McDowell,
Gerard P. Craughwell,	Michelle Mulherin,
Mark Daly,	Joe O'Reilly,
Paul Daly.	Niall Ó Donnghaile.

Seanadóir / Senator Neale Richmond sa Chathaoir / in the Chair.

Engagement with Border Communities Against Brexit

Senator Joe O'Reilly took the Chair.

Acting Chairman (Senator Joe O'Reilly): Today we have a series of engagements looking at the implication of the UK's withdrawal for the relationship between this State and Northern Ireland. Almost immediately after the vote, this emerged as an issue which would be of central importance to Ireland and how Brexit would work. It is core to how a significant number of citizens live their lives daily. It will also be a key part of the future relationship of the State with its closest neighbour. A number of witnesses we have had before us have referred to and made comments on this. The witnesses today will obviously add to the picture. We are trying to complete the picture as we move towards our final report. On behalf of the committee I welcome representatives from the Border Communities Against Brexit group, Mr. Damian McGenity, Mr. J.J. O'Hara and Mr. John Sheridan, to our meeting today.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to so do, they are entitled thereafter only to a 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 they are asked to respect the parliamentary practice to the effect that, where possible, 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.

With all of this out of the way, I invite the witnesses to make their opening remarks. They can decide the order in which they will speak. We will hear all of the opening remarks after which we will have questions in batches.

Mr. Damian McGenity: I thank the committee for inviting us to appear before it. It is a very good opportunity to explain who we are and what we would like to see done as a result of Brexit. I apologise on behalf of our main spokesperson, Mr. Declan Fearon, who is unable to be with us today due to work commitments. I thank the Clerk and the staff for co-ordinating the meeting.

Border Communities Against Brexit comprises ordinary individuals. Mr. Sheridan and I are farmers and Mr. O'Hara is involved in tourism. Border Communities Against Brexit has members from along the Border, from Derry right around to Dundalk. It came about mainly because there was no real voice in Border communities lobbying on behalf of the remain vote, which was 56%, in the North. It became very clear very quickly after the Brexit debate that there was almost a demonisation of people who wanted to fight to remain in the European Union. We are often called "remoaners" and this is something we have steadfastly stood against.

Our main concern is that as a result of Brexit there would be a hard Border on the island of Ireland. I was here with Mr. Fearon two weeks ago to listen to the EU chief negotiator, Mr. Barnier. We certainly welcome the high-level engagement Europe has had on Brexit. It understands very well the situation in Ireland. The Taoiseach and the Ministers have done a lot of work on this front. Our key concern following Mr. Barnier's address is the EU would seek to

protect its borders. It is understandable that this would be the case from a European perspective and from the perspective of protecting European food consumers. The impact of a hard border, through its economic ramifications and the jobs it would potentially put at risk, is enormous, as well as the social impact of hemming in people away from their natural hinterland or with regard to visiting their families.

The Irish ambassador to the UK, Mr. Mulhall, has said that 2 million vehicles cross the Border each month. Approximately 30,000 workers cross the Border on a daily basis. The main sectors we have lobbied, having identified them as being to the forefront of the Brexit debate, are agriculture, agrifood and tourism. In the North alone, there are 100,000 people employed in the agriculture and agrifood sectors. Mr. O'Hara will talk about tourism, which is an all-Ireland sector. There are 260,000 people employed in that sector. There is huge concern in the South about the impact the Brexit talks will have on trade between the South and the UK, particularly in the beef sector, where 90,000 jobs are at risk. According to a report that was published by the Central Bank recently, 40,000 jobs could be at risk as a direct result of Brexit in the next five years.

The North has depended on EU support. The EU has been very good to the North. Billions of pounds have been invested, particularly in rural communities. Under the Common Agricultural Policy, approximately £240 million is provided in direct support to farmers every year. We have been told that Britain will leave the EU in two years' time. That is a huge risk. There has been no real detailed discussion on how Britain will be able to sell produce on the world market. Europe has trade deals with 60 countries. Given that Brexit is happening so soon, we do not know how the agrifood sector in the North can expect to get trade deals to sell products. We do not think it is possible. If Britain crashes out of the EU with no deal, we will be looking at WTO tariffs. As we have outlined in our document, such tariffs range from 13% to 60% in the agriculture sector, depending on the product being sold. Such issues are of huge concern to us.

Those who support Brexit have not yet set out in detail how they envisage that the problems which have been identified will be resolved. That is why we have called from an early stage for the EU and the Irish and British Governments to engage with the possibility of securing a special status for Northern Ireland. We believe this is the only way to protect trade and the movement of people and goods on the island of Ireland. The effect of this proposal would be to move the EU border to the Irish Sea. We do not think this would affect the constitutional position of the North in any way. We would like to discuss this proposal further with the committee today.

Mr. John James O'Hara: I thank the committee for this opportunity to address it on behalf of Border Communities against Brexit. Our main business is tourism. We have a bed and breakfast and a tour company, Irish Life Tours. I will explain what we see coming down the road for the tourism industry. Tourism Ireland, which was established under the Good Friday Agreement, markets all Thirty-two Counties of Ireland. It has important offices around the world. We work very closely with its New York office. The problem at the moment is that it has cut its forecast for the coming year by 6% because of Brexit. This is a fact. In 2016, tourism in the North of Ireland increased by 26% and tourism in the Border counties increased by 14%. It is the second biggest industry in the island of Ireland.

The problem coming down the road relates to who will fund Tourism Ireland in the future. In 2008, its funding was cut by a certain percentage. The year 2010 was the worst for tourism in the history of the island of Ireland. The problem we have is that tourists are making up their minds today. We have to market two years in advance. We have been at meetings in Italy and Germany in recent months. The problem is that we do our marketing two years in advance.

People consider the idea of coming to Ireland in the first year and budget for that idea in the second year, before coming to Ireland in the third year. This problem needs to be sorted out today because it is having an effect on the ground today. We cannot wait until Brexit happens two years down the road. We have seen the figures for EU visitor numbers in the first three months of this year. There has been a reduction of 5.5%. Brexit is already happening on the ground. The issues to which I refer are developing because of currency fluctuations and fear.

I will explain the main thing that is concerning us. This is what is coming up in our meetings across Europe. People want to know whether tourists will be safe if there is a border in two years' time. That is a big issue. It came up in Italy and in Germany. These are facts. We are here today to explain our problem. Tourism Ireland needs to know where it will get funding as it goes forward, and what level of funding it will get. Are the Twenty-six Counties to be marketed separately from the Six Counties? Will we be selling an island that is partly in the EU and partly out of the EU? This is a real problem for businesses on the ground. Tourism is the second largest industry in rural Ireland. Many of those who own farms are involved in tourism as a second business, for example, by renting houses, canoes or bicycles. We need to get answers for them.

The second issue I am here to talk about is funding. The North of Ireland has received over £7 billion in EU funding under various programmes. One of the main programmes is the Erasmus programme. It is a very big programme for young students across the North of Ireland. It gives them an opportunity to spend 29 days in various parts of Europe. Their accommodation, food and travel costs are paid. Are we saying to our young people that in two years' time, they will be unable to go to different parts of Europe under this programme? We have students from Italy in our own business at the moment. They are here for three weeks. Last week, we had students in from Poland. We work with colleges across Europe. The students from those colleges are selling our products on the ground in Italy, Poland and Germany. We bring students canoeing and we show them various places and things around us. They are treated well when they come here. When they go back to their own countries, they tell 20 people around them about their experiences. This is the best and cheapest way of marketing Ireland as a tourism product. Funding is a major issue. The Peace Bridge in Derry is one of the finest projects one will see. The tourism issues across the Border counties need to be sorted out sooner rather than later.

Mr. John Sheridan: I thank the committee for the opportunity to make this presentation. I would prefer to have questions on Brexit than to speak for myself. I am a farmer from south-west Fermanagh. My farm is one of a number that are managed together as Legnabrocky Farms, the chief executive of which is my son. I was worried from the outset that the referendum might go the way it ultimately went. I grew up during the Troubles on a farm that adjoined the Border. I had to go through numerous army, police and customs checkpoints to travel between the local villages of Blacklion and Belcoo. I used to meet mobile patrols on the road. Every time one opened a gate, one did not know whether one was going to go up in smoke. Therefore, the first reason I was concerned about Brexit was that Europe had helped to deliver peace to this country. My farm is involved in primary beef and lamb production. We have suckler cows and sheep. Those commodities, particularly sheep, will be most affected by Brexit. I can explain the reasons for that later.

“Consternation” is the best word that I can use about the result of a referendum that was based on misrepresentation at best and lies at worst. I say this as a citizen of Europe and an Irish person holding a European passport who exercised his democratic right and voted to remain, as did 56% of the North. Of the Border counties, Fermanagh and south Tyrone were nearly 59%

in favour of remaining, Armagh was approximately 65% remain and Foyle was 78% remain. There was a very strong vote to remain along the Border corridor. I do not feel like being isolated in south-west Fermanagh with the only place I can go dictated by a 25 degree angle. I was brought up along the Border and have spent as much time in the South as in the North.

Under the Good Friday Agreement, the whole economic island of Ireland deserves to be considered for a special designated status. As Mr. McGenity stated, this would not affect the Constitution. The Constitution can be left for another day. The island's economies are integrated, far more so than Britain's economy is integrated with Europe's. Those economies were built for efficiency and scale, which is nearly unique in the world. They have it down to a t. This is a food island and I would like it to remain that way.

Acting Chairman (Senator Joe O'Reilly): I thank the witnesses for their heartfelt, sincere and competent presentations based on their immediate experiences. Three Senators are indicating that they wish to ask questions, which will be answered together before we take further questions. The order is Senators Mark Daly, McDowell and Ó Donnghaile.

Senator Mark Daly: I thank my colleague, Senator Paul Daly, for allowing me to speak before him, as I must return to the foreign affairs committee, which is meeting the Minister. The Brexit issue is looming large in that context as well.

My questions are on the special economic status that we are seeking on top of the ability to move seamlessly over and back across the Border. The research that we have seen on the special status of East Germany in terms of its economic ties with West Germany prior to the wall coming down shows that it was treated as though it were a member of the then EEC. Have the witnesses investigated this and made submissions on it? We have been told time and again, including when the Commissioner was in Leinster House and the European officials interacted with us, that the issue of Ireland must be dealt with first as one of the three matters that they want to have addressed before trade agreements are settled. They told us to go to them with ideas. One of the ideas that we are considering is using East Germany's special status prior to the wall coming down as a precedent for a special status for Northern Ireland and the Border counties, in that there would be an economic deal between Northern Ireland - not necessarily with the UK - and the Republic. Have the witnesses encountered this precedent and have they received any legal advice on it? We only have some information on it. Due to the nature of East Germany and West Germany and the amount of time that has elapsed since, it seems to have been an *ad hoc* structure, albeit one that we could use as a precedent.

We all know of the problems. We must devise recommendations beyond just asking for a special status for Northern Ireland, even if that is exactly what we want. We must set out how it could be done, why it should be done and what happened in East Germany. Germany will be one of the key decision makers in this section of the negotiations.

I must give my apologies, as I must go to the other meeting, but I will read the transcripts.

Senator Michael McDowell: I welcome our guests and thank them for their well-argued and well-supported submissions to us. I do not want to be presumptuous, but I believe that every committee member, including those who are not present, favours a special status for Northern Ireland. The principle is probably agreed and I hope that I am not being arrogant in saying that.

As Senator Mark Daly mentioned, the real question is about what that means. The para-

graphs in the witnesses' submission on potential solutions refer to the special status as allowing Northern Ireland "to remain part of the EU". That is one way of putting it. There is another way of discussing a special status for Northern Ireland, and that is a special status for Northern Ireland "in relation to the EU". That is a slightly different idea.

The common travel area is safe and sacrosanct. No one will interfere with anyone's right to cross the Border on a train or bike or by foot. No one will ask who the person is or what he or she is doing. Rather, we are discussing the movement of goods, including agricultural produce. That is the crucial issue.

I will put an idea forward for the witnesses' consideration and ask for their views on it. We do not have to have a single special status with Northern Ireland, for all purposes and in every respect, being "in relation to the EU" in category A or B. It is possible to view agriculture as one aspect of the special status whereas dealings with aircraft components from Belfast could be in a different category. In other words, an all duck or no dinner approach to special status need not be taken. We can have a special status across a range of economic activities and goods.

I am in sympathy with the witnesses' view that, in so far as physical customs checks must be carried out, the most practical way of doing so is on the Irish Sea corridors. When Mr. Michel Barnier visited the Houses, he said that Europe wanted to protect its borders. I did not take him as having in mind hard border checks for all purposes. There probably is not a major problem with saying that the island of Ireland can remain an uncustomed area for the movement of most goods and that, in respect of certain goods only, custom checks can be done on the basis of electronic returns. For example, one would seek prior permission or be registered as a person who moves aircraft components, pharmaceuticals or whatever. When Mr. Barnier stated that the EU wanted an imaginative and flexible approach, I hope that he was thinking along the lines of this kind of suggestion and that the harder Brexit idea is not there.

I will throw those ideas out to the witnesses and seek their responses to same. Regarding special status as a principle, they are pushing an open door with us. The question is, what does it mean or can it mean many things.

Senator Niall Ó Donnghaile: I echo the words of welcome. Recently, I was part of a delegation that travelled to Brussels with representatives of Border Communities Against Brexit. They put in a Trojan amount of work engaging with European colleagues at every level from Mr. Barnier down. I share many of their frustrations and concerns. I also share most of the sentiments that were expressed by Senator McDowell on special status. Respectfully, I do not share his confidence about the common travel area and the movement of people.

I agree with the previous speakers on special status.

My party has outlined its view in documents about how that would look. Other scenarios will evolve as things move ahead.

Mr. O'Hara's contribution highlighted clearly the potential threat. What we need to do first is protect the integrity of the Good Friday Agreement and the threat posed to it by Brexit. Mr. O'Hara observed that tourism is a critical, growing sector of the Irish economy, both North and South. He looked at its importance for job creation and the economy across the island, not least along the Border corridor, and the impact that Brexit will have on that sector. Then there is the question of the impact Brexit will have on Tourism Ireland and how it does its work, not only as a cross-Border body but also how it will promote the tourism offering in Ireland as a single

entity overseas when one part of the island is in the EU and the other outside. Once again, it highlights how much Brexit permeates across every aspect of our lives and in a negative and detrimental way. That was highlighted very clearly for me.

It would be interesting to hear the witnesses' own views on special status as they have engaged extensively on the issue at home and overseas. They made this point in their own contribution but we need to hear a clear outline from the Government of its view of special status for the North and indeed for the South. As the Government has been mandated by the Dáil to argue for special status, one would hope that is its responsibility and intention. Have the witnesses had engagement with the Irish Government in this regard? What feedback have they given regarding their view on special status? What have they argued for, with whom have they been arguing and what is its likelihood in the future?

