



European Affairs Committee

Uncorrected oral evidence: UK-EU relations

Tuesday 18 May 2021

3.55 pm

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Members present: Lord Kinnoull (The Chair); Baroness Couttie; Lord Faulkner of Worcester; Lord Foulkes of Cumnock; Lord Hannay of Chiswick; Lord Jay of Ewelme; Baroness Jolly; Lord Lamont of Lerwick; Lord Liddle; Lord Purvis of Tweed; Viscount Trenchard; Lord Tugendhat; Lord Wood of Anfield.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 17

Witnesses

I: Lord Frost CMG, Minister of State, Cabinet Office; Emma Churchill, Director General of the Border and Protocol Delivery Group, Cabinet Office; Rebecca Ellis, Director of the Northern Ireland/Ireland Unit, Cabinet Office.

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Examination of witnesses

Lord Frost, Emma Churchill and Rebecca Ellis.

Q1 **The Chair:** Good afternoon and welcome, Lord Frost, and your two senior colleagues, Emma Churchill and Rebecca Ellis, to this virtual House of Lords for a public evidence session. We are very grateful to all three of you—we know how busy you are—for making the time to come along today. A transcript will be taken, or is being taken, and will be sent to you in due course. Could you check it and let us know of any corrections that need to be made?

For the benefit of those who are watching, I shall explain the format, which, Lord Frost, you are very familiar with. I shall call each Member in turn. They will have up to six minutes to ask their questions and then I shall call the next Member of the committee. When all the Members of the Committee have had their six minutes, or up to six minutes, at the end of, as it were, normal time, we will go into extra time. Certain Members will pose additional questions and they will get a shorter amount of time to ask those questions of you. We realise that you need to be away after 90 minutes. Finally, could I ask all those who are asking questions or giving answers to keep them crisp, as we have quite a lot to get through? I think that would help enormously.

I will go straight in. Lord Frost, in February, you described the UK-EU relationship in the first six weeks after the end of the transition period as “problematic”. In the light of events since then, how would you assess the current state of UK-EU relations?

Lord Frost: Thank you, Chair, for this opportunity to appear before you. I think when we last met, as you say, in early February, things were quite problematic. We were in the immediate aftermath of the EU’s decision to activate a vaccine border on the island of Ireland, and quite a lot had flowed from that.

Quite a lot has happened since then, I would say. We have the treaty—the TCA—fully ratified and are beginning to operate it, and we have managed to settle one or two outstanding problems. I feel things are in a better place to move forward, but there are still a number of outstanding disputes, and it is realistic to think it will be a bit bumpy still for some months to come as we work through that. Coming out of the customs union and the single market and all the other changes to our relationship is obviously a big thing, and it is going to take time to adjust to that. However, two friendly and sovereign equals ought to be able to do that in a grown-up and constructive way, and that is our intention.

The Chair: One of the things that the Committee is concerned about in the structure of the TCA is that nothing was built into the period after that allowed the UK to interact directly—through, I suppose, the Council—with the EU 27 themselves. On reflection, do you feel that it would have been wise to introduce that concept into the mix?

Lord Frost: I do not think there is anything in the treaty that prevents us interacting directly. The partnership council itself allows Member States to attend, I believe. There is a formal element to that. Obviously, there is quite a lot that remains in Member State competence that we wish to talk to them about. Most aspects of our relationships with the 27 are affected in some way by the treaty. I do not think it matters that there is not a particular peg for it, but I have no doubt that we will need to work a lot directly with the Member States on all kinds of things, as well as with the institutions.

The Chair: Thank you. I am a Scot who lives in Scotland. Could you describe how you include the devolved administrations in the formulation of the British position before you arrive at meetings of the various committees of the TCA?

Lord Frost: We had not been activating the institutions, for want of a better word—the committees and so on of the TCA—until it was fully ratified. That has now happened, so we can begin to establish chairs and sort meeting times and so on over the next two or three months.

We are working on arrangements with the devolved administrations. Clearly, there have been the elections, which made that tricky in the immediate past, but we are beyond that now. We will want to come to some understanding with the devolved administrations about where it makes sense for them to be present at, for example, Specialised Committees, and how we discuss policy with them before that. That process is under way, and I expect to be talking to the relevant Ministers in the devolved administrations, as soon as they are all appointed, quite soon on this subject.

The Chair: Do you have a target date in mind for when you will have completed that very important strand of work?

Lord Frost: We do not have a target date. We are expecting or hoping that the first partnership council should be in the first or second week of June. We are still talking to the EU about the dates for that. Obviously, we would like to have gone some way in those discussions before that, even if we have not been able to finalise them.

The Chair: Thank you very much. A last little area for me is how we staff the various committees of the TCA. In fact, in the aggregate, there are 24 committees and working groups under the TCA. Which ministries provide who to which committees, and how does the process work?

Lord Frost: There is quite an important principle in the way we organise ourselves, which is relevant to some other aspects of work as well. That principle is that this is a very broad treaty covering the work of virtually every government department.

I think the bad weather has just reached us in central London.

The Chair: And me.

Lord Frost: It touches on the work of most government departments. The principle is that, for implementation of the relevant bits of the treaty, it is really for the relevant department to take that forward, obviously within a framework that we co-ordinate. By extension, it is for each department—or departments, because some have an interest in more than one—to staff its relevant Specialised Committee. We have been doing a fair amount of work on that. I would expect us to be exchanging committee names and chair names with the EU quite soon. Meeting to meeting probably depends on exactly what is on the agenda, but the basic principle is that the lead Whitehall department staffs the committee and decides on attendance.

The Chair: That is very helpful. Do you have a target date in mind for completion of that work strand?

Lord Frost: The leads here and in the Commission are beginning to be in touch with each other about when it makes sense to have a Specialised Committee or get the other fora going. There is no firm date. I think meetings will happen when they are useful over the next two or three months, within a framework that we will co-ordinate and keep an eye on.

The Chair: Thank you very much. At this point, I hand over to Lord Foulkes.

Q2 **Lord Foulkes of Cumnock:** Thank you, Chair. Good afternoon, Lord Frost, and your colleagues.

Can we turn to monitoring and scrutiny? You will be very familiar with the statement by the Commission on the role of the European Parliament in monitoring and scrutiny. Would you agree that when we are monitoring and scrutinising the operation of these two agreements, which are so important, not just for the European Union but for the United Kingdom, this House and this Committee should be given the same arrangements, equivalent status and the same access to information as the European Parliament is getting from the Commission?

Lord Frost: Thank you, Lord Foulkes. I would like to make a comment or two on scrutiny more broadly if that is okay—mindful of your point on time, Chair.

On the specific point of paralleling EU arrangements, the EU has its own institutional structure and relationship between the main institutions and the division of powers and competences between them. I do not see that as a useful parallel necessarily for how we organise our arrangements here, where there is a lot of good practice already and very well-established mechanisms for how we work.

What I do think, having had a month or two to look at these issues, is that we have, as you say, two treaties that are very significant and important but both exceptional. The Withdrawal Agreement has elements of involvement of the Court of Justice and direct effect, and the TCA, as I was saying, is very broad—unusually broad. We need to find scrutiny arrangements that reflect that. I am not totally convinced, having looked

at where we are at the moment, that in what we have offered already and in the discussions with the clerks that have already happened we have got that quite right, so I would like those discussions to continue in the immediate future. I think we should find ways of giving you a bit more transparency in certain areas and a bit more information a bit more readily.

