

European Affairs Committee

Windsor Framework Sub-Committee

Corrected oral evidence: Strengthening Northern Ireland's voice in the context of the Windsor Framework

Wednesday 8 May 2024

4.30 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Empey; Baroness Goudie; Lord Hain; Lord Lexden; Baroness O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 2

Heard in Public

Questions 14 - 22

Witnesses

[I](#): Dr Sylvia de Mars, Reader in Transnational Public Law, Newcastle Law School; Professor Colin Murray, Professor of Law and Democracy, Newcastle Law School; Martin Howe KC, Barrister, 8 New Square Chambers.

Examination of witnesses

Dr Sylvia de Mars, Professor Colin Murray and Martin Howe KC.

Q14 **The Chair:** Welcome to you all. We are very grateful to you for being with us for this session this afternoon. This is the second evidence session of our inquiry on strengthening Northern Ireland's voice in the context of the Windsor Framework. We are joined today by three legal experts. Dr Sylvia de Mars is a Reader in Transnational Public Law at Newcastle Law School. Martin Howe KC is a barrister at 8 New Square Chambers. Professor Colin Murray is Professor of Law and Democracy at Newcastle Law School. You are all very welcome and we look forward to your evidence. We would be grateful if you could introduce yourselves briefly the first time you speak.

Today's meeting is being broadcast and a verbatim transcript will be sent to you all to check for accuracy before subsequent publication. I also refer to the list of members' interests as published on the committee's

website. We will need to finish this session at the latest by 5.45, and one or two members may have to slip away a little before that. We will see how we go.

Perhaps I could ask the first question. I should stress that it does not invite you to go into great detail on the questions that come later, but I would be grateful if you could give us an initial view of the extent to which you think the voices of Northern Ireland politicians, officials and stakeholders are now heard in the context of the Windsor Framework, and how effective the various engagement structures and mechanisms that are established under the Windsor Framework are.

Martin Howe: I am a practising KC. I practise primarily in the fields of intellectual property and European Union law, particularly on the free movement of goods and services. Surprisingly, that aspect of my practice continues. I frequently appeared in the Luxembourg court when we were an EU member. I am still Chairman of Lawyers for Britain, the pro-Brexit lawyers' group. A long time in the past I shared with Lord Hain the fact of having at one point been a parliamentary candidate for Neath, although with considerably less success on my part.

The question of engagement is important. However, I tend to view it as being essentially an attempt to act as a palliative on a deeply unsatisfactory overall structure, which is that laws that apply in Northern Ireland, and indeed the interpretation of those laws, are wholly in the hands of foreign institutions. Until some way is found of addressing that fundamental problem, engagement can only palliate things at the edges.

The Chair: Let us none the less think about how successful they might be in palliating them as we go through.

Dr Sylvia de Mars: I am a Reader in Transnational Public Law at Newcastle University, but I am here today because I am an EU generalist and have accidentally become a specialist on Northern Ireland. I have bad friends, I say with a nod to Colin Murray, who has gotten me roped into this.

My feeling on the engagement structures and mechanisms in the Windsor Framework is more or less a flip to what Mr Howe just said, in that we have to accept that this is the deal that the UK Government have struck on behalf of Northern Ireland and we have to do the best we can while having EU law applied to us and not being a member of the EU anymore. In that sense, the Windsor Framework has made significant improvements on paper, but I agree with your previous witnesses that it is really difficult for us to say at this point how well those mechanisms are all working in practice and how well they are linking up together.

The Chair: That is a good start.

Professor Colin Murray: I am Professor Colin Murray. I am the Chair of Law and Democracy at Newcastle Law School and my focus is on the UK constitution, devolution and its relationship with EU law.

In the context of looking at these questions, I will follow directly on from what Dr de Mars was saying. We are in a situation where a body of EU law was agreed by the UK and the EU to apply in Northern Ireland. We are very much in the context of trying to work out a set of arrangements that work for a non-EU territory to have EU law applied in that context. That is slightly unusual, but it is by no means unique. We have already heard in the evidence session earlier this afternoon about parallels to Switzerland and the EEA countries. A lot of what was happening through the Brexit negotiations, right through to the Windsor Framework being concluded, was about trying to piece together a set of arrangements that would allow Northern Ireland's voice to be heard in these processes.

The basic problem or the constitutional misfit is that the UK's obligations under the withdrawal agreement sit with the UK Government—they are obligations upon a state—but the impact of the body of EU law that continues to apply under the protocol as amended to become the Windsor Framework applies within the context of Northern Ireland.

