



# Select Committee on the European Union

## Oral evidence: Future UK-EU relations: governance

Tuesday 9 February 2021

4.35 pm

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Members present: The Earl of Kinnoull (The Chair); Baroness Brown of Cambridge; Baroness Couttie; Baroness Donaghy; Lord Faulkner of Worcester; Lord Goldsmith; Lord Kerr of Kinlochard; Lord Lamont of Lerwick; Baroness Neville-Rolfe; Lord Oates; Baroness Primarolo; Lord Ricketts; Lord Sharkey; Lord Teverson; Baroness Verma; Lord Wood of Anfield.

Evidence Session No. 2

Virtual Proceeding

Questions 17 - 34

### Witnesses

**I:** Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster; Lord Frost, Prime Minister's Representative on Brexit and International Policy, and Head, Number 10 International Policy Unit; Lindsay Croisdale-Appleby CMG, Head of the UK Mission to the EU; Matthew Taylor, Director-General, Task Force Europe; Brendan Threlfall, Director, Transition Task Force Northern Ireland.

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## Examination of witnesses

Michael Gove, Lord Frost, Lindsay Croisdale-Appleby, Matthew Taylor and Brendan Threlfall.

Q17 **The Chair:** I declare this public evidence session open, here in this virtual House of Lords. Welcome back to the Chancellor of the Duchy of Lancaster, Michael Gove MP, and to Lord Frost. Thank you for coming along this afternoon. We understand just how busy you are at the moment.

As a public evidence session, a transcript will be taken and we will send it on to you. We will be grateful for any corrections in due course. For the benefit of those watching, there are various very senior officials also on the call today. We would be grateful if, when they are brought into the conversation, they could state their names and job titles, so that people know who they are.

We have a lot to get through, so I appeal to all who are speaking to keep their questions and answers short and crisp, so that we stand a chance, in our short amount of time, of getting through the full question set.

I should begin by congratulating you, Lord Frost. We were able to congratulate Mr Gove last time on producing good progress in the joint committee. Since then, you have produced the trade and co-operation agreement, so many congratulations to you and all those on the call for your parts in that.

We are now six weeks on from the trade and co-operation and its agreement. Mr Gove, how would you assess the current state of UK-EU relations?

**Michael Gove:** I will defer to Lord Frost on this and then perhaps add one or two thoughts of my own. As you quite rightly point out, the conclusion of the TCA was down principally to Lord Frost and his team's excellent work.

**Lord Frost:** We said ad nauseam last year, during the negotiations, that we wanted "friendly co-operation between sovereign equals" as our vision of the future. That is still what we want. That has not quite been the experience of the last few weeks, if we are honest about it; the EU is still adjusting somewhat, as we thought it might, to the existence of a genuinely independent actor in its neighbourhood. There has been a certain amount of disagreement over the vaccine issues, which in many ways have created political difficulties on the EU side, for reasons I will not go into now but which have played back into the broader relationship.

So we have had the direct criticism of our approach on vaccines, with the question mark put over our regulator's decision and criticism of AZ effectiveness. We have also had niggling border issues such as the current issues over shellfish; there are many others. We have had the issue over accreditation of our missions, which has been well known to both sides since spring last year but has only come out as an issue now. The EU is limiting the access that our head of mission has in Brussels as a

result of this, which obviously does not help the good conduct of business. We have just heard that the EU is likely to ask for an extension to the two months that were set out for ratification in the agreement. None of those things are dramatic in themselves, although some have been very serious.

Behind that, we have the Northern Ireland issues that CDL has been dealing with. To be honest, it has been more than bumpy in the last six weeks. It has been problematic. I hope we will get over this. It will probably require a different spirit from the EU, but I am sure we will see that and see some of this subside as we go forward.

**Michael Gove:** We all know that, when an aeroplane takes off, that is the point when you sometimes get that increased level of turbulence. Eventually, you reach a cruising altitude and the crew tell you to take your seatbelts off and enjoy a gin and tonic and some peanuts. We are not at the gin and tonic and peanuts stage yet, but I am confident we will be.

**The Chair:** Thank you. That is a very good segue into discussing Northern Ireland and a question from Lord Lamont.

Q18 **Lord Lamont of Lerwick:** Good afternoon, Chancellor and Lord Frost. We have already seen the abortive attempt by the Commission to invoke the safeguard mechanisms under Article 16. Some people have been urging you to take similar action. I understand absolutely your reluctance to do this, but the criteria set out under Article 16 and annex 7 include two particular things. One is a diversion of trade, which is certainly happening, and the other is "societal difficulties". That is the phrase used. If threats to officials are not societal difficulties, I do not know what is. I appreciate your reluctance to trigger Article 16, but is it not the case that, objectively, the conditions for doing so and taking safeguarding measures are there?

**Michael Gove:** Yes, but, as you quite rightly point out, we do not want to go there if we can possibly avoid it. We believe there are ways of working with the Commission in order to resolve the very real difficulties that exist on the ground.

**Lord Lamont of Lerwick:** When there was a lot of talk in the lead-up to the trade and co-operation agreement and to the protocol, one thing that was referred to often was trusted trader schemes. Trusted trader schemes only apply to dealing with the problems with tariffs. Is there not scope for broadening those to include restrictions that are creating problems with SPS? Would that not make a huge difference to the Northern Ireland situation?

**Michael Gove:** Yes, and we are working on precisely that. I will defer to my colleague, Brendan Threlfall, who is the lead official in this area.

**Brendan Threlfall:** We already operate what is called an authorised trader scheme on the SPS side within the grace period that we negotiated

with the EU last December. That means that those companies within that scheme do not have to do export health certificates during that period. Part of the proposals we have put forward that are in CDL's letter to the EU chair of the joint committee were that we would extend that for a period of a couple of years while we work on longer-term solutions as well.

**Lord Lamont of Lerwick:** Yes. My suggestion was having it when there was no grace period. We have just been talking about grace periods. In 11 months' time, the grace period for the supply of medicines will come to an end. That will mean that medicines going to Northern Ireland have to satisfy EU regulations, need approval in the EU, and will be subject to checks. Is that not going to be an extremely serious matter indeed?

**Michael Gove:** Yes. We want to use this period to ensure we can have the uninterrupted supply of medicines to Northern Ireland. That is one of the issues that we will be working with the Commission on.