Obviously, where there is a question of direct effect for EU law, there should be a process of EMs. Where confidential negotiations are going on, we should look to see if we can find a way, on a confidential basis, to ensure that the Committee has understanding of what is discussed. If you are in agreement, Chair, I would like our officials here to pick up again with the clerks and see if we can come to an understanding that reflects the relationship that we want in future, which is as good and as open a dialogue as we can possibly obtain.

Lord Foulkes of Cumnock: You mentioned good practice here in the United Kingdom in our Parliament. When your officials are talking to ours, could they look at the European Union Committee? When I was on it about three years ago and David Lidington was the Europe Minister, David used to come and speak to the Committee before every meeting of the European Council. He used to go through the agenda and listen to our views on it, and that worked extremely well. I must say I was disturbed when I heard yesterday that you said you were only going to talk to the Commons Committee about every three months. A huge amount can happen within three months. Surely, you must think again about that.

Lord Frost: I think you are right; lots can happen in a three-month period, and we should definitely find ways of making sure that the Committee is properly informed on a timely basis about significant developments between hearings. I feel that once every three months is approximately the right frequency to meet. It is unfortunately the case that, because of the breadth of the treaty, I have the duty to appear from time to time before quite a large number of other committees as well on specialised issues. My personal view is that a good hearing every three months is the right way to have this kind of discussion.

I agree that practice may have been different when we were an EU member. With all due respect to the importance of the partnership council, it is unlikely to have the same influence over our own law-making abilities as the European Council did, and I think the arrangement should reflect that.

Lord Foulkes of Cumnock: What about the periodic reviews of the TCA? Do you envisage that you would discuss those with us, consult us on them and take account of our views?

Lord Frost: I think so, for sure. I think there are number of special events, as it were. For example, if we were to consider activating any of the dispute mechanisms, or if the EU were to consider that, that is the sort of event that one cannot predict but we would certainly want to find a way of informing you about, and there are other periodic things that

should happen that we would want to keep you informed about. That is exactly the sort of thing that we should come to an understanding on between committees and between officials and clerks.

Lord Foulkes of Cumnock: This Committee and the Committee of the Commons are central in relation to the relations between ourselves and the European Union. If you only came every three months, it would make the rhetoric of taking back control look ridiculous. Taking back control meant taking back control to Parliament, not just to the Government. When our officials are meeting, I hope you will look very carefully to make sure that there is proper scrutiny by Parliament of all of these aspects.

Lord Frost: I will certainly reflect very closely on that point. We are at one, I think, that there should be the correct level of scrutiny, and I take very seriously what you have said.

Lord Foulkes of Cumnock: Thank you, Lord Frost, and thank you, Chair.

The Chair: Could I comment? I did not want to interrupt the flow. It is a very generous offer of yours, Lord Frost, to come back to the table to try to systematise how the system of scrutiny will work. We are very keen to do that, and we certainly would appreciate being able to come back rapidly to try to achieve a mutually satisfactory state of affairs. Thank you for that.

Before we move on to Baroness Jolly, I want to say that I inadvertently strayed into her territory, which is a sin. I confess it and apologise her.

Q3 **Baroness Jolly:** Indeed. Good afternoon, Lord Frost.

The European Parliament launched the TCA on 28 April and the Council adopted the necessary legislation on 29 April. The agreement formally entered into force on 1 May. In its recent report on the TCA, which was published in March this year, *Beyond Brexit: the Institutional Framework*, the EU Select Committee noted with concern the Government's decision "not to allow the governance structure established under the TCA to meet until the EU completed its own ratification process".

Members, understandably, were particularly concerned that, when the TCA was fully operational, as it is now, and the new arrangements were still unfamiliar, problems were most likely to be encountered. The Committee saw no justification for allowing such a complex and important relationship, affecting the security and livelihoods of over 500 million citizens here and in the EU, to drift without formal governance arrangements having been activated.

It is early days. The TCA is just three weeks old, and it is unfamiliar to us all, so it is now that we may meet unexpected problems. There is no justification for allowing such a complex and important relationship to drift without the formal governance arrangements having been activated. Successful implementation will affect the scrutiny and livelihoods, as I said earlier, of over 500 million citizens here and in the EU.

I have a couple of questions I would like to put to you. One is around strategy and priority, and the other is a nuts and bolts-type question. First, on strategy, now that the process for ratifying the TCA has been completed by both sides and the TCA's governance structures can begin their work, what will be the UK's priorities in initial meetings of the partnership council?

Lord Frost: Thank you, Baroness Jolly. You are right that we took a decision not to activate the institutions, except as necessary to keep things moving forward, until there was full ratification of the agreement. That has now happened. We did not believe that, while that was still hanging over us, we should treat the treaty as fully being operated. We now can. As I said, I hope we will have a partnership council within a month or thereabouts. We are still discussing the agenda. There is certainly a symbolic element to it, in that we want to acknowledge the new relationship and do something that makes that clear.

There are a number of issues that both sides will probably want to bring to the table. One, I would guess, is fisheries, for example, where both parties have an interest. We might want to bring to the table some customs and trade issues that have come up since the start of the year, and I am sure the EU will want to do similar things. I see it very much as an initial council that kicks things off, provides a forum for discussing some of the issues that we know have been a bone of contention between us in the last few months, and blesses and permits the work of the specialised committees. That, I think, is how the first one will operate.

Baroness Jolly: Thank you very much. How soon do you expect all the TCA Specialised Committees and working groups to be up and running, and when do you anticipate that the various chairs will be appointed?

Lord Frost: We should be appointing the chairs and exchanging names quite soon. Indeed, some may already have done that. I would certainly expect most of the Specialised Committees to have met before the summer break. It may not happen in absolutely every case, but, certainly, the bulk of them should be meeting for at least an initial discussion, so that by the summer we have the relationship going and the chairs of the committees are getting used to each other.

Baroness Jolly: Thank you very much.

The Chair: Thank you very much indeed. We move to Lord Liddle.

Q4 **Lord Liddle:** David, as someone who, as you know, is a strong pro-European and did not like Brexit at all, but now accepts it and wants to see a warm and close relationship with the European Union, one of the things that strikes me as important for that is the parliamentary partnership assembly that is provided for in the treaty. I would like your assurance that the Government share that enthusiasm for the creation and operation of the assembly, and that you will work with it closely and provide it with all necessary information for it to function properly.

Lord Frost: I can definitely give you that assurance. We see it as an important part of the relationship. I know that your distinguished Chair and the Member for North East Hertfordshire have been discussing some of the initial arrangements, and we are in touch with their teams. My understanding is that there is still some detail about how the UK side of the arrangement may work out, but that there is no reason why the assembly should not be able to meet relatively soon. Of course, we will give it all the support and assistance that we possibly can.

Q5 **Lord Liddle:** Thanks for that. There was the row about the status of the EU ambassador in London, João, a very experienced Commission official who was chef de cabinet to the President and had been ambassador to the United States. That has now been resolved, but if we are trying to establish a warm relationship with the EU, what on earth were the Government trying to achieve by having that row?

Lord Frost: It was not our intention to have a row or argument about that. The arrangements for the EU delegation in the UK had actually been discussed from time to time during last year, so it slightly surprised us that this had suddenly become a significant problem. However, we really did not want it to be a difficulty between us. We have worked very hard, and this is one of the issues I alluded to at the start that we have been able to fix.

We have been able to reach an agreement that provides for a satisfactory establishment agreement. Obviously, the EU ambassador will have status consistent with heads of missions of state and everything that goes with that. EU delegation staff will have the rights, privileges and immunities they need to do their job, as was always our intention. I think there was some—I am not sure it was a misunderstanding, but maybe not quite seeing the political and the legal framework in quite the same way at the start of the year. However, we have managed to resolve that now and I hope we can move forward.

