

Northern Ireland Affairs Committee

Oral evidence: [Implications of the EU withdrawal agreement and the backstop for Northern Ireland, HC 1850.](#)

Wednesday 13 February 2019

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Members present: Dr Andrew Murrison (Chair); Mr Gregory Campbell; Maria Caulfield; Mr Robert Goodwill; John Grogan; Lady Hermon; Kate Hoey; Nigel Mills; Ian Paisley; Jim Shannon, Bob Stewart.

Questions 251 - 364

Witnesses

I: Dr Etain Tannam, Associate Professor of International Peace Studies, Trinity College Dublin; Colin Murray, Reader in Public Law, Newcastle University; David Henig, Director of the UK Trade Policy Project, Co-Founder, UK Trade Forum.

Examination of Witnesses

Witnesses: Dr Etain Tannam, Colin Murray and David Henig.

Q251 **Chair:** Thank you very much indeed to our witnesses for being with us today to better inform our thinking in this particular matter of the border in the island of Ireland. Before we get into questions, I wonder if perhaps you might very briefly describe who you are and where you are coming from.

David Henig: I am David Henig. I am a trade policy specialist. I work with the trade policy think-tank, the European Centre for International Political Economy. I have been working on trade issues for 10 years or so.

Dr Tannam: I am Etain Tannam. I am associate professor in Trinity College Dublin in international peace studies. I am working on a book on British-Irish relations in the 21st century, so my particular area is British-Irish diplomacy, intergovernmental co-operation and cross-border.

Colin Murray: Good morning. I am Colin Murray. I am a reader in public law at Newcastle Law School. I am working as part of an ESRC-funded project team on Northern Ireland-related aspects of Brexit.

Q252 **Chair:** I will start and exercise my privilege as Chair in firing the first question at you. We have heard evidence in the course of our work around the possibility of technical and systems-based solutions to ensure we have no hard border on the island of Ireland after Brexit. We have heard from experts such as Lars Karlsson, Hans Maessen and Christian Bock, who were very compelling in what they had to say in relation to ways in which we might avoid this hard border that no politician wants to see, so that the border in the future looks and feels pretty much as it does today and as we found during our recent Committee visit to Strabane, and very beautiful it was too. We want to make sure it remains like that.

You will no doubt have taken note of the evidence we have heard and certainly seen some of it reported. My question to you is what your attitude is to the possibility that we can use so-called alternative arrangements in order to avoid the very close regulatory and tariff convergence that appears otherwise to be the solution to avoiding that border changing its nature. Mr Henig, you might like to kick off with that.

David Henig: I do not rule out that these solutions can play a part in the future. However, I put a timescale on it that is somewhere different to the timescale that others have put on it. I would suggest that you could envisage these sorts of solutions playing a part in ensuring there was no border and we still had rights to have different regulations in perhaps 10 years or more. If that feels like a long time in the future, I want to explain why that is my view.



Bob Stewart: That sounds a very long time in the future.

David Henig: It does. Let us bear in mind first that there is no country outside of the EU where there is no border infrastructure. The only place where border infrastructure has been removed is within the EU. The EU has said within the Brexit talks that actually we can not be a member of the EU and have no border infrastructure if we stay close to the regulations. That is the first crack. We have actually been offered something that nobody else has been offered already, so that is a starting point.

However, what we need to bear in mind is that the border is at the centre of all customs and regulatory checks that currently happen for products going into the EU or into any country. That is to say that the border is the only place where the transport, the goods, the paperwork can be guaranteed to all be together. If you were going to remove that possibility to have all of those together, you are going to need to put in place a very strong set of systems and processes—this is not just about the technology—to make sure that everything that is currently done at the border, which is far more than just customs, can be done elsewhere and can be done in such a way as to ensure that you do not have a huge increase in smuggling and people basically not paying their customs or smuggling in products that are not allowed. For example, should the UK do a trade deal with the US and have different meat—hormone-treated beef or whatever it is—the EU would say that was a major part of what they want to do to make sure that could not come into the EU. How do you do that without having border infrastructure?

I do not doubt that is possible. This is not just primarily about technology. This is a process question. How do you actually make sure you go through all the processes, you build up all the trust, you build up all the legal systems possible, such that both sides are completely sure that you can do this? I am afraid that, realistically, we need to look at how long technology solutions take. Before I was in trade, I actually started my career in IT. Let us put realistic timescales on this. There was the e-Borders system that the Home Office commissioned in the early 2000s and admitted in 2014 would never in fact be fully operational. These systems take a long time; the processes take a long time; the trust-building takes a long time. I do not doubt it can be done. That actually puts me at odds with quite a lot of customs experts who say it can never be done. I do not doubt it can be done, but it will take a long time.

Q253 **Chair:** Hans Maessen thought it could be done in two years, using a bespoke system. I think he admitted that no such system currently exists, because there is no real need for such a thing, because the border in Ireland is pretty much unique in relation to the security imperatives and so on. The difference between you and him appears to be eight years, which is a hell of a lot. I am wondering why you have chosen to suggest 10 years as when, perhaps, we might be able to be there. If you



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admit there is a possibility technically, conceptually, of dealing with this in a remote way or a systems-based way, why should it take so long? Are you simply relying on precedent—that is to say how long, for example, it has taken to establish e-Borders.