Q19 **Lord Wood of Anfield:** Thank you for being with us, Mr Gove and Lord Frost. I would like to ask you about the DUP's response to what has been happening in the last few weeks. As you know, it has sent out a five-point plan, which it says sends "a united message ... that Northern Ireland must be freed from the protocol" and that it "will actively oppose at every opportunity any negative measures, laws or Bills that continue to flow from the protocol and which undermine Northern Ireland's place in the UK internal market".

Mr Gove, I wondered what your reaction was to that. Presumably, you reject the DUP's fundamental opposition to the protocol. How would you respond to it?

**Michael Gove:** With close attention and courtesy.

**Lord Wood of Anfield:** Could you elaborate? Are you sympathetic to their criticisms?

**Michael Gove:** I am sympathetic to the position that all the people of Northern Ireland find themselves in. As we know, following on from the Commission's actions a week past Friday, concerns in Northern Ireland, as Lord Lamont and others have indicated, have been serious, widespread and cross-community. The DUP is the largest party in the Northern Ireland Assembly and we must take seriously what it and its representatives say, as we do those of all the parties in the Northern Ireland Executive.

**Lord Wood of Anfield:** I take that point. Thank you for that. Arlene Foster said under three months ago that the proposals you endorsed in your deal undermine the integrity of the UK. Presumably, you reject the DUP's opposition to the protocol.

**Michael Gove:** I take a different analysis, yes.

**Lord Wood of Anfield:** Can I move on to the question of community

tensions in Northern Ireland? We have all been worried about that. As you have said, there will be concerns about this cross-community. What steps are you taking as a Government to de-escalate this situation and address these rising tensions after the suspension of checks on goods?

**Michael Gove:** Those tensions were inflamed by the events of a week past Friday. The Commission was clear that a mistake had been made and was gracious and speedy in acknowledging that, but that act, once it had occurred, changed the dynamic on the ground. The Northern Ireland Office and Government are working with community representatives across all communities in order to seek to calm tensions and reassure all communities that progress is best made through politics. One way in which we are doing that is engaging with the Commission in order to make sure both the UK and the EU are fulfilling all their obligations, to ensure that the Belfast/Good Friday agreement is respected.

**The Chair:** Before we leave that area, I wondered if I could ask one matter of detail. Annex 7 of the Northern Ireland protocol lays out the procedure that you have to go through in order to invoke Article 16. At the time of the United Kingdom Internal Market Bill, there was comment about annex 7 and whether that had been respected. At the time of the recent fuss with the EU seeking to invoke Article 16, annex 7 was looked at again.

I wondered what assurance you could give us that you feel now that both sides are going to fully respect the terms of the annex and the necessity of deep communication between the two sides when they get into difficulties, so that they are following the process that is described in that annex.

**Michael Gove:** We are absolutely committed to doing so. The EU recognises and has been gracious enough to acknowledge that it made a mistake 12 days ago now. The proof for both sides will be in how we operate in the future.

**Q20 Lord Kerr of Kinlochard:** Thank you for being with us again, Mr Gove. Could you explain the rationale for the proposals you will be putting to Mr Šefčovič when you meet on Thursday? The evidence we have received from the Northern Ireland business community is that the new year disruption was much exaggerated and that its principal cause was the short notice given, 36 hours, of the details of the new regime. They clearly want extensions of the grace period, which you are seeking, and assurances of longer notice periods next time. Why do you say in your letter to Mr Šefčovič that we need a reset? Why do you tell us, in your letter to us, that you are looking for political rather than technical solutions?

**Michael Gove:** The situation on the ground in Northern Ireland speaks for itself.

**Lord Kerr of Kinlochard:** Could you elucidate? The alleged intimidation is alleged to have started before the Commission made its bad mistake

with its proposal to invoke Article 16.

**Michael Gove:** When the Commission made its mistake, as I say, it graciously and rapidly withdrew the prospect of invoking Article 16 in that way. Nevertheless, all political parties in Northern Ireland made the point that trust had been eroded and that change was required. We can see in the reactions not just among the unionist community but among those who vote for the Alliance Party, who consider themselves to be non-aligned, and certainly within the nationalist community, a recognition that change is required. In conversations that I have had, including with the deputy First Minister, it is clear that change is required in order to ensure the protocol is embedded.

It does not do any of us any good to pooh-pooh or relativise the feelings of our fellow citizens in Northern Ireland. Both the UK and the EU need to show that the protocol can work, by taking account of their concerns.

**Lord Kerr of Kinlochard:** Did you say that you would like the protocol to be amended?

**Michael Gove:** I want the protocol to work, and there are ways in which we can do that by making practical changes on the ground along the lines outlined in the letter that I sent to Vice-President Šefčovič, which I was sorry to see appear in the public domain.

**Lord Kerr of Kinlochard:** What I do not understand is the concept of the reset. We have known for 16 months that, if Northern Ireland stayed in the single market and Great Britain left it, there would be a frontier in the Irish Sea. There are some on both sides of the Irish Sea who have clearly been very unwilling to accept that and have been saying things in public that amount to denials that that would happen. The withdrawal agreement says what it says and I do not think it is likely to be amended.

**Michael Gove:** I take your point, but the proof of the pudding is in the eating. The proof of the protocol is in its application. The protocol is clear that the processes that are required must bear as lightly as possible on the people of Northern Ireland, on their lives and livelihoods. The protocol is there to uphold the Belfast/Good Friday agreement. The Belfast/Good Friday agreement requires respect across communities.

Again, the UK Government are taking upon themselves responsibilities for helping to protect the EU single market. We do so in full knowledge of the importance of the single market to the European Union. We do so in full knowledge of the strength of feeling within European Union member states. However, as I said to our colleagues in the House of Commons yesterday, if you send a bulb from Bedfordshire to Ballymena, in order to plant it in your back garden, that is not an existential threat to the single market. If it was, I would be interested to see that argument adumbrated at length.

Q21 **Lord Oates:** Good afternoon, Mr Gove and Lord Frost. Mr Gove, you said that we have to respect the wishes of the people in Northern Ireland and

take those views into account. That is certainly something that I would subscribe to. Is it not the case that the opposition of the DUP to the protocol, while it may have increased since the very foolish decision of the European Commission, was there from the beginning? Why did you not listen to it then?

