



Northern Ireland Scrutiny Committee

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

Wednesday 21 May 2025

10.45 am

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

Evidence Session No. 4

Heard in Public

Questions 38 - 46

Witnesses

I: Professor Catherine Barnard, Professor of European Law, University of Cambridge; Dr Richard Corbett CBE, Former MEP; Professor John Erik Fossum, ARENA Centre for European Studies, University of Oslo.

Examination of witnesses

Professor Catherine Barnard, Dr Richard Corbett and Professor John Erik Fossum.

Q38 The Chair: Welcome to this public meeting of the Northern Ireland Scrutiny Committee. We are today holding the fourth evidence session of our current inquiry on strengthening Northern Ireland's voice in the context of the Windsor Framework. We are joined today by three distinguished experts and we welcome them most cordially.

Professor Catherine Barnard is professor of European law and employment law at the University of Cambridge. Dr Richard Corbett CBE is a former MEP for Yorkshire and Humber, and former Labour Party leader in the European Parliament. We are very glad to have an opportunity to hear also from Professor John Erik Fossum, professor at the ARENA Centre for European Studies at the University of Oslo. We look forward very much to hearing from you all.

Professor Fossum, feel free to comment as you wish on general matters relating to the Windsor Framework, but you will know that we are particularly keen to have your comments on the experience of Norway.

We would be grateful if you could introduce yourself briefly the first time you speak. Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which will be sent to you all to check for accuracy. I refer to the list of members' interests as published on the committee's website.

Perhaps I could get proceedings under way by asking the first question. Could you assess for us the extent to which the voices of Northern Ireland stakeholders are currently being heard in the context of the Windsor Framework? There are two riders to that. First, how effective are the structures established under the protocol/Windsor Framework? On the second, at the right point I will bring in Nigel Dodds to raise the implications as regards the framework of this week's UK-EU summit.

Professor Catherine Barnard: I am professor of EU law at the University of Cambridge and senior fellow at UK in a Changing Europe.

As we know, this is a really important issue for Northern Ireland. This question of voice goes to the heart of the Windsor Framework/Northern Ireland protocol. That is because, in respect of the 300 or so EU rules that apply in Northern Ireland, there is an obligation of dynamic alignment. I will come back to that point and the relevance for the UK as a whole in a moment.

As I am sure this committee knows very well, you have the structure laid down in the withdrawal agreement and the Northern Ireland protocol annexe to it. You have the joint committee at the top, which is your political body. Of more day-to-day relevance is the Specialised Committee on the Implementation of the Windsor Framework, which, in essence, is civil servants. Sitting underneath are four main bodies, of

which by far the most important for the purposes of this committee is the Joint Consultative Working Group.

The JCWG, I understand, is actually proving to be extremely effective. There is a good level of engagement with stakeholders. What is going on in respect of the JCWG is kept fairly low key because of the complex political dynamics in Northern Ireland. With respect to Lord Dodds, we can see that the DUP is in a somewhat difficult position in respect of all these stakeholder engagements. The JCWG is, I think, working well.

There are another three limbs that sit under the specialised committee. The North/South Ministerial Council, which dates back to the 1998 agreement, has not been so present. On the north-south implementation bodies, there are quite a range of bodies there, and that probably has not delivered in quite the way that it was intended. The human rights equality bodies have been very active indeed, but maybe feel a bit frustrated in not being able to get what they necessarily would like.

For the purposes of what we are talking about today, this has assumed renewed importance in the light of what was published on Monday in respect of dynamic alignment in three proposed areas. As I am sure this committee knows very well, three documents were published on Monday: first, a joint statement; secondly, the defence and security pact; thirdly, the common understanding. In respect of the common understanding, this is, in essence, a road map of what the UK will be negotiating with the EU. That road map covers a range of matters, but, particularly important for the purposes of what we are talking about today, it is about SPS, energy co-operation and potential participation in at least part of the EU's internal electricity market.

In respect of all three areas, dynamic alignment is foreseen—in other words, the UK will keep up with the EU rules. That raises a question about the voice for the UK in respect of those rules. What is really interesting in the text of the common understanding is a reference to the fact that there will be some involvement. The language is slightly different in respect of energy co-operation, where it says that there will be some involvement in decision shaping—that is at paragraph 21. In respect of SPS and the emissions trading system, or ETS, both refer to the UK participation in the early stage of policy-making—that is at paragraphs 30 and 44.

This is intriguing and will create really quite significant problems down the line, including some of the problems that we have already seen in Northern Ireland. What exactly does involvement in early stage of policy-making mean? Who will have a voice? Crucially for the purposes of this committee, where will the devolveds fit into that voice in early-stage policy-making?

I have talked a lot, so will stop there.

The Chair: We will come back to the results of the summit with Lord Dodds in a moment.

Thank you very much for those introductory remarks and assessing the effectiveness of the principal bodies so clearly for us. Richard Corbett, could we have some introductory remarks, please, from you?

Dr Richard Corbett: I have nothing really to add to what Professor Barnard said on the, shall we say, executive-level and intergovernmental structures. The only thing I would add, and I think we will be returning to this later, is that, on the side of trying to influence or engage with the European Parliament, there is very little in place. Since European legislation requires, in almost all cases, the approval of the European Parliament, as well as the Council of Ministers, it is an opportunity perhaps that is being missed. I think we will be returning to this point later.

The Chair: We will.

Professor Fossum, would you like to comment at this stage?

Professor John Erik Fossum: No, not at this stage. I will come back on question 3 instead and say something on dynamic homogeneity, which Professor Barnard brought up.

The Chair: In that case, I turn now to Lord Dodds to press on the implications of the deal this week, which Professor Barnard outlined so usefully for us.

Q39 **Lord Dodds of Duncairn:** Thank you to our witnesses for their comments thus far.

