

European Affairs Committee

Uncorrected oral evidence: The UK-EU relationship

Tuesday 26 October 2021

2.30 pm

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Members present: Earl of 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

Heard in Public

Questions 1 - 24

Witnesses

I: Lord Frost, Minister of State, Cabinet Office; Susannah Simon, Director of the Trade Partnership, EU Secretariat, Cabinet Office.

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Examination of witnesses

Lord Frost and Susannah Simon.

Q1 **The Chair:** Welcome back, Lord Frost, to this hybrid European Affairs Committee here in the House of Lords. Welcome for the first time to Susannah Simon, who is a director in the Cabinet Office with responsibilities for the trade portion of the trade and co-operation agreement. Thank you both very much—I know how busy you both are—for coming along this afternoon. This is a public session, and so a transcript will be taken, and we will send it to you in due course and would be grateful of you advising us of any corrections that need to be done. We have only an hour this afternoon.

Lord Foulkes of Cumnock: Why is that?

The Chair: Unfortunately, Lord Frost's diary is very busy and he has a very important call on the Northern Ireland protocol later on.

Lord Foulkes of Cumnock: That is a pity, is it not?

The Chair: It is a fact of his diary, and we will obviously have to take it up out of this session. I would therefore ask that all questions and answers are kept short, to get through as much as possible of what is a fairly long question set. To that end, perhaps I could begin.

Lord Frost, in May, when you were last here, you said that we were in for quite a bumpy ride for some months, and I wonder how bumpy you think the ride is at the moment.

Lord Frost: Thank you, Chair, and thank you for having me. It is very nice to be here in person, with everybody again, looking forward to the discussion.

I think you are right; we said it would be bumpy back in May. It still is a little bit bumpy in various areas. I think it is important to contextualise this, though, because the bumpiness attracts the attention and there is a lot going on that is not quite so bumpy.

First of all, I like to think that our relations with most member states, if not absolutely every one, are pretty good. We have a stream of inward visits, with many prime ministerial contacts. For example, we have just signed, on Monday, a partnership agreement with Greece. We signed something similar with Germany earlier this year. Others are under way. So that bilateral side of the relationship is working well.

Equally, I would say most of the TCA is working well. As I have said before, customs arrangements and the practical relationships with member states' customs authorities are going well. On issues such as visas under the new services arrangements of the treaty, we have good practical discussions with member states. Some of the very small wrinkles in the law enforcement arrangements are being ironed out.

I think it is important that when we look at the areas of conflict—for example, at the moment, fisheries and where we are on Horizon and Northern Ireland—that we see it in that context. We have two

agreements of huge breadth covering virtually every area of our international life, and in most areas that is working extremely well considering how suddenly it came into force and how much there is to do. So, although the bumpiness attracts the attention, I do not think it is correct to say that the entire relationship is bumpy. Bits of it are and they are causing turbulence, but there is a lot else going on as well.

The Chair: Thank you very much. We will come to a number of the areas that you mentioned in that response. When Michael Gove was last here, in February, he talked of a moment when “the crew tell you to take off your seatbelts and enjoy a gin and tonic with some peanuts”. I wonder when you think the “gin and tonic and peanut” moment will finally come.

Lord Frost: I think it will come when we have found the right equilibrium on the Northern Ireland Protocol. As I was saying in my speech in Lisbon, I think that is the key to putting things on a better footing. The mistrust that is being generated by the Protocol is getting in the way of lots of other things. However, if we can put that on a better footing, I really have no doubt that we will be in a better place quite quickly and we can get the drinks out.

Q2 **The Chair:** A final question from me. One of the bumps is a bilateral bump that has been going on—a multiple set—with France and, for instance, the AUKUS agreement there. I wonder whether you feel that this bilateral spat is something that was getting in the way of the UK-EU relationship and how you intend to deal with that.

Lord Frost: France is obviously a major player within the EU. It has a lot of influence over the Commission, and that obviously colours a few things, I would say—not everything, not even most things, but it colours areas of dispute, I suspect. As regards France, we have ups and downs in the relationship and we have had very significant downs in the past, such as in the run-up to the Iraq war in 2003, when I was in the embassy in Paris. We are able to move on from these things because we have not only so much in common but so many common interests on which we are forced to collaborate, work together and make things work between us. So, without downplaying the difficulties we have at the moment, nevertheless it is a positive, important relationship that we would wish to put on to a better footing, if we could, obviously in a way that works for our national interests as well as France’s. But it is not something we are casual about, and we would like to get things back to an even keel.

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

Q3 **Lord Jay of Ewelme:** Thank you, Lord Chair. I just want to ask a question about Northern Ireland, Lord Frost, if I may. The Government's response to the Commission's recent proposals on the Protocol, published in October, sounded quite positive, but there is a moment of turbulence that seems to have crept in more recently. I just wonder whether you think there is a chance of reaching agreement in the negotiations that are going on at the moment.