What makes that slightly unusual by comparison with the examples I have just gone through is that we are now dealing with a non-state polity as opposed to the EU dealing directly with states such as Switzerland, Norway or Iceland. The set of arrangements that in some regards have been cobbled together—or, rather, have emerged over time after multiple phases of negotiation—have been trying to bridge that divide between what is happening at an EU supranational level and its relations with a former member state, the UK, and then how the withdrawal agreement's outcomes, results or requirements cascade down into the context of Northern Ireland.

Chair: Those were three very good starts.

Q15 **Baroness Ritchie of Downpatrick:** To what extent do the Windsor Framework's engagement structures enable the relevant stakeholders in Northern Ireland—those in the Assembly, the Executive and the wider business community and civic society—to engage with EU legislation at an appropriate stage of the legislative process? Professor Murray, you have done quite a bit of work on rights and equality with reference to Article 2 of the Windsor Framework, so we will start with you.

Professor Colin Murray: It is a really important question. That last element of it is especially significant, because there are different engagement structures depending on which element of the Windsor Framework is at issue. If we go right back to the earliest iterations of the protocol, sets of arrangements are put in place for the Northern Ireland statutory human rights and equality bodies to feed directly into the Withdrawal Agreement Committee system¹, when they think the UK is not adequately dealing with the rights and equality element contained in Article 2 of the Windsor Framework.

¹ Under Article 14(c) of the Windsor Framework

Those are distinct from the multiple arrangements that have emerged since then around involving NI officials and stakeholders in briefings from the Commission or the work of the UK-EU Joint Consultative Working Group, the committee system that is set up under the Withdrawal Agreement. That evolved separately as the extent to which EU single market and goods law would continue to apply in Northern Ireland was settled as the Protocol under Boris Johnson, concluded and brought into force and then amended under the Windsor Framework.

There is then an additional level of complexity because, when we look at these arrangements, it is not just about the stakeholders in NI and their engagement with the EU. Northern Ireland is now a space in which both UK internal market rules on access and EU single market rules for goods overlap. There is scope for divergence and changes in both directions, even though both sets of goods are intended to be marketable in the space of Northern Ireland.

Safeguarding the Union adds on top of this another layer of protections against Northern Ireland being forgotten in the context of UK Government changes that might lead to divergences from EU standards and that creating difficulties in trade between these constituent elements of the UK. Already this afternoon we have frequently heard the words, "We are at early stages", and we have heard an awful lot about the lack of transparency in what is going on in some of these committee arrangements. That makes it fiendishly difficult to try to work out the effectiveness of Northern Ireland officials in this context.

It is worth underlining at this point that officials do not have much confidence that a lot of this is working fully. There are UK obligations under *Safeguarding the Union* that call on the UK Government to inform the Assembly in Northern Ireland and the Northern Ireland departments when relevant issues of EU law are coming down the line. They have been missed already in certain instances. That is leading to an awful lot of duplication of work from Northern Ireland officials in trying to get on top of these issues, whereas the UK Government have said that they will be dealing with them directly and will be the conduit passing this information to Northern Ireland.

Baroness Ritchie of Downpatrick: If you have additional material on that, you could email the clerk, Liam, with it.

Dr Sylvia de Mars: Some very relevant points were raised in the previous evidence session already. I will elaborate on those a bit as someone who looks at the EU legislative process a lot.

There was a question as to whether stakeholders can engage with the EU legislative process at an appropriately early stage. A lot of that hinges on the words "appropriately early". We now have the enhanced measures that the Commission committed to in February 2023 to say that it was going to announce its working plan for the coming year. As was highlighted, that is all information being sent in one particular way. It

says that it enables engagement, but it does not specify what that engagement is meant to look like.

Likewise, the Commission has said that, when it develops impact assessments on its legislative proposals, it will put in a specific section to indicate what the feedback from Northern Ireland stakeholders was. Again, when are these stakeholders giving that information? How are the relevant stakeholders selected? How do they become aware of the need for them to put feedback in?

What was published in 2023 sets out the beginnings of a co-operative pipeline of getting information from stakeholders to the Commission and back and forth, but so far it reads like a document that was written by the Commission almost in isolation, which is saying, "Here's our side of things. We can give you this information". To me, it has not clearly indicated where the replies are meant to come from, beyond perhaps the Joint Consultative Working Group, which means that the process in place has not really changed that much with the Windsor Framework. What has happened is that the Commission has realised that it needs to be transmitting significantly more information to Northern Ireland about what it is working on.