My question is on the outcome of the summit and the three documents that were published, which Professor Barnard referred to. My understanding is that, in these documents taken together, none of what is going to be implemented immediately or in the very short term, and none of what is planned to be negotiated further down the line, impacts directly on the Windsor Framework/Northern Ireland protocol, in that none of it requires change to the framework. Therefore, the impact on Northern Ireland is really how the new relationship between Great Britain and the EU impacts on Great Britain trade with Northern Ireland. In itself, the summit and the outcomes did not alter the legal, constitutional or economic framework in which Northern Ireland is currently placed. I would be grateful if you could clarify that point.

Secondly, in anything that has been proposed—Professor Barnard, you have already started down that road in talking about the UK's involvement in the three areas of dynamic alignment—how do you see Northern Ireland's involvement with the European Commission and the Council currently? How might that change given the new arrangements that have been set up as far as GB-EU relations are concerned?

The Chair: Professor Barnard, this is very much one for you, particularly following your earlier comments.

Professor Catherine Barnard: Thank you, Lord Dodds, for those questions, which are immensely difficult to answer because of the skeletal nature of the common understanding. The common understanding covers a lot of ground, but it is quite thin on detail for the simple reason that these issues clearly need to be negotiated, and there is a further question about whether the EU actually has a mandate for its negotiations.

In respect of SPS, with dynamic alignment for the UK rather than just for Northern Ireland, I anticipate that some of the friction that still exists at the GB-NI border, even post Windsor Framework, will be reduced, because the UK will have pledged to keep up with EU standards. Of course, that in itself raises issues for those who voted to leave. If that is what is going to happen down the line—and that seems to be the UK's commitment—I think that it will actually ease some of the tensions at the GB-NI border.

In respect of your second point, about voice, I would say that, now there is a commitment for the UK to be involved in some of the early-stage discussions, that moves the problem elsewhere. How will the UK speak with one voice when the devolveds have particular interests in respect of SPS matters? That will be something for the UK Government to grapple with. The further question is how exactly that voice is going to be communicated to the European Commission, let alone to the European Council and the Council of Ministers.

Our colleague from Norway will talk to you a little about what the Norwegians try to do, because they also do not have a seat at the table. One of the positive outcomes of the common understanding, and, indeed, the more general defence and security pact, is that there is an anticipation of regular dialogues between the UK and the EU, which will help.

My only concern is that, in respect of the Northern Ireland post Windsor Framework, the Commission committed to doing considerable things to try to keep Northern Ireland informed of what was coming down the track, specifically through the enhanced mechanism that was agreed and the enhanced engagement with Northern Ireland stakeholders. You will know about the content of that better than most. For those on the committee who are less familiar, there are four things that the Commission committed to doing: an annual presentation by the Commission on upcoming policy; specific Northern Ireland information sessions; Northern Ireland-relevant public consultations on the protocol web page; and a Northern Ireland overview in relevant impact assessments. I hope that some of that will also be extended to the UK as a whole in respect of those three areas where it is anticipated that the UK will be involved in early-stage decision-making.

The Chair: We would like to move on to the scope for stakeholders and people in Northern Ireland to engage with the Windsor Framework.

Q40 **Baroness Ritchie of Downpatrick:** You are all very welcome. I want to

move on to complexity of the process. In evidence given to our committee so far and to the former Sub-Committee on the Windsor Framework, a key theme that emerged is the complexity of the institutional arrangements that govern the Windsor Framework and the difficulties experienced by stakeholders in getting round that complexity. In view of that, and taking on board the proposed new arrangements under the reset, is it clear to Northern Ireland stakeholders how they can engage with the structures that govern the Windsor Framework? Should the various structures and mechanisms be simplified or rationalised, and, if so, how, and, if not, why not?

I will start with Dr Corbett, who forwarded a supplementary submission that goes into all that complexity.

Dr Richard Corbett: I described that complexity in a degree of detail, though not very much detail, but I am not qualified to assess how difficult stakeholders are finding it in their practical day-to-day experience. Perhaps others may be better placed to answer that.

I observed that there is an elaborate structure in place, and that the first thing to do is to make that work—to seize the opportunities that are there and make sure that those structures can be used as a way of bringing your influence to bear. I would suggest that that should not focus exclusively on the question of whether proposed legislation should apply to Northern Ireland or not. There will be cases where that is not in question, but you may have a view on the content of that legislation and on whether it could be improved or modified in some way or another.

There are structures and other opportunities, which we will come back to later, for influencing the other part of the EU legislature—namely, the European Parliament—and there might be ways in which that can be improved as well.

Baroness Ritchie of Downpatrick: Do you think, therefore, subsequent to that, that stakeholders should be involved at the very early stages, bearing in mind your expertise from being a former Member of the European Parliament?

Dr Richard Corbett: Yes, the earlier the better in terms of influence. As you know, European legislation starts off with the Commission drafting a proposal, after consulting. Getting in and making sure your points are taken account of at that stage means that they would already be in the text being considered by the Council and the Parliament.

There is then a lot of to and fro. Typically, both the Council and the Parliament adopt proposed amendments to that legislation in their successive readings. They then have to negotiate to find a compromise, because EU legislation has to be approved in identical form by both the Council and the Parliament, so they examine each other's amendments. There is a meeting known as the trilogue, because the Commission comes along as well to answer questions, but, basically, the agreement has to be between the Council and the Parliament, to negotiate

compromises, which then have to be approved by both the Council and the Parliament for them to become law.

There is a lot of ebb and flow in the adoption of European legislation. The sooner your points are on the table and participants are aware of your concerns, the more likely it is that you may have some influence.

Baroness Ritchie of Downpatrick: Professor Barnard, do you think that Northern Ireland stakeholders and public representatives—namely, from the Assembly—should be in the area where the decision-making is taking place in order to provide influence where required?