Acting Chairman (Senator Joe O'Reilly): I will come back for more questions but to be fair to Senator Paul Daly, I will come to him in this tranche because he was gazumped earlier.

Senator Paul Daly: Sometimes decency does not pay because I let Senator Mark Daly go before me and he took my question. I am glad that the Acting Chairman let me in here, because I want to tease out the question of special status some more. I agree wholeheartedly with everything my colleague Senator McDowell said. Agriculture is my brief and I would like to get the opinions of the two agricultural representatives from the party and tease out the issue from an agricultural perspective. An all-island special status would be ideal in tourism, I cannot see any negatives there, and it would solve many of the agricultural problems, such as the cross-Border travel, milk, sheepmeat, cattle, pigs and so on. We are trying to come up with proposals, solutions and answers so I am playing devil's advocate here in trying to get to the root of things rather than being negative. On the bigger question of agriculture, the Twenty-six Counties cannot get any better status in its relations with the UK after Brexit than as matters stands at present under the European model. If, as a result of bargaining and horse trading, all-island special status meant that while the North remained in the UK, this meant there would be tariffs on their products going into the UK, how would the representatives feel about this? How would that work in the agricultural model? If that did not happen, how could the agricultural model work if beef from Belfast was going into the UK tariff-free while beef from Dublin went in with tariffs? I am not saying that it cannot work but it does not sound like something that would be very easily worked out. Ideally, we would love to wind back the clock and not have Brexit. However the aspiration coming from here is for all-island status, but it requires a lot of thought. It is not something over which we would immediately jump up and down while saying, "fair play Mr. Barnier, you gave us all-island status, we are 90% there". It could be a step back in some ways because we would have to collectively go back to the drawing board to see how this would work. There would be ramifications. What are the witnesses thoughts on that, especially from the agricultural perspective which is their brief?

It must be very frustrating without an assembly or a Parliament in Westminster, but prior to the Assembly's dissolution and the election being called, what feedback were witnesses getting on the ground from their negotiations or from meetings and research they had had with those on the other side of the Border? As Senator McDowell said, anything the witnesses are saying pushes an open door here. We can only go on the public speeches by Theresa May but the witnesses are meeting people face to face, like-minded individuals and people in business who might share the same grievances or fears as themselves. What do they think is the feeling on the ground? They are strongly emphasising that the majority in Northern Ireland have voted to stay but unfortunately in democracy, it is the overall result, we cannot go on sectoral votes in present

circumstances. I could argue that if all elections were based on the box in my little local village, I would be President of Ireland now. We have to take the overall result and unfortunately we are where we are. I would like to know what sense the witnesses are picking up in their face-to-face meetings on the other side of the Border. They will find nothing other than positive things here. We all share the one aspiration.

Acting Chairman (Senator Joe O'Reilly): There are a lot of questions there so the witnesses may take them in any order, by any speakers who wish to do so.

Mr. Damian McGenity: I thank the Senators for their support and their comments. On the overall remarks on special status, I wish we had the answers. It would short-circuit the enormous problems of Brexit. I want to pick up on Senator McDowell's point on potentially having separate deals for separate sectors. While there may be traction in that, one potential stumbling block is the diverse nature of business and of European law and rules on a variety of sectors. It may be possible to get a deal in the agriculture and the agrifood sector, and that would have further implications for getting product into the UK market, as Senator Daly said, because Europe does not allow countries to do individual trade deals. In pharmaceuticals, for example, Almac gave evidence to the Northern Ireland select affairs committee in February. It is a big employer in Portadown and has its European headquarters there. It is at the very top end of medicine and much of what it does is research and drug trials. It said in its evidence that it had bought a facility in Dundalk, that Europe requires that the medicines are tested in a laboratory by a competent person within the European Union. Look at pharmaceuticals or, as the Senator said, the aircraft and other sectors. For instance, I spoke to an engineer and quantity surveyor last week. He is a neighbour of mine in the North and does a lot of work in Dublin. The construction industry is beginning to realise that to buy product from the North in the UK which has a CE certificate, when that is brought here to the South, he, as an engineer, will not be able to sign off on that project because that component does not have a certification. The answer is not simple. There is a great lack of dialogue on Brexit. Unfortunately, there is no assembly now sitting in Belfast and those institutions need to be put back in place. In the absence of constructive dialogue and of a strand that we would like to see developed between London, Dublin and Belfast on the way in which these problems can be teased out, the way in which solutions can be put forward and on how people can engage in that discussion, we fear a solution will be imposed on us that could be very unworkable. Overall, we would like to have such a dialogue. The Irish Government has done an enormous amount of work. Its Brexit document is very good. The Minister with responsibility for European Affairs attended the General Affairs Council meeting on Monday. However, the deeper discussion required on what the solution to Brexit is and the feeding of that into the process is not taking place across all the political parties and the non-governmental organisations.

The feedback we have got on the ground, and Mr. John Sheridan will comment on this from the farming sector, and I also farm part-time, is that people are now beginning to wake up. This is only two years away. Representatives of the Ulster Farmers Union, UFU, appeared before the Seanad committee recently and they sat on the fence in terms of Brexit. My view and that of the Border Communities Against Brexit is that those in the farming sector were told that Brexit would be good for them and that they would be able to get deals on the international markets. We are a year down the line and no deals have been signed yet. The great danger is that if we crash out of the European Union, we would move to having default World Trade Organization tariffs in place and we would have no support in terms of payment because farming is simply not profitable. The UFU is now saying that Britain will have to trade internationally but its main competitor will be the European Union. The UFU is saying in debates such as this one

that in terms of farmers who voted for Brexit to deregulate the sector, that its regulation will now have to be increased. When they go to sell their products on the international market, the first thing they will be asked by potential buyers is why would they buy a British product when they have a European product of a high standard. Therefore, farmers will have to provide a higher standard product for that market. Overall, this is very complex.

Our feedback from Downing Street is that they are all over the place on Brexit, that there is no consensus within the Cabinet, there is no clear thought, their advisers are out of their depth and the UK Brexit Secretary is not on top of his brief. Given the general election that is taking place, if there were to be a fracture in the negotiations on the issue of the bill that the EU is seeking from the British Government, that would not bode well for us. There is a great risk that the talks could break down at a very early stage.

Mr. John Sheridan: Senator McDowell mentioned the phrase, “in relation to” a matter. Can he recall the point he was making on that issue?

Senator Michael McDowell: I said that the special status of Northern Ireland in the European Union is mentioned in the group’s document and it sounds almost like as part of the European Union. The alternative is to see a special status in relation to the European Union. Perhaps it is the lawyer in me but one has constitutional implications and the other does not.

Mr. John Sheridan: Senator Mark Daly, who has left the Chamber, asked the first question and I would like to respond to that. He asked about East Germany and the wall coming down between East and West Germany. The Border Communities Against Brexit took the attitude that we have a white sheet of paper in so far as we mitigate the impact of Brexit or approach a hard Brexit being imposed on us. As a group, we have believed from the outset that having a special status means nothing unless it is a special status within Europe. Anything else is only special status outside it. I would go so far as to say that we do not accept there is any form of a Brexit other than a hard Brexit. Any soft Brexit we would view as a Brexit by stealth over the years with layer upon layer of legislation being introduced which would once again lead to a hard Brexit.

Norway has its own deal with Europe. Switzerland spent eight years trying to negotiate a deal and has still has not finished but it still has a deal with Europe. Cyprus, north and south, is working as one island and has Britain’s biggest military presence located in the middle of the island. There is also Gibraltar, the Isle of Man and the Channel Islands. There are several different special designated statuses and it comes down to how we interpret it. We have the good luck of having the Good Friday Agreement. It is one of our biggest accomplishments. It is an international agreement lodged in the Hague and it is there to protect every Irish and EU citizen on this island.

We have a heavy cloak upon us as a group. We have not looked any further than that, other than we know that special status is possible. It was a matter for us to highlight and we have achieved that with a special status for Northern Ireland now being talked about throughout Europe, in Britain and in Ireland. That is the first step.

There is a second step, which shows our accomplishment. Everybody who is anybody - any business, all the educational establishments and the health establishments - and all those people who have responsibility who were very quiet before the referendum are now coming out and saying they want things the way they were. It is a little late for that but not in this country because of the Good Friday Agreement. We can hold the *status quo*. Even though people are

seeking that things will stay the way they were, some political parties, especially in the North, are saying that they want things the way they were but they want a few cherries on top. I am afraid those cherries are not there for the picking and that must be well understood.

Deputy McDowell referred to a special status for Northern Ireland and Mr. Damian McGenity more or less answered that point. The only point that was not addressed was the issue of a digital border. A digital border would still require a hub. It would involve self-regulation. A digital border cannot take cognisance of a container carrying a number of different commodities. Some of those would probably have to be checked and others would not need to be. A space for a warehouse and the parking of a lorry would be required. If a lorry with a container is carrying perishable goods and it takes two or three days to clear that container, those goods would be lost. If a customer needs a product from that container immediately, and the clearing of the container is held up for two or three days, that customer will not do business with that provider again. We have considered the issue of a digital border in many different ways and we believe there is only one place for it and that is out in the sea. We have a porous Border and it has always been like that, despite all the tools that were thrown at it to keep it in place. I have no doubt that Europe would protect its borders even more vehemently than Donald Trump would aspire to build a wall between America and Mexico. That is how much Europe values its markets. Europe will make sure that the integrity of its high-quality product, produced to a higher environmental standard and traceability, is not affected by any porous border. By that I mean, inferior product coming through a border on the one island, which would be crazy carry-on. I am glad to see that members feel the same and are considering how that special status can come into being, in particular in terms of how it can be legally implemented, which is Senator McDowell's field of expertise. The need for special status needs to be pressed upon Westminster. As a unionist farmer who farms on the Border, I have always perceived the Good Friday Agreement as my protector and that my sources to go to were Westminster, Dublin and Europe. We have doors and avenues into all of those places. Unfortunately, to date, Stormont has muddied the waters. Certain parties decided to go over to London and take out a four-page wrap-around advert in the *Metro* freesheet newspaper to promote a vote for Brexit. Those parties now want things to stay the same. That beggars belief.

In terms of Senator Ó Donnghaile's question on the common travel area, CTA, I am worried that there could be a problem in terms of the common travel agreement but if there were special status for the island of Ireland to remain in the EU, that could hopefully be overcome and the CTA would certainly be let go. In a Brexit scenario involving a Border on the island, I believe Westminster would try to hold to its side of controlling immigration. At the same time, it is starting to acknowledge it needs these people to work in factories in the UK. Immigrant labour makes up 65% of the workforce in the processing industry in Northern Ireland.

In terms of the Irish Government reply, I must commend it on the seminars it has held. I attended a mind-blowing briefing on energy. I did not know anything about the way energy worked on this island. After the seminar, I felt that Brexit is a complete bonfire of money and that the President of the European Commission, Mr. Jean-Claude Juncker, was misrepresented at the dinner he went to in Downing Street at which it was said that Brexit could be nothing only bad for everybody. That statement is correct. The division of these nations will do nothing for anybody. It must be done in such a minimal way that as little money as possible is burnt. Ireland, Britain and Europe will have to work together to ensure that because everybody is going to suffer in this. It is a sad situation but it can be overcome. We want the Government to make one last effort to put the ball over the bar and come out clearly saying it is looking for a special designated status, this is how it is going to do it and to set out the parameters and a

timeline as to how that will be done and how legal jargon will be brought into play. It needs to tell Westminster that it understands that the UK is leaving the EU. Ireland is a member state of the EU along with 27 others. It has international trade agreements with 60 countries. It must tell Westminster that, along with Europe, it will ensure that it is self-sufficient in energy, that it looks after its farmers, beef, milk and lamb, and the UK can leave the EU but Ireland, as an island, is firmly staying. That is the final thing we want the Government to say, whether that be the current Government or any that may succeed it.

In regard to whether we would be prepared to pay tariffs if there were an all-island status, let us look at the market for milk. The UK is about 65% self-sufficient in milk. However, two-thirds of the UK's milk exports to international countries, including Thailand in particular, are from Northern Ireland. International trade deals have been built up over the past 20 years. In 1995, milk commodity was trading at around £1.2 billion. Over 20 years, that has been built up to £2.23 billion. Dr. Mike Johnston, Northern Ireland director for Dairy UK, stated that in a Brexit situation, those he represents would be in competition with Europe and to hold those international markets, their product would have to be made sexier and more built into it. A lower price may have to be taken for it because UK producers would be competing with the EU and known EU standards and would not be able to give any standard for exports from the UK. There would be a new British standard that will not yet have been accepted by any other country. The same situation pertains for every commodity.

Mr. O'Hara will confirm that we were considering the Saudi Arabia frozen beef market. It is a big market for beef. There is already much live shipping to Turkey. There is not a huge problem in beef. Intervention could be used if Britain does not want to buy our beef. However, it should not be forgotten that Britain has always used Ireland as a bread basket and it will not be able to source the amount of beef it needs from any country but its next-door neighbour. It will therefore be knocking on our door and looking for that beef, tariff or no tariff. The lamb industry would fall off the top of a cliff. Britain has half the sheep-breeding population of Europe. It is approximately 75% self-sufficient in lamb but still exports 40% of that lamb to France. One thousand lambs per day go from the North to the South for processing and then on for export to France. After Brexit, to get 400 pence on the Rungis market, we would have to take a tariff of around 56%. Farmers in this country would achieve 226 pence, a little over half of the price in the North. Farmers here are already complaining that they are taking prices for lamb that they were taking 20 years ago.

I am not afraid to pay a tariff to Great Britain because while it is threatening that Ireland needs it as a market, I would say Britain needs Ireland as a source of food. Three million people per year get food from food banks in Great Britain. They include nurses and policemen. From where will the UK get its food? There is no guarantee from the British Government that in a Brexit situation they would look after food production sufficiently. It has said it would fund agriculture for one year post-Brexit. However, even that one year is ambiguous because it depends on the time when a claim is made. Some politicians have said that the Common Agricultural Policy was going to end in 2020 anyway. That is not correct. The current CAP reform was put in place until 2025 approximately with a mid-term review in 2017 approximately. It will be in place until 2022 or 2023 at the earliest. There is much misrepresentation of facts and figures.

I am happy to answer any questions members have. If I was mistaken in quoting any figures, I will stand corrected. We have relied on accurate figures from different sources, notably Andersons farm business consultants, which we will give to the committee after the meeting.

Acting Chairman (Senator Joe O'Reilly): We might take the next speakers before Mr.

O'Hara replies so that we can move towards a conclusion. The responses have been excellent, very detailed and very welcome.

Senator Gerard P. Craughwell: I am sorry that I was not present for the witnesses' oral presentation. I was away on Oireachtas business at the time. I have been watching the witnesses' progress ever since they appeared before our committee. There is no doubt about the amount of work they have done and I commend them on it. They have done an exceptional amount of detailed work. I know Mr. Sheridan spends his time watching social media and takes any chance he gets to push forward the agenda.