David Henig: To me, the complexity of the question is why it takes so long. This is not just about the technology. If it was just about the technology and if it was easy to put in a solution, I am quite sure that Norway and Sweden, who would like to have no border infrastructure, would have done it already. This is not just about technology, even though that is unproven. This is about processes, trust, legal frameworks and shared operations. In my experience, internationally, these things take a lot of time. Both sides, the UK and the EU, need to have full trust that any system you put in place works, with a very high degree of confidence.

Q254 **Kate Hoey:** Does good will come into it?

David Henig: I am quite sure that good will will come into it. Both sides can work together with good will and build up; I am quite sure, in fact, that is the only way you can do this. You would not do it without that good will.

Q255 **Chair:** On day 1 after Brexit, there will be complete regulatory and tariff alignment. That is clearly the case, since it takes a very long time for these things to diverge. Under such circumstances, both parties are going to have to take a risk-based approach to the way they deal with this particular border. The WTO makes that quite clear. It also makes quite clear that we can have derogations based upon national security, which may very well apply here. Can you see any circumstances at all in which either party would wish to see any infrastructure on that border after Brexit?

David Henig: I am sure that initially neither side wishes to see infrastructure on the border. I have been reading widely on the subject. Both Irish commentators and UK commentators have been putting on the subject that initially neither side will want to do it but that pressure will build. There is a matter of trust between the sides. We already have cases where the EU has questions about the way the UK handles, for example, customs. There was a case recently about Chinese imports not paying the right customs. I think pressure would build from the EU side in particular, but do not discount it building on the UK side, to say, "What is actually coming through this border? How are we managing it? We are going to have to put something in place".

I do not know what "something" is, and I do not think most people wish to speculate too much about what that something may be, in the hope that it is not required. I am quite sure that, in some dusty corridors in both Dublin and this city, people are thinking about this and thinking about how you could possibly do it without causing big political problems.

Q256 **Bob Stewart:** I have two things on this point. I would like you to



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describe what the Swedish/Norway border is like, because my impression was that it was pretty fluid. As I live sometimes on the French/Swiss border at Geneva, and particularly in Ferney-Voltaire, where we have a flat, I do not see any problem going across the border there between a non-EU country and an EU country. It worries me that you are saying 10 years too, because actually you have not answered the question as to why it takes 10 years. Why would it take 10 years? That is twice the length of the Second World War.

David Henig: Let us take those in turn. On the Norway/Sweden border and the Swiss border, I have crossed the Swiss border from both Austria and Italy and there is quite clearly infrastructure where I have crossed it. My understanding is that there are crossings that do not have that infrastructure.

Bob Stewart: They go straight through.

David Henig: I was stopped on both occasions.

Bob Stewart: Yes, on occasion.

David Henig: There is infrastructure in both cases. On the crossings where there is not infrastructure, goods are not allowed to cross, and I am quite sure there is surveillance sitting behind that as well. That is why.

Why have I not given an explanation for 10 years? It is very difficult to describe why diplomacy, trust and systems all take so long. Why do trade deals take 10 years to agree? In theory, people have proved that you could write a trade deal in a morning, but for both sides to agree, to find out exactly what you want and to get to a position where you have—what are we wanting here?—99% trust that this is secure takes time. It takes the action of the law. It takes both sides to have trust in each other.

It takes the systems and both sides to have systems, to agree what those systems are, for the technology to be tested and for traders to have confidence. There have been some very good reports about how the systems that are proposed would require traders to have a technology fitted to their vehicles that they may not wish to do initially. There are a lot of questions to a major systems change. These things, I am afraid, do take a long time.

You see so often in Government—we have seen in the past—systems where we think it will take a year, or the Government Department says it will take a year or two years, and it ends up taking 10 years. That is just an optimism bias that system people and Government can have. I am trying to be more realistic here. As I say, some people say this could never be done. I am trying to be more optimistic but to give you a realistic view of how long and why it will take that length of time. Do we want to do this properly? I think it can be done, but I do not think it can be done if you assume it can all be done tomorrow. That is my view.



Q257 **Chair:** Mr Murray, you look like you are gagging to get in at this point.

Colin Murray: I have a point on regulatory alignment and the day 1 alignment that the UK will find itself in on leaving the EU, but by day 2, we are told that trade deals will be in place internationally, and they will continue to roll on days 3, 4 and 5 for the UK. Every one of those trade deals will involve exactly those negotiations that Mr Henig is talking about, in terms of that relationship between states looking for advantage over things like regulations. There will be progressive regulatory dealignment between the UK and the EU.

You can go through Hans Maessen and Lars Karlsson's evidence. There is scant mention of regulation. We can be optimistic, perhaps, as to a customs border having a technological solution, but that is a customs barrier to trade. It is not a non-tariff barrier. The solutions that you have been presented with do not deal with the complexity of 21st century trade. So much of that lies in non-tariff barriers.

Q258 **Chair:** Could you expand a little bit on that? We are all familiar with what non-tariff barriers are, but perhaps some of us are struggling to work out why it is that we cannot interact properly north-south, and indeed east-west, after Brexit, once we have sorted out the mechanics of what happens on the border. The uniqueness of the island of Ireland in respect of Brexit is, of course, the security implications of a functioning proper border of the sort we are used to elsewhere. That clearly cannot be allowed in the context of Ireland. I am not quite sure where the issue is that specifically relates to the island of Ireland of the sort you are describing.

Colin Murray: There is more of an issue than security. There is the Belfast agreement set up of north-south bodies and the idea of a completely frictionless invisible border that works on. If a patient in a Belfast hospital needs a rare set of blood platelets, that product has in the past been imported from the Republic of Ireland. It is on record as happening.