Lord Frost: I hope there is. We are working on the basis that there is. Some things were important in the Commission proposals. They do not

go, I think, far enough to solve the problems we have at the moment, but two things are important in them.

First of all, it accepts that the problem is not solved by simple implementation of the Protocol. That was the Commission's position at the start of the year. It no longer is the case. Both sides agree that there is a problem that needs to be resolved by something changing in the current arrangements, and that is what putting these proposals on the table reflects.

Secondly, it has accepted that it is possible to change EU internal rules and laws in order to deal with the situation that is presenting itself in Northern Ireland. Again, I think that is a very important Rubicon to have crossed. They have not, I do not think, got far enough up the opposite bank of the Rubicon yet, but I think an important moment has been passed.

That is why I am realistic about these talks. There is a big gap, obviously, between the Command Paper and what the Commission has put on the table, but I believe that it is right to try everything to see whether we can work these proposals into something closer to where we wish to go. Of course, it takes two to reach an agreement; that is obvious.

Q4 Lord Jay of Ewelme: Leaving aside the European Court of Justice, which will come up in a moment, is it your view that on other grounds, on the trading issues, progress really is being made and that the prospect of an agreement there, in the negotiations now going on, is possible? Is that the area where you feel most confident, if I can use such a powerful and positive word?

Lord Frost: I think it is true that there remains a gap, but we are not in positions that are diametrically opposed to each other on this, as we are in other aspects. If I summarise extremely and simplify massively, I think that our approach is that goods moving into Northern Ireland should be subject to, essentially, no processes and checks, but that there are exceptions to that, most obviously for goods that move on into Ireland. The Commission's approach is the reverse, which is that everything is subject to processes, but things can be carved out of those processes. Obviously, you could get to the same point from those two very different starting points if the wish existed to do that, and perhaps we can, but I think the reality is that there is still quite a gap because I think that what the Commission has put on the table does not get that close to allowing a lot of trade to flow freely into Northern Ireland, and that is what we are trying to achieve here.

Q5 Lord Jay of Ewelme: Just one final point. I have been involved in European negotiations for 30 years or so and in many of them there comes a time when both sides agree, "Okay, well, this has been going on long enough now." There is a *terminus ad quem*. "We're going to reach an agreement by Christmas", or whenever. Do you have that sort of view in mind, or is there no *terminus ad quem* for these negotiations?

Lord Frost: I think there is a terminus; it just is not one that necessarily ends in agreement. That is the difficulty. I think both we and the

Commission would like to move this on and ideally resolve it this autumn, so there is not a lot of time left and that is why we are trying to work as intensively as possible at the moment. Obviously, it is no secret that if we cannot reach agreement and we are still faced with a significant political problem in Northern Ireland, Article 16 exists. It is in the treaty, and that would be one way of dealing with it, but I hope we do not have to go there. It is much better to do it by consensus. That is one possible way out of the process this autumn if we cannot do it any other way.

Lord Jay of Ewelme: Thank you, Lord Chairman.

The Chair: Thank you very much.

Q6 **Lord Lamont of Lerwick:** Following on from that immediate exchange, if Article 16 were triggered, what do you anticipate would be the range of options that would be available to you? Do you envisage that any of the policies you might pursue would require legislation?

Lord Frost: I would not wish to go into too much detail about what could happen under Article 16 because, obviously, it is part of the negotiating positions. I think I will begin by saying Article 16 is a safeguard. It is not a Protocol self-destruct clause. There are reasonable limits on what you can do under Article 16, and we accept that we are working within those limits. Having said that, Article 16 is a pretty unusual provision and potentially quite sweeping, and those limits could be quite large. So that is the space that we are working within and, if we take measures, they are safeguards. They have to be targeted on the problems that have arisen and the way the Protocol is working that is generating some of the current difficulties. That is how we would see it.

I think, on the domestic legislation question, simplifying massively, there is a provision in the 2021 Withdrawal Act that gives direct effect to a European Communities Act-like provision that gives direct effect to the Protocol; therefore, it also gives direct effect to Article 16, because that is part of the Protocol. But I think you probably would still want some secondary legislation, so that there was no doubt about the intention of the Article 16 action and to make sure that the UK legal order was completely clear and that we knew where things stood. That is my expectation at this point.

Q7 **Lord Lamont of Lerwick:** What is your view on what people call a "Swiss-style" arbitration panel to deal with the conflict in the position of the ECJ and the positions we think it ought to be in? Do I understand that, by a "Swiss-style" solution, people mean a separate arbitration panel that would adjudicate on wider points but would leave the ECJ at the same time interpreting what EU law was?

Lord Frost: I think that is what people mean by a "Swiss-style" arrangement. I do not think that it is a particularly accurate description of the Swiss arrangements, which go back quite a long way, are quite complicated and do not, with the exception of aviation, have an explicit role for the Court in quite that way. But that seems to be what people are talking about.