There are a few things in the document with which I take issue. I am a democrat. I live in a democratic society. In the democratic society in which I live, there are four provinces. At no stage will we ever allow a province to break with the rest of the country because it votes against something. Regardless of whether we like it - and many of us do not like it - Northern Ireland is part of the UK and the UK took a decision to leave the EU so we cannot use phrases like "opinions are not being respected" because the same would apply to Scotland, Wales or the Isle of Man. I do not accept that and I do not accept that the witnesses have been disenfranchised at this point. In respect of the argument made by the witnesses, particularly Mr. Sheridan who has made these arguments very well any time I have listened to him, the Good Friday Agreement is the solution to our problem. I would be interested in hearing the witnesses' view on this. In their document, they rightly point out that 1.8 million citizens in Northern Ireland can apply for and are entitled to be provided with Irish passports. That makes them different to their counterparts in any other part of the UK and or the EU. What we are effectively saying is that 1.8 million European citizens are being denied the right to participate fully in the European Union. This is where the Good Friday Agreement kicks in. We cannot have bilateral negotiations with the UK despite our several hundred years of history but we can talk under the auspices of the Good Friday Agreement. We can have arrangements under the auspices of the Good Friday Agreement which we could bring forward to the EU and request that it rubber-stamp them for all intents and purposes. I met Michel Barnier, Guy Verhofstadt and various other people when I was in Brussels. I do not care what anybody says, there is a huge willingness to find a solution to the problems of Ireland. We cannot have a situation post Brexit whereby beef is being sold on the world market as "northern" or "southern" Irish beef, with two different standards applying. In such circumstances, I completely accept what the witnesses are saying to the effect that the Border must be somewhere in the Irish Sea. There must be free travel across our 270 or 280-odd roads. We must be able to move trucks up and down and transport milk. Milk is going to Roscommon and then goes back to Belfast when it has been processed. Sheep are coming from Northern Ireland to be killed. I was going to say "executed" but "killed" is the word. The meat is processed and sent back. Bacon from the South goes to Northern Ireland. When I look at my Ulster fry, which I will be looking at tomorrow morning, I am never quite sure where any of it comes from. Our economies are totally interlinked.

There is a problem with having the Border somewhere in the Irish Sea. I would be interested in hearing the witnesses' solution in this regard. While the nationalist community and the citizens of the Republic would have very little difficulty with that, it is my view that we would have to deal very sensitively with our unionist brothers and sisters in Northern Ireland who see themselves as British. What right have I or anybody else to tell them they are not British?

I thought the witnesses were a bit hard on the UFU. I think it is walking a delicate political pathway in respect of trying to hold on to what it has. In respect of the €2.3 billion in financial aid between 2014 and 2020 mentioned by the witnesses, it is my firm belief that the British

Government will not honour its commitments to 2020. It is also my firm belief that as soon as the negotiations begin, the British Government will take all funding off the table because it is its view that the UK is leaving. I am putting a scenario to the witnesses that we should go forward as the economic island of Ireland, about which Mr. Sheridan spoke about a few moments ago. However, that would mean that the European aid provided to the farming community in the South would be matched by the British Exchequer in Northern Ireland. In other words, there would be no difference in the supports available to the farming community because I think it drives most economies in this country. If a farmer is getting subvention for cattle in the South, an equal subvention must come from Westminster for farmers in Northern Ireland so that farmers are playing on the same pitch and with the same supports and problems. Standards on the island of Ireland would have to be maintained to the EU standard, or higher if the British come in with a higher standard. I would be terribly afraid of what Mr. Sheridan spoke about, namely, the importation of cheap beef, bleached chicken and lamb from New Zealand, although I am not knocking its standards. I would be afraid of those things. We must hold the standard and in holding that standard, we must be sure that the farming communities on both sides of the Border have the same supports.

I would dearly like us to steer away from the notion that we have disenfranchised people in Northern Ireland in some way or that their views are not being respected. Unfortunately, when people live in a democracy, they do not always get what they want and certainly Northern Ireland did not get what it wanted from Brexit. I would be interested in hearing the witnesses' views on that.

Senator Frances Black: I will be brief. The witnesses' presentation was excellent, very clear and precise. Obviously, I am very concerned and really pick up on the anxieties. It is very scary - terrifying actually - particularly when I hear that Westminster is out of its depth and does not know what is going on or how to deal with it. That really concerns me. The fact that I am not sure that Northern Ireland is a priority is very concerning. I do not think it will be top of the British Government's priorities. I think Northern Ireland - particularly in terms of Cushendall, Cushendun, north Antrim and Rathlin Island - is probably one of the beautiful parts of this country. The tourism industry was really devastated during the conflict. I used to travel up to my father's home in the North with my family. I could not believe there was no tourism there back then. One could understand why this was the case in light of the conflict but it started to come back and I see that now. I go back up there all the time and I see the southern-registered cars, in particular, and also cars with British registrations. There is no doubt that it has picked up. My concern is that this would be impacted upon again. Coming from a farming background with family in Northern Ireland, the impact would, from a farming perspective, be devastating.

I have a very simple question. I know we talk about special status for the island of Ireland. Recently, the Minister for Housing, Planning, Community and Local Government spoke about working towards a united Ireland in one of his campaign speeches. What are the witnesses' thoughts on that? Would it be beneficial? I know that when we are looking at special status for Northern Ireland, it will be very complicated. In addition, I understand that if we ever did work towards a united Ireland, that would also be very complicated bearing in mind the fact that the Good Friday Agreement is very important and plays a huge role. What are the witnesses' thoughts on working towards a united Ireland? Would it help in any way or be beneficial?

Acting Chairman (Senator Joe O'Reilly): We are not going around again but Senator Ó Donnghaile wants to make a very short interjection.

Senator Niall Ó Donnghaile: They are very quick and concise observations more than anything else. While we all agree with the sentiment relating to special status, we must concede that one of the key components must be the retention of our membership of the Single Market. As has already been stated, there are different views regarding the common travel area and how that will work out. In the context of the economics of it, if we lose that, then táimid i bponc and we will be in big trouble.

It is not very often that I disagree with Senator Craughwell but I believe that we have been disenfranchised. The reason we have been disenfranchised is, ironically given the point he made, the Good Friday Agreement. When people both in the North and the South endorsed the Agreement overwhelmingly, it was agreed and accepted that there would be no change in the constitutional arrangements, unless it was consented to by the people. The people who had an opportunity to vote in the referendum voted to remain within the European Union. The Committee on Constitutional Affairs of the European Parliament has indicated that, in its view, the Good Friday Agreement will have to be altered as a result of the Brexit vote. Therefore, we have been impacted on uniquely and it is because of the Agreement that Northern Ireland is not like Scotland, England or Wales. The primacy of the Agreement, North and South, means that we are being disenfranchised and the constitutional status is being altered. Therefore, the Agreement is being subverted against our will. I do not necessarily want to put the organisation on political ground because I know that it tries to avoid it. However, for me, the most logical special status would involve an outworking of the Good Friday Agreement, that is, reunification, which would allow us all to retain our place within the European Union. That is not to simplify the issue, but nevertheless it should be part and parcel of moving forward.

Acting Chairman (Senator Joe O'Reilly): We will now hear concluding remarks.

Mr. John Sheridan: I will answer Senator Craughwell and in calling him Gerry I am not being formal. That is just the way we are, unless he insists otherwise. I thank him very much for his kind comments.

I feel as if I have been disenfranchised. First and foremost, when the referendum campaign started, we were told that £18 billion was the sum that was going to the European Union from Westminster. Whereas those in England did not quite get a buck for their pound, in the North we received approximately £1.50 or £1.60 for every £1 put in.

For the one debate held in the North, organised by the Ulster Farmers Union, UFU, on agriculture, two people were asked over: the former Secretary of State, Mr. Owen Paterson, and a former president of the National Farmers Union, NFU, Sir Peter Kendall. On Brexit, the encompassing body of the NFU for England, Scotland, Wales and Northern Ireland took the attitude that the United Kingdom should remain. Because of politics and its lobby which it had to protect, UFU sat on the fence on the issue. I asked Sir Peter Kendall to please tell us the truth. The former Prime Minister, Mr. John Major, said that after everything was taken off, £6.3 billion was the net cost to Westminster of its contribution to the European Union and that £300 million was the sum that went to the agriculture sector. There was the figure of £350 million a week on the famous red bus which was multiplied by 52 weeks to give £18 billion, but it was an absolute and outright lie and a misrepresentation. For that and many other similar reasons, I feel as if I was disenfranchised.

I am sorry for others such as those in Scotland who do not have a Holy Thursday agreement. However, I am well aware of the Good Friday Agreement which was made and lodged in the Hague. It was made following years of thought. It was not a knee-jerk reaction in a referen-

dum. For that reason, I do not believe I am wrong in saying I was disenfranchised. We should not forget that Ireland gave up its claim to the North in the Agreement and that Britain stated the North was entitled to self-determination. It gave those of us in the North that right. That is another aspect that has to be looked at.

I chair the National Beef Association in the North of Ireland. The association has thousands of members throughout Britain and hundreds in the North. I never asked to be put in this position, but I am in it now and have a responsibility to stand up and speak from the heart and about what my head sees in the future for my family, community and country which I love with a passion. I have to speak my mind and I think the UFU feels the same. There is a responsibility on it to look after its members first, regardless of its lobby. It is rather disconcerting to see it sitting on the fence and stating it wants things to stay the way they are when it knew from the start they could not. That is my retort to Gerry.

Mr. John James O'Hara: The one thing that is missing from this argument is real people. We come from rural Leitrim, a beautiful place. It has always been involved in different conflicts. In my house a man was hanged for treason because he had taken in people who were part of the Spanish Armada. There is the home place of Seán MacDermott and the Border along which roads were blown up. There are 277 Border crossings. This is the real thing. Having talked to farmers, if there is a hard border, a real farmer will have to travel 11 miles to get to another part of his or her farm. There are houses that straddle both sides of the Border.

Tourism Ireland is a good example to use to showcase the benefits of an all-island economy. Special status is the only way to go to solve the problems I see. There is a simple but important point. If an American tourist has a visa to enter the European Union, will he or she look for a second to cross the Border?

In July last year the car hire companies came together and added an extra €40 to the cost of car hire to travel across the Border into the North of Ireland. That is fact. They are looking at taking the money now. That is an extra cost to the tourist in Ireland.

Senator Frances Black is doing brilliant work. From a tourism point of view, she is right: having a hard border would make a major difference. We are developing an all-island network and will give the details to the Seanad. It is called *Irish.network* and is a 32-county network. It is about business and community regeneration. Given what we see happening on the ground, it has to come from the people up. It does not matter where we stand in political or community terms. That is why Border communities are working well together. We meet Deputies from different parties and are trying to bring the project along on an all-island, all-party basis and it is working. Listening to us, special status would be major, but the Border needs to be extended to the Irish Sea. That is the only way forward.

Acting Chairman (Senator Joe O'Reilly): Mr. McGenity will have the very last word.

Mr. Damian McGenity: I thank the Acting Chairman. I also thank the Seanad for its invitation and, in particular, taking the time to look at what is a crucial issue - Brexit. In preparation for this meeting I discovered that Senator Mark Daly had done some work on the issue. There are other committees working on it, including the Committee on the Implementation of the Good Friday Agreement and the British-Irish committee which we hope to meet in the future. While we do not quite know how the committee system operates here, we urge arrival at some cross-committee or cross-party consensus on gaining special status and what it might actually mean. As we state in our document, it is fundamental that dialogue opens up between

the Governments in Dublin, Belfast and London. If that tripartite could travel to Brussels with an agreement on the status we are seeking, it could be delivered. That is the message we want to leave the Seanad with today.

Acting Chairman (Senator Joe O'Reilly): I thank my colleagues for their input. I also thank the three delegates for their very detailed and well thought out presentations and their very thorough, fact-based answers to questions. This has been an extremely good session. We are very grateful to the delegates for coming.

In the context of the forthcoming discussions on tourism, members will be interested to know that the CEO of Tourism Ireland will appear before the committee in a few weeks' time.

Sitting suspended at 11.55 a.m and resumed at 12 noon.

Senator Michelle Mulherin took the Chair.

Engagement with Dr. Duncan Morrow

Acting Chairman (Senator Michelle Mulherin): The next item is engagement with Dr. Duncan Morrow, director of community engagement at Ulster University. On behalf of the committee I welcome Dr. Morrow to today's session. We are having a number of engagements today which are focused on relations between the State and Northern Ireland and we would very much welcome his contribution.

Before we begin I will read a note on privilege. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to so do, they are entitled thereafter only to a 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 they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her, or it identifiable.

Dr. Duncan Morrow: I thank the committee for the huge privilege of being asked to come here today. I am speaking in a personal capacity, having spent a long time working on the issue of reconciliation and community relations in Northern Ireland. That is the basis on which I have tried to frame my remarks. I also teach politics in the university, so I have an interest in the consequences and the procedure as to how we go forward. I produced a very long paper of which the second half is essentially irrelevant because it just provides background material. The committee will be glad to know that I will speak to the first part only. I will speak to the first part and then perhaps read a little bit of it, because it is something worth reading into.

The first thing to observe is that we have arrived at the crisis in Northern Ireland with almost no preparation. The issues have emerged after Brexit. Even in the context of the referendum itself, the issues of Northern Ireland largely surfaced through being raised by the Taoiseach and former Prime Ministers. Inside Northern Ireland it was remarkably quiet. The turnout figure was very low at 62%. The lowest turnouts anywhere in the UK were in the constituencies of

Belfast West and Foyle. It was in areas that voted to remain that people were least likely to vote. It has subsequently turned into more of an issue and we have caught up with it. That is a problem because the preparation has been very limited.

The second thing to note is that this issues hits across the pivotal institutions of the Good Friday Agreement. I do not need to labour the point that the Agreement has been the central development in Irish-British relationships over the last 50 years and has framed Northern Irish politics since then. I have written in my submission that “Reconciliation replaced conflict, dialogue and partnership replaced conflict and enmity and mutual accommodation replaced mutual antagonism”. These have been huge, historic shifts and I believe they were understood to be historic in Ireland. The Governments were central to the Agreement and the reason that Brexit matters so much is that anything which divides the purposes of the British and Irish Governments is very serious for Northern Ireland, perhaps even more serious than the people of Northern Ireland take it to be. It is also, perhaps, more serious than the people of the United Kingdom take it to be.

The Governments framed these talks. That is the truth of the matter. The Anglo-Irish agreement process, the framework documents, the negotiation behind these things, the sponsorship of the talks, the mediation in crisis and so on were all sponsored through inter-Governmental partnership, which was a critical element of the talks. There were built on a series of international principles, human rights not being the least of these, but which included treating citizens of the two countries equally within both, the opening of borders and freedom of movement. These principles may have been implicit or explicit but they were nevertheless there.