Q259 **Kate Hoey:** Why could they not still be after Brexit, if there was co-operation and agreement? Why could it not still be? Are you saying the hospital would refuse to send it if it was needed?

Colin Murray: We are sitting on top of a contaminated blood scandal going back to the 70s and 80s. The movement of blood products across borders from the European Union into a non-member state is now very heavily regulated. There is no way without deep regulatory alignment, where there will be the level of trust that has been talked about already, to maintain that quick and easy flow of a vital product like that across a border.

Q260 **Chair:** That is the most appalling Sir Humphrey indictment. It is inconceivable that people would be allowed to suffer because some bureaucrat somewhere is insisting on a particular set of standards.



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Colin Murray: But it is inconceivable that, after the contaminated blood scandal of the 70s and 80s, we would allow blood or blood-related products, like platelets, to pass over the border with no regulation and checks. It is exactly the situation—

- Q261 **Chair:** Forgive me. I am not getting at you, but it is important to make this very clear, because there is a lot of shroud-waving going on around this particular business. A country like the United Kingdom, as is and as it will be, and a bloc like the European Union as it currently is and will continue to be, will continue to operate closely and, I imagine, respect each other's standards. It is inconceivable that, in respect of what you have just described, there would be a significant level of divergence. Would you not accept that, or are you envisaging a future in which standards in the United Kingdom vastly exceed those in the European Union, or indeed, on the flipside of that, that they in some way sink into some sort of antediluvian state of disrepair, to the point at which our neighbours in Europe would say, "We are not going to be taking dirty products from the United Kingdom"? Is that really what you are saying?

Colin Murray: I am really saying that ripping up EU red tape as regulatory barriers were put in place was a huge part of what the Brexit offer was.

- Q262 **Ian Paisley:** We know that there are products you cannot bring across. Premature babies are born in Northern Ireland. They cannot be fed on the breast milk brought in from the Republic of Ireland. You are not allowed to bring it over the border. There are all sorts of things you currently cannot do in this wonderful world of the EU.

Colin Murray: Yes, and that is within a highly integrated single market.

- Q263 **Ian Paisley:** You mentioned smuggling. Smuggling is at its all-time high within the EU, not only at our border but across other EU borders.

David Henig: That is where the legal and the trust comes in. You have built up certain frameworks over time where, frankly, yes, there is still—

Ian Paisley: This is not perfection; this is a mess. Europe is in a mess.

Chair: I am going to bring some order to proceedings. I am going to reassure our witnesses that, although we all get very excited about this matter, we are in no way aiming that excitement at you, but merely at the issues.

- Q264 **Maria Caulfield:** Can I just raise a very small point on the blood? Going back to the blood scandal, is it not true that the Republic of Ireland had to pay out €1.5 billion in compensation due to a hepatitis C blood scandal? Is the reverse not true as well: that the standards in the Republic of Ireland have had a questionable history too?

Colin Murray: This is where the standards have moved on. Those issues were from 1980s, but those standards—



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Q265 **Maria Caulfield:** No, this was only last year—€1.5 billion.

Colin Murray: Yes, the pay-out was last year for a historic scandal.

Q266 **Maria Caulfield:** Yes, so you cannot say the Republic of Ireland, as a member of the EU, has a robust safety history.

Colin Murray: But I can say going forward that now, as a matter of EU regulation, these products are fully regulated, in light of those scandals happening.

Maria Caulfield: Why should people in Northern Ireland have confidence in the arrangements for the blood products from the Republic of Ireland? The same can exactly be said for the blood history from the United Kingdom. I think that is a very malicious comment to make in this Committee.

Q267 **Chair:** I think the point is made and I am going to proceed to Dr Tannam. You are obviously an expert in north-south and east-west relationships, which is obviously germane to the points that have just been made. Clearly, it is in the interests of all parties to this that, after Brexit, we continue with the level of trust that has already been referred to. Indeed, the experts we have heard from already rely upon, in making their cases, a high level of trust, particularly between the UK and the Republic of Ireland, which must endure. I wonder what reflections you might have on that.

Dr Tannam: I just wanted to say something about the previous point by Mr Paisley about the scandals that happen everywhere. Mr Paisley is correct: there is a polarisation at the moment that we have no border, whereas actually there is a border. There are different currencies and different systems. At Trinity, my department actually has a department in Belfast, a section of it, and we come up against these issues all the time.

John Bradley, formerly of the ESRI, has argued that Brexit makes the situation worse. It is not that it is perfect. Cross-border co-operation has not been perfect. Trade is not as high as we might like, in a way, but just to say that does not mean that it is fine, because actually the fear is things will get worse. I just wanted to add that.

Trust is hugely important. I know when the Brexit referendum was called I, for one, thought the British-Irish relationship would continue the way it had been, and that was the key to smoothing over all the other issues and reaching agreements that would be helpful for the border and would avoid worst-case scenarios. All of us have seen that there has been tension in the British-Irish relationship since the Brexit referendum. There has been rhetoric at times on both sides and media portrayals and stereotypes that have reoccurred, so I think it has been very negative.

Q268 **Jim Shannon:** Brexiteers going to hell would be an example of those words.

Dr Tannam: On both sides, yes.



Jim Shannon: I note you accept that—

Chair: Order, order. Jim, we will come to you in a minute.

Dr Tannam: There have been stereotypes on both sides that have not been helpful. At the same time, I believe the British and Irish Governments have actually come together relatively well, particularly over the past 18 months. I think we all are aware—and you are aware of this more than I am—of strategies and bargaining and when to be blunt and when not to be blunt. Overall, there has been relatively good management and diplomacy being used. That has been very positive.