**Michael Gove:** Yes, the DUP's position has always been clear. We can also see across communities in Northern Ireland, across all parties and indeed within the business community, concerns that have been expressed. It is our responsibility as the UK Government to address those. It is not my or the Government's position that we wish to resile from the protocol—quite the opposite. Again, the very existence of the joint committee is an acknowledgement and a recognition that there will always be operational issues in the application of this new protocol that need to be addressed, and addressed in the spirit of constructive and pragmatic problem-solving. That is the approach which the UK Government are absolutely committed to. To be fair to Vice-President Šefčovič, that is the approach that he has always taken to these questions.

**Lord Oates:** Could you therefore tell us how the EU has responded so far to the proposals you have put to it? What is your response to Vice-President Šefčovič's suggestion that the UK needs to make greater use of the flexibilities that were already agreed by the joint committee in December, before further adjustments are made?

**Michael Gove:** We have been in conversation at official and at joint committee co-chair level. My colleagues have been talking to Vice-President Šefčovič's team. I have been talking to him. There is a shared acknowledgement, as I mentioned earlier, about the need to proceed in a pragmatic and constructive way. Of course, the UK will always look at every aspect of its obligations under the withdrawal agreement and the protocol. We will do everything possible in order to make sure not just that the objective criteria we have to live up to are satisfied, but that we can provide reassurance to our friends and neighbours.

**Lord Oates:** We talked a bit earlier about the potential for a cliff edge at the end of the grace periods. Could you tell us your view of the consequences if that cliff edge takes place at the end of the grace period, if further extensions or mitigations cannot be agreed? Can you tell us what dialogue you have had with the Irish Government on these matters? What mitigating steps would you wish it to take?

**Michael Gove:** The purpose of the grace periods is in order to make sure businesses are ready to continue to give our fellow citizens in Northern Ireland access to the goods and services that they have a right to enjoy, as citizens of the United Kingdom. I have been talking to members of the Irish Government, as indeed many of my colleagues have. We have a shared understanding of the importance of making progress.

Q22 **Lord Faulkner of Worcester:** It is good to see you again, Mr Gove and Lord Frost. Thank you for giving us your time. I would like to start by

referring back to what you, Mr Gove, said in the House of Commons last week about UK businesses being ready. The quote I have is that, "We are also communicating with UK businesses to stress that they have an obligation to ensure that their goods are available for the citizens of Northern Ireland in the same way as they are available to her and my own constituents".

We have had reports from the Northern Irish business community, which says that UK businesses are not at all ready and are having great difficulty in fulfilling trading arrangements under the protocol. Can you comment on that?

**Michael Gove:** There is a broad spectrum. Lord Kerr indicated that there had been an initial disruption and things had calmed down. That is a view that reflects his general sunny optimism on most matters. As you quite rightly point out, there are others who have noted that there have been disruptions and that there are particular businesses that have faced issues. We are working with those businesses in order to make sure that any issues that they may have identified as barriers to the effective provision of goods and services in Northern Ireland can be overcome.

**Lord Faulkner of Worcester:** I had a letter at the weekend from the chairman of a charitable organisation, a heritage railway in Downpatrick. He said that he normally deals with heritage rail lines on the mainland and they exchange donations, equipment and so on. He was due to receive something from a railway in Devon, which was a gift. He said that he approached five or six firms he had regularly used in the past, two in Northern Ireland, the rest in Great Britain. Only two replied, one to say that it was not accepting any Great Britain to Northern Ireland orders anymore. The other courier provided a list of 10 requirements which he needed to go through before it would accept the order. Is that what we were intending to see happen? If not, how can we do something about it?

**Michael Gove:** The truth is that there are some businesses that, when it comes to trade with the EU and the dispatch of goods to Northern Ireland, are taking a little time to adjust to the new normal. There is a reticence and caution among some, which we are doing our very best to dispel by making clear what the processes are and how it is possible to comply with them with the least possible disruption to effective activity. There are also some specific concerns that require to be addressed. I am very interested in the case you mentioned and I would be grateful if you could communicate it to my team so we can follow up.

One of the more vivid examples, which I alluded to earlier when I was chatting to Lord Kerr, relates to plants and seeds. There are ways in which we can address that issue with good will on all sides. It may well be the case in the heritage railway concern that you mentioned that there may well be a misunderstanding or misinterpretation of the rules. It may be that there is a specific unforeseen impediment to the effective supply of goods to the heritage railway team in Downpatrick that we can properly address.

**Lord Faulkner of Worcester:** Good. Thank you very much for that. Do you think our Government are doing enough to address the risk of Great Britain-based businesses choosing to discontinue trading with Northern Ireland? Is that not a real danger?

**Michael Gove:** I would not want to downplay the issue at all. The trader support service is there and Government have invested in it in order to ensure that we are in a position to support businesses in Great Britain and in Northern Ireland, to ensure everyone in the UK has access to their goods and services. I do not mean to belittle the problems in any way, but, if I may use an analogy, sometimes when I was younger and proffered a Scottish banknote to a taxi driver in London they would question whether they should accept it. Mercifully, that is no longer an issue, but sometimes a misunderstanding arises that requires to be addressed. It is very important that we do so by stressing at every stage the integral nature of Northern Ireland within the United Kingdom.

I make no criticism of businesses. Their lives, particularly in light of the Covid pandemic, are pressured. That is why we will do everything we can to bust myths but also, at the same time, deal with the other very real issues that we know are impediments for some.

Q23 **Baroness Verma:** Thank you, Chancellor and Lord Frost, for your time this afternoon. How will the Government facilitate parliamentary scrutiny of the operation of the protocol on Ireland and Northern Ireland, including EU legislation within the scope of the protocol and the relevant work and decisions of the withdrawal agreement joint committee and all the other bodies that report to it? Now that the protocol is operational, when will you authorise discussions to begin between the Government and parliamentary officials on the mechanics of such scrutiny?

**Michael Gove:** Our approach so far has been that, before every meeting of the joint committee, we issue a Written Ministerial Statement with an outline of its agenda. After meetings of the joint committee, there have either been Statements or Urgent Questions in Parliament. There are also opportunities, through this committee and others, to scrutinise not just the decisions that have been made but the overall approach the Government propose to take.