I go back to the Command Paper. The position is simplified by talking

about the Court, but the Court is simply at the apex of a system that imposes EU law in Northern Ireland without consent. We tried to be clear about that in the relevant paragraph of the Command Paper. It is about the whole thing. We do not think it is right, or likely to contribute to stability, that the Court of Justice should resolve disputes between the two sides. We cannot do anything about the fact that the EU makes this very expansive claim for the interpretive powers of the Court. Indeed, we had to acknowledge that in a way in the TCA by carving it out of the way that it worked. We cannot do anything about that reality, and that raises the question of where EU law applies. Therefore, it takes us back to the beginning of that argument, which is that the problem is that far too much EU law applies directly in Northern Ireland. That is the core of the problem. We do not see that so much of it should apply, and therefore the interpretive role of the CJEU is also limited in that respect.

Lord Lamont of Lerwick: So you would reduce the areas to which EU law applied directly if you had your way.

Lord Frost: Yes. In the Command Paper, at paragraph 71, we talked about, for example, “any areas where EU law is applied or replicated in Northern Ireland”. Obviously, one way of dealing with this problem is replication. It is not the only way, but the problem—this is why we keep focusing on long-run stability—is that if you maintain a system where lots of EU law applies without consent, in the end you set up divergence between Northern Ireland and Great Britain, as we legislate in a different way, and therefore it is not a stable system. Therefore, you have to have some other way of doing it than the simple application of EU law into Northern Ireland, because that is the generator of the problem.

That is why I think the Court thing is a simplification. One has to look at the total system. How do you deal with the total system, which allows these privileged trading arrangements for Northern Ireland into the single market yet makes that reconcilable with democracy and normal dispute-settlement arrangements? That is not a simple problem, but it is one we would like to have a proper conversation with the EU about but which we have not quite got to.

The Chair: We might have to come back to that later on but, in the meantime, thank you for that.

Q8 **Lord Liddle:** David, you have always been very clear that you think that there is not much point to Brexit unless we diverge. I do not agree with that, but it is a perfectly legitimate point of view. You have set up this commission to look at opportunities for divergence and all the rest. When the Government are thinking about this, presumably they are going to take into account the possibilities of EU retaliatory measures, as provided for in the TCA, and the person who is best placed in government to advise on that question is you. So would you advise the commission about the potential for EU retaliation on any proposals for divergence? How do the Government propose to make this work and to assess the risks?

Lord Frost: It is a very good question. One of the reasons I have my

particular mix of portfolios is that they come together in the way that you describe, and it is my job to try to work this through. I would say we are already beginning the discussion that you describe between us and the EU. The first Specialised Committee on the level playing field has already met, and we have had a fairly preliminary exchange about some of the things that are in the offing on either side.

So it is very much understood that significant divergence in a way that distorts trade, to use the language of the TCA, can produce countermeasures. I think that any side contemplating that has to look at whether there is a genuine distortion of trade. Is the process followed? Is it worth it? As I said before, I believe that in many ways healthy competition between systems is a good thing and watching what the other side does and maybe learning from and imitating that is a good thing. It is not axiomatic that retaliation and trade defence measures are the only possible responses; another possible response is to watch and learn and to improve what we do collectively.

Lord Liddle: Let me come back on that. If you took a view that there was a significant risk of retaliatory measures, would you recommend to the Government that they did not go ahead, or would it depend on what you thought the benefits of divergence would be?

Lord Frost: I think it depends on the context, the subject matter, what is at stake and the economic size of the interest that you are talking about. I think that our approach would be to be fairly bullish about the benefits of divergence and to think that that was likely to produce spin-off benefits for both sides. We do not ignore the risk—the risk is there—but we have to be focused on our own ability to grow and to improve our own productivity and so on, and that comes from domestic reforms that we make. We must be focused on that, even if it comes with the risk of retaliation. I tend to downplay it personally.

Q9 **Lord Hannay of Chiswick:** You mentioned your reference, in the Lisbon speech, to healthy competition between regulatory systems. Do you not recognise that Mrs Thatcher signed the Single European Act in order to get rid of the unhealthy competition between regulatory systems?

Lord Frost: If I am honest, I think that is probably an oversimplification of what the Single European Act does. I would not claim to know what was in Baroness Thatcher's mind at the time—I know that you were, obviously, more closely involved at the time—but I do not think I would say that the purpose of the Single European Act was to create an entirely homogeneous Single Market in which there was no competition between systems in any way. I think that the single market that we have now is a mix of legislation set at European level, with a degree of discretion and with some areas that fall out of EU competence altogether—the Services Directive, as it finally emerged, is a good example of that. So I think it is more complicated than you suggest, if I am honest.

The Chair: Thank you very much. We are a little bit behind time. Perhaps we could move to our first virtual committee colleague, Lord Trenchard.

Q10 Viscount Trenchard: Thank you, Lord Chair. I hope you can hear me. I had some IT difficulties, but I hope I have got over them. Minister, at the Partnership Council in June it was noted by both parties how critical the governance structures and their implementation is to the agreement, and I wonder how they are working. You said that you expected most of the specialised committees to have had an initial meeting before the summer. What is the situation, and is their work being adversely affected by the present bumpy ride in UK-EU relations?