At the beginning, it seemed a bit less so at times, but I think there is a common interest in trying to resolve this issue, even though preferences are so different. At various times I know the Tánaiste, Simon Coveney, has been very sympathetic to Theresa May's position, for example. I would argue that the hard line rhetoric overall has declined, but there needs to be a formalisation of relations more going forward. We have seen how quickly relations can decline. I was quite shocked by that actually, at the beginning, after the referendum.

Q269 **Chair:** Yes. Of course, we are all going to be left after this, however it ends up, with two jurisdictions that are going to have to continue to co-operate very closely. I wonder if you might indulge me for one moment. Some of us have spent quite a lot of time over the past few years commemorating the centenary of the Great War. Just by way of diversion, I would say that is an example of where we have been able to bring two countries much closer together. Communities have been much closer together. It has been very heartening to see how that is possible, particularly since the Queen's visit and the President's visit in 2012. There is no doubt that mutual sympathy has grown very substantially, using those tools of soft diplomacy.

After Brexit, to what extent do you think we will be able to easily, perhaps, repair some of the inevitable damage that has been done between the relations between the two countries? How do you think that might be achieved?

Dr Tannam: It is very possible, and I think there is a political will to do that. We have had very bad times, obviously, in British-Irish history and Northern Irish history over centuries and decades. We have come through and we have a very strong relationship still, despite the tensions at the moment. The first point is that, yes, it is possible to do it and, I hope, probable.

There is a basic question. I was talking to a retired person from the Cabinet Office here about 18 months ago as well, and he was arguing about institutions. Do they reflect political will or do they create it? There is that question. My academic and personal belief is we need more robust institutions and more robust use of the Good Friday agreement's institutions to preserve co-operation, again because it really did decline



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quite quickly after the Brexit referendum. If that can happen on foot of the Queen's visit and other remarkable events historically, we need to protect that very much institutionally.

There needs to be that commitment to use the Good Friday agreement's institutions, all strands, and perhaps to develop new bilateral agreements or some other format. That has been mentioned by Theresa May as well, I think, and by the Government.

David Henig: Can I come in on that? When I was within the UK Government, I worked very closely with the Irish Government on trade issues. One of the things I note in trade negotiations, if you like, is that trade negotiations tend to bring out what divides you, rather than what you agree on. Something we really have to improve in the next phase is to make sure that, while we are having these disagreements, which we will have, inevitably, with our EU colleagues, we have in place strong underpinning relations.

It is not just with Ireland. We have a number of countries around the EU that we have very close relations with—the likes of Sweden or the Netherlands. We need to make sure those are continued and probably to put more effort into building closer relations with officials. One of the places we used to meet Irish officials a lot was in Brussels. Now that is not going to happen. How do we make sure that UK officials and Irish officials continue to have dialogue when we will no longer meet as often as we do now?

Dr Tannam: Bilateral relations with every country Britain has close relations with now are important, but with Ireland there is the Northern Irish post-conflict situation, where British-Irish co-operation is so vital to underpin that.

Chair: Yes, you are absolutely right. It is a special case.

Q270 **Mr Campbell:** You are all very welcome. I was just going to press the rewind button to get us back to 9.30 to start over again. My first question is to David Henig. Were you aware of a report in the *Irish Times* that appeared a couple of months ago, quoting reliable sources in the Irish Government, saying that the Irish army had concluded an in-depth mapping exercise of the border and the extent of the number of crossing points that existed, which were greater than what they had previously alluded to?

David Henig: I have been trying to follow as much as I can. I do not confess to having seen that. I cannot confess I saw that report, I do not think.

Q271 **Mr Campbell:** There were headlines in the news. I think you would have seen it. Mr Murray, were you nodding? Have you seen it?

Colin Murray: I have seen it, yes.



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Q272 **Mr Campbell:** We have also taken evidence from the chief constable, which seemed to reconcile with the number of crossings. They concluded that there were about 285 crossing points. That is major roads, minor roads, approved crossings, unapproved crossings, laneways, fields—all sorts of crossing points. Mr Henig, you said that you thought maybe it would be about 10 years before any technological solution had come about. I took a note of what you said. Everyone is very vehemently working towards avoiding a hard border, but I am struggling to get anyone to tell me what this hard border might look like. In fact, I am not struggling. I have not had anyone who can tell me. You used the words, "Something might be put in place". Has anybody said what that might be and where it would be, if it were to come about?

David Henig: Like I say, people have not been keen to speculate.

Mr Campbell: That is an understatement. That is definitely an understatement.

David Henig: Let us look at what happens on a border at the moment. First, let us look at the regulatory checks, the SPS, the animal and animal products checks. You need to have border inspection posts, so somewhere in the environment of a border you would have to have one or more places where animals and animal products can be tested.

Q273 **Mr Campbell:** Could I just stop you there? Is there any suggestion that there would be 285 of them?

David Henig: No, because I have not seen anybody actually suggesting that. As I say, nobody has wanted to speculate. I am merely saying what happens at a border.

Q274 **Mr Campbell:** Yes, I understand that. In other fields of activity, is there any suggestion for anything, whether it is VAT or some sort of security checks, that there are going to be 285 installations? Has anyone you have spoken to or read about suggested that would happen? That, to me, sounds like what a hard border might be, if there is ever going to be one.