You are right that the joint committee and its specialised committees are going to be augmented by the new partnership council and by other bodies, institutions and processes. We want to engage with the House of Lords and the House of Commons to make sure that parliamentarians feel that there is adequate scrutiny of all the aspects of our relationship. I made the point to our friends in the European Scrutiny Committee yesterday that I am happy to appear, and whoever is doing this job I am sure will be happy to appear, regularly. It is important that departmental Ministers from other departments also do so, whether that is the Secretary of State for Northern Ireland or the Secretary of State at Defra. Many of the issues, as Lord Lamont and other have mentioned, are SPS-related. Making sure that this committee has the chance to scrutinise them and press us on the approach we are taking would be important.

**Baroness Verma:** You pre-empted my final point, but I will come to the point I was going to ask previous to that. Will the Government be obliged to bring forward protocol-related domestic legislation or regulation within the devolved competence at Westminster if the Northern Ireland Executive and Assembly are unable or unwilling to do so?

**Michael Gove:** We always seek to work with the Northern Ireland Executive and respect the devolution settlement. We may need—I hope that this will not arise—to legislate in certain areas that are within the devolved competence. We always seek to work in a collaborative and co-operative way with all the devolved Administrations. Brendan Threlfall may want to add a little more.

**Brendan Threlfall:** I think you have covered it. There is a well-understood memorandum of understanding that covers government engagement with the devolved Administrations in these circumstances, on a statutory instrument of the sort that might come forward in the future. We would certainly follow the process and the engagement process set out in that.

**Baroness Verma:** Chancellor, you pre-empted my request to ask you, your officials and Lord Frost to come regularly before the new Lords European affairs sub-committee on the protocol to discuss further related developments. I appreciate that you have already indicated that you are very willing and happy to do so. Thank you very much.

Q24 **The Chair:** We leave Northern Ireland and come back to the TCA. I will start with one matter of clarification, if that is possible. Yesterday, Mr Gove, in the European Scrutiny Committee session, you said that it did not seem likely that the EU would seek to have an extension of the provisional application period. I thought I heard you, Lord Frost, say at the start of the thing that you now thought that was likely. I wondered if it would be possible for either of you to tell us what the situation is.

**Michael Gove:** Not for the first time, my predictive powers have been poor. Lord Frost's analysis of the situation is spot on.

**Lord Frost:** We have heard informally from the Commission today that we are likely to get a formal request to extend the two-month period that is in the treaty for ratification on the EU side. Obviously we have completed our process on our side. We wait to see what that request constitutes and how long it wishes to extend the process for. It is a little disappointing, given that we discussed this only a month ago and the original time period of two months is in the treaty. It is a little surprising, perhaps, that the EU wishes to change it quite so soon. However, we will talk to them and see what can be done. There is no wish on our side, and I hope not on the EU side, to extend this more than necessary.

**The Chair:** Continuing on the theme of UK-EU relations, one of the problems at the moment is over the diplomatic status of the EU ambassador. I wondered how you foresaw that this would be amicably resolved.

**Lord Frost:** As I said at the start, it is a little surprising to us that this has come up as a problematic issue at this moment, because we have been in discussion with the EU about this for some time, and continue to be so about the long-term arrangements. We have made clear that we have and we will give the delegation here—its head and its staff—all the privileges and immunities they need to do the job. There has been a bit of commentary suggesting that we were not going to do that. That is definitely not true. The delegation operates very effectively and we intend to continue that. We continue to talk about the right long-term arrangements reflecting the status.

I am sorry that the disagreement exists. I am even more sorry that there is a restriction on the activity of our ambassador and some of his team in Brussels. With your permission, Chair, perhaps I could turn to Lindsay, our head of mission in Brussels, to clarify a little bit more the terms on which he is operating at the moment.

**Lindsay Croisdale-Appleby:** Good afternoon. As David set out, our ambition is to negotiate an establishment agreement with the European Union to cover their delegation. They are currently operating in London under the terms of an exchange of letters that we agreed in 2019. We believe that provides an adequate basis while we conclude the negotiations.

In terms of the operation of our mission in Brussels, we have notified the EU of my appointment and I understand that it is following its due process. We knew it would do that. We will wait and see what it means in practice, but, as I say, our priority is to negotiate an establishment agreement for its delegation in London.

**The Chair:** Listening to that story, it sounds awfully like tit for tat. I feel that is not a good basis on which to begin a new relationship. The very first article of the TCA talks of close and peaceful relations based on co-operation, respect for other parties' autonomy and sovereignty. How are the Government seeking to try to give effect to that article at the moment?

**Lord Frost:** I do not think it is quite tit for tat. We are not putting any restriction on the operation of the EU mission in London. At the moment, in practice, it is limiting the kinds of contacts that can take place at political level in Brussels. That is a pity. I do not think it is necessary. As you rightly point out, it is not in compliance with the spirit of Article 1 of the agreement. However, I am sure we will get over it. There are discussions going on. I am sure they will reach a practical conclusion on this subject and we will get back to normal.

**The Chair:** I am very grateful for that. I live in hope, because we should be very great friends.

Q25 **Lord Ricketts:** On the last point, perhaps it should not have been a surprise to us that the Commission took this badly since, as I understand it, every other Commission delegation in the world has diplomatic status,

so we are marking ourselves out. I wish Lindsay every success getting very rapidly into an effective relationship in Brussels. It is very important.

I wonder if I could ask you to explain why the TCA does not contain any provision for a regular summit-level UK-EU dialogue. The EU has a regular summit arrangement with all its other main third-country partners. If you take Canada-EU as an example, which we use as a model for a lot of the agreement, there is an annual EU-Canada leaders' meeting that last met in October, virtually. Why have we decided not to have any structure for our dialogue with the EU at top level?

**Lord Frost:** The TCA has a large and, as many people have said, relatively complicated structure for managing the business of the TCA, including the partnership council, which is at ministerial level, and a lot of contacts beneath that. There will of course be lots of contacts of all kinds about the relationship that will be shaped by this.

You are right to say that there is no treaty provision for a summit as such. We took the view on this, and on certain other similar issues, that there was no need for a treaty provision, that the depth of contacts and the nature of the relationship was likely to make this happen naturally, and that such events often tended to be overformal and overscripted, not necessarily adding that much to the depth of the relationship. It is absolutely not that we do not wish to see summits happen. It is just that we think they will happen naturally and organically, as part of the very rich quality of the relationship we will have.