I have identified at least six dimensions of inter-Governmental issues which seem to be critical and explicit in the Agreement. These dimensions are: the question of citizenship and how it is defined; questions of consent on the Border and of identity and constitutional nationalism; changes to the Irish Constitution; the parity of esteem doctrine which says that Britishness and Irishness will be treated with parity of esteem; the North-South Ministerial Council and the North-South bodies which relate to it; and the British-Irish Council. It strikes me that this is not just a Northern Irish issue but an inter-Governmental issue and that the Good Friday Agreement is touched by anything which changes those things.

While we have had continuous devolution in theory since 2007, we have had at least eight mini-breakdowns all of which have required the mediation of the Governments working together in order to put the Assembly together again in some form or other. The framework of the Good Friday Agreement was that nothing is agreed until everything is agreed. We run the risk that when some things become not agreed, everything becomes not agreed again. It all unravels.

This is where I might read some of my submission. I tried to frame my remarks around three questions. The first was whether any party to the Good Friday Agreement has any formal intention of abandoning it. My view is that it seems certain that for the vast majority of voters and the Government in the UK the decision by the UK to leave the European Union was not taken with any intention of breaking or abandoning the Good Friday Agreement. In some ways this highlights a difference between the received view of the Good Friday Agreement in Great Britain as a largely successful pragmatic compromise specific to Northern Ireland and that on the island of Ireland, where it is understood as a dramatic and historic exercise in constitutional and political innovation between two states, achieved through very delicate compromises and balances. Even the Good Friday Agreement’s detractors on the island of Ireland, and there are many, acknowledge its significance.

For voters and Government in the UK, any impact on Ireland is unintended collateral, but not malicious. We may therefore have to reckon with the fact that the potential implications of the decision to leave the EU for the Good Friday Agreement and hence of Ireland North and South are not fully understood or acknowledged in the UK itself. If this is true, this would mean that there has been no preparation for the extreme delicacy and attention to detail required to renegotiate its fragile balances within a short timeframe. More importantly, the assumption in the UK is that the Good Friday Agreement has to be altered to bring it into line with the prior order issue of Brexit. The assumption in many parts of Ireland is that Brexit must be designed in such a way as to protect the existing commitments of the Good Friday Agreement. This mindset difference is, in and of itself, a significant challenge. All of this is a significant challenge to any concept of reconciliation, which remains the purpose, core and at the heart of what the Agreement was to deliver.

Does the UK's decision to leave the EU create significant problems and challenges for the structures and assumptions on which the Good Friday Agreement is built? The answer is "Yes". The Agreement was only possible because nothing was agreed until everything was agreed. In this context, unilateral action by one signatory inevitably has consequences for the overall ecological balance and sustainability of the entire deal. I have outlined four levels at which I see these challenges arising. The first is at the tacit and implicit level. In terms of the underlying assumptions, unilateral action by one party in a formal partnership has inevitable consequences for other parties. When that party is a government, inevitably, those shocks are greater.

Second, it is clear that the sense of shock and concern about the Good Friday Agreement is not equally recognised even by those who opposed or supported Brexit. Those who support Brexit see that as illegitimate interference in a sovereign decision, with the potential that they would be resented. Those who hold their Irish citizenship as their primary identity or who value the international partnership of the Agreement have exhibited shock, confusion, anger and grief. Above all, there is an underlying feeling of betrayal in that commitments made had been broken without a second thought, and with indifference to the consequences for peace and the sacrifices that were made to get us this far. In a divided society, the most important aspect is that these very different emotional reactions polarise and divide, with huge consequences.

Third, at institutional level, the Good Friday Agreement was above all a new compact on how Britishness and Irishness would relate in Northern Ireland, in Ireland and between these islands. The institution of physical borders, trade borders and cultural borders of any sort is an unanticipated development of huge implications. Given that the Border is now caught up in global economic and political questions, it may not be possible to make accommodations which are first and foremost designed to meet local requirements.

That in turn raises the unique citizenship arrangements in Northern Ireland. The Agreement establishes the birthright of everyone born in Northern Ireland to be British, Irish or both as they may choose, in perpetuity and aside from all questions of constitutional change. Equal treatment and access to goods and services is guaranteed to both. The State must act with parity of esteem to both traditions and is committed to cultural rights. Furthermore, Ireland has a special interest in Northern Ireland and has an established State presence through a Department of Foreign Affairs, DFA, office in Northern Ireland. The President of Ireland makes informal unheralded visits to communities, institutions and events without obstruction. The consequence is that both Britain and Ireland, and through Ireland the European Union, will have an enduring and unique shared interest in the people and territory of Northern Ireland that makes it distinct, and only operable through co-operation and mutuality.

The Good Friday Agreement states that “the functioning of the Assembly and the North-South Ministerial Council are so closely inter-related that the success of each depends on that of the other”. Unsurprisingly, the North-South Ministerial Council was deigned to “consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings”.

Exactly what happens now is unclear. What is certain is that without the agreed North-South Ministerial Council and cross-Border bodies functioning there is no constitutional basis for the Assembly to function. At its most acute, North-South co-operation has been critical in justice, policing and security. The Patten commission explicitly promoted co-operation with the Garda Síochána. The Fresh Start agreement set up a joint task force and there are regular cross-Border actions against crime, including terrorism and smuggling. Those are some of the constitutional issues.

With regard to principles, the European Union is built on a number of core assumptions which might be held to be implicit in the Good Friday Agreement and its development. Some of them are explicit such as the human rights charter. In broad terms, these can be characterised as human rights, the four freedoms, and equality of opportunity. Given that they are implicit rather than explicit, the way in which they interact can be complex, but there can be little doubt that any fundamental derogation from any of them threatens the balance of a divided society.

Technically, the European convention is an instrument of the Council of Europe, not the European Union. Nonetheless, any threat to unilaterally alter the UK’s relationship with the convention and the court would have significant potential ramifications for the Good Friday Agreement where it is a core element in the construction of the institutions. The four freedoms are not explicitly addressed in the Good Friday Agreement. However, it could be argued that their spirit - freedom of movement for labour, capital goods and services - have been the central practical outworking of the Agreement in Ireland. Any change to those freedoms will alter the lived experience of post-Agreement Ireland in a fundamental way, challenging the Agreement less at the level of its technical formulation than at the level of lived experience.

That takes me to the social and economic level. The Agreement has had a profound effect on the social and economic life of Ireland, North and South. Any unintended consequences of Brexit will therefore impact not only on the relationships of sovereign states but on the quality of life of communities and families and on the economic future of the island. While economic and business relationships, including cross-Border enterprises, thriving trade and extensive infrastructure, have taken most of the attention, the social implications for cross-Border commuters, cross-Border families and communities rejoined since the Agreement through programmes such as PEACE and INTERREG should not be overlooked. In addition, any hard land border between the UK and the EU will be placed precisely where the costs of these changes will be greatest and where resistance is most deep rooted and determined. The geography of the Brexit referendum in Northern Ireland matters, posing the question of how any border could be imposed, who would impose it, how tariffs are to be collected and monitored and how immigration is to be controlled.

The search for solutions to these problems is urgent, but it is likely to be time consuming and politically contentious. Furthermore, there is no agreed Northern Ireland position on these matters and, in so far as they touch on issues of identity and constitution, there is unlikely to be one. The fact that the EU has established that these issues are prior to any discussion of trade

must be correct, but the potential for this to cause growing frustration in the UK and among those supportive of Brexit in Northern Ireland should not be underestimated. Furthermore, any prospect that as a result the UK would crash out of the EU is potentially disastrous for Ireland in the context where these issues are still not addressed and there is growing recrimination.

Some steps to be taken suggest themselves in a practical way. The two most serious threats to peace in every divided society and therefore in Northern Ireland are fundamental political uncertainty, which is filled by people taking action, and significant unilateral action in the face of partnership where people believe that it is broken. Brexit raises both of those issues in an unexpectedly vivid form. It is therefore incumbent on all parties to move past the “Keep calm and carry on” phased to the next phase which may be characterised as “Let us now make plans to address these issues before they become unmanageable”. Failure to do that will leave both uncertainty and mutual recrimination in terms of partnership in place, with the potential for it to fester.

By raising the question of Ireland as a prior order issue, the EU should make clear that its priority regarding Ireland is sustaining and growing reconciliation. This could potentially become a shared goal of negotiations if the United Kingdom could also be encouraged to see sharing reconciliation in Ireland as the goal of negotiations rather than simply a question of protecting national trade interests. If reconciliation is the goal, and the protection of reconciliation in Northern Ireland, North and South and between these islands requires flexibility and unique arrangements, then both sides should be encouraged to signal that these will be explored in-depth. The substance of the negotiations should be to identify the potential incompatibilities between the existing treaties and agreements and Brexit; and to establish an agenda for resolving these issues, which includes the negotiators, the Governments and the political parties in Northern Ireland.

There is no consensus in Northern Ireland about Brexit. Any attempt to force one in advance is likely to result in lowest common denominator minimalist agreements leaving all of the contentious issues unaddressed. Northern Ireland must be present in its plurality in the negotiations. The alternative is that any deal will have to be imposed with considerable long-term consequences. The existing frameworks of the Agreement - the North-South bodies, the British-Irish Council and the intergovernmental conference - could be focused on problem solving around this issue. There is also an urgent need for renewed civic voice for solution finding in this situation. One of the key issues to be addressed is the nature of the Border and its management. There is no point anymore in simply saying the Border could run down the Irish Sea or it could be hard or it could be soft; we need to get down to that discussion. The other key issues are the future competences of the three strands within the Good Friday Agreement and their interlockingness because those matter. These are citizenship rights and equality issues that underpin the Good Friday Agreement and which probably need to be reiterated in some form; trade and economic relationships; and the ongoing support for reconciliation, including three areas which seem to still be the past, present and future with the frameworks of dealing with the past, the fresh start and a shared future, in other words, building for a different future.

Acting Chairman (Senator Michelle Mulherin): I thank Dr. Morrow.

Senator Mark Daly: I offer apologies because I must leave the meeting at 12.30 p.m., but I will read the transcript. Dr. Morrow talks of the special status for Northern Ireland, but I did not get his opening remarks. Many have raised the issue. Does the Good Friday Agreement have to be renegotiated in full or in part as a result of Brexit? With regard to the special status of Northern Ireland, we have brought it up here on previous occasions, and I will repeat again

what has been said about the precedent. Has Dr. Morrow done any research into the special status of East Germany, and its citizens, which had special status within the EU because of its unique relationship with West Germany, which was in the European Economic Community at the time? We should look to the precedent of Cyprus and northern Cyprus, which is currently under negotiations between the UN, the EU and - ironically - Britain with regard to Cypriot reunification. Consider those citizens in northern Cyprus who are treated as EU citizens even though they live in the part of Cyprus not under the control of the government of southern Cyprus. They are citizens of an EU country, which is the whole of Cyprus. Has Dr. Morrow researched the precedents for all of that in respect of citizenship and how Northern Ireland changed people's ability to be Irish and British citizens or both and how post-Brexit they are going to be EU citizens or non-EU citizens? In making the case for the special status of Northern Ireland and most important the citizens of Northern Ireland this committee must give recommendations using precedents or other examples that have already been set.

Senator Joe O'Reilly: I welcome Dr. Morrow. I have a question that may stray into territory in which our esteemed colleague Senator McDowell would have much expertise. The Good Friday Agreement is enshrined in international law and it has standing within international law. Is there an option for the Government to challenge any elements of an agreement that would threaten, or be in contravention of, the Good Friday Agreement in international law? Would Dr. Morrow see potential there in a doomsday scenario if we needed to do that? In a hierarchy of rights would the Good Friday Agreement take precedence over a potential settlement that might arise in Mr. Michel Barnier's negotiations?

Senator Niall Ó Donnghaile: I thank Dr. Morrow for the comprehensive paper and presentation. Senator O'Reilly has raised an interesting point. It is one I have tried to tease out in various fora regarding the primacy of the Good Friday Agreement and the unilateral move from the British side that - to quote the European Parliament's Constitutional Affairs Committee - "altered" the Good Friday Agreement. I may be on to a loser here, since I have not heard Senator McDowell express an opinion on this, but given the legal status of it should there be cause for concern that this unilateral move does not just potentially alter the Good Friday Agreement but seeks, in a way, to trump or precede the votes taken North and South? Does the Irish State have cause for concern that elements of the Good Friday Agreement, of which it is co-guarantor and which people have endorsed through referenda, is under threat of alteration? Is there merit within that argument? Dr. Morrow has said in his paper that an arrangement almost exists already within the Good Friday Agreement for special status. This may be arguable within a political context but within the broader economic and social context I am not so sure that I am convinced of that just yet. Does a referendum in Britain effectively trump a referendum that was held here on the Good Friday Agreement?

Senator Paul Daly: I just want to have Dr. Morrow's opinion and there are no right or wrong answers here, which is the safety net for us all when it comes to making comment. How high up are the topics of the Good Friday Agreement, Northern Ireland and the old Irish scenario in Theresa May's English priority list for this situation? It is as if they are making things up as they go along. The Brexit referendum result had not been perceived and no thought had been put in to it prior to the referendum taking place. The UK has now inherited a quagmire of potential problems, issues and scenarios going forward with the Brexit negotiations. I believe that if there was a one to one with Theresa May one would hear a lot of points, problems and issues before the Good Friday Agreement, Northern Ireland or Ireland gets a mention. What is Dr. Morrow's opinion on this? From the UK's perspective, I believe that at the moment a tripartite or even sitting down to renegotiate the Good Friday Agreement is a non-runner. Ireland is

negotiating as one of 27 member states and this is the end of the story. We are not allowed to go and negotiate individually. Northern Ireland is part of the United Kingdom's negotiations so what input would the North have?

Senator Niall Ó Donnghaile: I wanted to make one further brief point. An element of the Good Friday Agreement agrees that there would be no change in the constitutional status unless it is consented to by the people. Does Brexit poses a threat to the constitutional arrangements that exist under the Good Friday Agreement if it is altered?

Senator Michael McDowell: Since I am coming under a bit of pressure to say something I should throw in a couple of my own thoughts and maybe Dr. Morrow would address them.

The question of the primacy of the Good Friday Agreement is primacy over what. At the moment it has the status of an international treaty, it is registered in the UN and is accepted in The Hague, the EU has endorsed it and so on. It has that status but we are now dealing with an exercise by the UK of a right that was given under the Lisbon treaty to opt out of the European Union. Ireland was party to that treaty also. We agreed that every member state had the right to leave. We did not say to the United Kingdom: "Sorry, you do not have a right to leave unless you get our consent." There is a complexity in that regard.