In that sense, we are not quite yet where, for example, the institutional framework agreed between Switzerland and the EU, which ended up being rejected by the Swiss, was. That specifically said, "We'll invite experts to come to us and comment on legislative proposals". So far, this is saying, "We'll give you information so you can talk to us", but they have not set out clearly how that conversation back is meant to happen, if that makes sense.

Martin Howe: When you look at the way the European Union legislates and the way that legislation applies in Northern Ireland, it is inherently very difficult to see how realistically the shape and form of that legislation will be affected by what people say in Northern Ireland. It is hard enough for some member states to get legislation changed or altered.

There might in some circumstances be more scope for specific variation of EU-wide legislation when it comes to its application in Northern Ireland, but over time the EEA states have found that, despite their consultation rights under the EEA treaty, they have very little impact on the shape and form of EU legislation, which they then in effect have to enact themselves under the European Economic Area Agreement.

The Commission's statement, which Dr de Mars referred to, is an extremely flimsy document. It is just over a page long. As she says, it simply says that the Commission will present its programme, one-way communication, to unspecified Northern Ireland stakeholders and that, when it writes up an impact statement, it will put some stuff in from people in Northern Ireland.

It is a difficult task to achieve. There are also dangers in encouraging direct channels of communication outside the United Kingdom directly

from within Northern Ireland. I agree with Professor Murray's point about the difference between the other examples where European Union law has applied in a territory outside. In effect, those territories are states. They are the EEA states. They are units. Northern Ireland is not a state. You have the different political entities in it with the Assembly, the Westminster Government and Parliament.

Since we are recovering sovereignty, it is important not to encourage people in the United Kingdom to look directly to foreign institutions for the shaping of the laws that apply to them. I regard that as something of serious concern.

Q16 Lord Hain: Given that our focus in this investigation is on Northern Ireland's voice as a democratically devolved constituent of the UK, how will the new bodies, such as the East-West Council and the UK-Northern Ireland Executive working group, fit in with the Belfast/Good Friday Agreement? What progress has there been on establishing them?

Martin Howe: I certainly welcome the East-West Council's engagement in the United Kingdom. How much it has achieved I do not know. The one problem, as was alluded to in passing by Professor Murray, is the issue of Northern Ireland's voice in respect of UK-wide internal market rules. It is important that Northern Ireland's voice is heard in that context, but it is a matter of concern if, by the back door, European Union laws in effect provide a drag-along mechanism for laws that apply across the whole UK.

Dr Sylvia de Mars: This is a very difficult question for a legal academic to answer. I looked at these bodies and thought, "Yes, they're probably necessary for political communication between Northern Ireland and Westminster", but the number-one thing that I would be looking for here that does not already exist is a body that 100% focuses on what Mr Howe just indicated—UK regulatory plans—so that it can alert Northern Ireland to what might be happening and the work on its compatibility with EU law can be done at an early stage.

From reading the description of what is happening, I believe this Government and NI Executive working group might be the body where that is intended to happen, but, as far as I am aware, it has not yet been established and has not met in any particular form, not in a way that we can know about, in any event. The lack of transparency about these bodies and what they are doing in practice makes it really difficult to see the extent to which the communications between the Northern Ireland Executive and the UK Government are building upon the Windsor Framework and are compatible with the Good Friday Agreement.

Lord Hain: Where does that leave Northern Ireland's voice?

Dr Sylvia de Mars: Inside a black box, perhaps. I am not 100% sure. It is really difficult to say.

Lord Hain: Colin, perhaps you could pick up on that black box issue.

Professor Colin Murray: If we are to look at the structure of the East-West Council, it is internal to the UK. The UK is a state. Issues of “devolve and forget” have frequently blighted relationships between Westminster, Whitehall and the devolved institutions across the UK. Anything that moves away from “devolve and forget” and raises issues that need to be raised of how law is decided at Westminster or its interaction with how EU law is working at a Northern Ireland level is to be welcomed.

If you compare that to the cross-border 1998 institutions, they took in two states and therefore needed to be put on a treaty footing, and so were quite different in the co-operation they were setting up compared to interactions that are internal within a state and which have long been much more informal in nature. Even in that context, there was a 10-year hiatus in the operation of the British-Irish Intergovernmental Conference.

There is some initial energy behind the East-West Council and some association with the current Government in Westminster, but will that same pressure make this work continue for years down the line? Is this very much personality-driven? Is it a make-weight element to try to extend the scope of *Safeguarding the Union* that might end up being forgotten about over time?