Lord Liddle: Has our mission to the EU gained equivalent status to the EU mission in London?

Lord Frost: The arrangements are different. The Foreign Office is the guardian of that area. Accreditation is in part the responsibility of the Belgian state, as well as the EU institutions. The precise state of those processes is traditionally shrouded in some discretion, but I understand that arrangements for accreditation in the same way, on a formal basis, are indeed in train.

Lord Liddle: What lessons have the Government learned from what has been a totally unnecessary row?

Lord Frost: I do not think I would agree it has been unnecessary. I think it has been unfortunate. What it shows, and perhaps is a lesson for us, is that there will be friction, as we begin this new relationship, in areas that we do not expect. I think this will be true as we look forward as well. It is inevitable that there will be some areas where we do not anticipate

difficulties and they arise, and we will have to deal with them. Having the institutions of the TCA working effectively and the channels open will help there.

Lord Liddle: Thank you.

The Chair: Thank you very much indeed. We move to Lord Faulkner.

Q6 **Lord Faulkner of Worcester:** Good afternoon, Lord Frost. It is good to see you again. I want to ask about citizens' rights, particularly citizens of the EU, EEA and Switzerland who have the right to remain in the United Kingdom.

I would like you to comment first, if you would, on the rather alarming press reports this morning that the Home Office has sent out thousands and thousands of letters to people telling them that they are going to lose their status unless they clarify the situation by the end of June, when very substantial numbers of those people have the right to remain in Britain and, indeed, in many cases have dual nationality. Are you not worried that the Home Office database is obviously hopelessly inaccurate and that it is causing quite needless pain and alarm for people whose presence in Britain we really value?

Lord Frost: I have not seen those press reports, so you catch me at a slight disadvantage. The dilemma we face is that we want EU citizens who wish to remain here, and have the right to remain here, to register with the settlement scheme by the end of June. There is a dilemma, which our citizens face overseas as well, between being proactive and warning people that certain deadlines are approaching and certain things may need to be done, even if some of them have already done them, and saying nothing and leaving it to their own initiative and finding that some do not do it. As I say, I have not seen the press reports, but it certainly seems sensible to alert EU citizens as far as possible to the fact that the 30 June deadline is approaching, and if you have the right to remain in the UK it is good to register and exercise that right.

Lord Faulkner of Worcester: I think it is a little worse than that, Lord Frost, because people who are now classified as British nationals are still getting this Home Office letter. Some of them are elderly and some are sick. They are quite clearly alarmed. The best report, I suspect, as far as newspapers are concerned, is in the *Guardian*, which has it on its front page and on two inside pages, where there is a fairly horrific account of what I think most people would regard as incompetence on the part of the Home Office. It is clearly not your fault, but it is something that will make your task rather more difficult because of the ill-feeling that it is creating. Do you not agree?

Lord Frost: As I say, not having seen the *Guardian* yet today, unusually, I cannot comment on the detail. We have tried to be as clear as we possibly can that EU citizens here are our friends and neighbours, and we want them to stay. The huge number of registrations there have been with the scheme already show that the scheme is working well, we think, and compares favourably with many other arrangements. I take seriously

what you say, and I will certainly have a look at it, but there should be no doubt about our intention to make the scheme work fully and to be welcoming, as we have always said we will be, to EU citizens who are here.

Lord Faulkner of Worcester: Thank you very much. Perhaps it would be better if you wrote the letter, if I may say so. Have you any plans, in view of this difficulty, to extend the 30 June deadline?

Lord Frost: I do not think there are any plans to extend it, although it is a Home Office responsibility. We have said that we will be extremely understanding, if for good reasons—reasonable reasons—individual citizens do not register. There may be many good reasons why they do not and are late, and we will be as pragmatic about that as we possibly can. In the end, there has to be a deadline and we have to make the system and the administration work. That is what lies behind it.

Q7 **Lord Faulkner of Worcester:** Thank you very much for that. What mechanisms are available for our Government to raise issues relating to the rights of UK nationals who live in the EU with the individual Member State Governments? What can you do on that?

Lord Frost: We monitor it very closely. Foreign Office Ministers and the Foreign Office have some lead direct responsibility. It is clearly a big task for the embassies. There have been problems and they are reducing, but problems still exist in some countries. If there are problems, we take them up with the Government of that country and we raise them in the Joint Committee, and we have been doing so on every occasion. It must be understood that, if an EU Government do not fulfil their responsibilities under the Withdrawal Agreement, the EU, collectively, is not fully abiding by the terms of the Withdrawal Agreement. That is something for the Joint Committee. The Commission must assume responsibility for that and deal with it. We try to make that clear as we possibly can.

Lord Faulkner of Worcester: Thank you. You have, in fact, by that answer, answered the second half of my question, which I have not yet asked. Do the Government believe that all Member States are compliant with their obligations? From what you just said, they are quite clearly not, but you are working on it. Is that right?

Lord Frost: We are working on it. I think the situation is improving a lot, and continuing to improve. The sorts of problems we get are difficulty in evidencing rights. For example, if Member States are slow to roll out the right kind of cards or ID card that evidences that you are a citizen with Withdrawal Agreement rights, sometimes people find it hard to access services and benefits—unemployment benefit, child benefit, health and so on. Occasionally, we still find that some Governments require overburdensome paperwork from people to acknowledge their rights. In all cases, we are working with them and the situation is improving, but I do not want to downplay it. The provisions of the treaty need to be complied with because they affect citizens' lives in Europe, and we do our very best to make sure that takes place.

Lord Faulkner of Worcester: Thank you very much.

The Chair: Thank you very much indeed. We are moving into an area where I think, Lord Frost, you may well be tempted to use either Emma or Rebecca to assist you. We obviously know well who they are, but could I request that, when they speak for the first time, they very briefly introduce themselves so that those watching will know as well? I ask Baroness Couttie to take up the running.

Q8 **Baroness Couttie:** Good afternoon, Lord Frost. Thank you very much, Lord Chairman.

We have been hearing anecdotally from UK traders that they face differential application of the TCA as they export goods to the EU, with some countries perhaps being more zealous, shall we say, about some of the checks and balances that they put in, creating some quite significant non-tariff barriers. To what extent are you aware of these issues and what are the Government doing to ensure that the EU applies a uniform approach to non-tariff barriers across all the EU countries we export to?

Lord Frost: Thank you, Baroness Couttie. I will turn to Emma in a moment on this because it is a top-line issue for us. My general remark would be that we have good relationships with the authorities at a practical level that deal with customs in the Member States. This is a decentralised responsibility within a framework set by the customs and the treaty. There are cases of, you might say, overzealous enforcement but, in general, the pragmatic relationship works well and has kept trade flowing pretty effectively in some difficult conditions. That is our macro assessment. We have seen trade exports go back to the normal of last year. Emma, you do this more day to day, so over to you.

Emma Churchill: Thank you. I am Director General of the Border and Protocol Delivery Group. As Lord Frost was saying, from 1 January onwards we have had really strong operational engagement with our counterparts in all of the key Member States, as you would expect. Members of the Committee were asking earlier about both bilateral co-operation with Member States and the interactions with Member States and the Commission that would happen in advance of the formal mechanisms of the TCA being put in place. The relationships that we have had with border officials in the key Member States are a really excellent example of what can be done at the operational and practical level.