Lord Frost: It is all going a little bit more slowly than we thought before the break, I think, but nevertheless on a good forward track, I would say. There are 18 Specialised Committees, 14 of which have now met, and three of the remaining four, which I think are on aviation safety, road transport and administrative co-operation, have set dates to meet. The remaining one, on Union programmes—Horizon, for example—does not have a date set, and that is one of the problems. Susannah has been more closely involved in these committees, day to day, than I have, but I think it is fair to say they have gone pretty constructively. The agendas have been quite wide ranging and we are getting the system working—that is the short version—and I would say there has been a pretty minimal contamination effect from the wider problems in the relationship.

Viscount Trenchard: Could you say a little bit more about the last one, the Horizon committee? I wondered whether co-operation as envisaged under the Horizon programme is being hampered by the current state of our relationship.

Lord Frost: There seems to be a problem. We are not quite sure what it is, because obviously back at the end of last year the EU had not passed all the necessary legislation to make the new programmes work, so the relevant bits of the agreement were draft agreements. But there is a commitment in Article 710 of the TCA that the EU shall implement our membership of Horizon and the other programmes.

The EU has now passed all this legislation, yet we still have not completed the process and we are not entirely sure why that is the case. One can speculate, but it has never been said to us, and we would not want to get into a situation where one side was not delivering on its treaty obligation. I note that the Commission spokesman today said that it fully intended to make us members. “Well, do it then”, I think is all I can say, “and we can start getting it working properly.”

Viscount Trenchard: Thank you very much.

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

Q11 Lord Tugendhat: Lord Frost, I come to the question of import controls. Three times now businesses have undergone the time-consuming and expensive business of gearing up for import controls and then the can has been kicked down the road. Do you feel that a moment will come when this asymmetry becomes unsustainable, and what steps do you feel need to be taken to reassure business that either something will be done or it will not be done, if you follow me?

Lord Frost: I do, and I think there are a number of factors that weigh on the decisions we have taken over import controls over the last year and, although we would have liked to provide total certainty about the dates, in fact the last year and a half in the economy has been so unusual, in all kinds of ways, that we have not wanted to add to the burdens, and therefore thought that the right thing was to move these back. I think we will stick to the dates that are now in place unless we get another terrible wave of the pandemic, but I think, barring that, we are confident.

I do not entirely buy the argument that says that because the EU does it, we must do it. There is obviously some merit in leverage if one is trying to achieve things, but at the same time, just because they impose a burden on themselves does not mean that we have to do the same. I would be surprised if, when we finally bring in these controls in January and July, we do exactly the same thing as the EU does. I do not think we would see their levels of checks on SPS goods and live animals as entirely proportionate, for example, so we might not do the same thing ourselves.

Lord Tugendhat: I think that is very interesting reply, if I may say so, and I think that a lot of people would do well to study that reply. It leads me, if I may, to an additional question. Could you envisage a situation in which we do not impose import controls and, over time, the EU takes the view that you have just enunciated, that perhaps they are not required? Could you imagine us not imposing them and, in due course, the EU lifting them?

Lord Frost: We will impose them. I think it is simply a question of what level of controls and process has to go to go with them. I think our aspiration is to have the best border in the world by 2025—we have set that out—and a well-managed, light-touch border that applies to all third countries, EU and non-EU alike, by that point. If we can do it well, I would expect that the EU might look at that. Its customs code dates from quite a long time back now and, frankly, a slightly different world, and I would expect them to want to improve it, if it could be seen to be done differently.

Lord Tugendhat: Thank you.

The Chair: Thank you very much indeed. We move to Baroness Jolly.

Q12 **Baroness Jolly:** Thank you very much, Lord Chair. Lord Frost, the Government opted to delay the introduction of many SPS requirements until July next year, but they have retained the previous deadline for the introduction of full customs controls, which are still due on 1 January. Could you tell us the rationale for delaying some checks and controls but not others?

Lord Frost: To a large extent, it essentially depended on what we felt the burden on business of the next step was and how far down the road we already were. As regards customs controls, there is a sort of myth that we are not doing customs controls. We are doing them. What we are not doing is absolutely every aspect of them at this point, and at the end of December we are filling in the gaps, if you like, and removing the ability to do deferred declarations, which most are already not using. To

be clear, we felt the extra burden—normal customs controls being in place—was not going to be significantly onerous compared to where we were. SPS controls are different—you need veterinary certificates and a different set of processes—and we felt that businesses needed a bit longer to get ready for that. So that is the logic.

Baroness Jolly: Thank you very much.

Q13 **Lord Faulkner of Worcester:** Could I take you back, Minister, to preparations for the revised deadlines, with July being the time we are now looking at? Can I ask you what steps are being taken to ensure that government and business will be ready for those this time round and can you guarantee that the timetable will not need to be delayed again?