The second interesting point is the Good Friday Agreement acknowledges that both Governments recognise it is the right of a majority of people in Northern Ireland to determine one question only; whether the North remains in the UK or - with a single binary choice - becomes part of a united Ireland. It never said that Northern Ireland has the right to join the United States of America or to go in or out of the European Union. The choice that is guaranteed to the people of Northern Ireland under the Good Friday Agreement is, as I see it, never a right for them to say they are sick of the European Union and they are getting out or that they want to join with Iceland or Scotland or whatever. It is a binary choice. It is not an absolute constitutional autonomy which is given to them.

We have to remember that Mrs. Theresa May was a lukewarm supporter of the remain campaign. The previous Prime Minister resigned when he lost the referendum. Mrs. May formed a Government to implement the people's wishes in Britain. We cannot regard her as the person who has torn up the Good Friday Agreement. I think it is a negative view of her and that the pro-Brexit lobby was entirely indifferent to and negligent about the Irish issue. She was not part of it. She is now trying to pick up the pieces and to keep the Conservative coalition together until she gets her overall majority, in which case she will have a bit more elbow-room and a mandate to reach compromises. As I see it - just looking at the good things at the moment - the maintenance of the Good Friday Agreement is stated to be a British priority. It is also stated to be an EU and an Irish priority. We should not get up in a heap and say that destroying it is somebody's priority.

Dr. Duncan Morrow: I agree.

Senator Michael McDowell: In such circumstances, the first issue I raised relates to what the Good Friday Agreement has primacy over. The second is that our aim is to reconcile the inevitable Brexit with the Good Friday Agreement by having as soft an impact as us possible on that agreement and its underlying values, as mentioned in Dr. Morrow's papers. I hope I am not being too controversial.

Dr. Duncan Morrow: Not at all.

Senator Frances Black: I thank Dr. Morrow for his presentation. I totally agree that the key issues regarding the Agreement must include the nature of the Border, its management and the future competences of the three strands within the Agreement - citizenship, rights and equality. The latter are so important, as are trade, economic relations and support for reconciliation. In Dr. Morrow's experience, what is the energy from Westminster and what is the energy from the Irish Government? Coming back to the priority, because this is so important, particularly for Ireland in general, what is Dr. Morrow's experience of it? In a perfect situation, what does he feel should really be focused on today? What are the beginning stages? What should be worked on at present? What is the timescale in all of that? We do not have much time, which is a bit worrying.

Dr. Duncan Morrow: I hope I answer all the questions. If I miss one, Senators can remind me. In some ways, the questions run through each other.

The risk to the Agreement structure is, in my view, not that anybody has intended to break it - the Senator is right and everybody is very aware of it - but that it seems to be inversely proportional to the problem. In that context, I go back to a children's game, Jenga, whereby if one pulls out one strut from somewhere in the middle of the stack, the whole lot collapses on the table. That is my fear. It is not on the level that anybody has a plan; it is that, by pulling this out, one sets off a dynamic.

On the energies and priorities, it is crystal clear that it was not a priority for London. The core priority is renegotiating the relationship with Brussels, and the immigration and trade issues that arise from that are London's absolute priority. The difficulty is that the Northern Ireland settlement was based on a totally different principle. The Ireland settlement was based on the principle that getting control over borders was done through international co-operation, not by putting up big fences. This principle is to get control over borders by putting up big fences. That would really be running a coach and four through the whole structure of what the Good Friday Agreement is about. That is what we are wrestling with here. How do we actually deal with that?

Senator Mark Daly asked if the Agreement has to be renegotiated. It is very difficult to put the challenge we face in particular terms. However, if we wish to retain the core principles of the Good Friday Agreement, we are going to have to do much detailed negotiation about how those principles are adjusted for Brexit. If we do not do the detailed negotiation about those things, then Brexit will unravel the principles of the Good Friday Agreement. That is the problem. It is urgent that we sit round a table and start dealing with these matters in detail. The John Hume doctrine of all those years ago was that nothing was agreed until everything was agreed. All those strands and different dimensions were in an overall package. Nobody got everything that he or she wanted, but everybody got enough to allow matters to move forward. If the Border is taken out of the equation, it strikes me that all the other balances are unpicked. I am asked to speak about reconciliation here. If one wants to protect it, we need to really look at this because the potential for creating much offence-giving resentment on either side of this is pretty large.

Somebody talked about the differing energies in the different capitals. One of the most striking things to me personally, as I go around the North, is the difference in energy between nationalists and unionists, or between remainers and leavers. Many people who are instinctively unionist seem to think that we just need to get on with this, move ahead and get it done. On the other side are the people who really see this as the difficulty it is and are alarmed about what it means in practice - potentially a hard Border and so on.

To go back to the geography of it, the hard Border seems to me to be a fiction in practice, unless somebody is going to put in place large fences and do something about imposing it, in which case we do not have either a hard or soft Border but, rather, a theoretical frontier that is a non-reality. I do not know what the context of that is - I am starting to think of a lawless space in the middle of this island - but the consequence is something to wrestle with, or else one can go back to saying that we will have a hard Border. We have to assume that everybody in the places where the hard Border is imposed will like that and will not seek to resist it. I think that is a difficult proposition in light of our history.

It is not about being alarmist; it is about getting past the nicety of staying calm and starting to really identify the very specific practical problems which have to be looked at here, which is why I said there are five things. The reason I have not come up with a proposal on them is that everything we learned about negotiation here is that one names the heads of agreement and then sits round the frames and tries to fill them in such a way that one can accommodate people in a meaningful way. I do not know whether London has the time, energy or effort to do it. It certainly is not an attack on Mrs. May or saying that she has an agenda to break this down. The consequences of neglect for us are that dynamics start to emerge which, for example, make the assembly in the North and the North-South bodies non-viable and raise various other aspects of the Border question. That starts to amount to a serious set of issues.

Does the Agreement have to be renegotiated? It is probably not the proper term, but we have to talk about how the Agreement is read into the current circumstances, and that will look very like negotiation. I do not know whether there has to be another signatory on the other end. I am certainly not proposing that language of renegotiation but, to be clear, we need to look at that. That might be something that needs to be done. That question needs to be looked at in detail and we need to ask whether it can be done within the framework of the existing agreements or not. If it can, it should be; and if it cannot, it needs to be acknowledged and we need to move on one way or the other. That would be an important piece of work to do. Can the Good Friday Agreement and its principles be retained within the current frameworks after Brexit or not? I have not done that work.

While I am open to contradiction here, to my knowledge the citizenship arrangements in the Good Friday Agreement are globally unique. We have the most open citizenship arrangement anywhere in the world as far as I know. The formulation of it is that it is the birth right of everybody born in Northern Ireland to be British, Irish or both as they may choose. In other words we can shift between them and furthermore that would be maintained in any further jurisdiction. There is an ongoing inter-penetration of Britishness and Irishness in Northern Ireland which will not stop and which is territorially defined by the Six Counties. That means it is special. I do not know what the language is. Maybe we have to find another language that is not special. That citizenship arrangement does not apply to any other territory on the island of Ireland or the island of Great Britain. That makes it different. There is also the right to shift which Ireland got established through the negotiations such that if Northern Ireland becomes part of Ireland it will be integrated immediately as a member of the European Union. That also makes it unique.

It strikes me that to a certain extent we are dancing on the head of a pin about the specialness issue. We can start to talk about where it is special and where it is not special, but it is certainly different. That is my starting point. It does not really help in a divided society to try to find solutions that do not take account of that difference. The obvious alternative is to have a referendum and have a straightforward discussion on the Constitution one way or another, but that will still not solve the issue of this inter-penetration.

On the specialness of this, I am stuck between my wish and my clarity that this has to be done if one wants a way out of it, and my - if not despair - certainly concern that it is not a priority. So I do not know if it is just a case that nothing will go or whether that then turns into a slow car crash. However, the previous safety net of working on reconciliation, joint institutions and the governments resolving problems when they reached a certain level of escalation are no longer certain to me, as someone living in the North. That creates uncertainty. Uncertainty in ethnically divided societies is the biggest single factor that drives people into polarity. The second one is the loss of trust between the key partners; that is the unilateralism one.

Structurally, looking at this strictly academically, both of those conditions now apply; we have uncertainty and we have a degree of difference because, as the Senator said, Ireland is not even negotiating its own deal but is negotiating it through the European Union. We have a degree of unilateralism and resentment on both sides. I am sure all members of the committee watched the British reaction to Mr. Juncker's speech, which was pretty negative in suggesting that this will become a complicated and difficult negotiation.

I am simply saying we are special and we need attention. While Northern Ireland is not the United Kingdom's priority, one of its priorities for the past 50 years has been not to get bogged down in Northern Ireland. We are heading to a place where we may end up getting bogged down in Northern Ireland. It is incumbent on me to say that. We need to put in place something to deal with that at the level of seriousness it had. I do not think we are manufacturing this. We are actually saying that we ought to do this now because otherwise it will take far longer than it needs to.

On the status issue, as Senator McDowell said, it is not clear that there is a simple legal challenge there. There are many different complex legal Acts, the Lisbon treaty being one. The United Kingdom Supreme Court determined that Brexit could proceed, but it is quite possible that as the negotiations come forward there are certain kinds of Brexit that actually contradict all of those laws and make it impossible. I think we are still stuck within a kind of a case-law situation and we do not know.

Senator Michael McDowell: What court will hear the case?

Dr. Duncan Morrow: That is another thing, to which court would it be taken? Nevertheless we know legal issues are certainly engaged. How that happens will depend on the type of Brexit.

Ireland is now upfront; the European Union has said it is upfront. After the election we will need to see what negotiating position the United Kingdom takes and what its approach to this will be. If it accepts that Ireland is upfront, much of this may become possible to deal with it. If the United Kingdom rejects that, then paradoxically the Northern Ireland issue will move up the agenda rather than go down the agenda, but it will do so on an emotional basis and it will become more complicated. It may be that cool heads will prevail and we will start to move on trying to get some detail on this.

However, if we get the alternative scenario where two years into the process there is no budget deal and we are facing the crash-out doomsday scenario, then Northern Ireland really is in the middle of quite a difficult situation because it is about imposing hard borders where there is no agreement. It is about a series of divisions inside Northern Ireland which are reopening. Those are significant for all of us because we know what that can mean. I am not here wishing it, threatening it or even suggesting it is inevitable. However, I am saying that we know it is

possible and we need to do everything we can to ensure we are going in the still direction that we have.

Acting Chairman (Senator Michelle Mulherin): I thank Dr. Morrow for engaging with the committee. He has given us considerable food for thought. This is an ongoing process until we produce a report. If he has any other feedback or if anything occurs, he should feel free to provide that to the committee for our consideration.

Sitting suspended at 12.50 p.m. and resumed at 2 p.m.

Senator Neale Richmond took the Chair.

Engagement with Ms Gina McIntyre

Chairman: I welcome Ms Gina McIntyre, chief executive, Special EU Programmes Body, to this engagement. As a committee, we are anxious to hear what solutions, if any, she has to offer. Many other witnesses have mentioned money. We hope Ms McIntyre has lots of answers.

Before we begin, Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. By virtue of section 17(2)(f) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to so do, they are entitled thereafter only to a 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 they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her, or it identifiable.

I now invite Ms McIntyre to make her opening statement.

Ms Gina McIntyre: I am delighted to have the opportunity to be involved in this discussion exploring potential solutions to the challenges we are facing following the UK's withdrawal from the EU. I am accompanied today by Mr. John Greer, director with responsibility for assessing applications and monitoring projects. I hope that he will get an opportunity later to outline some details of the funded projects and their activities at this time. We always welcome the opportunity to report on the progress and impact of our cross-border EU funding programmes, PEACE IV and INTERREG VA, which are worth €0.5 billion and will run until 2022. It is a good news story in terms of these programmes. I am sure Members are familiar with them. In line with the topic to be addressed here today, I will confine my comments to the context of those EU funding programmes.

It is important to mention at the outset the significance the EU funding has had in the region over the last 20 years. Funding has played a crucial role in addressing social, economic and cross-border challenges and cannot be underestimated. The value alone of the funding does not reflect the impact it has had. The impact of Brexit and possible loss of funding is a matter of great concern to many hundreds of thousands of people who are directly and indirectly benefiting from the PEACE and INTERREG programmes across the region. It is an issue that has come up many times in conversation over the last few months. I draw the attention of Members

to annex 1 attached to my statement which provides some historic overview, including a number of the most significant benefits from both programmes.

I would like now to briefly outline a number of the challenges that we have identified in relation to managing the EU funding in the region. The most significant challenge we face is the uncertainty surrounding future funding, post-2022, when the UK leaves the EU. However, with regard to current funding programmes, we have also identified some practical challenges over the next few years. The funding for the current programmes has been, as much as possible, Brexit-proofed in relation to the UK's share of the funding within the programmes. This was provided by way of an assurance from the Treasury in October last. All projects that are approved before an exit date will have their funding assured. We are in the business of ensuring that as many projects as possible will be funded before that time. The practical implications of the UK leaving the EU on the activity delivered by the projects is as yet uncertain but we will continue to monitor that into the future. We will be running a series of evaluations and engagements with projects and stakeholders to ensure that the activity they have planned to deliver and are undertaking is not hindered in any way at the time of Brexit. These stakeholders also had plans and ambitions for future activity post the funding of their projects and we will also be looking at the how Brexit might impact in that regard.

The European Commission undertook a research project across all European borders to gather evidence relating to funding of cross-border programmes. It identified 37 common obstacles, which Members will be pleased to hear I do not intend to list now, summarised into four key areas. In terms of what could help address some of those obstacles, the research recommended that the best way of overcoming the obstacles that would have the most productive impact in the region was in the areas of competitiveness, such as product innovation and development of cultural and industrial activities and social and human capital, such as education and training activities. I am pleased to report that our programmes will run up to 2022, focused on those areas.

Members will see from the INTERREG VA programme that it is a cross-Border programme worth €283 million, comprising four core objectives in the areas of research and innovation, which is about building business industry relevant research and innovation capacity across the region on a cross-Border basis and will involve engagement with 1,400 SMEs and micro-businesses, aimed at developing their new products and processes in tradeable services. There are environmental initiatives in the areas of protected habitats, water management and sustainable transport. There is also a significant amount of money, €63 million, in cross-Border health and social care, which will target more than 30,000 people.

The PEACE IV programme is worth over €270 million. I imagine that most of you are aware of the PEACE programme and its objectives. It was the EU assistance to help address the peace and reconciliation needs of the region. The Irish Government played a pivotal role in securing this PEACE IV programme, which we are now implementing.

There are four core themes in that programme the first of which is shared education, which involves direct, sustained, curriculum-based contact between pupils and teachers from all backgrounds on a cross-Border basis with the aim of promoting good relations. Second, €37 million was allocated directly to the area of children and young people in trying to ensure that we improve the capacity of those young people to have positive and effective relationships with others from different backgrounds. Third, shared spaces and capital involves eight capital projects with the objective of creating a more cohesive society and changing attitudes and behaviours in the area. This also covers victims and survivors. We have €17 million allocated to this theme

and it will add investment to cross-Border health and well-being services that develop proven expertise within the region. Initiatives to address local needs will be delivered directly through local councils and almost a third of the programme has been directly allocated to the local authorities across Northern Ireland and the Border region. They all have individual plans and allocations, addressing the areas of shared spaces and services, children and young people and building positive relations. Finally, the fourth core theme is the building of positive relations at a regional level. This objective is to support groups impacted by the legacy of the conflict and this support will, we hope, be used to fund up to 20 projects at regional level.