There are two ways that we have been doing that. One is through the bilateral relationships with border officials, and that has, since 1 January, been an opportunity for them to raise with us what they would see as common mistakes being made by traders and hauliers, where they have not quite completed the paperwork in the right ways, and that has enabled us to feed back to stakeholders and get the necessary improvements in place. The other is, as you were indicating, picking up where our stakeholders and businesses have been telling us about inconsistencies.

I think the most specific area where that was raised in the early days was in relation to agri-food and sanitary and phytosanitary checks. Throughout January, that was raised with us by a number of stakeholders and business representative organisations. My colleagues in Defra spent quite a lot of time with the key Member States and with the Commission working through the interpretation that Member States were putting on the rules and making sure that they were being applied consistently. The feedback that we have been getting is that that has improved very significantly from the early days in January, and we hope that it will continue to do so.

Baroness Couttie: Have there been similar issues with rules of origin or anything like that?

Emma Churchill: The feedback that we had in the early days was mostly in respect of SPS checks. Of course, there have been individual occasions when a business has come to us and said, "This is what we've encountered. Is that right?", and we have talked to the relevant border officials in the Member States. It was most widespread, I would say, in relation to SPS checks, which was related to some of the difficulties we had in the early days supporting agri-food and those traders to get trade going again. However, as Lord Frost was just saying, we have seen significant improvements since January, and you have seen that flowing through in the trade statistics, I think.

Baroness Couttie: The £20 million SME Brexit Support Fund has been extremely valuable to small businesses. How much of that, if any, is supporting the haulage industry? Is there another mechanism? A lot of small businesses use third-party hauliers and couriers to get their products to the EU. Anecdotally, one hears issues about VAT, whereby small businesses charge VAT at the point of sale that then goes to the haulier who then should reclaim it as they export the product, to pay the domestic VAT, whatever it is called, in the country to which they are importing it. That is not actually happening, so the end product pays VAT or VAT-equivalent twice, plus the additional admin cost for the haulier. I am hoping that that has been a short-term thing that is being sorted out. How aware are you of that and how is it working?

Emma Churchill: I will say a couple of things about that. In a moment, I shall come to the fund that you mentioned. There is still plenty of money in that fund to be claimed, and I think it is very important that people do so.

The first thing is that a lot of money was made available by the Treasury in the run-up to the end of the transition period, which was funding for customs intermediaries, and that is quite a wide definition of the people who are supporting people with customs. It was over £80 million, in fact. I think that fund was very well used by a whole range of customs agent businesses, including some haulage firms that were going to offer that kind of service after the end of the transition period. People accessed that money and it has been spent. That was the first way in which those agents were supported.

You mentioned the £20 million Brexit fund that was announced in March. That is quite an important fund because it is specifically targeted at SMEs. One of the sectors where we have seen people taking the longest time to get used to the new arrangements is the agri-food sector, because those requirements are the most extensive; those businesses have the most extensive changes to get used to. The other is SMEs. It was in recognition of that that the Treasury set aside the £20 million fund for SMEs that needed to get advice on exactly the kind of issues that you just raised. There are some quite tricky issues, as we hear, in relation to rules of origin. Businesses are getting their heads around rules of origin. The other example you quoted, absolutely rightly, is the VAT arrangements. They were changed at the end of the year and it is taking traders a bit of time to get their heads around VAT and rules of origin.

What that fund—

Baroness Couttie: Is it actually being successful, and are people getting their heads around it? I realise the fund was there and that some of the money has been spent, and it is a good thing that it was there. What I am not sure is how successful it has been.

Emma Churchill: One final thing to say on the fund is that there is still plenty of money in it. If there are SMEs that are still confused, and still feeling that they need consultancy advice and support to get their heads around the new rules, there is plenty of money left in that pot, so they should absolutely be accessing that.

We have two sets of evidence about whether people are starting to get their heads around the rules. One is the macro evidence that Lord Frost was just mentioning on the value shown in the trade statistics. We now have three months of those trade statistics, published by ONS. We saw, of course, a dip in January, a strong recovery in February and a further recovery in March. It is the case now that the trade value for exports for March is in fact higher than both March last year and the average for 2020. That is the macro evidence.

You can also see evidence coming through in the business surveys that are being done by the ONS and, indeed, by others. We could see in the surveys that were done in January, for example, far greater numbers of businesses quoting the new rules as a barrier to trade. Over time, just in the last couple of months, we have seen that improving in the surveys that the ONS has been publishing. We are hoping that that will continue further, because there is no doubt that some businesses are still getting to grips with the rules. We can see that improvement in what businesses are telling us in those surveys, as well as in the overall trade statistics.

The Chair: Thank you very much indeed. I am afraid we will have to call it a day on that one. It was a very interesting and telling series of points. Thank you. We come to Lord Purvis.

Q9 **Lord Purvis of Tweed:** Thank you, Chair. Hello, Minister. It is good to see you.

I would like to follow up Baroness Coultie's questions, if I may. I have the ONS figures in front of me. They are those from 12 May, which I think you are partially quoting from. Let me say what is in table 1. For non-EU trade, quarter 1, January to March 2021, versus quarter 4, 2020, exports fell 0.4% and imports fell 0.9%. For the EU, they fell 18.1% for exports and 21.7% for imports, in quarter 1 compared to quarter 4, 2020. The ONS itself said that it is too early to judge whether this is temporary or whether it reflects longer-term supply chain adjustments. What is the Government's assumption as to which of the two it is?

Lord Frost: The answer is that it is difficult to tell. There is a lot going on in the trade figures at the moment. There is a lot of stock building. That has been very clear. There is unwinding. There are obviously the ongoing effects of the pandemic. There may be some more durable effects in there. At the moment, we just cannot tell. We take reassurance from a couple of things. One is that in particular the comparison between quarter 4 last year and quarter 1 this year is unlikely to be very useful, because the effects are so marked over that period and we have to let things settle down.

If you look at current flows, our exports to the EU in March this year were £12.7 billion, whereas in March last year they were £11.3 billion. The average for 2020 was £11.9 billion each month. We are back over the average for last year for exports. Imports seem to be recovering a bit more slowly, although there is evidence for quite a lot more stock building, it seems, in imports than exports, so it is possible that that is just a timing effect. You are right, Lord Purvis, in quoting the ONS and its reluctance to draw any firm conclusions. We must all be guided by it.

Lord Purvis of Tweed: Thank you, Minister. The reason why I cited that is that, as you say, it is difficult to tell. All we heard in the previous answers was that it is positive now and there is rebound, but there is a stark difference between non-EU trade and EU trade.

Let me ask a question about the border operation model and the readiness for it, and about the delay to the import supplementary declarations because of the unreadiness of UK ports. Businesses that were trading on 1 January have been able to defer by 175 days. That means that businesses will have to provide import supplementary declarations by 25 June and start to pay tax. What is the Government's estimate of how many businesses will have to start giving import declarations from the end of June?

Lord Frost: You are right to comment on the import control processes that we are bringing in gradually. You rightly point to the delay in controls from earlier this year. We tend to think that businesses have been dealing with quite a lot of complexity. They have obviously been dealing with the pandemic. If we could give them a breakthrough these delays, it is the right thing to do. I will turn to Emma on your specific point, but the supplementary declarations will tend to follow the trade flows that already exist, by definition.

Emma Churchill: I do not have the specific number you asked for, Lord Purvis, which is the precise number of businesses that will need to put in a supplementary declaration on the first day when supplementary declarations are required. As Lord Frost says, it is on a rolling six-month basis. If you started bringing your goods in on 1 January, it will be six months after that. If you started on 1 February, it will be six months after that, and so on.