By comparison, the Northern Ireland Executive working group has a really important role here, but the same things have existed in the past and have faded away. There was supposed to be an executive committee, under *New Decade, New Approach*, to tackle Brexit issues. It was found to be dysfunctional and ceased to operate within a matter of months. It was supposed to be the conduit between the Executive in Northern Ireland and the UK Government when it came to Brexit issues. The same problems that bedevilled that committee could end up bedevilling this new working group.

Lord Hain: That is very helpful. Can you clarify what you meant about “devolve and forget”?

Professor Colin Murray: When we look at the history of devolution, devolution is designed to work on two levels. It takes jobs off Westminster’s plate. Everything that needs to be done to administer every different part of the UK no longer needs to be done at Westminster. That frees up legislative time there and moves legislative focus off those issues, and it does the same at a Whitehall level.

It is supposed to do that by encouraging subsidiarity and putting the focus of lawmaking closer to where people are in different parts of the United Kingdom, but that very much takes the internal affairs of those different polities in the UK off the UK Government’s central agenda. When that happens and there is less of that focus, a situation can arise that manifested at repeated times through the Brexit negotiations where issues specific to NI had not been fully thought through and almost blindsided successive UK Governments at different points in those negotiations.

Lord Hain: Do you see that happening now?

Professor Colin Murray: If these new structures fall by the wayside, there is every opportunity for that to happen. Perhaps the additional problem is what Tom Reid, a senior official in the Executive Office, talked about when he was before the Stormont Windsor Framework Democratic Scrutiny Committee as issues of capacity and capability in the Northern Ireland Civil Service. These systems only work effectively if Northern Ireland has officials on the ground who are across all the different aspects of EU law and their tie-in to the UK's post-Brexit constitutional order. Tom Reid warned the committee that, after two years where Stormont was not functional, with a hiring freeze in the Northern Ireland Civil Service, there were huge shortfalls in capacity and capability when it came to these specific EU law issues.

Lord Hain: That was very helpful.

The Chair: Thank you for that. That was a very helpful last comment.

Q17 **Lord Dodds of Duncairn:** Thank you to our witnesses. It is extremely interesting. On Professor Murray's last point, there was a commitment from the UK Government, amongst the many others in *Safeguarding the Union*, to provide expertise or support to Northern Ireland on this capacity issue, which I entirely agree with. Again, like a lot of the things we have been discussing, I have not seen any evidence of it thus far and I am not sure what it means in practice. We will have to wait and see.

We have so many bodies and so many complex piecemeal solutions to various defects, whether they are internal market issues, trade issues, constitutional issues or democratic issues. It looks as though that is what this whole edifice is built upon. If we accept the premise of EU sovereignty in law in Northern Ireland, here are all the problems that creates and here are all the little bits that we have to do now to try to fix all the various elements.

My question boils down to this. Holistically, in the absence of a holistic approach and an overall solution, will this not lead eventually to major gaps developing? We have already seen it in the previous evidence that you have been referred to. The Government themselves, even in the very earliest stages, failed to notify the Assembly of laws to which the Stormont brake could have been applicable. That is highly relevant politically, no matter the substance of the particular legislation.

Is there not a real danger that it is so complicated, with so many areas where things can go wrong, that inevitably many things will go wrong? I am sorry for being long-winded.

Professor Colin Murray: It is an excellent question in relation to the uniqueness of the arrangements that NI has ended up with at this juncture. I would probably take issue with the idea of EU sovereignty in the context of NI. It was a UK Parliament decision to accept the Withdrawal Agreement, so in the same way that the UK Parliament could vote to give the UK Government powers to trigger Article 50, the body of EU law that exists under the Withdrawal Agreement for NI has been

brought in as a function of the UK Parliament agreeing these arrangements.

That does not detract at all from your point about complexities, but we are almost at the most difficult juncture for making a lot of this work. There has not been a set of devolved institutions for two years. A lot of the thinking about these questions at an NI level has not been happening or perhaps has not been as foregrounded as it should. At the same time, the civil service in NI has not been able to recruit the people it needs to do this.

Thirdly, all these conduits that we are talking about between the UK Mission in Brussels, the UK Government and Northern Ireland are being tested for the first time. We are starting to see laws at an EU level—for example, on protected designation for craft goods—that have been accepted during that window of time when all these systems were either on hiatus or had not been fully worked up that are now applying.

As these systems are fully worked up, the proof of the pudding will be if we move away from this slightly messy start-up phase, where, as Lord Dodds perfectly accurately points out, balls have been dropped with regard to necessary notifications to NI institutions.