**Lord Ricketts:** I wonder how you see that process developing alongside the building of bilateral links, which I am sure we will be actively doing as well. It seems there is a risk that, if we do not have any structure around UK-EU top-level dialogue, it will be very transactional. We have already seen it has been necessary to have very senior engagement on transactional issues as they come up—crisis management, if you like. How do we develop strong EU-UK and bilateral links at top level?

**Lord Frost:** That is a wider question. To a large extent, it is a question for the Foreign Secretary, as well as those round this table. It is clear that we will have to reinvigorate in many ways the way we do bilateral relationships with European countries. That involves strengthening the embassies, clearly, but it also involves reviving some of the bilateral fora and structures that may have got a bit moribund in some cases in recent years, as the EU has occupied the terrain. It is obviously something that is a strategic question. We will have to go up a level in the way we do those bilateral relationships, complementing the TCA.

We will have to see how transactional it is in real life. There is so much in this agreement, as well as the necessary foreign policy and other collaboration outside it. There is so much in it that I think we will find the trade-offs, collaborations and natural working come quite organically once we are over this period of turbulence.

**Lord Ricketts:** We clearly all hope so. Building up strategic relationships

with all 27 member states individually will take an enormous resource. I would have thought there was an advantage in having some structured co-operation, either at Head of Government level or indeed at Foreign Minister level, where at the moment there is no structure around that, in order to have a collective forum rather than 27 bilateral individual relationships.

**Lord Frost:** I do not disagree with you. We took the view that did not need to be formalised in this treaty, because it gave a rigidity to something that should not be rigid. I am sure we will see these things developing over time. It is necessary and desirable.

Q26 **Baroness Couttie:** Good afternoon. The TCA establishes a partnership council, 19 specialist committees and four working groups, in addition to the existing structures under the withdrawal agreement. You have already mentioned that this is complex, and some may even say unwieldy. How will the Government engage with these bodies? Who will represent the UK and the EU on them? How do you plan to co-ordinate all this work, including the interaction between the partnership council and the withdrawal agreement joint committee? Do the Government have the resource they need in both Brussels and Whitehall?

**Michael Gove:** These are very good points. In a way, it follows on from what Lord Frost was saying to Lord Ricketts. When you have structures of these kinds, it is inevitable that there will be the sorts of conversations and shared working that Lord Ricketts, entirely understandably, wanted to see and Lord Frost endorsed. Through the leadership that Lord Frost will have from No. 10, there will be effective co-ordination of that work across government. The Cabinet Office, through its secretariat structure, will support that. As Lord Frost indicated, the Foreign Office and its excellent team will ensure that our mission in Brussels and our posts across the EU are well staffed. When we are dealing with the relationships we have with friends and neighbours, and also when we are operating in international organisations, from NATO to the WTO to the UN, over time we develop relationships that depend principally upon the expertise of our superb foreign and diplomatic service, supplemented by officials in No. 10 and the Cabinet Office.

**Lord Frost:** I described the mechanisms as complex and, in a way, they are. That is because the agreement is complex. As we said at the time it was agreed, it is the broadest international agreement I am aware of, certainly in this field, in the number of subjects it covers. Inevitably, it has a large number of committees and a committee structure that reflects that complexity. We are working through at the moment how these committees will be staffed out, which departments will sit on which and how the reporting mechanisms will work. Although it is complex, it is not unusual. All these committees have their parallels in other international agreements. What is unusual is simply that they are all in one place because of the nature of this agreement.

**Baroness Couttie:** When will the UK co-chair of the partnership council be named?

**Michael Gove:** The Prime Minister will make that announcement in due course.

**Baroness Couttie:** What does “in due course” mean?

**Michael Gove:** It is for the Prime Minister to decide.

Q27 **Baroness Neville-Rolfe:** Thank you all for coming. Still on the same theme, I was keen to understand how the Government will provide for transparency and parliamentary oversight of these bodies. How will people know what is on the agenda and whether there are opportunities to tackle outstanding issues, anything from shellfish to difficulties with purchases from the EU or musicians’ visas? The partnership council is very important, because it can actually amend the TCA if it needs to do so.

**Michael Gove:** There are established processes, but, of course, we need to make sure that we see what more can be added or what that is existing can be augmented. To take a case in point, the concerns over bivalve molluscs were reflected in an Urgent Question in the House of Commons earlier this week. The issue surrounding musicians and their visas has been well advertised in the media. The Secretary of State at DCMS has been clear about the position we want to take there. I know that any individual departmental Secretary of State would make themselves available to this committee, and indeed any of its sub-committees, and similarly to the European Scrutiny Committee.

As I mentioned earlier, it is our habit to have Written Ministerial Statements before significant meetings, whether that is of the joint committee or of the partnership council, and indeed to have explanatory memoranda and other papers lodged with the House at any important juncture.

**Baroness Neville-Rolfe:** That is very helpful. There is also a wider audience beyond Parliament of businesses and others who might be affected by the changes and want to make an opportunity of them. That probably links in with my next question. What role will the domestic advisory groups and indeed, equally importantly, the civil society forum play in your opinion? How will the Government facilitate that work? Would that help with the transparency issue I have raised with you?

**Michael Gove:** First, the richer the dialogue we can have with civil society and with individuals, the better. Secondly, as I know this committee has taken an interest in and expressed a wish to see emerge, there are proposals contained in the TCA for co-operation between EU parliamentarians and UK parliamentarians.

The other thing I was going to say was that, while the purpose of the TCA is to respect that there are sovereign equals, the UK and EU, one of the concerns that was expressed, naturally, by some in the debate over whether we should leave the EU is that both the Commission and the

Council of Ministers meet in camera, without minutes or effective scrutiny of their deliberation.

There were three brilliant essays by Perry Anderson in the *London Review of Books* over the last month or so, which I would commend to everyone. They draw attention, from a progressive left point of view, to what many will have seen as a deficit of transparency in EU institutions. We have left now. This is a matter for the member states and we respect the integrity of their processes. The transparency with which UK Ministers are quite rightly held to account, and indeed the member states within their own states have democratic processes, reflects a distinction between EU processes and nation-state processes, which obviously had a bearing on the debate about Brexit.