That, of course, is for businesses that chose to take advantage of the possibility of putting in their supplementary declarations up to six months later. We know from our HMRC colleagues that, in fact, some businesses chose not to take advantage of that, especially large businesses. Some large businesses said, "We don't want to have to change our systems twice, so we will start putting in full customs declarations straightaway". It is not as simple as just counting the amount of trade, because some have chosen to put their full declarations in and some have not. I am afraid I do not have precise figures on that for you.

Lord Purvis of Tweed: Could you write to us and outline the proportion of businesses and your estimate of the impact? In the absence, Minister, of the Government doing an impact assessment of the TCA, and indeed of the border operating model, we do not know what the impact on businesses will be for the new declarations that they will have to make after the 175 days.

Can I return to the point you mentioned about the support fund, Emma? I was a bit confused. You mentioned that there was £80 million and you said it had been well spent, but then you said there was plenty left in the pot. Why is it underspent after six months?

Emma Churchill: Apologies, I should have been clearer. I was referring to two different sets of funding that the Treasury provided. The first was over £80 million directed at supporting customs intermediary businesses to expand. That started last year and, I believe, is now completely accounted for.

The second fund, which was launched in March this year, is for SME traders themselves to access consultancy or other support services to help them to get to grips with the new rules, and indeed access a customs intermediary if that is appropriate for them. That is a £20 million fund also being run by colleagues in HMRC. I understand that they have received around 2,000 applications from SMEs for that fund so far, totalling £3 million, which is why I said it was a £20 million fund with about £3 million so far applied for. There is plenty left in that fund should SMEs wish to apply for it.

The Chair: I very much regret that we have to leave that line of questioning there. It has been another very interesting short session. Can we move, please, to Lord Lamont?

Q10 **Lord Lamont of Lerwick:** Good afternoon, Lord Frost. I want to ask you about equivalence and the financial services sector, and what outcome

the Government may be expecting on equivalence decisions and their importance. First, would it be fair to say that increasingly in the financial services sector people are not looking with great hope for equivalence because they think it involves giving up too much autonomy? Secondly, it is a very political weapon, as the record with Switzerland shows, likely to be used by the EU as leverage when we are negotiating with the United States on a free trade agreement. Lastly, it can be withdrawn at fairly short notice.

Lord Frost: It is probably fair to say that there are different views in the City itself on this question, as there have been throughout the period since the referendum, but the reality of the position remains as before. We have both been assessing each other's equivalence arrangements since last year. We sent in thousands and thousands of pages of material even though we were operating the same rules as the EU at the time, and we are still waiting for the EU to complete some of those processes.

Obviously, the City has to get on and do its own thing pending that, and, increasingly, that is happening. We have agreed a memorandum of understanding with the EU on UK-EU relations on financial services. I think we are still waiting for that to be signed off at the EU end, but the text is essentially agreed. That provides a forum. It does not in itself necessarily accelerate the equivalence processes. You are right; that is the balance of advantage and disadvantage on equivalence. Different kinds of firms take different views on that.

Lord Lamont of Lerwick: I think I am right in saying that the forum meets only very occasionally—twice a year or something like that—whereas regulators talk all the time. What do you think will happen on two time-limited equivalence decisions that are of importance and where it is difficult to see that the EU could substitute other arrangements, namely the central securities depositories decision, which expires in June this year, and the one relating to central counterparties, which expires on the same date next year? Both are of huge importance to the EU. Are we expecting a decision soon on the first of those two?

Lord Frost: The Treasury is in the lead in managing this day to day. I think I should be careful in commenting on a financial services issue of this nature. I am clear that the EU took those decisions on equivalence at the end of last year because it thought they were in its interest. When it comes to renewing them, I guess it will look at them in the same way. As you say, they are pretty fundamental pieces of legislation for the way financial services systems work, and that is why it took those decisions. EU decisions in this area are autonomous and there is only so much we can do to influence them.

Lord Lamont of Lerwick: But if the one in a month's time was not renewed, it would have a very big impact both on the EU and on ourselves.

Lord Frost: I think you are right.

Lord Lamont of Lerwick: Thank you.

The Chair: Thank you very much indeed. We move to Lord Tugendhat.

Viscount Trenchard: Am I not meant to come first, Lord Chairman?

Q11 **Lord Tugendhat:** I am so sorry. Good afternoon, Lord Frost. You will be aware that the Sub-Committee of our predecessor Committee produced a report concerning services, in particular the problem we are dealing with now of creative professionals. There has not yet been a government reply to that. Are you now in a position to comment on the Sub-Committee's report?

Lord Frost: Thank you, Lord Tugendhat. We are very aware of that report. I read it with interest. We will be replying to it quite soon. It is very interesting and, as you say, it raises many of the issues that we have found ourselves dealing with in a practical way, notably on the question of cultural workers.

What we are seeing in that particular context are the consequences of the end of free movement, and the fact that service providers who move to deliver services have to deal with a different set of arrangements for visas and work permits. We will be offering as much support as we possibly can on that, but it is a new environment, and we all have to work within it.

Lord Tugendhat: How did the situation arise? I understand that both sides were anxious to avoid this outcome, yet here we are. Both sides put forward proposals. What was the cause of the difficulty?

Lord Frost: The fundamental underlying difficulty is that we cannot end free movement into the UK without ending free movement out of the UK, and, therefore, we are in a new situation. We put forward arrangements on the so-called mode 4 provisions, which would have covered musicians, actors, cultural workers and their support and so on, and would have meant they did not need work permits. The EU's view was that it did not want to agree ambitious mode 4 arrangements as a matter of principle. It wanted to parallel its other recent free trade agreements. That is why that did not prove possible.

The EU proposal was, essentially, a visa waiver agreement that would have amounted to us ceding control over our ability to require visas for people coming into the country to deliver services, so it would not have been consistent with the end of free movement. Its proposal was a lot narrower and would not, in fact, have dealt with many of the problems that have arisen. That is the negotiating history. We think our proposal would have dealt pretty comprehensively with most of the problems, but, as in so many other areas, the EU did not really want to go beyond precedent, so we are where we are.

Lord Tugendhat: We are where we are, as you say. How will we get out of where we are? How do you plan to address the barriers to mobility, and what kind of agreement do you think it might be possible to achieve?

Lord Frost: That is now for DCMS to take forward. The Secretary of State has taken a lot of time and effort to drive it forward. Where we are at the moment is providing some central support and expertise for culture workers in particular. There is a working group that meets and shares information. Our embassies are in touch with all the Governments of the EU to establish properly what is needed to deliver cultural services, as it were, in the EU. We have ascertained that in 17 of the 27 countries the requirements are either zero or quite minimal. We are trying to make sure that it is easy for musicians and actors to find the necessary information, to support them in applying for a visa if they need it, and to do the most we can to support them in getting used to the new situation. We are all working very actively on that.

Lord Tugendhat: Would I be right in assuming that there are differences of view between the various Member States, and that this is an area where, although Brussels is obviously your interlocutor, different member states attach a different priority to a matter of this kind?

Lord Frost: Yes, there are quite big differences between Member States and what they require. From memory, I think, for example, France and Germany are pretty liberal, and have minimal or non-existent paperwork requirement for short-run cultural visits. Some others require a lot more. This is one of the areas where there is not EU competence; there is Member State competence. There is a lot of historical practice and precedent as well, in how they see their own interests. We hope that at least some may relax the rules and make life a bit easier. We ourselves are very relaxed and have a very liberal regime; it is easy for musicians and others to come to the UK and perform.

Lord Tugendhat: Thank you very much.