Lord Frost: You would expect me to say this, but we were confident that, as regards government preparations, we were ready on the original timetable, which was deferred. But of course that is the easy bit. The important bit is whether economic actors are ready to do it at the same time, and that is obviously more complicated. As I said, we felt they had enough to cope with this year already and that is why we moved it out, to give us a bit more time.

There is under way a very active programme of talking to trade associations and to the big traders directly—the high-value traders—both here and in the EU, to try to make sure people know what the requirements are going to be and that they are ready for them. We cannot guarantee we will be able to get to everybody, obviously, but we are trying our best to make sure that people are prepared, and so far the signs are good that, given how long we still have, this should be okay.

Lord Faulkner of Worcester: Thank you. Can you clarify what you meant, in your speech in Lisbon, about how border controls and checks may not be required at the same level of risk: “We don't believe the level of risk requires them”? What did you mean by that and in what specific areas might the UK have lower levels of checks and controls than the EU?

Lord Frost: One area is the area I mentioned—SPS and agri-food goods—where, without in any way compromising the high standards, the EU's law requires extremely high levels of real-life checks of those goods, which it does not often reduce. I am not saying that this decision is taken, but we might well come to a decision that that is disproportionate compared with the actual risk, at least from some countries. So that is one area.

Another area might be customs paperwork, where at the moment we have inherited the EU's single administrative document because we have inherited its laws, but it is not obvious that you need to collect every single piece of information that is on that document and process it in that way.

Those are the sorts of areas that I think we would like to look at. We should not rush at it, because everyone needs time to adapt and there would need to be time to change rules, but we should see over the next couple of years whether we can improve the process.

Lord Faulkner of Worcester: How do you envisage that the EU will react to that, if that is the route you go down?

Lord Frost: I hope it would look at its own processes and think that maybe it could improve them. In an ideal world—we would still be open to this—of course we would do this together and mutually agree that certain things were not needed or that they could be done in different ways as part of a trade facilitation agreement. We tried to kick that off in the negotiations last year and it never quite took. If the EU is still open to that, we would do it, but otherwise, I think imitation and learning are the best ways. When we do our best-in-class border we will learn from how it is done elsewhere in the world.

The Chair: Thank you very much. We move to the second of our virtual colleagues, Baroness Couttie.

Q14 **Baroness Couttie:** Thank you very much, Lord Chair. Good afternoon, Lord Frost. I would like to move now to UK exports to the EU. At the first meeting of the Partnership Council, in June, we raised with the EU the need for greater consistency in the application of customs and SPS controls to our exports, and indeed last week we took evidence where we were hearing about the inconsistencies as various different countries in the EU apply these controls. I would like to have a little bit more detail from your perspective about where you see the issues are. Is this still an area of concern, and have there been any developments recently in this area?

Lord Frost: I think the first thing to say is that generally it works well and so far I think that the general approach that has been taken by European customs authorities, who are still national even though they are working to EU legislation, has been quite pragmatic about things and not insist on everything being done perfectly but to allow trade to keep flowing. There are cases, as you say, that we are aware of where goods have got stuck, and usually we are able to unstick them—our embassies in particular are very good at identifying these sorts of problems—but I would say that they are, if not isolated, certainly not characteristic of the overall relationships. I think that some countries are somewhat more problematic than others—I do not particularly want to go into it in public, but there are one or two that crop up from time to time—but I believe that, in general, continuing to work the channels and getting people used to the way this works is going to deal with most of these problems.

The very last thing is that we have put in place the export support service—in a sort of soft launch, as you could say, which I hope will get a bit harder quite soon—which is DIT's new support arrangements for companies to help them deal with some of these process questions. That is open and easily found on GOV.UK, and we are encouraging people to use this if they need to.

Baroness Couttie: We heard last week about certain countries that are being perhaps a little bit more draconian, shall we say, about some of the checks which they are imposing, more so than they are with other third countries that they are trading with. Do we have a specific process in

place to deal with those countries and these issues? How are we capturing the data on where the issues are and how are we then processing it very specifically bilaterally with countries where certain checks are difficult?

Lord Frost: There are two processes to deal with it. One is the relevant Specialised Committee, because ultimately the rules that operate are subject to the TCA and if UK companies are not being treated as they should be under the TCA, that is a problem for the EU and needs to come up in the Specialised Committee. Obviously, we cannot do that for every single problem and we have managed it in different ways with different countries. For example, we have set up a contact point process within the Portuguese administration—I happen to know just because I was there a couple of weeks ago. They have set one up that aims to resolve these questions quickly, as they arise, rather than having to hunt down the right person.

Those are the sorts of mechanisms that we are using. It hugely depends on the volume of trade and the nature of it with the different countries, but that gives a snapshot of some of the ways we are trying to deal with this.

Baroness Couttie: I think that part of the difficulty seems to be the interpretation of the TCA, where some countries are perhaps being much more literal and strict about their interpretation, as opposed to being more pragmatic, and that may suit their domestic agenda and their domestic economic and trade policies. I can see that that might be much more difficult to resolve than when the interpretation is incorrect.