**Baroness Neville-Rolfe:** That is good to hear, but it is important also that we understand a little bit more about things like the domestic advisory groups. My assumption was that they went beyond the government machine and brought in others, which might be helpful to the Government in the impact on the ground of the process of change as it moves forward.

**Michael Gove:** That is a very important point. Every week, we have a meeting of the Brexit Business Task Force. It is an organisation that was established at the request of five of the principal business representative organisations in the UK: the CBI, the IoD, the FSB, Chambers of Commerce and Make UK. We have a rolling agenda and look thematically at certain issues, such as the impact of the TCA on Scotland, Wales and Northern Ireland, the impact of the TCA on the food and drink sector and so on.

Those meetings are candid, but after those meetings, members of those organisations and individual businesses on the ground are very free to discuss with the media, and of course with their members, the representations they have made to government and the responses they get from government. That is just one example, but you are absolutely right that it is important that we have that across the piece. That is the way in which our feet are kept in contact with the ground.

Q28 **Baroness Primarolo:** Good afternoon. Could I turn to the question of the outstanding elements of the future UK-EU relationship and what remains to be agreed? Perhaps, Chancellor, you could outline what those principal elements are. Could you also indicate to us what sort of timetable you see for those issues to be addressed? How will the Government track progress on delivering them?

I would also be grateful if you could touch on the question of supplementary agreements to the TCA, which will be an overall and integral part of our bilateral relations. How do you see these arrangements? Do you see scope for the new agreements being brought, for instance, within the umbrella of the TCA in time?

**Michael Gove:** There are some processes that are autonomous processes within the EU that we would like to see expedited, but, by definition, it is the EU that is in charge of the timetable there. On these broader questions, let me defer to Lord Frost.

**Lord Frost:** It is a very comprehensive agreement. We like to think that there is not much more negotiating to do for the time being about new elements to come into this. They are not quite loose ends, but there are things still to be completed, for example on data, where we still await an EU decision on data adequacy. There is a bridge in the treaty for up to six months that enables that. Financial services are another example, where a process of discussions with the EU is now beginning about a potential memorandum of understanding to share information, develop engagement and similar. Those are at the top of my mind of significant things that need to happen, but they are very much provided for within the framework.

There are some areas where smaller reviews need to happen, for example on mutual recognition of qualifications. There is a review of how we put a framework in place that will enable this to work in practice. Then there is quite a long list of simple things that have to happen: a range of notifications to each side; issuing licences, for example to fishing boats; establishing various forums and working arrangements; and providing guidance to each other on how we do things. There is a long list of quite technical stuff that will get picked up in the committees. There is a lot but, at least in my mind, there are no new things that need to be done by way of additions to the agreement as such.

On your particular question about future agreements, there is a provision in the treaty that says that supplementing agreements between us are brought within this framework unless provided otherwise. There is a presumption that it all fits together. There are two such already, i.e. the nuclear co-operation agreement and the agreement on exchange of information. I expect there will be more over time.

**Baroness Primarolo:** We have touched on the question of parliamentary scrutiny a couple of times. In dealing with the list, Lord Frost, you touched for example on mutual recognition of qualifications. As well as having the transparency which the Chancellor has rightly assured us we will have as parliamentarians, can you tell us what opportunities Parliament will have to make an input into these discussions and the decisions that are reached?

**Lord Frost:** I am not sure I have much to add.

**Michael Gove:** We are ready to discuss with Parliament the approach that Parliament would like to take. We take account of debates. We certainly take account of Select Committee evidence sessions and reports. If there are other ways in which it would help Parliament and parliamentarians to make sure that there was appropriate scrutiny and

indeed an examination of these issues, we stand ready to work with Parliament to advance that.

**Baroness Primarolo:** Chancellor, you are saying that Parliament needs to propose a suitable parliamentary scrutiny process that also provides for input from Parliament on those decisions. The Government stand ready to implement that, to ensure that Parliament is not just told by Ministers but is actively participating in the agreements that are reached.

**Michael Gove:** Yes, we want to make sure that we involve Parliament to the fullest extent. I could go on to talk about the role of the Executive, the prerogative and the conduct of foreign affairs and so on, but that would be a bit old school, I suspect.

**Baroness Primarolo:** Thank you for sidestepping that point. Lord Frost, you referred to the important decisions on data adequacy and equivalence. That needs to make some progress. Clearly, both are crucial, particularly data adequacy. Could you give us any indication of how these decisions are progressing? In particular, how are the Government seeking to make sure that these negotiations are concluded?

**Lord Frost:** There has been a process of engagement with the EU all through last year on data adequacy, in parallel with the negotiations although not part of them. We explained to the EU how our data processes worked. It was a process that some thought might have been needlessly laborious, given that we were operating exactly the same system as the EU at the time. However, we did that.

Unfortunately, that took so long, due to no fault on our side, that this has overrun the end of the year. There is a process in being and we await the EU's verdict on whether we are considered to be adequate. Since we are operating exactly the same legislation at the point of exit and we have not changed it, it would be surprising if we were not. That is the assumption we are working on, but the process is continuing and being handled by DCMS.

**Baroness Primarolo:** It is one thing to get data adequacy because we are operating the systems now, but how might it work going forward in our continued compliance, in order particularly to deliver part 3, for example, on the security issues?

**Lord Frost:** We will want to develop our data regimes over time. That is part of what being an independent country means and what Brexit means. That does not mean that data adequacy cannot be in place. The EU has considered countries to be adequate that do not operate exactly the same legislation as the EU but operate something they consider to be providing equivalent standards. We would expect that we would always provide equivalent standards of data protection and so on as the EU did, maybe in a different way, maybe through different processes. It is inevitable that these things will evolve over time, but we would not expect that, in principle, to cause problems for adequacy. Adequacy is

not about operating exactly the same rules. It is about operating rules that provide the same outcome.

**Q29 Lord Sharkey:** The Government have said that they intend to participate in Horizon, Copernicus and Euratom research and training programmes. Could you give us some insight as to how these decisions were reached and what role value for money might have played? Why, in particular, was the SME funding instrument or its successor not part of a Horizon Europe association?