Professor Catherine Barnard: On the last part of your question, the reality is that we have left the EU. As much as many people would like to be at the table, the EU is clearly not going to allow us to do that, and has made that abundantly clear. In the common understanding reset document, for example, it says at paragraph 44 that these rights for early-stage participation in policy-making would not extend to participation in the work of the Council or its preparatory bodies. The EU is making that point very clearly, which is the inevitable consequence of having left the EU.

To go back to the early part of your question, if I may, about the complexity of institutions and the difficulties of stakeholders fully participating, I agree absolutely, on the complexity. Even just preparing for giving evidence this morning, I was struck by how many sources you need to look at to work out what is available.

The point I particularly want to emphasise is the question of capacity of stakeholders. These matters are quite broad and wide-ranging. In Northern Ireland, you have a relatively small number of individuals who are very stretched in being able to participate in all these institutions, as well as probably doing the day job too. You also have issues about the extent to which there is sufficient capacity in Northern Ireland for people to have had real training in public engagement in policy issues.

Going forward, in the light of the reset, the positive dimension is that it now becomes a UK-wide issue, rather than just an NI issue. As a UK-wide issue, by definition you have many more people, and therefore more capacity to work on some of these issues. That also comes with added complexity: not only are you dealing with the UK but you have three devolveds plus England. With the three devolveds plus England, they will need to be consulted, and all of that takes time, to develop a composition going forward.

It is perhaps worth noting that relationships between Whitehall and Westminster and the devolveds were particularly fraught during the Brexit period. As we know, all the devolveds refused to give legislative consent to the major pieces of Brexit legislation. Things have got somewhat better, but, nevertheless, even in respect of the reset, which touches upon areas of devolved competence, I do not think there was very much consultation with the devolveds over what might go into that.

I imagine your committee might want to encourage the Government, in respect of the next stage of the negotiations, to take account of the interests of the devolveds.

Baroness Ritchie of Downpatrick: Professor Fossum, is there anything from the Norwegian perspective?

Professor John Erik Fossum: I have not prepared anything specifically on Northern Ireland, so I would rather speak specifically to the Norway example.

The Chair: It is to Norway's experience, and third countries in general, that we now turn.

Q41 **Baroness O'Loan:** Good morning, all, and thank you very much for coming. It is good to have your evidence.

Professor Fossum, I will start with you. How do other third countries, such as Norway, manage structured stakeholder engagement in the context of their relationship with the European Union?

Professor John Erik Fossum: I would like to take a bird's eye view of this to start with and list what I think are the possible venues or channels that are available. I have listed seven of these.

The first one is direct access to EU institutions and arrangements for both Governments and politicians. The second is access through the EEA institutions: the EEA committee, the EEA council, the joint parliamentary body and the EFTA Court. The third is access via Norwegian institutions in Brussels: that is, in direct engagement with Brussels.

The fourth is access to the Norwegian Government through government consultations and involvement, so this is more of an indirect form of access. The fifth is access through interacting with other countries' Governments: learning and copying from other countries. The sixth is what I call surrogate representation, where other countries' representatives promote your interests and concerns—for instance, if MEPs speak to your concerns in the European Parliament.

The final one is access through interaction with other civil society organisations in Europe. This is specifically for the civil society component. We are dealing with different types of actors: we have Governments, politicians and civil society, broadly speaking.

I will say something about these, and the actual affiliation Norway has. If we start with the first one, we have, as Professor Barnard already said, very limited access to the EU decision-making institutions. There are, however, experts in the Commission working groups, even in some comitology, and access in agencies. Therefore, there is what I call decision shaping, as Dr Corbett was also talking about, and scope for the Government to be involved early in the initial stages of the Commission's decision-making. There is also access for politicians to be present at Council meetings pertaining to Schengen issues, but without voting

rights. On the EU's first pillar, so to speak—those institutions pertaining to the European Economic Area agreement—there is a formalised form of access.

When it comes to the other policy areas, this is bilateral and governmental negotiations, and therefore much less open. In the EEA area, we are talking about the Commission system, with a normal institutional interaction, where the Parliament and so forth is involved and the EU's transparency rules apply. The EU's intergovernmental institutions are marked by fewer EU transparency rules; hence it is more difficult to get a clear sense of what is going on. There is also access through invitation in the COSAC, the committee of Parliaments, including in the security interparliamentary aspect.¹

If we sum up this presence in the EU, we see that it is clearly tailored towards the Government and its administration. Government officials are able to be present early in the process, whereas other stakeholders need to get involved with EU actors or the Norwegian Government, and they need to understand what is going on in the EU in order to do so. I have been critical of this, because the lack of political representation means that the relationship is very often with government administrators, rather than through political channels and is therefore often more administered than politically governed. The relationship depends a lot on whether the Government is instructing its experts in Brussels on what the Norwegian position should be.

In Norway, research has shown that the Government have actually been quite passive and not given these experts very much instruction, so they have operated as ordinary experts in the EU. Research is also showing that, even if the Norwegian Government were more active, it would win through if it promoted interests that were considered more general, not Norway-specific. It is much more difficult to get through if you propound Norway-specific interests. If you are able to couch and frame your interests as more general interests in the early stages, there is a chance that your positions will be more easily included in the process itself.

The Chair: Thank you so much for that clear exposition. Baroness O'Loan may have one or two further points.

Baroness O'Loan: I wanted to know whether you think that it enables Norway to protect its national interests. I would then like to ask Professor Barnard whether she has a comment.

Professor John Erik Fossum: I have as noted been critical of this and said that I see this affiliation as suffering from a democratic deficit. We see that also through the structuring of the EEA institutions. It privileges, as I said, the Government over civil society. The general situation here is that the mode of affiliation does not engage Norway in the decisions that

¹ Note from witnesses: there is also the Delegation for liaisons between the Norwegian Storting (parliament) and the European Parliament.

are affecting it. The institutional apparatus affirms the EEA agreement as a system of rule-taking.