David Henig: If you would follow the precedent of Norway/Sweden and of the Swiss border, which we heard earlier, what I assume people would be looking to do would be to say that goods would not be allowed to cross on many of those 285. I know there are farms that straddle the border, which is a problem point. These are questions that, frankly, both sides would have to try to address. My best guess is if, let us say—and I hope this does not happen—relations just broke down between the EU and the UK, there would need to be posts somewhere in Ireland. I do not know what the UK side would do either. Would we want to put checks in Northern Ireland? These are very difficult questions and there is a very good reason that nobody wants to speculate on them.

Q275 **Mr Campbell:** All the people you have mentioned have said they have no intention of doing that. The British Government have said, "We will not do it". The Irish Government have said, "We will not do it". The European



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Union, the European Parliament and the European Commission have said they have no intention of doing it. Who is going to do this? Who is going to put these in place, whatever they are, something, as you say? I am really struggling to see what this mythical hard border would be. Nobody anywhere has ever explained to me what it would look like, how it would be put in place, how it would be monitored and, most important of all, how it would be done in such a way that everybody in the Republic and Northern Ireland could circumvent it at ease because of the fields, the lanes, the unapproved crossings. What would be the point? If somebody emerged from the group who have all said they are not going to do it and said, "We have to do it", is there an answer?

Dr Tannam: I have two points. I am not a technological person and I have never worked in IT, so I am just not an expert. I think the issue on the number of posts is not really relevant. It is any in the context, again, of a post-conflict situation. Unfortunately, because we do have a minority of dissidents, that is the fear going forward, not immediately, but that it could become a target that could lead to a hardening then. I do not think the number really matters. I think it is any.

Yes, nobody wants it and the EU has said it does not want a hard border, but the EU has also said it must respect the integrity of the single market. That is why the backstop was introduced. It is why, hopefully, the future trading arrangement will not necessitate the backstop. Overall, yes, nobody wants a hard border, but everybody has been emphasising the contradictions that might be there.

Q276 **Mr Campbell:** You are saying the number is not important. If it appears to be the case that nobody seriously is suggesting that all 285 crossings are going to be manned and you are saying the number is not important—

Dr Tannam: I am not saying that it is not important, but that the risk is still there.

Q277 **Mr Campbell:** Let us take the discussion down the route of saying we will look at the 10 or 12 main crossing points, main roads—Dundalk, Newry, Londonderry, Letterkenny, Aughnacloy. There are about 10 or 12 main roads.

Colin Murray: As existed, if I can interject, before the single market came into place in 1993, a limited number of approved routes.

Q278 **Mr Campbell:** That then leaves about 275 other ways to get across the border.

Colin Murray: All of which, up to 1993, people were prosecuted on for moving cows -

Q279 **Mr Campbell:** I have lived on the border for 65 years. I have not seen very much evidence of that in the past.



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Colin Murray: Did you have a licence to use a vehicle on an unapproved route?

Mr Campbell: No, because that was not my business.

Colin Murray: Until the 1970s, they were only issued to veterinarians, to doctors or to clergy crossing the border. There are plenty of documented cases of people desperately trying to get access to vehicular routes or vehicular use of non-approved routes that simply were not granted up to that point. That is the history of life on the border.

Q280 **Mr Campbell:** There have been 100 years—more than double the lifetime of the EU and the EEC—where people have lived, worked, operated and socialised on either side of the border, even when there was a terror campaign. I take it Dr Tannam was alluding to some sort of token gesture, with the number not being that important, and just main roads being monitored, or whatever it is they are going to do, with something being put in place in a small number of places. Is anybody seriously suggesting now that is going to deal with people who are going to use the hundreds of other crossing points, or with people who have a small bit of land on one side of the border and a large plant on the other side of the border. Simply register both and where you would like them to be from, the EU, or outside of the EU. Is anybody seriously suggesting now that is going to deal with people doing what they have always done for 100 years, long before the EU came into existence? Is anybody suggesting to me now that WTO, the EU, the British Government or the Irish Government—somebody—are going to devise a system that is going to say, “We have to do this and this will deal with these problems”?

David Henig: I do not think anybody wants to go there. I should add that I am on record in an article last week saying that what we need to do on these questions is to take this into a separate process. Again, it is about building trust: “How are we going to actually manage these situations?” At the moment, you have a situation where Brexit is almost seeming to hinge on this question. To be honest, I do not find this a very comfortable debate, to start basically hinging the entire future of the UK’s relationship with the EU on these questions of border crossings or what border checks we will put in place. You start to say, “Who is going to blink? Is the EU going to put things in place? Is the UK going to put things in place?” These are not comfortable questions. I find it difficult to say.

What we can say is these are the things that the EU currently does with every external border. They put in place the border inspection posts. They put in place checks. If you are saying they have to do something different, that is actually a big ask. Let us work that through, but let us not say, “We are so special they have to do something different”. No, this has to be a collaborative process. It is the only way we could take this forward.

Q281 **Mr Campbell:** Hopefully nobody on the UK side is saying what you have



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inferred they might be saying. Certainly what I am indicating and have been indicating is that, if everybody says they are not going to put infrastructure there, somebody else has to say what it is they are going to put. The British Government have made it clear they are not going to do anything. I am going further and then saying even if somebody did, there are so many ways round it that there is no point in doing it. It is totally and utterly irrelevant. People will circumvent it with ease, as they did for 100 years, and they will do it for the next 100 years. Unless Brussels wakes up to that fact, we are going to be in the bind that you have quite correctly alluded to.

We do need to resolve this, but we need to resolve it on the premise that no infrastructure can be done or would be done, and, if it were done, would be got around with ease. If we work on that premise, I think we are more likely to get a solution.