There is a high level of interest in these programmes. The INTERREG programme is about 90% committed at this stage and the letters of offer have been issued. The PEACE programme is about 45% committed. We are also assessing all aspects of the PEACE programme with the view to having that programme 90% to 100% committed by the end of September.

One possible solution to the challenges surrounding the loss of EU funding is to take every opportunity to obtain access to EU cross-Border programmes in the future. The EU, the Irish Government and the UK Government have all put Northern Ireland and Border issues at the top of their agenda. Each has reaffirmed its commitment to safeguarding the peace process and the Good Friday Agreement. There is good will for solutions to be found and we in SEUPB are in a unique position enshrined in the Good Friday Agreement. We have much experience of working at intergovernmental, regional and local level, developing programmes and looking at the needs of the region. With regard to the EU itself, there are precedents across the Union of programmes that currently involve a non-EU country. The committee will all have heard about Norway and Sweden. There are also other programmes ranging from Russia to Andorra and for the accession countries, so the EU already has that facility in place. It also has tools in place such as integrated investment tools for regional policy. We therefore believe there are opportunities and precedents in place and consequently, if there is political will and a financial way, there are opportunities we should be seizing at this moment.

Some reasons non-EU countries get involved with EU countries are really quite straightforward. For some it has to do with the geography of the border region and their wish for integrated development between the neighbouring lands. The programmes become a valued part of the regional policy approaches and create access to centres of innovation, such as universities, which allow for exchange of knowledge. While those precedents exist, however, I believe that Northern Ireland and the Border region of Ireland require a unique, bespoke solution because much of that cross-Border work has been under way for 20 years. As we are now going into a different situation, it is important that we have our own bespoke and unique solution. The PEACE programme was itself a unique solution because there is no other PEACE programme in the whole of Europe. We have the precedent and we should seize that opportunity. Most of the sectors that are going to be affected by Brexit are actually already included in PEACE and INTERREG. We cover a wide range of sectors. Future programmes should include the best of those aspects - all of those aspects - because one cannot have a peace programme without the harder economic aspects the INTERREG programme brings. The programme should have the best of both to help create a Brexit bridge across that Border. Timing is critical, however, because the European Commission is already working on its future, post-2020 programmes. As it is also looking at the regulations and how they will be modified, timing is critical to ensure that nothing is done to those regulations or in the drafting of those future programmes that could exclude an opportunity that we may have in the future.

Senator Michael McDowell: Ms Gina McIntyre stated that timing is of the essence and

that her organisation is already working on it. Had work been done on cross-Border projects and funding prior to Brexit, prior to the referendum result? In other words, was there work in train on the next programme that was then interrupted?

Senator Gerard P. Craughwell: We had a group down here last week from Co-operation Ireland. They were unionist community workers in the main and they argued that they have been left behind and have not benefitted in any way from the peace process or from anything else. Is that because they or their communities have not been proactive enough or where does Ms McIntyre see the problem? I would be interested in her comments because I believe we have to bring all of the communities together, particularly as we are looking at Ireland becoming an economic area. Everybody has to be comfortable in their skin with that notion and nobody has to feel threatened. That might have little to do with Brexit in the short term but long-term it will have an impact on how we, as two parts of the island, jointly try to tackle the problems.

Second, an organisation like the SEUPB is constantly planning for the future and developing new programmes. Has the organisation now reached a cliff edge, unsure of where it is going after 2020? I understand that funding is guaranteed to 2020 but certainly, based on the visitors we have had here from the House of Commons and the House of Lords, there will be no money coming from Westminster towards anything unless some sort of new bilateral agreement is put in place. Has the SEUPB just stopped dead in its tracks and said what we have right now we hold?

Senator Joe O'Reilly: I join in welcoming the witnesses and note that what their organisation does is very important and impressive. I was personally involved with the all-Ireland scouting centre at Castle Saunderson and helped those involved to prepare and fight their case to get SEUPB funding. They were very successful. I visited it recently and the output and product there, what it has done, is impressive. It is an enormous facility with huge implications for community building and for young people's lives. It is a great example of what the SEUPB does. The whole list there is very impressive.

A couple of things struck me. Did the SEUPB do much of a marketing job during the campaign on what it does? Was there much of a focus on its work? The organisation goes under the radar a bit and when it is received it is taken for granted. Is there a deficit there in the marketing of the organisation's project and product in the popular sense? Crystal-ball gazing is not in the witnesses' brief and neither they nor any of us know what is likely to happen post Brexit when it comes to replacing the organisation. Have the witnesses a view on that or on what will happen? It will be a huge loss if the SEUPB and these kind of activities are not replaced.

Senator Mark Daly: I thank the witnesses for their attendance. This is one of the key issues in respect of the PEACE IV funding. What we are looking for is the precedent of the Norway-Sweden model, particularly a list of those funding schemes involving EU and non-EU members, which we can include in our submission. We will continue with the PEACE funding and the Government is making a strong case on that. We are lucky that Mr. Barnier was involved in that in his previous post and therefore understands its importance. The scale of the INTERREG programmes - 3,552 businesses helped in the 2007 to 2013 programme - makes stark what will be lost if an alternative is not found. The EU has challenged us to come up with an alternative and to demonstrate that Ireland is a special case. We have to make those special cases. The precedent is there with those cross-border agreements between an EU state and a non-EU state. As INTERREG applies to the EU only, we therefore need to create a special purpose vehicle to replace it. The PEACE funding is unique to Northern Ireland but there are also other unique EU and non-EU funding programmes that we might have to use as an example to

replace the INTERREG programme.

The Chair and this committee will be making recommendations but they must be very specific. If we ask the EU to continue the INTERREG programme in Northern Ireland, it will not work. We need to be able to say that we understand that INTERREG cannot continue but that to continue with the peace process we need to continue with INTERREG and follow the funding models and programmes that are in place elsewhere. The witnesses are the experts on this and we need their assistance. What are the other EU and non-EU states doing to programme and fund projects?

Ms Gina McIntyre: We have all the information on the list of programmes involving a non-EU country. They are programmes within the INTERREG family. There are a suite of programmes, INTERREG A, B and C. There are transnational programmes and we have a piece of research on that which details a broad list of the programmes that exist. We can certainly provide a written document to include some of that information. The Norway-Sweden and Swiss-Italian programmes are examples. There are several programmes and we can provide that for the committee.

The way they operate is that the member state that stays within the EU gets its ERDF element from the EU in the same way that any other programme does. The part for the country that is not in the EU comes from its national budget and it is matched.

Senator Mark Daly: Therein lies the rub.

Ms Gina McIntyre: Yes. That is how the INTERREG programmes work. The precedent is there.

Senator Mark Daly: We are looking for solutions. A draft proposal contained in a report on Brexit by the Joint Committee on the Implementation of the Good Friday Agreement, of which I am a member, is that all current and future EU programmes, in the absence of an agreement in the alternative, would be funded by Her Majesty's Treasury. While that is also what Ms McIntyre is talking about, in that instance we would require details on the Italian-Swiss programme, that is, the breakdown of how much the EU country contributes and how much the non-EU country contributes to the same programme. It is important for the work of this committee that we do not talk about the theory of INTERREG continuing but how it works in practice in other countries.

Ms Gina McIntyre: We have the detail on how it works in practice and we can send a report to the committee on that which can be included.

Senator Mark Daly: It is hard to break this down because it is multi-annual but in terms of INTERREG, how much would the British Treasury have to give to continue to fund INTERREG post Brexit? Is the witness able to calculate that figure?

Ms Gina McIntyre: It would depend on the nature of the programme because it would depend on the activities contemplated.

Senator Mark Daly: How did it work historically? For example, how did it work during INTERREG from 2007 to 2013?

Ms Gina McIntyre: The breakdown is 60:40 at present. The UK side has paid 60% of the current INTERREG programme while 40% comes from the Irish side. The EU funds are in-

cluded in each of those. Were the UK willing to proceed with future programmes, we obviously would be seeking that it contributed the same money.

Senator Mark Daly: The funding issue is very important and will be a core part of the discussions. The EU has said that Ireland must be sorted. It would be very helpful if, in the historic example of the previous funding programme broken down on the 60:40 basis, we could arrive at a figure. This would enable us to say that were this programme replicated post Brexit, this is what the cost would be to the Irish taxpayer, this is what the EU would contribute and this is what the British taxpayer would contribute. That is essential to our work as we do not wish to merely state that programmes should continue. We need hard numbers. The EU wants hard numbers in order to be able to say to Britain, when negotiating the divorce settlement, that certain things have to continue. If that could be supplied it would be very helpful.

Ms Gina McIntyre: We can certainly supply the breakdown from the previous programming period but the budget negotiations within the EU are going to be very difficult going forward. The EU budget reflects what Ireland will get out of it. We will not be able to work out how much finance the UK might be willing to put in to match a programme until all those pieces are in place or if it will contribute anything. It will be the UK's choice if it is going to contribute anything. Those figures are available and we will send them to the committee.

We find that there is a huge interest in these programmes. We are well oversubscribed in the areas of funding that we have delivered and to which we are currently making awards. I do not believe that there was any issue about marketing the programmes.

Mr. John McCandless: I am the communications manager for the SEUPB. The Castle Saunderson project is an excellent project. We were involved in its launch with President Michael D. Higgins a couple of years ago and we got very good coverage for that. It is sometimes difficult to communicate the work that we do. We work with the projects themselves to help them develop what they are doing in terms of communications and marketing and they all have a separate budget for that. We do the marketing and communications and the projects do that as well.

We recently carried out a stakeholder's survey to look in to awareness of the programmes within Northern Ireland, the Border region of Ireland and in western Scotland. Awareness is higher in the Border region than it is in Northern Ireland. It is projects such as Castle Saunderson, the effects of which permeate through the local communities, which help generate awareness of what the EU funding is doing. We can always do more; that is a given. Perhaps the Senators here today would like to come and see some of the projects and help us to communicate the benefits of the work that is being done through PEACE and INTERREG.

Ms Gina McIntyre: Mr. Greer might talk about the level of interest in the projects and how the public have responded to the workshops.

Mr. John Greer: To return to one of the earlier questions on the amount of work done prior to the Brexit vote, we had begun work on the INTERREG programme and on a call for proposals under our specific objective 1.2. We had received a number of applications under that call. Unfortunately for us the UK's decision to leave the European Union happened at a very early stage of the programmes. Fortunately, it has not had a significant impact. Interest in the programmes is phenomenal. Typically, any call for proposals we put out receives requests for funding in excess of three or four times what we have available. Unfortunately for the applicants, there is a high rate of attrition for those requests but it clearly demonstrates a great

appetite for the work we are doing and recognition of the programme's place.

Ms Gina McIntyre: Mr. Greer will give an example of one of the projects we fund under INTERREG.

Mr. John Greer: Ms McIntyre touched on the fact that the programmes have a wide-ranging impact, which are the ambitions set down by the Commission. We are output-based, so the Commission has a set of outputs the projects have to achieve but I think we deliver far more than that. One project we are funding under the health call is being led by the Royal National Institute of Blind People, RNIB, and is essentially connecting people who are blind in rural communities with one other. This both provides connection for the people on the ground who are suffering blindness and provides bridges with the community groups that are acting as a conduit to put these people together. The important point is that it has a very dramatic effect on their lives on a day-to-day basis. It changed their lives both for the duration of the programme and for a period thereafter.

One of the bigger things is the projects in INTERREG that are focused on research and innovation. These have very singular outputs looking at the number of PhDs that are produced. Their impact is far wider than that because we are funding investments in creating superclusters round renewable energy. They are providing opportunities to create PhD students, as well as opportunities for employment. They are building an intellectual property, IP, base in Northern Ireland and the Republic. That has massive impacts in respect of employment opportunities and the attractiveness of the region for foreign direct investment. The commercialisation of the intellectual property has real-world effects on developing solutions that people will use on a daily basis. One of our projects, the border and regions airway training hub, BREATH, project is led by the Dundalk Institute of Technology and is focusing on the area of chronic obstructive pulmonary disease, COPD. COPD has a much higher rate of prevalence in Ireland and BREATH is developing solutions to address that illness and then commercialising them. Not only is the project providing research opportunities, investing in the intellectual property base and providing jobs for people, but it actually is addressing a condition that is specifically prevalent within our country.

Ms Gina McIntyre: We were not working on future programmes at the time of the referendum because as Mr. Greer alluded to, we were working on getting our current programmes up and running and all the letters of offer approved. Nothing was stalled on that work. We have already started looking to the future and emerging technologies programmes because it is led very much from the Commission's objectives and policies. We look at that and we have a great story to tell with those current programmes. Great work goes on there. There is no shortage of people wanting these programme in the future. We have examples of the types of projects we are doing. People may not have realised that the EU was funding cross-Border programmes but they are excellent.

On the comments about the unionist community, as the PEACE programme is rolling out at present, the local authority action plans are starting in their action to get mobilised. The projects will be mobilised and people will start to see the impact of the PEACE programme on the ground in the next year. There has been a dearth for the past two years, from the end of the programme to the one that is ready to go. They may see the impact of that on the ground. We have done a great deal of work in the past ten years in engaging with the unionist community to bring them into the programme and to ensure they were getting an allocation from the programme. I believe one aspect of the failure to engage was a low capacity within that community to apply for the grants but I would like to think that has been addressed during the years. We certainly

have done a great deal of work on that issue. The people who came before the committee might see the impact over the next few months, which will change their attitude.

We are constantly developing new programmes. We are constantly looking at where the gaps are. As we go through these programmes, we will continue to look at revising them if there is funding to do so. We are always looking to the future and we will continue to do so. We think there is a very positive response from both the EU, the UK and Ireland on the impact of these programmes and the challenges we will face. We are very optimistic there will be future programmes. We know the Irish Government are very committed to finding a way forward.

Chairman: I thank Ms McIntyre sincerely for that engagement. I thank everybody from the Special EU Programmes Body for coming before us.

This is an open process so if there is something that comes across their desk that witnesses would like to feed into the committee's work, we would appreciate hearing from them. We will be continuing for a number of weeks and the more information we have, the better the report and the better recommendations we can make to Commissioner Barnier and to the Government.

We thank Ms McIntyre and her team and wish them the very best of luck in the coming months.

Ms Gina McIntyre: I thank the Chairman.

Chairman: We will suspend to allow the next witness take his place.

Sitting suspended at 3.05 p.m. and resumed at 3.07 p.m.