What is also important is that you have to hash out the conflicts domestically, because there is little scope in the EEA agreement for hashing out conflicts and disagreements with the EU. Much of that needs to be dealt with domestically. There is this type of democratic deficit.

Also, look at the way Norwegian institutions are configured; for instance the Norwegian parliamentary system is hardwired to deal with EU issues as foreign policy issues. It is very useful to compare the Danish parliamentary committee with the Norwegian parliamentary committee.² The Danish one is active, instructs the politicians and checks how they have been dealing, for instance, with European Council issues. In Norway, the parliamentary committee is much more one where the Government provides information to the Parliament on what is going on, because so much is already determined in Brussels without any direct democratic political input from the Norwegian side.

There is a democratic problem with this affiliation structure. There are elements, and I will get into this a bit later, of access and so forth. The EU system is fairly open and allows for informal interaction, but that is quite different from the assured access you have through formal representation.

The Chair: Professor Fossum, we look forward to hearing more from you later.

Professor Catherine Barnard: Was it the question about the democracy deficit that you would like me to address?

Baroness O'Loan: I just wondered whether you had a comment on the Norwegian arrangements, please.

Professor Catherine Barnard: I would make two points. There has been a recent inquiry carried out in Norway about Norwegian influence and involvement in decision-making—I use that term loosely—which the committee may be aware of. I can send it to you, if that would be helpful, and I am sure Professor Fossum would talk more fully about it. It summarises quite well some of the points that Professor Fossum was making about the problems of being a rule-taker and having access, even at the early stages.

One point that he made was about the role of the Norwegian embassy in Brussels, and just how important it is to have a team there who spend a huge amount of time drinking coffee, or equivalent, with EU officials, so that there is informal involvement. Certainly, I have experienced some very effective operators on the Norwegian side, making good personal relationships with individuals in the EU, and thus getting information that way.

² Note from Witness: this refers to the Danish Parliament's European Affairs Committee and the Norwegian Storting's European Consultative Committee

All this points to a requirement for the UK to think about investing more in what is now UKMis—the UK Mission in Brussels—rather than less. I think that this will become even more important in the light of the research.

Baroness O’Loan: Dr Corbett, from the practitioner’s point of view, did you have any engagement with Norwegian interests, or is there anything you would want to add to Professor Fossum’s and Professor Barnard’s comments?

Dr Richard Corbett: When I was a Member of the European Parliament, I was very aware of the Norwegian presence in Brussels. Its mission to the EU is one of the largest in many ways. It is larger than those of some of the smaller member states, and it is very active and well organised. You could say that missions from third countries, since they are not members—they are not inside the meeting rooms; they are outside—are acting as lobbyists. They are lobbyists on behalf of a state, of course, not private interests, but it is comparable. They have to meet people informally, have coffees and lunches, or small informal meetings or briefing sessions, and participate sometimes in parliamentary hearings. Those are the tools that are used by missions from countries outside the European Union when they are seeking to influence EU decision taking.

Lord Dodds of Duncairn: Professor Fossum, the position is that Norway, as a single sovereign state, is involved in these arrangements with the European Union. If, for instance, the northern provinces of Norway—Nordland, Finnmark, Troms and so on—were separated out into the single market and the rest of Norway, including Oslo and so on, was not, what would your assessment be of how effectively those arrangements would work? We are talking about all of Norway but we are talking about only a part of the United Kingdom. That is the fundamental difference and problem. When we talk about the Norwegian experience, that is a sovereign Government covering the whole of their sovereign territory. In Northern Ireland, we are a devolved region that has been divided off from our main market. I was wondering whether you had looked at that or had any thoughts on it.

Professor John Erik Fossum: It would be deeply problematic, because all our closest neighbours and other trading partners are EU members. Therefore, they would be surrounded by states that are all in the EU’s internal market. We are affiliated with Schengen, and that was imperative, because, if we had not been, we would have had a 1,630 kilometre closed border with Sweden. It shows the need to maintain this as a seamless system.

We have a bit of an issue in the electricity market. Norway is de facto divided several electricity price zones, with one divide running between north and south. The north is less sensitive to the European situation and therefore had lower prices when prices rose on the European continent. Norway is an integrated trading system. Internal divides would be difficult also because the north is quite dependent on the activities in the south. If it were isolated, it would have less clout.

The other aspect that is distinctive for Norway is the north and the security aspect. We need to have a population in northern Norway, especially the northernmost area, which is flat and easy to invade. We have to have a physical presence there in order to dissuade Russia, to be quite frank.

The Chair: Those are very interesting points.

Lord Willis of Knaresborough: You mentioned in one of your original statements, Professor Fossum, that there was interaction with other relevant nations. When you said that, did you mean Northern Ireland or the UK? Which do you regard as the other relevant nation, or is that not the case? Does Northern Ireland not feature in that organisation?

Professor John Erik Fossum: It does not feature explicitly in that organisation. It would be under the heading of the UK.

I was also thinking about the Nordic region. It is interesting that the EU is superimposed on the Nordic union. We have an open job market and so forth in the Nordic region as well, so there are very close links and affiliations across the Nordic region. That has a bearing on our broader relationship with Europe, so there is a regional component to this as well.

Formally speaking, the Norwegian Government relate to the UK as such. They did not take a position on Brexit or any of the devolved nations in any formal sense, but I am sure that a lot of people were sympathetic to the Scottish position on the EU issue.

Lord Hain: Dr Corbett, you mentioned that the Norwegian mission in Brussels is pretty large. How effective do you think, from your experience, its influence is?