The Chair: We come a bit later than we should have done to Viscount Trenchard.

Q12 **Viscount Trenchard:** Thank you, Chair. Minister, I am very honoured to be able to ask you questions today.

My question is about the EU's draft data adequacy decision. As you know, the European Parliament's civil liberties committee voted to request the Commission to withdraw the draft decision to grant the assessment. Do you expect the draft data adequacy decision to be confirmed, and, if so, when?

Lord Frost: Where we are is that the Commission has carried out the necessary thorough assessment of our legislation and, not surprisingly, concluded that we provide an adequate level of data protection. It is not all that surprising, as we are operating the same legislation at the moment. We are glad that it has got there. It now has to be signed off by the Member States—by the Council—which we hope should happen quite soon.

We have been watching the Parliament's interest in the subject. It takes a close interest in the issue. It does not have a formal role in the

adoption process. Its resolution is non-binding. When it votes on it, it will be interesting. I am sure the Commission and Member States will take due note of it, but it will not stop them, we hope, endorsing and completing the process of data adequacy. It needs to be completed very soon, obviously, because the bridging arrangement in the treaty, to take account of the fact that data adequacy was not given on 31 December, lasts only until the middle of the year. That is the timeframe.

Viscount Trenchard: As you know, the European Court, in the *Schrems II* judgment, invalidated the US Privacy Shield arrangement. How do the Government assess the risk of European Court legal proceedings against any adequacy decision?

Lord Frost: As we have all learned from observing the EU's behaviour in this area over the years, it takes this aspect of its third-country agreements very seriously, and the court polices them very closely. Obviously, that is autonomous for the EU.

We are confident that, whatever we do in future, we will be observing the very highest data standards and we will continue to have adequacy, or at least there is no reason why we should not. The workings of EU institutions in this area are not something we can necessarily influence, but we are confident that there is no reason why the arrangements should be overturned by the courts, as we see it.

Viscount Trenchard: Do you think that the Government should be doing anything to minimise the risk of future UK-EU divergence on data protection? Of course, we have a more flexible data protection arrangement with Japan in our new trade deal with Japan. Interestingly, the EU also has a deal with Japan. What will we do to minimise the risk that the decision might be reversed or not renewed in the future?

Lord Frost: You are right to point, Viscount Trenchard, to the fact that the EU has adequacy agreements with other countries that do not operate EU legislation, and it looks at high standards and protections in relevant areas. If we want to retain adequacy, we will need to maintain high standards of protection. I am confident that is what we will want to do anyway, so there is no reason, on the face of it, why there should be a difficulty. We will, of course, retain the right to develop our own arrangements as we see fit, within those principles. That is one of the benefits of Brexit.

Viscount Trenchard: Thank you.

The Chair: Thank you very much indeed for that. We move to another very important area with Lord Wood.

Q13 **Lord Wood of Anfield:** Good afternoon, Lord Frost. It is very good of you and your team to be with us today.

I want to ask you about Part 3 of the TCA, on law enforcement and co-operation in criminal issues, which has been operational for four months or so. It has been an unusual four months, as we all appreciate, partly

because of Covid. We also appreciate that these are early days. Could you give us a sense of your assessment of the operational effectiveness of the new regime to date, in particular compared to the regime that preceded it? How does it compare with arrangements before the end of last year?

Lord Frost: As you say, it is early days, and it has been unusual as regards movements across borders and all sorts of things in the last few months. We are confident that we agreed an exceptional deal with a comprehensive package of capabilities in Part 3 of the treaty. I say “we”, but, actually, it was Rebecca, by my side, who was then doing that and takes all credit for achieving it.

In most cases, we agreed law enforcement tools that do the job pretty effectively. Certainly, the indications I get are that they are largely working well. Obviously, SIS II is an area where it was clear from the start, unfortunately, that that was not on the table. We are using Interpol channels, and routinely exchanging information on those. That is what we did before we joined SIS in 2015, and that is what we do with the rest of the world. It is working effectively, and we have a plan to invest in longer-term capabilities to make it work better going forward.

The other area that may be worth mentioning is extradition, where we are still waiting for one or two countries to implement legislation in domestic law to be able to implement that bit of the treaty. A number of countries have bars on the extradition of their nationals to the UK, which is what we expected, and it is characteristic of these sorts of extradition arrangements that that happens. Those are the two areas I would mention as being different. Some of the problems with extradition will disappear over time.

Lord Wood of Anfield: Can I ask you a follow-up about SIS II? This is an issue that not just commentators, but the Commons Committee and Lord Ricketts’s Committee, have raised concerns about. In light of the Home Secretary and the Chancellor of the Duchy of Lancaster assuring us that we will be safer post Brexit than before, could you give us a sense of how the new Interpol database is working? Both Committees, of the Lords and the Commons, expressed concern that the Interpol database did not have the same level of information or provide it at the same speed as SIS II. Is that not a continuing concern?

Lord Frost: It is obviously not the same as SIS II, and it does not have the speed or the automaticity of SIS II—we know that—but that does not mean that the alternative cannot work effectively. All the indications I have are that it is working effectively. As I said, we use Interpol channels with other countries. Actually, one of the few advantages of the EU being clear from the start that it was not going to do this was that at least everyone could prepare for the new situation, and our operational partners have got used to the possibility and are working with it well. That is the indication we have. Obviously, it remains to be tested in normal conditions, as virtually every other aspect of the treaty does.

Lord Wood of Anfield: Thank you. Another issue that the Committees have been raising is the structural problem, as it were, in the fact that the UK can be suspended from the arrangements, or even that our co-operation can be terminated, if we do not remain in step with EU data protection laws or if we are found to have breached fundamental rights in handling data. Does that fragility of our position provide a concern for you?

Lord Frost: We are not planning to breach the ECHR or data protection laws, so it is not a concern in that sense.

Lord Wood of Anfield: Sorry to interrupt, but we may deviate from EU data protection laws, and this requires us to keep in step as a condition of our engagement.

Lord Frost: I think that is not quite correct, in the sense that there are alternative arrangements in the treaty that provide for other ways of exchanging data, in the unlikely event that we lose data adequacy. I am looking at Rebecca, whose memory may be being tested on this subject, but I think that is the situation. Specific and very heavily negotiated provisions on suspension and termination apply to both sides. The agreement can be terminated in any case by either side for any reason, at notice. Some of the issues around the ECHR, and data are to some extent political signalling rather than substantive.

Rebecca Ellis: It is quite normal in an agreement on law enforcement of this nature. This agreement is unusual in its breadth and depth. In this sort of international agreement on law enforcement co-operation, it is quite normal to have very broad termination and suspension provisions that can be used at the broad discretion of either party. Normally, it is quite a different arrangement from trade agreements in that respect, which reflects the proximity of these kinds of issues to the fundamental areas that the Government and Parliament have to retain discretion over.

The EU has made some declarations about the circumstances in which it might choose to use those provisions, but the fact that there are broad termination and suspension provisions available at the discretion of each of the parties is quite normal. It is just that it has chosen to make some statements for internal reasons as to circumstances when it might choose to use those.

Lord Wood of Anfield: Okay, thank you. Very quickly, could you give us a sense of how in the future the Government intend to keep both Houses of Parliament updated on the operation of part 3 as it evolves?

Lord Frost: I can give you a sense. It is probably an area where, in accordance with our doctrine, it would be for the Home Office, the Home Secretary and the relevant scrutiny committees to be kept informed on the detail. There has been at least one hearing on the subject with the committees. I think that, at least at detailed level, is probably the right route.