**Michael Gove:** You are absolutely right that value for money was a consideration in deciding which programmes we would seek to continue to be part of. That was one of the reasons why we chose not to continue with the Erasmus programme. Euratom and Horizon provide significant benefits for the UK, for, respectively, our nuclear industry and our science base. Value for money was not the only consideration, but it was a significant one. The decision was reached by Cabinet committee discussion, informed by Treasury analysis.

**Lord Sharkey:** What about the SME funding instrument? Why is that not part of our Horizon Europe association?

**Lord Frost:** It is the same answer, effectively. We wish to participate in programmes that offer a benefit and do not wish to participate in those that do not. That was subject to the same process as other programmes in this area. We made clear at the start of the negotiating process, back in February last year, that there were a number of programmes that we knew up front we would not wish to participate in. This left a relatively small number: Horizon, Erasmus, Copernicus and some others. That was where the debate then went. We tried to be as scrupulous and careful as we could in looking at both value for money and wider benefits. Some programmes went through that and in others we decided to manage the benefits in different ways.

**Lord Sharkey:** In the future, do you see a wider engagement, such as civil society dialogue, when you are making these decisions, either withdrawing from or applying to join additional programmes?

**Michael Gove:** We had engagement with scientists and universities in the approach that we took towards participation in Horizon. The point about the SME instrument is that it is a commercial intervention to help players expand their role internationally. It is a perfectly legitimate set of activity, but we were focused on and prioritising funding in basic and applied scientific research. That was a reflection of the priorities that were shared with us in the conversations we had with people in universities and the broader science community.

**Lord Sharkey:** In general, there is a willingness to accept that civil society might be consulted in future decisions.

**Michael Gove:** Yes, totally.

**Lord Sharkey:** Do you have any red lines left that would prohibit UK

participation in other EU programmes?

**Michael Gove:** There are three points. The first is value for money. The second is whether it involves a surrender of sovereignty, ECJ jurisdiction and the application of the direct effect of EU law within the UK. The third is the broader one, which is just a general public policy judgment: is this a programme that works? We do not have any theological objection. The objections are financial, constitutional, legal and public policy.

Q30 **Baroness Donaghy:** Good afternoon. I turn now to dispute resolution. Are there any bespoke or innovative features in the dispute resolution provisions in the TCA? How would the process for dispute resolution differ in the cases of disputes over the level playing field? In particular, how will the rebalancing mechanism operate?

**Michael Gove:** I defer to Lord Frost, who is the architect of the very carefully constructed mechanisms here. The key thing to say by way of preface is that it was assumed by some that we would have to accept, in effect, a form of ECJ jurisdiction or suzerainty in this whole area of dispute resolution. In fact, we have something that connoisseurs of classic free trade agreements would recognise and appreciate as very much in that mould. That was our aim. We were told that it was unlikely to be achievable, but it is to Lord Frost's credit that we got there.

**Lord Frost:** That is a very important prior point: that these are standard arrangements; they are tailored, but standard in the sense that they are appropriate to a free trade agreement and not some other kind of agreement. This is all set out in part 6 of the treaty, as I am sure you know. Part 6 describes the standard arbitration mechanism and processes that lead up to it, which is the normal thing you get in free trade agreements. Then it lists some areas to which that applies and areas from which it is excluded. That is the basic mechanism and it is completely standard for free trade agreements. That is relevant to most of the agreement.

What is different? There are some areas where we have agreed that standard arbitration could be extended into, where that is not true in analogous agreements elsewhere, for example parts of aviation, some very targeted elements of fisheries and the energy elements of this agreement. Those bring in arbitration. Arbitration is carved out of quite a lot of areas, notably law enforcement in toto, important areas of fisheries and others. This is all set out in INST.10. Then, as you say, there are some tailored mechanisms, and they are notably in the level playing field area, with tailored arrangements for remedial measures on subsidies and a panel of experts on non-regression. Those were some of the most heavily discussed and negotiated bits of this agreement, as you can probably imagine.

I appreciate that is quite a long answer. The short answer to your question is yes and no. These are basically standard, but they are to some extent tailored to the nature of the agreement. The rebalancing mechanism is special and was subject to a lot of debate and negotiation.

The EU originally wanted a kind of equivalence mechanism. That became a very fraught point of the negotiating process. What we have now is something that can only apply in the case of material divergence on both sides. It is restricted to a limited number of areas, requires rapid arbitration and is reversible in case measures that are taken do not pass the arbitration test. If it is too much used, it triggers a broader renegotiation. We felt that was a reasonable balance to deal with both sides, but I do not think there is anything like it in any other treaty.

**Baroness Donaghy:** What remedy will individuals or businesses adversely affected by the operation of the TCA have?

**Lord Frost:** They will be able to use the arrangements in the treaty, so the committee structure and then the dispute settlement mechanisms. Those are triggered by Governments, but Governments will use them when individuals and businesses think there is a problem. That comes back to the point that was raised earlier about the need to have close relationships with interest groups, industry groups and those who are aware of problems, so we can feed them rapidly into the system. One of the things we will be doing soon, as we reorganise things slightly internally, is to establish teams whose job is precisely to remain in contact, to use the mechanisms in the treaty to our country's advantage if we believe we are being disadvantaged by decisions taken on the EU side.

Q31 **Lord Goldsmith:** Good afternoon, Mr Gove and Lord Frost. Part of what I wanted to ask in relation to the dispute resolution processes has been answered already, Lord Frost, by you. As your answer has recognised, the processes are not standard. There may be features of the architecture, but they are not standard, in the sense that they are different from other processes and, to some extent, untested. Would that be a fair assessment?

**Lord Frost:** Yes, it is fair. A lot of them are standard, but are in a context that is new for us. Some of them are tailored and not standard. That was something that I think was on the mind of both negotiating teams: that we were setting up something that was a very new thing. We believed that we knew how it was going to work, because there is quite a lot of past free trade agreement practice and so on, but we could not be quite sure. That is why, in some areas, there is a degree of tentativeness about what is agreed. There are quite a large number of review clauses in this treaty compared to standard ones, and quite a lot of provisions for its evolution in various directions. That reflects the fact that we were setting up something and none of us could be sure how it would work. We have a degree of confidence and there is a lot of past practice, but you are right: we are establishing something new and these dispute settlement mechanisms are part of that broader context.