Dr Richard Corbett: There is no substitute for being in the room and having a seat at the table to be represented in the Council of Ministers and to have MEPs in the Parliament. If you are outside and trying to influence, you have to set up the most effective operation you can, and the Norwegians have done it quite well.

Professor John Erik Fossum: I had prepared something on this for a later question, but I can take it now.

I completely echo what Dr Corbett is saying. The Norwegian Delegation in Brussels consists of 63 people; 38 are diplomats and there are experts from the different ministries. This is the largest diplomatic mission, and includes a range of experts across all the functional areas of Norway's EU affiliation. The Delegation reports that it receives 10,000 visitors every year, so it is facilitating contacts and opening doors. It has very competent people, and it is a vital watchdog for the Government.

I have heard accounts of it receiving case documents for upcoming cases. There is an informal exchange of information that is very important in how this mission operates. It is a. It affirms something that I will amplify later: the centrality of physical presence.

Q42 Lord McInnes of Kilwinning: Thank you to the witnesses for joining us today.

Professor Barnard, you referred earlier to the processes and structures within the Windsor Framework on EU engagement with stakeholders in Northern Ireland potentially being rolled out across the UK following Monday's agreement. I wanted to ask you about the effectiveness at the moment of that EU engagement in the annual presentation and, potentially, workshops moving forward. Could you lay out how, theoretically, you think that that should work and any observations you have had in the current running of the annual presentation, for example?

Professor Catherine Barnard: In my answer to an earlier question I set out the broad structure. My distant view is that it is well-intentioned but not delivering in quite the way people would have hoped, partly because of capacity issues and partly because there are political issues. Lord Dodds could speak more clearly to this than I, but there are issues about the ambivalence of certain of the political players towards engaging. The pragmatists would say that it is better to engage than not—we are where we are—but those who have objected to the Windsor Framework/Northern Ireland protocol as a matter of principle would resist any participation in these bodies.

That is one reason why I hope that, following the reset, when SPS becomes a UK issue, that will remove some of the political difficulties that currently face those operating in Northern Ireland. Of course, if you are very opposed to any co-operation with the EU because you think that that is against the spirit of Brexit, this will not help. For those who are in the middle, who recognise that some sort of pragmatic solution is better than nothing, making it a UK-wide issue rather than an NI issue will, I hope, reduce some of the difficulties and increase the numbers of people who can get involved in the process and offer their views.

Going forward, how might this work for the UK as a whole? There is a risk of a proliferation of bodies, because this will be superimposed on the trade and co-operation agreement structures, as well as the structures under the withdrawal agreement. Do not forget that, under the TCA, you have the Parliamentary Partnership Assembly, or PPA, the domestic advisory groups, or DAGs, and the civil society forum. The question then is how this all works.

There is a further issue, which takes us back to Norway and the fact that Norway is a rule-taker in the same way that the UK will be—albeit softened, for the reasons that Professor Fossum has given. How will this pipeline of new legislation be accommodated through the UK parliamentary systems? I use that deliberately in the plural, because some of it will affect the devolveds. There will need to be input into not just legislation—I emphasise that it still looks as though that will be fairly low level—but the results of legislation coming out of the EU and how it will go through the UK parliamentary systems. What happens if there is a vote in Westminster or one of the devolveds to reject what the EU is putting forward? There are lots of problems ahead. That was anticipated

in Northern Ireland in respect of the Stormont brake. That raises further questions about how all these difficulties will be smoothed out.

In the Norwegian report I mentioned before, it seems that the relevant committee looks at it and then reports to the Norwegian Parliament. In essence, there is a rubber-stamping. One thing that comes out very clearly from this report is the backlog in Norway of actually giving effect to its obligations under the EEA agreement.

I can see that Professor Fossum would like to follow up on that.

The Chair: With apologies to the witnesses, I am conscious of time.

- Q43 **Lord Thomas of Gresford:** We have heard a lot about getting involved in the early stages of EU legislation that affects Northern Ireland. To what extent do the protocol or Windsor Framework's engagement structures enable Northern Ireland stakeholders to engage with relevant EU legislation at an appropriately early stage of the legislative process? What could the UK learn from other third countries such as Norway? It seems to me that we have learned so far that an effective lobbying system would be essential. I wonder whether Richard Corbett could deal with that, please.

Dr Richard Corbett: I could, but I would have thought that Professor Fossum would be better placed to answer that.

The Chair: We will bring him in after you.

Dr Richard Corbett: As we have all been saying, it is a lobbying exercise to a degree, and that can be organised better, but it is lobbying by public authorities of a state. Therefore, that should open more doors than private commercial lobbyists. There are also structures that can be used. Professor Fossum listed the seven ways in which Norway engages, some of them through structures, governmental or other, and sometimes through civil society and other networks. You need to use the whole panoply if you want to have influence. I think we are coming back later to where there could be an improvement on one aspect of that, which is how to seek to influence the European Parliament. We will come back to that later, if I look at the list of questions coming up

Professor John Erik Fossum: I would agree on the issue of presence and the role of the delegation in Brussels. I should add that the Norwegian Government have specific provisions for hearings and to include stakeholders in the legislation in the various parts of the process. This is also specified for the EEA agreement, so that there are specific provisions for when, for how long and who should be included. The provisions are general, so that each ministry would normally include those that it finds most appropriate in those particular instances. The deadline is about six weeks. It is specified that this can be more limited and that there would be exceptions, and that has to do with when you are involved in the process.

It is interesting to note that, when it comes to regulations coming from the EU—regulations rather than directives—there is no scope in implementation for designing or tailoring this to local conditions and so hearings are not normally included, as there is not much wiggle room for Norway to do so. That means that it matters what kind of legislation is coming from the EU. The more the EU is moving towards regulations, the less easy it is to deal with this in order to get local adjustments.