The Chair: Thank you very much. We move to Northern Ireland and the Chair of our Northern Ireland Committee, Lord Jay.

Q14 **Lord Jay of Ewelme:** Thank you very much, Chair. It is good to see you, David, and it is good to meet Emma Churchill and Rebecca Ellis.

I have one or two questions on Northern Ireland. As the chairman of the Committee on the Protocol, I have to say that, for somebody outside the inner circle, it is sometimes a bit difficult to weave one's way between the *Mail on Sunday* and the *Financial Times*. Could you confirm reports that the UK and the EU are working through 27 areas of contention in relation to the Protocol? Can you tell us what are the most serious outstanding areas of contention and what progress you are making in resolving them?

Lord Frost: Thank you, Lord Jay. It is nice to see you again, too.

I think you are right; the operation of the Protocol since the start of the year has thrown up quite a lot of issues of various kinds, all of which we are trying to discuss with the EU. There are certainly 20 or 30, I would say, on the list, and we are making limited progress on some of them. Some of them are important without being absolutely fundamental to the way the Protocol works. Rebecca is doing this day to day, so she may want to add some detail.

Rebecca Ellis: Discussions are very actively ongoing on a continuing basis, as they have been for a number of weeks. There are meetings with the Commission today, tomorrow and Thursday. It is happening on a continuing basis. The UK has been consistently putting papers and so on into that process to try to ensure that it is a constructive discussion focused on finding solutions to some of the wide number of challenges being experienced with the operation of the Protocol.

Some of the issues covered are well known. Others have been the subject of a bit more comment recently. Over the weekend, medicines were the subject of some press commentary on Friday and Saturday. Others are areas that you will be very familiar with, such as the extent of the checks required for SPS rules and some of the challenges around customs declarations. There are, as Lord Frost said, between 20 and 30 issues, depending on how you categorise them, and it is fair to say that they cover the whole range of areas covered by the Protocol.

Lord Jay of Ewelme: Thank you very much for that. I see that the BBC has a road map for all of this. Would you be able to let the House of Commons and the House of Lords have a copy as well? It is rather easier than watching it online.

Lord Frost: The difficulty is that it is a live document, or, more accurately, two documents. There are two versions of the document, one owned by us and one owned by the EU, and they are evolving. We would prefer to see if we could get a bit further in the confidential negotiation, if that is okay with the Committee, and see whether we can move it forward a bit further, without releasing negotiating documents at this

stage. It is a little unfortunate that some of the documents seem to have got out through some other route.

Lord Jay of Ewelme: Thank you very much for that. Could I follow up on one point that Rebecca Ellis talked about, which is the rather difficult phytosanitary question? Do you see any room for compromise between the British and the EU red lines on equivalence and dynamic alignment on food safety and animal health rules that could substantially reduce the burden of the Protocol? What is your response to suggestions of a temporary alignment of rules?

Lord Frost: It has been a fundamental issue of principle that we do not dynamically align with EU rules in this or any other area. That is not for ideological reasons. It is because, as you know, we need to keep control over these rules if we are to do trade agreements with other third countries. They are central to that and we cannot outsource them. We hope that some of those agreements might be reached relatively soon, so I do not think the temporary alignment proposition really solves the problem. I think we will confront the real problem soon enough either way.

We would like to see an equivalence arrangement that reflects the fact that we both operate high food standards that are, in most areas, extremely similar, and that should enable reductions in paperwork and checks. The EU has agreed such processes with New Zealand and Canada. There are such provisions in a number—I think half a dozen or so—of other recent free trade agreements that the EU has reached, but, unfortunately, not with us. It did not want to include the equivalence mechanism last year, but, if it would like to, we would be very happy to pick up negotiations again.

Lord Jay of Ewelme: Do you have the sense that it is inclined to do that, or has an impasse been reached?

Lord Frost: The discussions are not over. There is still a pretty significant difference between the two conceptions that may, in the end, make it difficult to reach agreement, but we keep trying.

Lord Jay of Ewelme: Thank you for that. Can I ask you one broader question? You were in Northern Ireland recently, which I was very glad to see, and you saw many on the unionist side. What steps are the Government taking to calm the political and community tensions that have arisen in Northern Ireland partly because of the Protocol and, indeed, may arise in the future? This is quite an important part, I imagine, of the Government's overall policy.

Lord Frost: Very much so. We have an overriding interest in stability, prosperity and security in Northern Ireland, obviously. We are responsible for that. It is primarily the responsibility of the Secretary of State for Northern Ireland, and he remains in close touch with all ranges of opinion in Northern Ireland all the time. He was extremely active during the periods of protest last month, as indeed were most strands of political

opinion in Northern Ireland, in trying to calm them. We have absolutely no interest in seeing anything other than calm and stability in Northern Ireland.

Lord Jay of Ewelme: Is the Prime Minister much involved in this, too? I think back to times when Mrs Thatcher, John Major and Tony Blair were all very much involved. You talked about the Northern Ireland Secretary, and you are clearly very heavily involved yourself. Is the Prime Minister, too, much involved in all of this?

Lord Frost: I think the Prime Minister is involved in the appropriate way. He talks to the key players in Northern Ireland regularly, and remains in touch with them, and I expect him to carry on doing so.

Lord Jay of Ewelme: Thank you very much. I have one final point. You talked, in answer to an earlier question, about the need for as open and good a dialogue as we can manage, or as you can manage. I hope it will be possible for you to pursue this conversation in slightly greater detail at some later stage during the summer with the Committee on Northern Ireland. I will just leave that as something to think about, which you might take up separately.

Lord Frost: Yes, that is understood.

Lord Jay of Ewelme: Thank you, Chair.

The Chair: Thank you very much indeed. I stress that we could have spent all 90 minutes discussing the issues of Northern Ireland.

Before we come to the very last question—the home leg will be run by Lord Hannay—there are four supplementary questions in extra time. That would, I am afraid, rely on you being able to stay for an extra five to 10 minutes, Lord Frost. Is that at all possible?

Lord Frost: Yes. If we can keep it to 10 minutes, we should be able to do that.

The Chair: It will certainly be less than 10 minutes. I call Lord Hannay.

Q15 **Lord Hannay of Chiswick:** Thank you, Lord Frost, for the evidence you have given so far.

Could we turn to Gibraltar? First of all, could you update the Committee on the negotiations between the UK and the EU over the treaty that was envisaged under the 31 December arrangement between the UK, Spain and Gibraltar? Do you expect the negotiating mandate to be agreed by the Council soon? If so, when? Are the provisional arrangements for Gibraltar that were agreed on 31 December at risk of expiring if a bit more of a move-on does not take place? Thirdly, on trade, is it the UK's intention to keep Gibraltar within the scope of the trading agreement's arrangements with the EU, and how does that fit with the First Minister's idea of perhaps joining the EU customs union?

Lord Frost: There is a lot there. I will try to be as quick as I can. As you say, we reached a political agreement on 31 December, and, since then, we have been waiting for the Commission to produce its mandate. It seems to have got held up somewhere in the processes in Brussels. We hear that there is some working through the detail happening between interested parties, although we are not 100% sure of all the detail of that. We understand that the process is now coming towards a conclusion and we are hoping, as we hear, that the Commission will submit its mandate towards the end of this month for Member State approval. Hopefully, that approval will come quite quickly and we can kick off negotiations by the end of June. That is our current expectation. It could slip further, but we are keen to bring a degree of process and certainty to it.

The current arrangements, as you say, rest on the political agreement, and I think they can rest on that as long as necessary, as long as there is momentum in the process for negotiation of a legally binding arrangement. I do not think there is an immediate difficulty.