**Lord Goldsmith:** Let me move from that to a slightly more substantive point, which is about Article 10 of the protocol. The Commission produced its notice to stakeholders on 18 January, which sets out its view in relation to how far Article 10 would reach. Its interpretation is that it

would reach quite deeply into UK subsidy measures. It is at pains to point out, for example, that the state aid measures it has in mind would not simply be in relation to people who are actually trading. For example, it says that service providers, wherever located, whose customers engage in trade subject to the protocol, might fall within the scope of Article 10 of the protocol, so it is quite wide. Do the Government accept the analysis that is set out in the Commission's notice to stakeholders? If not, are you are going to set out your view in some way?

**Michael Gove:** We are reviewing it and will discuss it with the Commission.

**Lord Goldsmith:** "Watch this space", in other words.

**Michael Gove:** Yes, absolutely.

Q32 **Lord Teverson:** Chancellor, can I say how much I agree with your moderate outrage that the Council of Ministers legislates in private, as you said earlier on? I do not remember the British Government ever actually challenging that when it had the presidency, but never mind.

I want to talk about the parliamentary partnership assembly, which a lot of us would welcome in many ways. I am interested to understand what you expect its role to be. How does it start? Does the House of Lords or the House of Commons send itself or send a note to the European Parliament? What is its relationship? What do you want it to achieve and who suggested it? Was it from the EU's side or from Britain's side?

**Michael Gove:** It was from both sides. There is widespread support for it from parliamentarians in the European Parliament, the House of Commons and the House of Lords. As I mentioned before, I did not want to force the issue before the TCA was concluded, but we will do everything we can to facilitate it. There are models, such as the Council of Europe and the NATO Parliamentary Assembly. There is also the British-Irish Parliamentary Assembly and so on. There are different models.

The key thing is to make sure that people who want to participate have a means of doing so, that we make sure there can be meetings in a way that allow for not just the formal engagement on an understood agenda but informal engagement, which builds and develops understanding. Covid obviously makes that difficult at the moment. There are a variety of different models and we do not want to be prescriptive about it. We just want to make sure they are there to facilitate strong relationships. It is just a suggestion, because ultimately it is for the House, but if Lord Kinnoull, Sir Bill Cash and Tom Tugendhat were to come forward with proposals as to how that might work, that would be great.

**Lord Teverson:** That is a very good suggestion. How many parliamentarians do you think would be in this body? Is there any guidance on that? Forgive me if I have missed that.

**Michael Gove:** No, there is not. There would be an appetite, certainly on the EU side, to have widespread representation. There is already a group within the European Parliament that exists to foster strong and good relationships with the UK, led by the former Polish Foreign and Defence Minister, Radek Sikorski. Reaching out to Radek and his colleagues would be a very good first step in order to make sure we can advance this process.

**Lord Teverson:** Will it have a scrutiny role on the partnership council? Is that part of its job description?

**Michael Gove:** I do not think so, but it is important that Government respond to Parliament. The idea, as with the British-Irish parliamentary assembly, is that both sides develop a deeper understanding of each other's concerns. Then they can reflect those concerns in their own particular assemblies. Of course, we are open-minded as to what Parliament would want to do in order to make sure that this relationship flourishes.

**Lord Teverson:** As you will be aware, the European Parliament has an effective legislative role in Northern Ireland through all the single market provisions. Maybe this is a question for the diplomatic side. How are we going to have a relationship with the European Parliament in that area? In many ways, that is just as important as when we were a member, in terms of Northern Ireland itself.

**Michael Gove:** Lindsay, as the head of the UK mission, and his team have very good relationships not just with the Commission and those who serve the Council but with European parliamentarians. We continue to have relationships with them on the basis of a shared interest in issues, and of course party and other affinities. We will keep in touch.

One of the things that there is a widespread recognition of across Europe is the importance of taking account of the unique sensitivities in Northern Ireland and thinking about how to legislate there. That has obviously been reinforced in recent days. People in the European Parliament will want to make sure they are taking account of the views expressed by the citizens and parties that represent Northern Ireland's people.

**Lord Teverson:** Lindsay, has the delegation been issued European parliamentary passes yet, or is it likely to be?

**Lindsay Croisdale-Appleby:** Our team in Brussels is operating with the European Parliament in the normal way. They have had a series of good meetings with parliamentarians in the course of this year. As CDL was saying, it is a good and fluid relationship and we expect that to continue, including, as you say, in the context of legislation that will impact on Northern Ireland.

**Lord Teverson:** I wish you well on that enterprise.

Q33 **Baroness Primarolo:** This question is about the overseas territories,

which have been excluded from the TCA. What assurances can you give that their economies will not suffer because of Brexit and that the Government will stand by them, as members of the British family?

**Michael Gove:** We are absolutely committed to standing up for the overseas territories, and for that matter the Crown dependencies, in everything we do. Extensive work was done, most notably with the Government of Gibraltar, in order to make sure that an agreement could be secured alongside the TCA. We continue to take incredibly seriously our responsibilities to the overseas territories. As you say, they are all part of our British family.

**The Chair:** I am sure the whole committee will be very heartened to hear those words.

Q34 **Lord Oates:** Could I return very briefly to the issue of the status of the EU delegation? Chancellor, in your evidence today, both you and Lord Frost have repeatedly referred to the UK and the EU as sovereign equals. Given that fact, I am afraid it is beyond my cognitive abilities to fathom why we are needlessly squandering good will by failing to grant the status to the EU ambassador that practically every other country in the world grants them. Could you please try to explain to me why we are doing this in this way? I literally do not understand it.

**Michael Gove:** We have a good day-to-day practical relationship with Mr Vale de Almeida. He is someone I knew before he was in his current role and have the highest regard for. There are one or two complex factors here, which I would be happy to share with the chair of the committee in private, which he could share with you. It is nothing to do with the individual concerned but everything to do with the way in which certain aspects of diplomatic accreditation can and should work.

**The Chair:** I would very much like to take you up on that very kind offer as well. We have reached the end. Thank you to both of you, and your whole team, for bearing with us in what has been a very helpful session. You have been frank and have done it with some humour as well, which we are all very grateful for. It is a long road ahead and there are many issues still to conquer. We wish you well and look forward to welcoming you back in due course.