David Henig: I have full sympathy, and that is why I outlined to you that I am trying to be realistic about what could be a solution in the timeline. You do not particularly like my timeline, but I am trying to be realistic and say, "It could be done in that timeline. Here are ways in which you can do it". If things break down before, what is going to happen? Realistically, both sides are going to have to, before long, come back to the table and start talking again in that way. That is my honest answer to you.

Mr Campbell: Yes, and there will be no hard border.

Chair: I should explain to the witnesses, although they are very experienced in these matters, that our job is to probe so that, ultimately, our report is fair, balanced and even. If it appears that some of the questioning is reasonably robust, I hope you will forgive us. It really is not, believe me, aimed at you but more at the issue.

Q282 **Kate Hoey:** Are any of you in receipt, not personally but your department or where you work, of EU money?

David Henig: In ECIPE, one of the very few principles we have is that we do not. I personally am not. For the organisation I have no idea about 15 years ago, but it is a very strong principle for the organisation.

Q283 **Kate Hoey:** Dr Tannam, are your university, where you are working, in receipt?

Dr Tannam: Two of my colleagues have just got Horizon 2020 research grants, one on radicalisation in the Balkans and one on ethics. She works in theology and ethics.

Colin Murray: There is not a research-intensive university in the United Kingdom that is not in receipt of—

Q284 **Kate Hoey:** I did not ask that. I am asking about your particular university in Newcastle.



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Colin Murray: Newcastle most definitely is in receipt of European Union funding. I have not received any personally.

Kate Hoey: I would not expect you personally to—

Colin Murray: In terms of European Union funding for my research.

Q285 **Kate Hoey:** Dr Henig—sorry, not doctor. After appearing in all these select committees you never know what could happen. You seem to have just plucked 10 years because it sounds like a nice figure. Why not nine years? Why not seven years? Why 10 years?

David Henig: Let me just flesh out, because I cannot put an exact—

Kate Hoey: I do not want an explanation again.

David Henig: I cannot put an exact number on it. What I would suggest, and what I have suggested, in writing, is that you need both sides to come together and actually produce a definitive report on all these issues, and then to lay out a definitive and reasonable timetable in which they could be done. That is what I would like to see, personally, within the political declaration. I have said, "Here are ways I would improve the political declaration/withdrawal agreement", and that is one of them. Then you can have a better idea than my gut-feel guestimate of 10 years. I have discussed it with endless numbers of people online. Some people think five would be more reasonable. Some people think 20. It is my best guess.

Q286 **Kate Hoey:** You obviously read a lot of articles. Did you happen to read a letter in the *Belfast News Letter* this week by Lord Empey, the former leader of the Northern Ireland unionist party? He talked about it being a sledgehammer to crack a nut, in terms of the overall trade between the Republic of Ireland, most of it coming to Northern Ireland and Great Britain, and vice versa, in relation to whole of the EU.

David Henig: I have heard the argument, so I am familiar with that.

Q287 **Kate Hoey:** It is a very small percentage. I think it is 0.0001% of the whole of the EU trade in this particular little bit of border. My colleague has said how many crossings there are. Do you not think we are actually getting to the stage where clearly some people want, perhaps, in the EU or the Irish Government, to make this more of an issue than it actually is?

David Henig: From where I come from in trade, it is fully understandable that, essentially precedent is really very important in trade relations and external trade relations. The EU has all these external borders. While we can all say in this room that we think that Northern Ireland is special and deserves a special case, the problem is that large numbers of other people will say, "We are special and we deserve special treatment as well".



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I would take it as being the natural caution of customs officials. Customs official are an extremely cautious bunch, because that it their job, to be an extremely cautious bunch. This is the natural caution of bureaucrats and customs officials, not anything more sinister. That is my view.

Q288 **Kate Hoey:** Dr Tannam, what is your view on the view of Lord Trimble, who was obviously instrumental in getting the Belfast agreement implemented, and others on the way the backstop, if implemented, was actually going to be piercing a knife into the Belfast agreement?

Dr Tannam: I actually have not read his view on that, so that is a caveat. No, I do not think it would. I cannot see logically why it would pierce a hole into the Good Friday agreement's institutions. It is a way of protecting the agreement. I think that is nearly the whole point, so maybe if you want to explain in what way he thought it would.

Q289 **Kate Hoey:** It is very simple. If the backstop is implemented, the people of Northern Ireland will have no say in the relationship, the trading and all the extra things that will happen on trade, because their representative will be the Irish Government.

Dr Tannam: No, that is a big assumption. I do not think that would be the case.

Q290 **Kate Hoey:** Then who will be speaking for people in Northern Ireland in the EU?

Dr Tannam: For a start, in general it has not been laid out yet by the British Government how the devolved regions specifically will be involved in all of this. I think there will be, and there have already been mentioned, various committee systems.

Q291 **Kate Hoey:** It is very clearly laid down in all the different structures of how it is going to work, the backstop, and there is no voice for Northern Ireland people.

Dr Tannam: I do not think the representation was hugely clear. My impression of the withdrawal agreement was that I could not see very clearly in all cases how exactly it would all work out for the devolved regions generally—Scotland, Wales and Northern Ireland. I do not see at all any contradiction with the backstop. That is a big assumption David Trimble has made: that that would somehow lose Northern Ireland's voice.

Q292 **Kate Hoey:** With respect, it is not affecting Scotland. It is a Northern Ireland/Republic of Ireland backstop.