On your final question, on goods and customs, the framework envisages a bespoke customs union between the EU and Gibraltar, so there is no physical barrier. Gibraltar does not, in fact, produce many, if any, goods itself, as the Chief Minister said in his hearing in January, so it is, to some extent, theoretical, but that is the current plan. There is a good level of detail to be worked through when we get to the treaty.

Lord Hannay of Chiswick: Have I got this right? Are you saying that, if we ran on to the end of the year without a formal agreement between the UK and the EU over Gibraltar, you think it would be possible to prolong the temporary arrangements that came into force at the beginning of this year and are operating now? I suppose it would depend on the number of other postponements.

Lord Frost: I do not see any reason why that should not be the case. It would be for both parties to consider at that point, if we get to it. I hope that we will not and that we get into a constructive negotiation about the legally binding treaty that will deal with the problem.

Lord Hannay of Chiswick: Thank you.

The Chair: Thank you very much indeed. We come to the four additional questions, the first of which will be asked by Lord Lamont. Each of these will have two minutes.

Lord Lamont of Lerwick: Lord Frost, on Sunday you wrote a rather pugnacious article in a tabloid in which you said that the EU should stop political point-scoring and become more constructive. Today, you started by saying—

The Chair: Lord Lamont, you managed to mute yourself half-ay through the question.

Lord Lamont of Lerwick: Sorry. Could I try to encourage you to go

back to your alter ego in the tabloid on Sunday, and pose two questions publicly to the EU about the MIP? The first is what problems have arisen as a result of the extension of the grace periods for certain products? If the answer is none, why can the grace periods not be prolonged indefinitely?

Secondly, to be put to it publicly, why does the EU insist on checks on goods going from GB to Northern Ireland to preserve the integrity of the EU single market, but does not offer checks on goods going from the EU to Northern Ireland, which equally, it might be argued, threaten the integrity of the UK single market? How can it be so resistant on both those points?

Lord Frost: They are both very good questions. Actually, we are asking versions of them in the discussions that are going on at the moment. I am sorry that you thought that my article was pugnacious; I do not know whether you are sorry.

Lord Lamont of Lerwick: I approved of it.

Lord Frost: I thought you might say that. It was not intended to be pugnacious, merely clear about the situation as we now face it. We continue to be clear about that situation. There are, as you say, anomalies in the positions of principle that the Commission takes on some of these issues, and we are trying to deal with them in the negotiations on those and on many other points.

The Chair: Thank you very much. We move to Lord Trenchard.

Q16 **Viscount Trenchard:** Thank you, Chair. Following Lord Lamont's questions on financial services, Minister, do you not think that, given that we have said we are going to diverge, and Andrew Bailey has said we will not diverge for divergence's sake but neither will we remain aligned for alignment's sake, it is very much in our interest swiftly and boldly to move to a new type of regulation?

We need a new rulebook entirely, along the lines that Barney Reynolds and others have recommended, to make sure that the UK markets are so attractive and so competitive that it will be impossible for the EU to try to deny access to them to European issuers and borrowers. It was very disappointing that the Financial Services Act made such timid little steps towards diverging where it is in our interest to do so. Do you have any great hopes for the result of the future regulatory framework review?

Lord Frost: I think you are right; the future success of this country after Brexit arises from doing things differently in many areas, and this is one of them. The approach we have taken on financial services is that we regulate our sector in a way that is right for the UK, which is non-politicised, the best practice globally, and efficient and proportionate. We think that is what will make people come to the UK and want to do business in the UK. It is true of financial services and it is true of other areas.

We are beginning that process. There has been the fintech review, led by Ron Kalifa, and the listing review that Lord Hill led, both of which were extremely interesting. There are further processes under way to look at financial services legislation, and we are getting a degree of outside input to that. Without being overambitious, I would certainly say that you are right in pointing to some of the public statements that have been made and the potential direction of travel.

The Chair: Thank you very much indeed. We move to Lord Liddle.

Lord Liddle: My question concerns the other side of the coin, as it were, on divergence. I noticed in the *Financial Times* today that we are about to conclude a free trade deal with Australia. I am not asking the Minister to comment on internal discussions in the Government about that, but does he accept that, were there to be, for instance, much easier access for Australian lamb and beef to Britain, it could potentially cause problems for Welsh lamb, Scottish beef and Northern Irish beef, making the problems of devolution more difficult? It would also make relations with the Commission less relaxed about flexibility on the Northern Ireland Protocol, because it would then fear that Northern Ireland could be a channel for exports to the rest of the European Union?

Lord Frost: Thank you, Lord Liddle. You are right; I do not think I should comment on Australia. If we have learned anything from the last few years, it is that, when the Government discuss possible outcomes for FTAs in public in different ways, it tends not to produce particularly good outcomes, so I think we should continue our self-denying ordinance on that subject.

It is the policy of this Government to do free trade agreements, and we would like to do as many as possible and of as high quality as possible. That means you have to find the right balance between offensive and defensive interests. Our view is that trade and comparative advantage are good, and that should be reflected in the agreements we try to reach. Obviously, that is the business of the Secretary of State for International Trade. We are optimistic that we may be close to an agreement on that subject with Australia.

On the Protocol linkage, it does not change things. It just makes actual the theoretical issue on the Commission's mind that there is an agreement with a third country that has as its basis the fact that we are able to control our own rules. It is anticipating that already in its behaviour towards us, so I do not think it makes equivalence any less difficult to achieve. It is a situation the Commission is anticipating already.

Q17 **Baroness Couttie:** I want to continue the line of questioning that I used before. Are you confident now that hauliers and courier companies understand the VAT rules completely, and that there is no double charging of VAT from both the UK and the recipient country? That relates both to exports from small businesses and to personal items. I have been hearing examples of things like packages of personal clothing having VAT

charged on them as they enter the EU country to which they are being sent. Also, do you think that the quite significant charges, in some cases, that hauliers and couriers were making for Brexit-related admin will come down now that what is required is better understood?

Lord Frost: The detail of that is a matter for HMRC. I get a certain amount of correspondence on the subject, particularly on VAT issues, from businesses and individuals, but it is anecdotal. I think there is every reason to believe that firms are getting used to the situation. They already had to deal with it as regards third-country non-EU trade in the past.

I think the costs will go down. People will get used to it, and we will find that companies are able to implement the rules as they are supposed to. I am not at all surprised that there are some teething troubles, but equally I believe, expect and anticipate that those teething troubles will go down fast, and are going down fast.

The Chair: The very last question of the day is from Lord Hannay.

Lord Hannay of Chiswick: Could I ask a follow-up on Lord Liddle's question about Ambassador Almeida? Could you tell us one benefit that the UK acquired through the rather lengthy stand-off that we have now conceded? Just one.

Lord Frost: I do not think we would see the question in those terms. It was a question of establishing the right relationship between us—the right basis in domestic law and under the VCDR—in a way that reflected the new relationship. We did not want to have a dispute about that. We moved to settle it as soon as we could in a way that formed a balanced settlement for both sides. It is always beneficial to countries when they have good diplomatic relations, and there is no argument about that. I am glad we got there in the end.

The Chair: Thank you very much, all three of you. Thank you for your frankness and your openness in what has been an extremely valuable session for us. We look forward to seeing you again in the near future. We will follow up with your colleagues and officials, Lord Frost, on getting a structured process of scrutiny agreed. I agree with you that it will be a very valuable thing if we can achieve it rapidly. With that, I declare the meeting over and I say goodbye.

Lord Frost: Thank you very much.