Martin Howe: Professor Murray has made a very valid point about the complexity and Lord Dodds has followed up on that. There are two points here. One is on the subject of sovereignty, where I have a slight difference with Professor Murray that may be only terminological. The legal effect of European Union law in Northern Ireland does indeed stem from an Act of Parliament—in this case, the 2020 European Union (Withdrawal Agreement) Act. In that sense, it is almost identical in its legal basis to the way European Union law applied when we were a member state via the gateway of the 1972 European Communities Act.

It differs materially from the way in which European Union law affects the EEA states, which do not face a direct effect from the European Union treaties, which Northern Ireland does, but have an international law obligation to incorporate laws that mirror European Union law. That is a slightly technical point. Northern Ireland is more entrained in the European Union legal order than the EEA states, and considerably more entrained than Switzerland.

Coming back to the complexity point, and mentioning the origins of the geographical indications, the European Union's laws relating to the single market in goods are numerous. It is a very wide field, with many subfields within it that are highly specialised. This regulation alone occupies 56 pages of the *Official Journal of the European Union*. I am an intellectual property specialist, and digesting this sort of stuff takes me a long time. Working out what effect it would have on intra-UK trade, if it comes into force in Northern Ireland but not in the rest of the UK, is a complex task.

I can see that the capacity problems for Northern Ireland and its institutions to try to get together the expertise that they need to take the

right decisions about that, let alone whether they can implement them, are another inherent flaw of the entire system of having European Union law applying within the territory of an independent state.

Dr Sylvia de Mars: As an observer for the last seven or eight years now, I find it very frustrating that it feels like the UK Government are still chasing their own decisions in a lot of ways when it comes to Brexit in general, in the sense that they should have had a conduit for clear information to Northern Ireland ready at the moment when they decided that this was the settlement that Northern Ireland was going to have. It should not have come as a surprise that this was information and capacity that the Northern Ireland Assembly and Northern Ireland Executive did not have and needed in order to make the UK's decision work for it.

To draw a parallel, we finally have, as of last month, a working border with the EU. There are so many things where it looks to me like decisions were taken day to day without thinking about the next step in the process that we need to ensure we have in place. Unfortunately, we are seeing the consequence of that, in that there will be stumbling at the beginning while these structures are belatedly set up.

This inquiry has, for the most part, just brought out the fact that we are starting to see institutions develop to manage this new relationship that Northern Ireland has, with both the UK and the EU, but we are not yet where we can look at them clearly and say, "Yes, this is working" or, "No, this will never work". We are just seeing attempts at this point and trying to come to an assessment of those.

The Chair: Thank you for that. The capacity point has come across loud and clear.

Q18 **Lord Thomas of Gresford:** There are mechanisms in place that are designed to give some control by the Northern Ireland Assembly over the application of EU law. How would you assess the effectiveness of those mechanisms, such as the Stormont Brake and the Applicability Motion procedures, as they now apply in Northern Ireland under the Windsor Framework?

Martin Howe: I have predicted that they would not be effective; that they would be very ineffective. My main reason for that was based on the experience of similar but by no means identical mechanisms under the European Economic Area agreement. Under that agreement, when the European Union passes new legislation or amends its own legislation in the single market, it does not then directly and automatically have effect in the EEA states; it has to be agreed by the EEA-EU joint council, and the EEA states therefore have a veto. Technically, they can veto the obligation under the EEA agreement to apply new or amended directives or regulations in their countries.

However, there are consequences if they do that, because the European Union then has certain rights under the EEA agreement that can ultimately lead to the suspension of the rights under the agreement for

the free flow of goods between the EEA and the EU. The one serious attempt to invoke this power was by Norway in relation to one of the post office directives, and they encountered so much difficulty that they withdrew it after a couple of years.

I am afraid that my prognosis is very poor as to whether this will be effective. We will perhaps find out whether I am being optimistic or unduly pessimistic in due course, with the issue of the geographical indications of origin for craft works, when we see what happens in that context.

Lord Thomas of Gresford: There is no punishment to be inflicted by the EU if the Stormont Brake is used, or if the Applicability Motion procedure results in the UK Government rejecting an EU law, is there?

Martin Howe: They can take countermeasures under the agreement. They can impact on trade certainly between Northern Ireland and the EU, and possibly between the UK generally and the EU, if they regard it as having distorted the market.

Lord Thomas of Gresford: So your view is that the Stormont Brake will never be applied or will be ineffective if an attempt is made.

Martin Howe: I do not know whether it will ever be applied. We will see what happens. I do not know whether this committee has more recent information than I have. I tried searching for a formal UK government announcement or response to this since the Stormont Motion. I have not been able to find it. If it exists, I apologise.