Dr Tannam: I think there would be provision for Northern Ireland to have a voice very much in that system.

Q293 **Kate Hoey:** How? Who?

Dr Tannam: The political parties, if the Executive was running. Obviously, that would help.



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Ian Paisley: The arrangement is spelt out in the withdrawal agreement. The arrangement is oversight. That is the only thing that is offered. It is spelt out at paragraph 74, I think.

Chair: Forgive me, Ian. Can we leave that until we come to your questions?

Q294 **Kate Hoey:** I think the fact you have not read it says quite a lot.

David Henig: Can I make a point on this, please?

Kate Hoey: No, because of Dr Tannam's particular expertise, that is why I came to her.

Dr Tannam: Just to clarify, there are many times, as academics, we may miss something, particularly at the moment, so I have really attempted to read all—

Kate Hoey: No, but Lord Trimble is not just an ordinary—

Dr Tannam: I have tried to read all sides and be academic, as I am. I apologise for missing that.

Q295 **Kate Hoey:** I accept that, but I would say that Lord Trimble is not what you would call an ordinary person. I suppose we are all extraordinary here.

I want to ask Mr Murray a separate question. I do not want to go into that one any further. I was asking you. Mr Murray, have you heard of Professor Joseph Weiler, who was the head of the European University Institute, now Monnet professor of law?

Colin Murray: Yes.

Q296 **Kate Hoey:** He wrote a very interesting article about having a front-stop rather than a backstop. Would you have any comment on that?

Colin Murray: I will just take the issues through that you have presented so far, Ms Hoey. In terms of Lord Empey's letter, the "sledgehammer to crack a nut" metaphor is truncating his quote, because he talks about an incredibly politically sensitive nut within the letter, so putting it in those terms is perhaps to understate some of Lord Empey's concerns around the arrangement. Also, it is not a matter of cracking a nut. It is about maintaining relationships. It is about keeping in place the existing setup in which the Good Friday agreement or the Belfast agreement operates.

That background that is talked about in the preamble of the agreement is based on a footing where the UK and the EU are co-operating within the European Union. You take that pillar out of the way and something has to be put in its place.

Q297 **Kate Hoey:** That is if the two sides want it to be like that, but if they want it to work, would you accept it could continue to work more or less



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the same, apart from some of the trade issues?

Colin Murray: Forgive me; what could work more or less the same?

Kate Hoey: The good relationship that you are talking about.

Colin Murray: The good relationship is not kind words. It is an all-island energy market. It is, at the moment, a single unit for sanitary and phytosanitary measures. It is law. It is not "good relationship". If you are taking away law, it needs to be replaced with law if you are going to get to anything towards the UK Government's stated goal of a frictionless border.

Q298 **Kate Hoey:** You think that can happen.

Colin Murray: The withdrawal agreement makes a relatively good fist of achieving it between the sets of red lines that were put in place in advance. The Scylla and Charybdis of the withdrawal agreement were the European Union (Withdrawal) Act and the cross-border taxation Act. They set up an arrangement where Northern Ireland would not be a separate customs territory for the UK but also set up that there would be no regulations that could be put in place to establish hard border infrastructure. The withdrawal agreement finds that way around the position that Parliament imposed upon the negotiations.

Q299 **Kate Hoey:** I just have one final quick question, because one of my colleagues usually asks people, and I might as well get in first. How much time have you spent on the border, looking at all the different parts of the border in Northern Ireland and the Republic of Ireland?

David Henig: I have not been fortunate enough to visit recently.

Q300 **Kate Hoey:** I presume you have. Have you been lots of times and you know the border quite well?

Dr Tannam: Yes, but having grown up in Dublin, as an example of how things were, we used to go to Donegal on holiday and we never went through Northern Ireland. We took nearly twice the length of time going through Sligo to get there.

Q301 **Kate Hoey:** You never went to Northern Ireland.

Dr Tannam: Not as children, no, growing up. Since my PhD in the 90s I have been.

Kate Hoey: You missed out on quite a lot.

Q302 **Kate Hoey:** Mr Murray, have you been?

Colin Murray: My home was in sight of the Republic of Ireland.

Kate Hoey: You know the border very well. Good.

Q303 **Chair:** Mr Henig, you wanted to make a point.



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David Henig: I wanted to make a point on consultation, because I think this is an important point. I would agree in one sense with the point that the consultation mechanisms within the withdrawal agreement are not sufficient, but I wanted to bring that into a general point. I have studied the withdrawal agreement in great detail and generally the consultation mechanisms for the UK as a whole are pretty awful as well. I wanted to say that this is not an isolated case for Northern Ireland. This is a case where the agreement is not, in my opinion, as good as it should be.

Colin Murray: Simply in terms of Lord Trimble and the consent principle, there is not a threat to the consent principle under the Belfast agreement built into the withdrawal agreement. It does not separate Northern Ireland out as a customs territory. The Supreme Court in the Miller case was absolutely clear in paragraph 135 that, in terms of consent, consent ran as far as the constitutional status of Northern Ireland as part of the United Kingdom.

Q304 **Kate Hoey:** It still does not answer the question of who is going to speak for Northern Ireland people if there is a backstop, but I am sure some of my colleagues will take that up.

Colin Murray: That is a very good question, but it is not necessarily one that creates a legal argument against.

Q305 **Kate Hoey:** I am not really interested in whether it creates a legal argument or not.

Colin Murray: Lord Trimble is, and that is simply where your line of questioning started from.