Lord Frost: Actually, to be fair, I do not think many, if any, countries are doing this as a matter of policy, except perhaps in one or two areas. I think it is more the way the rules get interpreted by particular bits of the customs system—some bits and some people are more assiduous in this than others. That is more the problem than a deliberate attempt to cause us problems, because I am just not seeing a huge amount of deliberate attempt to do that, and there has not really been at any point this year.

Baroness Couttie: Thank you very much.

The Chair: We move to Lord Hannay.

Q15 **Lord Hannay of Chiswick:** On data, in your statement to the House on 16 September, you said: “We intend to create a pro-growth, trusted data rights regime, more proportionate and less burdensome than the EU’s GDPR”. In diverging from the GDPR—the intention is implicit in that statement—is there a risk that the Government will jeopardise the adequacy decision for the UK taken by the Commission in June, and have the Government carried out a risk analysis of the potential cost to the UK if that were to happen and the adequacy were to be withdrawn, and would the terms of the TCA, in fact, in those circumstances, permit or perhaps even require us to consult with the EU before we started to diverge?

Lord Frost: I think all those things are definite possibilities as we evolve

the rules, but we are at a very early stage. As you say, we have data adequacy at the moment. We have launched a consultation on how to do things differently, we are in the middle of that consultation at the moment, and I think it closes later on this year. That will be the basis for any reforms, any legislation we decide to put in place, and I am sure that we will talk to the EU about that—there are processes in the treaty that allow that when we get to that point—and in so doing I am sure that we will want to say that we are putting in place a regime that provides for very high standards but in a somewhat different way and maybe in a way that is more light-touch but provides for the same standards.

Obviously the EU has given adequacy to other countries that do not operate the GDPR, because it recognises that they are providing similar levels of protection. I do not see why we should not be in that position ourselves. That would certainly be our aspiration, because we have no wish to reduce standards. We want to do things better.

Lord Hannay of Chiswick: Thank you.

The Chair: Thank you very much. The third of our virtual colleagues is Lord Wood of Anfield.

Q16 **Lord Wood of Anfield:** Thank you. Lord Frost, I want to ask you about co-operation with the EU on criminal justice and law enforcement. In February the Government repeatedly told the Security and Justice Sub-Committee that they were confident that they would pass the evaluation test set out in the trade and co-operation agreement, assessing the UK's suitability to share sensitive data under the so-called Prüm arrangements. This evaluation test was supposed to take place within nine months—by September—but in August the Commission brought forward legislation to extend the nine-month transition arrangements for a further nine months. Why was that necessary, given that we were so confident we would pass the test in good time?

Lord Frost: It is a question that probably should be put to the Home Secretary and those involved more directly with this. I know that this process has taken a little bit longer than we hoped, for some practical reasons, I think, rather than anything else. It is not the first deadline that has been pushed back, as we were discussing, to provide for more scope to do things right. I do not think it is a big issue between us; it is simply to provide more space to achieve that. And, of course, it is not stopping Prüm DNA and fingerprint exchanges going on meanwhile.

Lord Wood of Anfield: We have only nine more months, because only one postponement of the existing arrangements is allowed. Are you confident that within the next nine months we will sort these things out, because the obvious question is: what if we do not? There is no provision for a further extension.

Lord Frost: I do not see any reason why we will not do this. I do not think there is any underlying difficulty here and I am sure that we will be able to put it in place.

Q17 **Lord Wood of Anfield:** Thank you. Just one further question, and I hope

this does not sound too whingey on behalf of the committee or the House, but we were appointed by the House to consider matters relating to the UK's relationship with the EU, obviously, and that includes, crucially, the implementation of any agreements between the UK and the EU, and EU documents deposited in the House by the Minister, yet we and Parliament knew nothing about the significant matter that I have just raised. Does this reflect, as some people are suggesting, a view on the part of the Government that they are just not interested in parliamentary scrutiny of its relationship with the EU? So far, to be honest, we have seen precious little evidence that there is an interest in doing that.

Lord Frost: Well, I cannot speak for everybody; all I can say is that I have tried to be open with this Committee. I think we are still in the middle of a discussion about the scrutiny arrangements and the amount of documentation that could be exchanged, and I am sure we will be able to bring that to a conclusion very soon. But it is certainly not my intention to evade scrutiny in any way, and I think my frequent appearances in front of this and other committees show that.

I believe—as I am sure colleagues do—that it is important that significant developments are appropriately drawn to the attention of the appropriate committee. I think that is just reasonable, and if it is not happening, that is a pity. Obviously, “significant” is a term to which one might bring judgment. It is not necessarily objective, but I think we know what it is when we see it and I think it is reasonable that committees be kept in the picture. Certainly, that is what I have tried to do.

Lord Wood of Anfield: Okay, thank you very much.

The Chair: We will certainly come back to that. Yes, you are quite right, Lord Frost, that we are still in these discussions. I think the discussions are moving out of a phase where it is being handled by officials, and instead it will be, I am afraid, a deputation of committee chairs that will come to see you quite shortly on that.