It will be interesting to see whether the UK Government go along with the, as it were, attempted non-application of this regulation or whether they agree, none the less, to implement it in Northern Ireland. That is the first step. If they do decide to go along with at least the majority of one of the communities in Northern Ireland and not apply it, we will see whether the mechanisms that the European Union has apply result in that position being maintained.

Lord Thomas of Gresford: We were told in the previous session that two applicability Motions had been discussed and that the Assembly refused to pass one but agreed to the other. Are you aware of that?

Martin Howe: I am afraid that I am not aware of the nuance with regard to the second one that they agreed to. Did that relate to another measure?

Professor Colin Murray: It was regarding pet food.

The Chair: One Applicability Motion has been referred to the Government, but the second one was allowed to go through by the Northern Ireland Assembly.

Martin Howe: That was a different matter. That was not this regulation.

The Chair: It was not the craft one. It was about organic dog food.

Martin Howe: That is a different measure. I had not looked at that one, I confess.

Lord Thomas of Gresford: Professor Murray, what is your view of the effectiveness of the Stormont Brake and the Applicability Motion procedures?

Professor Colin Murray: There is a huge amount of confusion going around about these terms and their interrelationship with each other. If we take it that the single market for goods at Brexit date was applied to Northern Ireland as part of the Withdrawal Agreement and the UK Parliament agreeing that, the Stormont Brake and the Applicability Motions deal with changes with regard to the single market for goods.

They sit as part of a range of measures to try to prevent a democratic deficit emerging that had developed over time since the Withdrawal Agreement. One element is that the Stormont Brake and the applicability Motions also sit alongside Article 18 of the Windsor Framework, or the Stormont lock, which is the four-yearly approval by the Northern Ireland Assembly of Northern Ireland's place under the single market rules continuing.

There is a general overarching approval that will come up later this year, as well as these measures that relate to specific EU law changes. Under the Withdrawal Agreement, the UK could, under Article 13 of the Northern Ireland Protocol, thereafter amended to become known as the Windsor Framework, reject outright any amendment generally to the EU single market in goods that took in a new measure.

Under the Windsor Framework and the implementation of that arrangement, the UK Government gave Northern Ireland's institutions a say over that. That is the Applicability Motion. Instead of the UK Government deciding to approve or reject something like the new EU measure on trade in craft goods and protected designations, Northern Ireland gets to have a say on that issue. When that happens, the UK has to decide whether it will unilaterally sign up to, say, aligning the remainder of the UK market—Great Britain—to that standard in a way that would take away problems for Northern Ireland, but Martin Howe referred to that earlier as being a drag-along effect. That is one way in which that could be dealt with.

The Stormont Brake is separate again. That relates specifically to the amendment of existing measures that are covered by the single market in goods under Annex 2 of the Northern Ireland Protocol. If we look at those arrangements, there are areas where you could say that there are legitimate concerns as to how well this will work in practice. Already, the Assembly's committee on this has flagged the time limits as being particularly problematic, and the amount of time they have to give in the UK's statutory instrument as notice to the Speaker in Stormont to have

one of these measures considered truncates any debate or previous engagement with stakeholders.

The other issue is the two-month time limit overall. For an Assembly committee to engage with this, it has to happen within two months of a measure being published in the *Official Journal of the European Union*. The problem with that is that two months does not take account of whether the Assembly is in recess. At different points in the year, there could be a really truncated period of time in which Assembly scrutiny or the ability to engage these Stormont brake mechanisms happens in practice.

Lord Thomas of Gresford: The two-month period is ridiculously short. We heard from the Windsor Framework Democratic Scrutiny Committee that it could not possibly take evidence or hold hearings and come to a considered view within that time. It simply would not have the time to do it. Is that right?

Professor Colin Murray: A lot depends on some of the pipeline questions that we were talking about earlier. Once these systems are all up and running and there is clear advance knowledge of the Commission's work package, a lot of this can be made to work because there will be advance notice of EU measures coming down the line before they hit the official journal.

A particular problem now is that that has not been happening while Stormont has not been functioning, so we are seeing a sudden requirement that a lot of these measures be dealt with. That does not make the problem go away where, if a measure hits the official journal at a time when Stormont is in or is about to go into recess, it might, in those circumstances, be very difficult to make this work. How do you make something for NI work that operates at a level of the EU as a whole and the 27 EU member states?