Engagement with Professor Christopher McCrudden

Chairman: I welcome Professor Christopher McCrudden to the final session of a very productive day's work on North-South relations. We are delighted to be able to glean from his expertise and we will have a full engagement after his opening remarks. Before I invite Professor McCrudden to make his opening statement, he might bear with me as I read the notice on privilege. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. By virtue of section 17(2)(f) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to do so, they are entitled thereafter only to a 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 they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her, or it identifiable.

I now invite Professor McCrudden to make his opening remarks.

Professor Christopher McCrudden: I thank the Chairman and Senators. My name is Christopher McCrudden. I am Professor of Human Rights and Equality Law at Queen's University, Belfast and William W. Cook Global Professor of Law at the University of Michigan

Law School. Until 2011, I was Professor of Human Rights at Oxford University and I am a fellow of the British Academy. I am also a practising barrister at both the London and Belfast bars and in that capacity, I was junior counsel in one of the cases from Northern Ireland that was heard by the UK Supreme Court in December concerning Brexit. If there are any questions on that litigation I will be happy to try to answer them but I will not be discussing that case specifically unless asked to do so.

I thank the Chairman for the invitation to give evidence to this Seanad committee. I am honoured to have been invited. It is my first time and I hope it may not be the last. I congratulate the Chairman on his initiative in holding evidence sessions regarding the implications of Brexit for Northern Ireland. I am conscious as the Chairman said that it has been a busy day. I shall not therefore make a lengthy statement.

I wish to make seven brief points by way of introduction. First, I believed before the referendum - nothing that I have seen since has led me to change my mind - that Brexit is likely to be a disaster for Northern Ireland if the adverse consequences are not substantially mitigated. I congratulate this committee for holding evidence sessions because it wants to focus precisely on the mitigation of adverse consequences. I now know pretty much what those problems are, not least in areas that affect me personally such as higher education. We are sure to be hit from time to time with the discovery of yet another unintended consequence. At least the broad outlines of what the problems will be are now clear. In broad terms, there is a significant degree of consensus among the parties in Northern Ireland, and between Dublin and London, about the wish list relating to Northern Ireland that should be presented in the forthcoming negotiations. I think that will become even clearer after the general election when the agreement that appeared to be emerging between the major parties in Northern Ireland is published. The basic aim of policy for the future seems to be to preserve as much of the *status quo* as possible.

There now appears to be broad consensus among the EU 27 - this is also reflected in the British Government's negotiating position - that there are unique circumstances that apply to Northern Ireland. I think the inclusion of this language was a major achievement of Irish diplomacy. It really does not concern me whether the phrase that is used is "special relationship", "special status" or "unique circumstances". I realise that there are political consequences, but I do not think the exact phrase matters all that much in broad terms. The committee will be aware of the important and critical distinction between a special status within the EU and a special status more broadly and not necessarily within the EU. The UK Government appears to have ruled out the first of these options but not the second. Of course, that may change either way.

I suggest we need to move beyond identifying problems, beyond wish lists that seek to preserve the *status quo* and beyond stressing the unique circumstances of Northern Ireland. We need to begin to develop a detailed plan regarding how to achieve as much as possible of that wish list. I hope the committee will be doing this. Any agreement must be capable of surviving scrutiny by, for example, the European Court of Justice. From what I can see, there is no such agreed plan at the moment. It is not evident in Dublin, Belfast, Brussels, Berlin or London. Not only does there not appear to be an agreed plan in any of the relevant official circles, there does not even appear to be the basic outline of a plan with regard to Northern Ireland, which is worse. The various wish lists that are floating around are just that. I do not think we have the luxury of saying "Sure it will be grand".

I have been working with some of my colleagues at Queen's University - Professor David Phinnemore, Dr. Lee McGowan and Professor Dagmar Schiek - as well as with Mr. John Temple Lang, who is a former Commission official, and Mr. Brian Doherty, a former legal adviser

to the Northern Ireland Government, to try to focus minds by producing an outline of a plan. This has now been published as a pamphlet by the European Policy Centre in Brussels. I would be happy to supply a copy to the clerk of the committee for distribution to Senators if they so wish. I hope we can talk more about the detail of this plan. I will provide a broad outline of it.

Our plan would involve Northern Ireland joining a European Economic Area, EEA, agreement together with Norway, Liechtenstein and Iceland. This would address some critically important issues: notably, trade in goods and services, membership of the Single Market, free movement of people and the preservation of the single electricity market. The major advantage of the EEA option for Northern Ireland, apart from addressing some of the major substantive issues I have just mentioned, is that it is a known quantity and therefore would not involve a re-negotiation of everything that would be necessary to develop a single market, etc. It would not be a panacea. It would not cover the issues of customs, agriculture and fisheries. Essentially, we are suggesting that an EEA+ option, which would supplement the EEA agreement with a series of additional agreements in areas not specifically covered by the EEA, should be adopted. An additional useful aspect of the EEA is that a significant discussion has to take place about the dispute settlement mechanisms to be included in the agreement that will result from the forthcoming negotiations. The UK appears to have set its face against any involvement in the European Court of Justice, at least for now. We will have to see whether that red line is maintained. That seems to be the position. The EEA agreement uses the EFTA dispute settlement mechanisms. The EFTA court, rather than the European Court of Justice, would be involved.

The final point I would like to make is a personal position. I suspect that the major sticking point for any proposal of this kind will be in London, rather than in Brussels. The EEA+ option would meet several of the UK's apparent negotiating red lines. No part of the UK would remain in the EU, would be subject to ever-closer union or would come under the jurisdiction of the European Court of Justice after the agreement came into effect. However, it would seem to involve a need for some east-west checks, particularly in terms of the movement of goods and people between the island of Ireland, which would be within a single market, and the rest of the United Kingdom. It would seem to involve some east-west checks while significantly reducing North-South barriers. The UK Government has specifically rejected the proposal that Scotland would join the EEA on the grounds that it would interfere with the UK's single market. Suddenly, the single market appears to be an attractive option, at least within the UK. Unfortunately, there appears to be a stark choice between North-South checks and east-west checks. This choice will be based not solely on economics but also on questions of identity.

Chairman: I thank Professor McCrudden for his thoughtful and illuminating address. I invite Senators to ask questions and make remarks.

Senator Michael McDowell: I thank Professor McCrudden for a very stimulating and challenging contribution. It occurs to me that lawyers are sometimes inclined to look at things as they are rather than as they might be. If a flexible and imaginative solution to Ireland's difficulties were to be found, it could be the subject of a mini-treaty to enable it to go outside the constraints of existing EU law without forming a precedent for other things or requiring the European Court of Justice to go along with it, so to speak. If something is done at treaty level, or even at mini-treaty level in the form of a protocol to be added to the treaties, that is it: the court in Luxembourg more or less has to accept it and live with it as a treaty court. It occurs to me that we should not be too afraid of the European Court of Justice because if there is an appetite for real flexibility, this can be done. I accept that it would involve unanimity, which is never a very happy thing, but it should be doable if there is nothing much to antagonise any of

the other 27 member states.

I was interested in what Professor McCrudden had to say about the common travel area. I have been banging a drum at this committee by saying I do not think this is a major problem. I understand that the UK authorities hope to maintain visa-free travel for EU citizens travelling to the UK. The UK intends to put up its defences, so to speak, in areas such as employment, health and welfare, in respect of which there will be all sorts of internal checks. It will, however, allow any EU national to get on a train from Paris to London without asking him or her to apply for a visa or to pass through a formal immigration control.

What I really want to ask about is goods. Whether the special status is within, subject to or part of the customs union or analogous to being part of the customs unions, the east-west axis is the much easier one to control, subject to certain things. I made the point this morning that one does not have to have a single solution for all areas. Agriculture and agricultural products are one thing while pharmaceuticals and aircraft parts are another. Some things are far more easily monitored in their movements than others. One can have quite a flexible approach which does not involve stopping every truck wherever it crosses whatever line.

I wish to ask Professor McCrudden to elaborate on a couple of matters. What is his sense of the Conservative Party ideology that it wants a homogenous United Kingdom and that anything going down the line of a special status for Northern Ireland is anathema to that basic value? Professor McCrudden drew a distinction which I drew this morning. Special status within the EU would get the Conservative Party's hair standing on end but special status in respect of the EU is a slightly less challenging concept. Can Professor McCrudden comment on those propositions?

Senator Gerard P. Craughwell: I congratulate Professor McCrudden and his group at Queen's University on the first Brexit debate I attended. It was excellently prepared and the contributors were truly wonderful. Certainly, it sent me back home thinking that we were somewhat behind the curve in comparison to where those guys were on that evening.

We had a group in this morning whose members were talking about how Northern Ireland had been disenfranchised with the will of the people not being observed in circumstances where 56% of them voted against Brexit. As a democrat, I hold the view that if one is a citizen of the United Kingdom, it is tough luck if one province happens to go against the majority. Majority rules and that is the bedrock of democracy. Having said that, however, the Good Friday Agreement changed everything. There is no other part of Europe that is covered by an agreement like it. There is no other citizen in Europe who has a right to hold two passports and to claim citizenship of both the Republic and the United Kingdom. Technically, if all 1.8 million people in Northern Ireland decided to apply for Irish passports, where would it leave the United Kingdom's dogged position of no access to the Court of Justice and "We are all in or we are all out"? It is not possible to tell 1.8 million people who have a right to be citizens of the Republic, by virtue of which fact they would be citizens of the European Union also, that one is going to write off their wishes. That runs contrary to my democracy argument that it is tough luck that the United Kingdom, of which the North is part, decided to leave the European Union. We are talking about unique circumstances.

I take on board a great deal of what Senator McDowell said. In coming up with a special solution, a treaty is probably the only way forward. It is something I have just heard for the first time but it seems like an ideal solution. I am interested in those areas of dual citizenship and the notion of whether one can really force one's will on a community which is separate and

distinct from the island of England, Scotland and Wales where 56% of them do not want to be part of that decision and are *de facto* European citizens in any event.

Senator Paul Daly: My colleagues will have heard these questions before, but I put them now in terms of Professor McCrudden's presentation and in order to tease the model out from the perspective of agriculture. Professor McCrudden seems to angle towards the east-west model. I will stick with agriculture specifically. If the EU agrees that as part of negotiations Northern Ireland or the island of Ireland will get a special status, beef producing farmers, for example, in the Twenty-six Counties will still be paid up EU members in receipt of CAP payments. There will be no CAP in the North. I cannot see the EU going that far. While it might give the island a special status, I cannot see it funding that. As such, there will be a divide within the agricultural model straight away. If we have an east-west border, will there be tariffs on Northern Ireland beef if there are tariffs on Southern Ireland beef? One then has the element of farmers in the North of Ireland who will dig in their heels and say their beef is British beef. It has come across loud and clear in our deliberations with many groups - such as that which appeared before us this morning - that they would accept a tariff, which would be a better scenario than a division on the island. Almost everyone who has attended - and ourselves - favours a model of special status. If it were achieved in the morning with an east-west border as opposed to a hard border North-South, would we have opened a complete can of worms in terms of working out the logistics of the all-island model?

Senator Joe O'Reilly: I welcome our guest. I understand the matter raised by Senator Paul Daly but I am hopeful that Professor McCrudden will say that the difficulties he outlined can be overcome. It is good that Professor McCrudden proposed a model and a solution, which is welcome. How hopeful is he that he can get the model through? Has it gained much traction? While today is an effort in that area, has he done much else to get that into the space and onto the table as an option? At the initial meetings on Brexit in my local authority area at home, the local Oireachtas representatives suggesting that the Norwegian model of relationship with the EU was probably the great hope for the entire UK. How optimistic is Professor McCrudden that we can get what he proposes accepted? How optimistic is he that we can overcome the difficulties raised by Senator Paul Daly? I hope he says that we can. Certainly, as a public representative living in the Border area, I am acutely aware that we have to get an all-island solution to the greatest possible degree.

I share Senator McDowell's optimism around the free movement of persons. That battle is won, albeit we cannot take the victory for granted. Assuming it is won, we need a similar situation in respect of the free movement of goods. The alternative is a nightmare which has been well chronicled in the past number of weeks. I will not go back over that again.

Senator Mark Daly: I would like to raise the issue of EEA+ status in respect of Northern Ireland. Theresa May has ruled it out in seeming to opt for the hard Brexit option. I take the point that resistance to that idea would probably come from London rather than from Brussels, although I am not too sure how excited Brussels would be about it, either. It would set a precedent for part of the country remaining and getting the benefits of the EU. Would British companies then establish themselves in Northern Ireland in order to have the best of all worlds? They could be able to trade in the UK and the EU. I am not too sure how that would work in practical terms. The EU has challenged us to come up with solutions that are within current EU law, although those laws can obviously be amended. If Belfast was going to remain in the EEA and also remain in the UK, a London-based company would just establish a subsidiary there, allowing it to do its operations in a sterling area. As we have found out with everything else,

there is a caveat to every solution we come up with until eventually we end up back where we started. The mantra from the EU is that Brexit is not going to be a success. Britain's objective is to make it a success but the EU's is for it not to be. Would Northern Ireland remaining in the EEA+ be regarded as a success in some instances? A lot of UK companies and financial houses could transfer to Belfast because they would have access there whereas if they were in Britain they would not have it.

There is also the issue of the European Court of Justice. Everyone is kind of talking around the issue but it is part of our remit here. Our position must be that Ireland needs to be sorted first before the trade element is done. It also must be our position that Northern Ireland remains under the jurisdiction of the European Court of Justice, no matter what the British Government or Westminster decides to do in terms of pulling it out of it. While Britain might leave, Northern Ireland should remain. That is part of our negotiating position. In the absence of that, EU citizens in Northern Ireland, of whom there are many hundreds of thousands, would have no access to justice under EU law.

Professor Christopher McCrudden: I thank the Senators for their thoughtful and testing questions. I will go through them sequentially.

Senator McDowell raised four issues. The first was the modalities of how we would reach an agreement, and the structure and form of such an agreement. I tend to agree with him that some form of treaty-based, specific agreement for the island of Ireland and its relations with Northern Ireland and with the EU would be a sensible way forward. I am perhaps less immediately optimistic than the Senator that this would escape consideration by the court of justice, not least because, as he will have seen, in the last few weeks the court of justice has reviewed a trade agreement and has found part of it to be in violation. Prior to that, the court of justice had been mightily exercised about retaining jurisdiction over the interpretation of EU law, which of course would require jurisdiction over any treaty of that kind. I am with the Senator half way, in that I agree it would be a necessary mechanism, but I am not convinced it would escape the court of justice.

Senator McDowell's second point was about the common travel area, which he does not see as a major problem. The common travel area as I understand it dates from about 1923. It has gone through various forms and iterations. Its most recent iteration is a non-legally binding statement that is published, unlike most of the previous common travel area agreements. I am stating the obvious in saying that each of those agreements took place in a context in which both the United Kingdom and Ireland were outside the EU and therefore EU law did not apply, or they were both inside the EU and thus both bound by its law. The unique circumstance is now possibly of the common travel area seeking to operate with one party in the EU and bound by EU rules while the other is not. We do not have a precedent for that.