Lord Thomas of Gresford: As I understood from your earlier evidence, you were saying that stakeholders have to go through the Norwegian Parliament. You are shaking your head. Have I misunderstood?

Professor John Erik Fossum: There are more venues, and the hearing institute is one that the ministries organise with stakeholders. There are different aspects of this. When I talked about the Parliament, I talked about the Parliament's location in the decision-making process overall. These hearings would typically be before the Parliament actually enters into the process.

Q44 **Lord Empey:** Good morning to our witnesses. It is nice to see you here.

What role does the United Kingdom Government, including the UK Mission to the EU, play in enabling Northern Ireland stakeholders to engage with the EU institutions effectively?

Professor Catherine Barnard: UKMis has invited Northern Ireland stakeholders to Brussels and arranged various meetings with UKMis itself, but also with some of the key players in Brussels. That is clearly a good thing, but of course the answer is always that it could do more. UKMis's resources are limited and it is expensive to bring people over, but I think we would all agree that it is better to meet some of the key players in person rather than just doing it remotely. The answer is that it is a good thing but more could be done.

Lord Empey: Do you think that, in the light of what happened on Monday, we are going to move more to an UKRep-type of situation in Brussels?

Professor Catherine Barnard: It is really important that we move to an UKRep-type situation. It would have to be given a new name of some sort, but, yes, it will need to go to an UKRep-type situation, but better resourced. Paradoxically—and I think this is the Norwegian experience—not being in the room means that you need to deploy more resource to do the work outside the room.

Baroness Goudie: Good morning. Thank you very much for coming.

This question applies to Richard Corbett and to the other colleagues. Is this support sufficient? How does it compare to other third-country missions?

Dr Richard Corbett: UKMis—"UK miss EU" is the quip in Brussels—is still in the same building as UKRep was when it was a representation of a

member state to the EU. I gather that there are slightly fewer staff than before, but not enormously fewer, but do not quote me on that—I do not know the figures. Certainly, it is there and physically present. It is just off Place Schuman, in the heart of the European district. You still see civil servants from UKMis engaging with representatives of the different European institutions. How effective that is will no doubt vary case by case, but they make the attempt.

The Chair: Our next question is on the role of the Northern Ireland Executive Office in Brussels.

Q45 **Lord Willis of Knaresborough:** Thank you to the witnesses. We have thoroughly enjoyed your comments this morning.

I want briefly to ask what you think or know is the key role of the Office of the Northern Ireland Executive in Brussels. I think it was Professor Corbett who was saying how remarkable Norway's commitment is, in its staff and its organisation in Brussels. Do you think that an expanded NIE office in Brussels to track EU legislation would really help us? What is your view on that recommendation? How significant should that increase be, remembering that this is Northern Ireland, which is part of the UK, as opposed to Norway, which represents the whole country? Perhaps Dr Corbett could begin by answering that.

Dr Richard Corbett: The Office of the Northern Ireland Executive is quite a small office. I have noticed that it organises quite a few cultural events, which is fine but is separate from what we are talking about.

There is of course no way it could increase to the size of anything equivalent to that of Norway, or indeed UKMis. The key is to make sure it is perhaps strengthened—that is up to you—and that it can leverage and work through the UK Mission on some issues and maybe through the representation of the Republic of Ireland, if it was amenable to that and there is an identity of views on some subjects. Certainly, with the UK Mission, which is just around the corner from it, it should be attentive and representations should be made to leverage that much larger office.

Professor Catherine Barnard: In respect of the Office of the Northern Ireland Executive, there is an issue here. The political parties in Northern Ireland are not in agreement as to whether there should even be an Office of the Northern Ireland Executive and, if there should be one, how big it should be and what it should engage in.

To come back to what was decided on Monday, if it becomes more of a UK-wide issue rather than just an NI issue, I hope that that will remove some of the political controversy around the existence of an Office of the Northern Ireland Executive in Brussels. Obviously, Northern Ireland will continue to need to have a voice there. Its position still will be different from that of the UK as a whole, not least because Northern Ireland's commitments under the Windsor Framework will go beyond what the UK's commitments will be. For example, under the Windsor Framework,

Article 2 covers equality and social matters, which of course is not contemplated in the form of any reset.

Wearing my UK in a Changing Europe hat, I would like to emphasise that we think that UK in a Changing Europe is probably the only body doing any consistent tracking of what is coming out of the EU in legislative proposals. This is something really important that the UK Government should do, because they have far more capacity than we do as a small think tank to track what is coming down the track and, crucially, what has been adopted.

Lord Willis of Knaresborough: If you were on this committee, what would your recommendation to the Government be?

Professor Catherine Barnard: You need to have a body that is part of the Civil Service and is engaged in knowing what is even coming out of Brussels, and to be consistent in what has been adopted. As you know, the European Scrutiny Committee in the Commons has gone. That is a great shame. Leaving aside what was agreed on Monday, there is still a huge amount of EU legislation that has an impact on the UK, even though it is not in any way anticipated even by the Windsor Framework—for example, the AI Act, the Digital Services Act and the Digital Markets Act. All this has extraterritorial effect and it is receiving no parliamentary attention or scrutiny.

I fully accept the argument is that we have left the EU and therefore these things should not be discussed and debated in the UK, but the bottom line is that British business is still being bound by these rules. Our failure to have a look at them is doing a disservice to British business.

The Chair: Professor Fossum, you have some points you would like to make on this.

Professor John Erik Fossum: This is an important recommendation. I base that on a study that I co-supervised: a master's thesis on regional offices in Brussels³. The analysis compared Swedish and Norwegian offices from capital regions, as well as from regions in the north. The study's findings underlined the salience of informal contacts and the importance of being present in Brussels.