Lord Frost: It might be.

The Chair: But in the meantime, we go to Lord Purvis.

Q18 **Lord Purvis of Tweed:** Thank you Lord Chair. Good afternoon, Lord Frost. In your Lisbon speech, when you were referring to the issues with the Northern Ireland protocol, you said it was when “the UK’s negotiating hands were tied”. Are there any constraining factors or any hands being tied for the UK negotiating over Gibraltar?

Lord Frost: Obviously, Northern Ireland and Gibraltar are very different questions. I think that is the first thing I would say. Although there are some analogies to be drawn between some of the things we are doing there, I think they are very different.

We are in a negotiation on Gibraltar, the shape of which is constrained by the very good political agreement that we reached at the end of last year—we would just like to see that given legal form as expeditiously as we can. Quite constructive discussions have begun on that and we hope that we will be able to get there before too long.

Lord Purvis of Tweed: I am assuming that that is a no—there are no hands being tied and no constraints on the UK.

Lord Frost: Yes.

Lord Purvis of Tweed: The 29 March press release that was issued from the Foreign Secretary and the Chief Minister says at paragraph 11 that “we are prepared to make level playing field commitments”. So presumably this is aligning with European laws for Gibraltar, proportionate to the market access for that territory, without consent from the people of Gibraltar. Is that the case?

Lord Frost: If that statement is the one I have in mind, it was co-signed by the Chief Minister, who I think represents the people of Gibraltar.

I think we recognise that, as in the political agreement, it is necessary to put in place a minimum of provisions to enable the border to flow freely between Gibraltar and Spain. That has required one or two unusual things, but the fact is that Gibraltar does not produce many goods, so some of the questions of alignment and customs that have come up are minimal. I think the EU's aspiration is to do a lot more—at least, that is what we judge from their mandate.

Q19 **Lord Purvis of Tweed:** Is it still the UK's position that it favours a foreign entity—the EU, through its Frontex agency—using its procedures and processes for checking on British territory?

Lord Frost: Checking entrance into the Schengen zone through Gibraltar airport.

Lord Purvis of Tweed: So it is the case.

Lord Frost: That is in the political agreement.

Lord Purvis of Tweed: So having the best border in the world includes a foreign entity policing part of it. Is that correct?

Lord Frost: In the context of Gibraltar, yes.

Lord Purvis of Tweed: How will that operate within Gibraltar when it comes to this treaty? Will it be that the First Minister of Gibraltar has to say to us, as a committee, that Gibraltarians are happy with this treaty, or how else will consent be realised? How will it be demonstrated? Gibraltarians have no representation in this Parliament. You indicated that this will be reconcilable with democracy. How will that apply for Gibraltar?

Lord Frost: This is an issue that is being discussed in the negotiations, which are being led by the Foreign Office, I should say, not by me, although I accept that there is some read-across between the two arrangements.

I think you are trying to generalise too much from the extremely specific circumstances of Gibraltar into wider areas. Our approach in this is to work with the elected political authorities in Gibraltar—the First Minister—and to put in place arrangements that they are comfortable with. That is what we tried to do last year, that is what that statement says and that is

what we are trying to do going forward. I think that is the only reasonable approach one can take.

Lord Purvis of Tweed: I was just asking for your view, Minister, because your Lisbon speech goes back to Burke and a lot of principle.

Lord Frost: It does.

Lord Purvis of Tweed: You did not preface it by saying that this applied only to very specific circumstances and areas; this was principle. So what is the principle for Gibraltarians approving? You indicated that it is the First Minister at the time of the agreement of the treaty, but we are a sovereign Parliament that decides. There is no mechanism for us. We have to take your word for it that democratic reconcile has been reached for us passing laws that will then apply specifically to Gibraltar to align it to the certain aspects of the single market for goods—not for customs, but the single market. That is correct.

Lord Frost: I think you are trying to stretch the elastic, if I may say so, Lord Purvis, of the relationship between this Government, this Parliament, the authorities in Gibraltar, the very special arrangements around Gibraltar and the issues that that produces. I think you are trying to stretch that a bit further than it would really bear and I do not think you can draw the general conclusions that you are trying to draw from those very specific circumstances.

Lord Purvis of Tweed: I am simply asking, Minister: if this treaty is implemented with due warrant, which is that a British Overseas Territory will be aligned to European Union laws, how will we then legislate for Gibraltar when it comes to those laws?

Lord Frost: I repeat what I have said—that Gibraltar is an entity which has a relationship with this Government that is a familiar arrangement. As an overseas territory Gibraltar has its own elected authority and constitution and is very closely involved with us in preparing these negotiating positions and the talks. I think that is honestly all I can say at this point. As I have said before, this is a negotiation that the Foreign Office is leading and I think that the details of the negotiating position should be addressed to them as well as to me.

The Chair: Thank you very much. I think we will have to carry that on in correspondence. In the meantime, over to our leading fast bowler, Lord Foulkes.