I am glad that the Senator is optimistic but I am less immediately convinced that the common travel area can resolve the problems, not least because we do not really have a full view of what the complexities of those problems might be. For example, the free movement of persons may or may not be problematic in terms of requiring checks. If there is a substantial hard Brexit view that there has to be a hard Border, that might involve individual checks of everybody crossing that Border into the United Kingdom. We know of course that the common travel area in the past, from 1923, did envisage just those kinds of checks in certain circumstances. Saying that the common travel area is the thing to go for camouflages the fact that in the past, the common travel area has covered a multitude of different types of arrangements. What I am suggesting we should go for is the current iteration of the common travel area. Whether that is

consistent with EU law remains to be seen.

I am spending more time on these questions than the Chairman probably wants. The third question from Senator McDowell was about goods and the flexibility that is envisaged in terms of east-west issues. I agree that most of these issues can be negotiated on a tailor-made basis. The problem is not a principled issue but a question of the modalities. The problem is that negotiating everything of this kind from scratch - trade in goods, trade in services, free movement, the common electricity market and so on is the stuff of ten years of negotiations at least. One of the potential benefits of the off-the-peg EEA model is that while it does not cover many of the questions that I will go on to consider like agriculture, it does get some issues off the table, which then allows us to build on a relatively secure basis. There is real tension between getting the ideal solution, as it were, ten years on, and getting something now on which we can build, that at least gets something onto the agenda and securely pinned down. We do not have to renegotiate all the details of the EEA agreement. All of that has been done. It is a known product.

Senator McDowell's fourth point was on the Conservative Party ideology. He will be surprised to hear that I am not in a position to interpret Conservative Party ideology. I will say, although I have promised not to talk about the Brexit case in the British Supreme Court, two things are very apparent in that decision. This is not in respect of the ideology of the Conservative Party but of a much broader constitutional ideology. One is that parliamentary sovereignty rules. All of the apparent understandings that some of us had that there was a movement beyond parliamentary sovereignty have now collapsed. This has consequences for the future. If we want to shift out of the current constitutional mode in the United Kingdom context, that will have to be absolutely hammered home and we cannot rely on flexibility in that regard.

The second is that the United Kingdom is a unitary state and so the argument that my clients wanted us to put with regard to the idea that there is a constitutional pluralism, as it were, within the United Kingdom went nowhere. It was a unitary state governed by parliamentary sovereignty. This comes back to the point about antipathy to special arrangements. We are undergoing essentially a constitutional negotiation - that is not much of an exaggeration - in the UK. I do not know how well that will go but the position in London is generally that the UK is a unitary state and, therefore, anything that breaches that, particularly if it has economic effects like breaching the so-called single UK market, will be viewed very hostilely.

I thank Senator Craughwell for his comments. I believe the percentage who voted to remain in Northern Ireland was 53%. On the point about democracy, to be theoretical and academic, it depends on what the demos is. The Senator will know as well as I do that what the demos in Northern Ireland is, whether it is part of the United Kingdom is the critical question that divides Northern Ireland. The problem that Brexit has brought to the fore is that the relaxation in notions of national sovereignty and national identity, the sense that there could be shared and different understandings of those issues, is being threatened. Unfortunately, identity, sovereignty and nationality have come rushing back. That is the problem because we return to the question we thought we had resolved with the Good Friday Agreement as to what exactly the demos is in the Northern Irish context.

More generally, in terms of two passports, I must declare an interest as I carry both a British and an Irish passport. I am, therefore, in exactly the position the Senator mentioned. Not only that but I need to declare an interest again as both my children have British and Irish passports, although they were born in Oxford. Where does this leave us? It leaves us in a situation where the position in Northern Ireland is a particular example of the larger negotiations that will have to take place about how the UK treats EU citizens and how the EU treats British citizens, par-

ticularly the former. The issue is that it is no longer just a question of how the UK treats Polish plumbers but how it treats 1.5 million people in Northern Ireland who are, as the Senator correctly noted, potentially all EU citizens. This begins to bring a particular dimension to the general problem of how one deals with EU citizens. What this means is that there are two outstanding questions, as has been mentioned, that are in the preliminary part of the negotiations. One of these is Ireland, while the other is the treatment of EU citizens. The EU citizens' point also has an Irish dimension. Notwithstanding whether the penny has fully dropped, the Irish dimension is central to two of the three preliminary questions that must be settled before the negotiations can proceed to trade.

Senator Paul Daly raised the issue of agriculture. The European Economic Area agreement does not cover agriculture. While it covers some of the goods aspects of agriculture, the general issues the Senator raises are not covered. It is clear, therefore, that the EEA agreement would not deal with the issues described. It would not cause an extra problem with regard to such issues, however. In other words, while there would have to be a separate agreement with regard to agriculture, there is no reason this will not be compatible with the EEA agreement. Other states in the EEA have negotiated separate agricultural deals so at least the EEA option does not create more problems in the area of agriculture.

As to whether the agriculture issue is a can of worms, the answer is "Yes" and it would be misleading of me to indicate otherwise. Either last week or the week before, the leader of French farmers expressed some of the opposition to the notion that Northern Ireland could be the route for cheap British food imports into the European Union and they are resisting this for that reason. I fully agree with the Senator that this opens a can of worms. It also raises a funding issue as to how far the British Treasury will provide subventions that will be equivalent to the EU funding that will be lost. As the Senator will be aware, the UK will provide this funding temporarily but there is no guarantee that will be the case subsequently.

Senator Reilly asked how optimistic I was. On a day as beautiful as today, how could one fail to be optimistic? On wetter days in Strangford, as I look out over the harbour, I think it is very difficult in two respects. First, it is not clear that an agreement will be reached, in other words, we may not get past the first three initial issues. Everything seems to change each time I disembark from a flight. I was in Berlin in recent days and I visited London a few days prior to that. As to whether there is general optimism, the answer is "No". As to whether it is more than 50% likely that there will be an agreement on these issues, I am doubtful about that. On that question, the problem is that the outlines of what everybody wants are clear. There should be no hard Border and free movement and a single market on the island of Ireland should continue, etc. The EEA is one of the relatively few ways in which these major objectives can be achieved. It is as simple as that. We have a dilemma, therefore, because some aspects of the EEA agreement will not be palatable. On the other hand, if people want to achieve what they say they want to achieve, this is the way to do it. I apologise as I realise that does not answer the question about optimism.

Senator Reilly also asked what we were doing to sell the idea of the European Economic Agreement. Academics generally are not in the business of selling ideas. We are presenting an idea for consideration in various places. I presented it in various forums in London and I know John Temple Lang has presented it in various forums in Dublin. As I stated, I attended meetings in Berlin in recent days but I have no idea whether the idea is being picked up. It is being talked about and it is coming out in various think tank reports. *The Guardian* referred to it last week when it noted the idea was on the table. Beyond that, however, I cannot say much.

On Senator Mark Daly's question about how enthusiastic Brussels is, the thrust of the question, which I take as being put in good spirit, is that this creates a problem because Belfast wins. Coming from Belfast, that would be an entirely acceptable result as far as I am concerned.

Senator Mark Daly: The European Union does not want anybody in the UK to win.

Professor Christopher McCrudden: I understand that. The problem the Senator identifies is a real one. I would encapsulate it by asking how far the hard economics of this will be tempered in Brussels by a sense of what I can only describe as solidarity with Ireland. I am afraid I have no idea which is going to win out. If it is purely based on hard economics, each of the points being made by the Senator is entirely valid. We are where are. I did not vote for this and I did not want it. As I stated at the beginning, it is something I would want to reverse if I could but it is not, apparently, going to be reversed. The question is whether, therefore, in light of that Brussels is going to punish the UK and, in doing so, punish Ireland for something for which it was not responsible in the first place. I hope that wiser counsel will prevail that will recognise the need for solidarity in the first place with Ireland, as well as the need to preserve the peace. There is a sense in Brussels that can be picked up that there is a degree of pride that European capitals were involved with underpinning the peace agreement. The last thing I hope Brussels, Berlin or Paris wants is a return to the terrorism in Northern Ireland. I do not want to appear to be sabre-rattling and there is a danger in using the whiff of cordite to try to threaten; that is not what I am doing and I hope I would not be interpreted as doing that. In order to be responsible, one needs to play down these threats although they are a reality. If there are Border posts, the Senators living around there know that in the past, in the 1950s, the Border posts were the target. It was as simple as that. We have photographs to prove that and it is all in the archives. I cannot imagine it is anything other than the crassest lack of responsibility for any capital to risk going back to that when we have a working arrangement in Northern Ireland. We hope it will work even better in future with regard to devolved government. We cannot sacrifice that.

Senator Mark Daly: With regard to the EEA+ issue, has any economic analysis been done with respect to practicalities and current legal challenges? Is it possible that the economic analysis could be "gamed out" and Belfast wins, with the financial houses of London not having to go to Frankfurt and Paris but instead setting up a brass plate company in Belfast before being good to go? We have been asked to put forward realistic solutions that are doable. I support the idea of an EEA+ in terms of what it would solve for agriculture, cross-Border issues, an all-island energy economy and all of that kind of stuff. It comes back to the idea that the EU is saying, quite clearly, that Brexit is not going to be a success. If it was a success, everybody would do it. They are hardly going to encourage Brexit to be a success.

Senator Michael McDowell: It occurs to me that Senator Mark Daly is speaking about the Single Market for services. It is a lot more complex to fracture on an east-west basis than the market for goods. It may be that the best we can hope for is special status as regards goods and having to walk away from services and saying it is part of UK sovereignty or something.

Senator Mark Daly: The physical movement of goods is one issue. That is why we are teasing it out. We are doing this as we are talking. If EEA+ is not a runner because of the benefits for brass plate companies establishing in Belfast - I am talking about financial houses or insurance companies - what is the next best thing in the real world? That is probably not possible. If we scale back, EEA+ would be EEA-, including the all-island energy economy, along with agriculture. There is also the issue of hard goods manufactured in Northern Ireland or the South being traded over and back. We talk about the challenge of maintaining the *status quo* to the point where it might preclude all sorts of things being done in Northern Ireland in order to have

the have the benefit of EEA+ for those who are there as of a certain date. Senator McDowell makes a valid point in that there are certain things the EU will not allow as Frankfurt and Paris might like to pick up much of the stuff coming from London and do not want it going to Belfast.

Professor Christopher McCrudden: I am delighted about the way in which the conversation has gone because it seems to be precisely the sort of conversation we should be having. It is about detail, workability and feasibility rather than simply identifying problems. We are now looking towards solutions and that seems to be absolutely the right thing to do. Our position is essentially to float this as an option, partly to tease out precisely these kinds of questions. Until now, as far as I can see, there has been no alternative plan against which one can set exactly the kinds of questions being raised. If we have succeeded in raising those issues, it has been at least a partial success but we can do more than that.

The Senators asked specifically about some implications. The paper I will send to the clerk spends a bit of time teasing out some of the legal issues we have spoken about. As to whether the EEA agreement is compatible with EU law in a broad sense, it is. That has been entirely settled and there is no question on whether it is compatible with EU law. That is a major plus as all the negotiations that had to take place to make it compatible with EU law have already been settled. We are coming back to the known quantity point. We have also been doing work on the details, for example, in terms of the financial contribution that states would need to make if they were to buy into the EEA agreement. We have been doing estimates of that. It is not in the paper but we can send separately some work that is exactly on the question raised about financial services. We have been trying to work out what the implications are for financial services.

Senator McDowell mentioned the distinction between services and goods and he is absolutely right. We already have a functioning EEA market in which precisely that problem has not arisen. We have not yet seen the flow of financial services to Norway, for example, so there are constraints in the EEA treaty meaning that some of the financial services issues are not quite as simple as might be supposed. I want to make Belfast a success and I would be happy for floods of financial services to come to Belfast but unfortunately, our estimate is that will not happen and the benefits are minimal for the financial services industry to move lock, stock and barrel to Belfast. I might send a note to the committee on that issue to explain the background rather than holding it back this morning.

Senator Mark Daly: The point is interesting. We can go through key areas like policing and justice and there can certainly be an argument made for whatever EEA arrangements are there. Senator McDowell would know about extradition and how the European arrest warrant would solve the problem. A hard Brexit brings a special problem relating to the peace process in that regard. Tourism is a cross-Border and all-island issue with the related matter of the travel area. There is also the energy market and environmental issues. There is no huge success in Westminster arising from agreements on an EEA level between North and South on those matters. They do not want to see brass plate companies moving there. This is about trying to find out how to make a credible argument to say there is no downside to continuing the European arrest warrant in Northern Ireland, given the special problem we have on the island with that issue. The British Prime Minister, Mrs. Theresa May, has said no deal is better than a bad deal. When it comes to the European arrest warrant, no deal means we now have the same problem that was dealt with by Governments in the past. The challenge is trying to identify economically, and this is an economic argument, where it is that the EU would turn around and say it cannot agree to the EEA on that.

Professor Christopher McCrudden: One of the reasons for the success of the Belfast

Agreement is that it operated in a situation where the economy was improving, in particular in its early days. Not a lot is written about this but it was clearly the case that it was an improving market, in particular in areas of confidence-building, for example, employment. The fact there was an expanding employment market made it a lot easier for greater equality between Catholics and Protestants in employment to come about, which in turn increased the likelihood of the political arrangements being more successful because some of the tensions otherwise in the community had been reduced. I would argue that the notion of splitting the terrorism stuff off from the economic stuff is a mistake. There is a crucial requirement that Northern Ireland, in order to remain peaceful and supportive of the Good Friday Agreement, is going to have to be economically successful, and that if one has an economic basket case on one's Border, that is in itself destabilising. It is destabilising for the Republic and it is going to be destabilising for us. With respect to the Senator, the economics here cannot be hived off. It is an intimate part of the question as a whole. I would resist the notion that it should be separated off in the way that, perhaps as devil's advocate, Senator Daly has been suggesting.

Chairman: I thank Professor McCrudden most sincerely for his initial remarks and the very detailed responses he gave to the many questions asked by my colleagues. As he mentioned a number of times, we would appreciate any follow-up letters or notes he would like to send. This is a live committee and will continue to work on this issue for another few weeks yet.

Senator Michael McDowell: I would like to get a copy of Professor McCrudden's published paper.

Professor Christopher McCrudden: I thank the Chairman and the members of the committee for their tolerance.

Acting Chairman (Senator Neale Richmond): We will suspend the meeting for a couple of minutes to allow Professor McCrudden to leave. We will return in private session.

Sitting suspended at 4.03 p.m. and resumed in private session at 4.04 p.m.

The select committee adjourned at 4.14 p.m. until 10 a.m. on Thursday, 1 June 2017.