The study actually showed that, even if Swedish regions had access through the Government and could directly access EU institutions, and the Swedes were doing that, the Norwegian regions' ability to access informal networks and liaise with others—that is, to engage in informal co-operation with other regional offices in Brussels—was very important, as was the ability to maintain an ongoing presence. The interviewees from the regional offices underlined the importance of presence. Long-

³ Note from witness: written by Marte Haugen. Haugen conducted a range of qualitative interviews with officials from these regional offices in Brussels and had also been an intern there before.

term thinking, continuity and specialisation are some of the terms that were underlined.

To have a physical presence there that allows one to follow the unfolding of issues, as Professor Barnard was saying, is fundamental to this. We have a lot of regions, businesses and so on that have offices in Brussels, because they appreciate and recognise the centrality of being physically present.

The EU is permeable. That is one of the lessons. A lack of membership does of course exclude you from physical presence in the decision-making bodies, but it does not exclude you from information, knowledge of what is going on and so on, if you go after it. There is much of that.

The 'early warning' you get by understanding what is going on in Brussels is vital. Even in Norway, for instance, the Government are too slow. The report that Professor Catherine Barnard was referring to pointed out that, when it came to the determination of whether an issue was EEA relevant, the Government were waiting until this had been determined in Brussels. That is far too late. You have to know about this at the very early initiative stage in order to do anything, and Norwegian civil society is not clued into this process at all.

That is also why we have had this so-called social benefits scandal. A lot of our public administration, especially at the municipal level, is not clued into the obligations that Norway has under the EEA agreement.

The other point for us is to make sure that people in Brussels and in the different member states know and understand the EEA agreement, and the distinctive aspects of it.

Let me just add one element to this. In my understanding, the EU treats countries according to whether it understands them as qualifying for membership. Norway is understood as a country that qualifies for membership, and of course so is the UK. It is therefore reasonable to assume that the EU will treat these countries differently from how it would treat countries that it does not understand to qualify for membership.

Baroness O'Loan: Professor Barnard, I wanted to come back to your comments. One of the things that we have asked government to do is to track regulatory divergence. The work that you describe your think tank as doing is, in effect, tracking what is coming and what comes, and that must therefore inform regulatory divergence. Is there any more information that you can give the committee that you have become aware of but is not more generally known?

Professor Catherine Barnard: Thank you for your question. I just missed the very last sentence.

Baroness O'Loan: Is there any more information that you can provide to the committee that would help us in this business of tracking

regulatory divergence, as well as anticipated regulatory divergence?

Professor Catherine Barnard: We have been tracking regulatory divergence, both active and passive, since Brexit. It is very striking that, even under the Rishi Sunak Government, the level of active divergence, where we have consciously departed, was very low. Indeed, under the Labour Government it has stopped entirely.

However, passive divergence is a much bigger issue. In the period until just before the European Parliament elections in 2024, the EU went through a period of significant legislative activity, and some major pieces of legislation were adopted. Of course, the UK has not kept up with that by definition, because we are not obliged to. This does have impacts on Northern Ireland, where, for example, the packaging rules have changed. This has been very difficult for Northern Ireland, as I am sure you know.

My understanding is that the Food Standards Agency is doing some of its own tracking. I have that from conversations with people there. Their information, however, is not published. Even UK in a Changing Europe cannot claim to be comprehensive, because it is essentially one member of staff whose job it is to try to monitor this. As we know, what the EU covers is so vast, but we try to focus on the main areas of change. We are told that lots of embassies rely on that work. Government departments look at that work, which is flattering but also concerning, because we think it is probably a job that the Executive should be doing, where they are properly resourced to do it.

Lord Empey: This is a point to Dr Corbett and Professor Barnard. The complexity of our arrangements up to but excluding Monday was already substantial. It is now going to be more. How on earth are we going to be able to control all of this? You could hardly get it on an organogram, never mind anything else. To be effective, I presume that all of this is going to have to be concentrated in some way. Would that make sense, Dr Corbett?

Dr Richard Corbett: Intuitively, yes, but, at this stage it is not a bad thing to have had a number of frameworks agreed and commitments made on various sides, and to make them work. Rationalisation should come later. At this stage, it is a matter of trying to make sure these things actually work and are useful vehicles, and then perhaps there will be an opportunity to rationalise.

Professor Catherine Barnard: I would add that the complexity is greater even than you perhaps indicated, because, of course, the Windsor Framework does not map perfectly on to what appears to be being discussed in the context of the common understanding. Therefore, there will still need to be the Windsor Framework institutions to deal with those bits of the Northern Ireland protocol that do not map on to the developments in the broader UK-EU relationship. Even in respect of the broader UK-EU relationship, there will need to be engagement with Scotland and Wales as well.

Baroness Goudie: Dr Corbett, you mentioned in your evidence that there is no real contact with the European Parliament. Do you think this is a great mistake? I personally do, but what do you think?

Dr Richard Corbett: Yes, indeed. I believe that is going to be the subject of its own question.

The Chair: Let us glide to the final question, bearing in mind Baroness Goudie's point.

Q46 **Lord Hain:** Given that Northern Ireland is bound by the customs union and common market rules, what is the scope for direct Northern Ireland engagement with EU structures—for example, between Northern Ireland Executive Ministers and their important officials directly with the European Commission, or between Assembly Members, the Northern Ireland parliamentarians, and the European Parliament? Clearly, there are no formal structures, but what informal structures might be envisaged here? Are there any lessons from third countries' relationships? I am also interested in Dr Corbett's written evidence, where you mentioned the scope for the UK-EU Parliamentary Partnership Assembly. Is there any scope there?

Dr Richard Corbett: This is a field where there is some scope for improvements. I mentioned before why it is important to engage with the European Parliament, as well as with the Council, and at an earlier stage the Commission, when it drafts its proposals. For the bulk of European legislation, the Parliament is co-equal with the Council; it is, in effect, a bicameral legislature. The Parliament normally amends Commission proposals, sometimes substantially, as it goes through this process.