Q20 **Lord Foulkes of Cumnock:** Lord Frost, you negotiated this treaty and you commended it to us at the time. Do you not find it a little embarrassing that you are renegotiating it across such a wide area so soon after it was signed by the Government and approved by this Parliament?

Lord Frost: Not really, because circumstances have changed and what we—

Lord Foulkes of Cumnock: Why have circumstances have changed so quickly?

Lord Frost: The fact that there is very clearly no longer cross-community, cross-party consent in Northern Ireland for the Protocol. That is very clear, because all the unionist parties have put out statements saying that they would like the Protocol to be rejected and replaced. That is a very clear assertion.

Lord Foulkes of Cumnock: Did you not anticipate that that might happen?

Lord Frost: We put in place a Protocol that included quite a lot to be worked out afterwards—Michael Gove tried to work it out last year—which included a lot of novel areas and had as its overriding purpose the support for the Belfast/Good Friday Agreement. We knew that much of this was novel. That is why there is an explicit provision in the protocol, under Article 13(8), that it can be superseded, in whole or in part, is why we have to have safeguards and is why there is a consent mechanism. So it is unfortunate that the cross-community consent no longer exists and we have to come back to these questions a bit sooner than we thought, but I do not think it can fairly be said that these were circumstances we did not anticipate.

Q21 **Lord Foulkes of Cumnock:** Do you not think this is going to create huge problems for us when we negotiate treaties in the future with other countries?

Lord Frost: I hope we will never negotiate one in quite the same circumstances that we negotiated in October 2019, when this Parliament restricted one of the major options in those negotiations—that we could leave without a deal—and left us with the ability only to take what was put on the table and do the best we could. I hope we never negotiate anything in those circumstances again, because it is self-evidently not ideal.

Lord Foulkes of Cumnock: Well, we will have to disagree on that matter.

Q22 **Lord Hannay of Chiswick:** Could I just follow up on that? Surely—perhaps you will correct me if I am wrong—at the time when you struck the deal to which you put your name, as did the Prime Minister, it was opposed by the DUP. It was not accepted; it was always opposed by the DUP. Could you tell us a little bit about your contacts with the other parties in Northern Ireland, such as Alliance, the SDLP and Sinn Féin? There is not a huge amount about that in the reply you sent to our Committee's report on Northern Ireland—that is a polite Foreign Office way of saying there was nothing about it at all.

Lord Frost: Nevertheless, I do have contacts with such politicians and I meet representatives of the Alliance, the SDLP and indeed Sinn Féin from time to time. One of the reasons why I cannot give much more than an hour to this hearing is that I have to go and do one of those contacts. So we do our very best to stay in touch with the whole range of political opinion. Obviously, Brandon Lewis, as Secretary of State, does a lot more of that than I do. Of course it is our job to remain in touch with the whole range of public opinion in Northern Ireland, and there is a range of views

on the Protocol. It is unfortunate that those views are quite polarised and that they undercut the support the Protocol needs to operate.

Lord Hannay of Chiswick: Thank you very much indeed.

The Chair: We will have two more and then we will have to finish.

Q23 **Lord Liddle:** On this Northern Ireland point, do you support the efforts of Vice-President Šefčovič to establish direct relationships with the parties in Northern Ireland to get a better understanding of what changes may be required?

Lord Frost: It is a free country—just about—and we would not want to put obstacles in any way to anybody coming to the UK and finding out more about it, and I think that the more the Commission understands about the circumstances in Northern Ireland and the pressures on the actors, the better that will be.

I have said before that I think that visitors to a country should respect the fact that they are in another country, especially if they are not part of the Government of that country, but I think it is very useful to have him there, seeing more and to establish contacts—just as I do not feel inhibited going to EU countries and talking to anybody I wish to there.

Q24 **Lord Faulkner of Worcester:** To stay with Northern Ireland, Lord Frost, looking back and bearing in mind what happened to Theresa May's proposed deal, which contained a backstop, do you think that the reaction to that would have been any worse on the part of the unionist community than it is had been to your Protocol?

Lord Frost: It is speculative. Their opposition to it is a matter of record. I think that the problem with the backstop was not only the problem in Northern Ireland but the fact that it kept the whole of the UK in the customs union and in effect required alignment to the single market for goods, and bits of it across the whole of the UK. So that was the difficulty and the reason why it was never approved by this Parliament.

I think that whether we would have got to the same point is speculative. The pressures on the Government if the backstop had been in force would have been so different that I cannot quite imagine how they would have worked out without even more severe tensions than the ones that we have.

The decision that we took in October 2019 was to deliver Brexit for the whole country and to give openness about the future for the country, and if we did not have that I think things would be extremely difficult; that is all I would say.

The Chair: Thank you very much, Lord Frost, and thank you both for being with us today. I am sorry, Susannah Simon, that we did not get to hear from you but that, I am afraid, is a reflection of the reduced time that we had today. The questions that you would have been very helpful on were simply not able to be asked, but we look forward very much to seeing you again here shortly to continue the conversation. In the meantime, thank you again.