Dr Sylvia de Mars: The number one reason why the Applicability Motion and the Stormont Brake might not be seen as effective is that ultimately they require the UK Government to choose whether to upset the MLAs who are protesting the application of a revised or new EU law by letting it pass anyway under one of the possible exemptions from heeding the Stormont Brake or the Applicability Motion, or risk a potential trade dispute with the EU by following on from what the MLAs have requested that they do.

There are legal terms in place as to when the UK technically can reject a Stormont brake application or an applicability Motion, but, as with all legal terms, they are somewhat open to interpretation. Much here hinges on the choices that the UK Government will make. If they choose to agree with the Applicability Motion being denied, or with the Stormont Brake being triggered, Northern Ireland voices would declare the mechanism to be a success. If they decide that the conditions in the Windsor Framework for these measures to be stopped from applying to

Northern Ireland have not been met, it will be seen as not effective. It really just depends on what the UK Government does.

Q19 **Baroness Goudie:** Good afternoon. Does the return of the Northern Ireland Executive and Assembly create potential for further engagement at a political level? What political engagement has taken place so far at a UK level and at an EU level? What further engagement is planned? Have there been opportunities for Northern Ireland's political engagement in the structures and joint committees? This is very important going forward.

Martin Howe: I confess that I am not aware of what exactly has been going on as regards that part of your question. Regarding the opportunities, the return of Stormont means that that there can now be engagement of the Stormont brake mechanism.

Just to clarify, I would use that phrase somewhat loosely when, as Professor Murray correctly points out, there are two distinct legal regimes, one relating to new measures that the EU introduces in the field of the protocol, and the other relating to the amendment or replacement of existing measures. That is a primary area where there is scope for engagement. As I say, I remain a sceptic as to how effective that will be.

Baroness Goudie: It has to be effective in the long term.

Baroness O'Loan: It does not mean that it will be.

Dr Sylvia de Mars: I have a really difficult time finding out any information to answer this question, which in and of itself is a problem, in that if we are going to make any determinations as to how effective Northern Ireland's voice has been in any of these political discussions about implementation of the Protocol or application of the Windsor Framework and so on, we need to know when Northern Ireland is involved in these discussions, how they are involved, and the extent to which their input has been effective and whether it has been heeded. At the moment, we can barely find out whether any of these relevant groupings have met, let alone what they have been talking about and so forth. I find this very frustrating.

Professor Colin Murray: There has undoubtedly been a continuation of almost the tendency in Brexit negotiations before the Withdrawal Agreement to try to do as much behind closed doors as possible, which perhaps is not suitable now that we are getting into the implementation of these measures and trying to make these committee structures work.

The simple answer is that the Joint Committee has not met since Stormont was restored, so there has been no opportunity to feed into that. There has been one meeting of the specialised committee relevant to the Windsor Framework since then, but the only thing that comes into the public domain from those meetings is a fairly terse joint statement that notes some issues that were addressed—in this case, particularly the goods trade and the need to engage Northern Ireland's stakeholders.

We know that, in those committee processes, the Northern Ireland Executive will have officials in the room. The UK Government have made guarantees in that regard, from *New Decade, New Approach* onwards, but we do not know any more about what is being said or what exactly is being fed into those discussions by those NI-specific voices.

Q20 Lord Empey: Coming to an issue that was raised earlier in our proceedings about a more direct role for Northern Ireland in engaging with EU structures, there are huge political and constitutional implications from that, and I have my own views on it. Nevertheless, I just wanted to know if our witnesses this afternoon felt that there was a role for such arrangements between, say, the Executive and the European Commission, given that we already have an office in Brussels that is responsible to the Office of the First Minister and deputy First Minister, or the Executive Office as it is now called, and whether there is a secondary role, which does not exist currently, for a direct link between the Assembly and the European Parliament.

Dr Sylvia de Mars: My initial thoughts are that if the right Northern Ireland voices are making it to the correct meetings that will be taking place to make the Windsor Framework work, this is not essential. If I had to choose between one of these options as being more important than the other, the Executive liaising with the Commission is probably more essential to the operation of the Windsor Framework than the Assembly liaising with the European Parliament.

I am echoing points that were made in the previous meeting here. If you want to have a voice heard in the EU legislative process, you need to get there at the beginning and not at the point of legislation being adopted, where there is very limited chance that things will still be changed or that your voice can make a difference.

I do not think it is essential if the other structures created by the Windsor Framework are working as intended, but I also do not think that the Executive reaching out to the Commission could hurt.

Lord Empey: Martin, you expressed a view earlier.