The Parliament is also important upstream. When the Commission is drafting proposals, it will frequently have had a discussion with the relevant European Parliament committee. Sometimes, even, the Commission is drafting a proposal because the European Parliament has requested it and it is responding to a parliamentary request. When I was an MEP, that often meant that we MEPs were aware of proposals coming up before the Government were.

Lord Hain: Was this through a particular European parliamentary committee?

Dr Richard Corbett: Committees are indeed focused on their areas of expertise, naturally. Certainly, if you are on a committee where a legislation proposal was in the pipeline, you were likely to be aware of it. I would sometimes have British Ministers phoning me up when a proposal landed, asking, "Well, what is this about?", because we already knew a bit about it before the Ministers did. On having early influence, engagement with the Parliament is something to consider.

In my written submission to you, I put out a couple of ideas. One is to use the UK-EU Parliamentary Partnership Assembly. This meets twice a year, and involves British parliamentarians and members of the European Parliament. There is nothing that would preclude that partnership

assembly from creating a sub-committee. It is master of its own rules of procedure, and it can agree changes to its procedures by a two-thirds majority, subject to those new rules being approved by the Bureau of the European Parliament and the relevant authority in the UK Parliament.

One could envisage a sub-committee on Northern Ireland, in view of the specific situation that Northern Ireland is in. If this were composed of six or seven members from each side, including members coming from the Northern Ireland Assembly, that would be a means of engaging directly with MEPs. One could envisage such a sub-committee meeting on the occasion of the regular meetings, twice a year, of the partnership assembly, and perhaps once in between each of those meetings—so four times a year.

That would ensure that there would be a certain number of MEPs. Typically, the European Parliament would make sure there are different political groups represented in such a sub-committee, so there would be members from the various political families and groupings in the European Parliament aware of those concerns and of Northern Irish ideas, which will have typically come from your own parliamentary committee.

The Chair: Forgive me for breaking in, but, sadly, we are reaching the conclusion. I know that Baroness Ritchie has a point that she would like to make. But do return in the last moments to your point.

Baroness Ritchie of Downpatrick: Professor Barnard referred to point 30 and point 44 in the common understanding, where it says, “The European Commission should consult the Government of the United Kingdom at an early stage of policy-making. These rights would not extend to participation in the work of the Council or its preparatory bodies”.

For fear of setting up more bodies, as Lord Empey has already referred to, how would that mechanism take place to ensure a timely distribution of information and the required actions needed to better inform people, but also to allow that greater level of participation?

Professor Catherine Barnard: I would sincerely hope that something like the agreement that the Commission already has on enhanced engagement would be a starting point, because that at least requires a presentation by the Commission, in the case of enhanced engagement with Northern Ireland, about upcoming policy initiatives and legislative proposals. That level of transparency would already be beneficial to the UK as a whole. There should be a parliamentary committee that receives this and then cascades it out to the devolveds at the same time. Those mechanisms should trigger at least some form of stakeholder participation in respect of the particular topic that is at stake.

Chair: I will hand back to Dr Corbett for further comments, having so rudely interrupted him.

Lord Hain: Just briefly, before we go back to Dr Corbett, what power or

scope does the European Parliament have for setting up its own informal consultative mechanisms?

Dr Richard Corbett: In principle, the European Parliament adopts its own rules and procedures, so there would be nothing stopping the European Parliament setting up a committee or sub-committee specifically on Northern Ireland, though it is unlikely to do that.

On engagement with European parliamentary committees, what I have suggested in my written submission is trying to find a way to take advantage of the fact that parliamentary committees often have hearings on proposed legislation and invite stakeholders. Those stakeholders do not have to be only trade associations, trade unions, NGOs or whoever; there is no reason why this could not include holding hearings with representatives from Northern Ireland.

This would have to be lobbied for informally, and contacts made with the relevant committee chairs, persuading them of the usefulness of this on appropriate occasions. That might be work for the Office of the Northern Ireland Executive in Brussels, with help from UKMis. That is another thing that could be explored beyond the idea I mentioned earlier of creating a sub-committee in the UK-EU Parliamentary Partnership Assembly.

Professor John Erik Fossum: Norway has an office in the European Parliament, so it is physically present there with a representative. That could also be an idea. For instance, if the UK got a physical presence, there may also be a case to have some type of Northern Ireland representation in that, due to the particular conditions for Northern Ireland.

I would very much second what Professor Corbett is saying about these interparliamentary relations. We have to keep in mind that the early warning system that the European Commission has made has involved the national Parliaments more directly. That is maybe another opportunity for either Northern Ireland or the UK to liaise with other countries that are getting information from the Commission, in order to get it earlier on. If one has good, friendly relations with others, one can liaise on that as well.

Lord Hain: How effective is that Norwegian office in the European Parliament?

Professor John Erik Fossum: It is more like a listening post. I do not know the details of it, but it is important to be physically present. It is a steep learning curve to understand the EU system, when you do not have much of a domestic debate on this. Just learning the complex EU system itself and being able to interact with it is vital.

You talk about complexity. Norway has a total of 100 agreements with the European Union, so it is a complex relationship. Being present and understanding the vital institutions of the European Parliament is fundamental, and there should be some continuity in it.⁴

The Chair: That would be very helpful indeed. Thank you for bringing us to a conclusion by reminding us of the extent of complexity with which this matter is surrounded.

Man thanks to you all. As I draw the panel to a close, I remind witnesses that a verbatim transcript will be sent to them for correction. Profuse thanks to all three for what they have contributed this morning. It will be so helpful as we prepare our report. Thank you.

⁴ Note from witness: The office in the European Parliament is only a small element in the work that is undertaken to understand and interact with the EU system.