Martin Howe: I agree that, looked at from a purely pragmatic point of view, it sounds helpful. I have a concern about it, though. We are talking about sovereign relations between an independent country and a foreign entity. In general, those should go via a central government route. That is not to say that specific Northern Ireland interests ought not to have a very strong part to play and should, of course, be communicated via a government-to-EU route.

I am more concerned by the principle of having a subunit of the United Kingdom engaging directly in what should be a foreign relations area without going through the Government. Regardless of whether it is justified, it is certainly a departure from the normal way in which international relations are conducted.

Lord Empey: You made that clear earlier, but, interestingly, the

legislation that we were discussing yesterday on public bodies in the United Kingdom for example operating trade boycotts against a third-party state would seem to be a bit contradictory.

Professor Colin Murray: Following on from Martin's point, there would be competence issues with the Northern Ireland Executive attempting to do this directly. At a parliamentary level, however, we cannot overlook the fact that do structures exist. The EU-UK Parliamentary Partnership Assembly set up under the TCA takes in observers from the Northern Ireland Assembly, but, while the Assembly has not been functional, we have not really had an opportunity to see how that has been working at this point. There are two Westminster parliamentarians on that parliamentary assembly, and the list of substitutes to it, from Northern Ireland. Again, there is another level at which there can be that direct engagement through those structures that exist. Last September, we saw the European Parliament Committee on Foreign Affairs send a delegation and hold a meeting at Stormont with lawmakers in that context.

It is a stretch to say that none of these structures is in existence. They very much are in existence at this point, but, as Dr de Mars has already pointed out, they come down the line in that process and cannot be taken as a substitute for that early engagement in the formation of Commission work packages when it comes to seeing how these laws will impact upon Northern Ireland.

Q21 **Baroness O'Loan:** What opportunities are available for Northern Ireland business and civil society stakeholders to engage with the UK or the EU under the Windsor Framework? How would you assess the effectiveness of the existing structures? Could they be improved in future and, if so, how? We have discussed this quite a lot already, but does anybody want to add anything to the evidence that you have already given?

Professor Colin Murray: I would add very little to what has already been said, but the key issues are transparency and accountability. It is very hard to tell who is a stakeholder and who is getting to take part in these conversations, and we do not know the detail of these conversations, so it is very hard to assess their effectiveness. This is not to say that they are not effective, but it takes place as an entirely closed box set of arrangements.

Dr Sylvia de Mars: I will echo those concerns. Again, if we think about the Commission's Enhanced Measures on engaging with Northern Ireland stakeholders, there is mention of them engaging, but there is no indication of how or when. They say that they will publish on the Commission website when relevant proposals are being worked up or when there is a public consultation that they want Northern Ireland's input on, but to date I have not seen anything along those lines appear. That website is completely empty at the moment.

In terms of improvements, I will look at the bigger actors in this picture, if you will let me call them that. The EU needs to be significantly clearer on how it is engaging with Northern Ireland stakeholders as opposed to

just talking at them. The UK also needs to be doing a significantly better job of creating a pipeline of information that makes scrutiny at the Northern Ireland level possible and workable.

A good assessment of whether these measures are effective will probably come from the Windsor Framework Democratic Scrutiny Committee and its findings on how quickly it can get information and how useful the input that it is providing is proving in practice.

Q22 **Baroness O'Loan:** Since you mention the Windsor Framework Democratic Scrutiny Committee, can I ask you a question that may be slightly unfair? Are the terms of reference of that committee adequate to enable it to do useful work?

Dr Sylvia de Mars: That is a big question. Again, it is early days. The UK Government should respond to feedback from that committee on how it is finding that it can operate in practice. My answer is that I am not sure. I would like to see it operate for a while longer and then listen to its experience of what it can and cannot do and how effective that is.

Martin Howe: I do not have much to add to what the other witnesses have said, beyond saying that, apart from the issue of transparency, if you are going to consult stakeholders, let us see who you are consulting.

There is another issue, which is how representative the stakeholders are who you choose to consult. One would at least hope that, when you are consulting stakeholders, you consult across the range of opinion and not a select group of stakeholders who have a particular perspective or interest rather than more generally. Again, without transparency, stakeholder consultation sounds good, but it can be even a negative if it is an unrepresentative consultation.

Baroness O'Loan: The evidence that we have received so far on effective stakeholder negotiation has been very limited. The extent to which people understand the routes by which they might be engaged has also been limited, so you are all making effectively the same point: more transparency is definitely needed and a lot more work is still to be done.

The Chair: Thank you to all of you for helping us with our inquiry. We are very grateful to Martin Howe here in the room, and to Sylvia de Mars and Colin Murray, who I assume are in Newcastle. Thank you for being with us today.