Dr Tannam: Coming back to Lord Trimble, again I am sorry I did not read it and it is not in any way a reflection of any preference on my part. Professor Michael Keating in Aberdeen—I do not if he has presented here—has argued just what David has said: that there are inadequate or unclear provisions really about any of the devolved regions having a voice in the withdrawal agreement. It is not clear. That is one point.

Secondly, I know it is my hobbyhorse, but the British-Irish relationship is vital here as well, in making sure Northern Ireland has a voice and in making sure there is legitimacy for the people of Northern Ireland and they feel there is legitimate representation. I think both Governments would emphasise that. It is not clear, but I do not think the backstop is going to prick holes or pinpricks in the Good Friday agreement. That is an assumption.

Q306 **Jim Shannon:** It is lovely to have you here, believe it or not. I want to ask you a couple of questions. I am really very interested, Mr Henig, in your opinion that it will take 10 years to happen, and then, to a question by my friend and colleague here, Kate Hoey, you were not sure. It might take a shorter time. The reason why I ask the question is because it is simple to me and reinforces my position. By the way, just for the record, I am a Brexiteer, which would be a very different opinion from the three



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of you on this panel now, I would suspect. Because of that, I see Europe as a bureaucratic monster that sucks all the money out of the United Kingdom. Why you want it to take another 10 years is because that gives you another 10 years to get more money out of the United Kingdom. That is what I would suggest to you would be the real reason for it.

It also perhaps puts a question in my mind. This is being very respectful to you, Mr Henig, but if I had a job to do on my farm and you told me it was going to take 10 years to do it, I would tell you to go away and I would get somebody else to do it quicker. Honestly, with great respect to you, I am sure that there is somebody in Europe who can do it quicker than 10 years. It is all about will. It is all about trust.

I think all three of you have mentioned the issue about cross-border regulations and all the other things that take place. I have a company in my constituency, Lakeland Dairies. They have two factories in Northern Ireland; they have two factories in the Republic of Ireland. The milk product comes across the border in a liquid form. It is turned into powder, exchanged back across the border again, it goes back across the border a third time and it is then packed, produced and sent overseas. Tell me why that regulation and that system cannot work when we leave the EU? Why should it not work? If the regulations in the Republic of Ireland are the same as the regulations in Northern Ireland for the four factories that Lakeland Dairies own, why should anything change? Can anybody answer that, please?

David Henig: I will have a go at both parts of that. Let us take your farm as an example. I do not know what you would want to do on your farm, but maybe you get a number of opinions. You were talking about procurement. When I was working in IT, you often said, "Let us take away the one that is wildly the cheapest and the one that is wildly the most expensive, and then let us look at where the middle ground is". I am trying to give you a middle ground between people who say that this can be done tomorrow and people who say that this will never be done. I am trying to give you a middle ground.

I would suggest that if you really want to build on that trust and make a reasonable case for this, we should be looking at is getting both sides, on the basis of trust, to sit down—whatever both sides are, or get somebody neutral to do it, if there is somebody neutral—and say, "How long is this realistically going to take?" with experts across—

Q307 **Jim Shannon:** With great respect, it is not to do with my farm. It is to do with Lakeland Dairies. That is the question I asked you. I live on a farm, but I asked you a question. We ask the questions; you answer.

David Henig: That was on the first part. I was about to answer the second part as well.

Chair: I would also just say to my colleagues we need to maintain normal courtesy when our witnesses are here as our guests. We just need to keep that in mind.



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David Henig: I want to come on to the second part. Whether or not you think the EU is a terrible bureaucratic monster that wants our money, and I have been close enough to see the best and the worst sides of it, so I am not going to comment, the important point is that it is the EU we are going to have to deal with, in terms of the regulations. It is the EU's regulations in terms of animal products crossing borders that are a big problem here. Those are the EU's regulations.

Q308 **Jim Shannon:** The issue is this. The regulations in the Republic of Ireland for that company are the same as they are in Northern Ireland. Therefore, when the products are exchanged over the border, on both occasions they go back and forth, nothing changes. It is going to be the same after we leave the EU, so why should anything change? Why should it change when the regulations are the same, when the product is the same and their goals are the same?

David Henig: That is the question, and I think Mr Murray raised this before. Are our regulations in fact going to stay the same? If they are going to stay the same, we have that strong case. At the moment, we do not know if they are going to stay the same.

It is very important that we come back to the idea of a US trade deal. In the case of a US trade deal, it is quite likely that some of our agricultural regulations will change. That introduces a problem. Do you want that to apply to Northern Ireland? We recall that, at the moment, Northern Ireland is a single animal health zone. I cannot remember the exact terminology. There are big questions.

The big question for all of us to answer is how we would want that situation to be. Would we like a situation in which Great Britain changed regulations with regard to animals and Northern Ireland did not, in order to ensure that frictionless trade carried on? These are the kinds of questions we need to surface and say, "These are going to be the questions. Let us now look at it properly". I agree with you in theory that if we do not change our regulations that should be the basis on which we can maintain frictionless trade.

Q309 **Jim Shannon:** That is the point I was trying to make. If there is no willingness on our behalf to change any regulations from the agri-food sector, or from others, there should not be the same obstacles or restrictions in relation to it.

David Henig: I agree.

Q310 **Jim Shannon:** You also mentioned the issue about trust. I am going to ask the three of you a question about trust, because it is very important. We need to be trustful of each other, and this process has been rather divisive. I said earlier on, in an intervention to my colleague here on my left-hand side, about Donald Tusk's comments this week that Brexiteers were going to hell; just for the record, and for Hansard, I have a personal relationship with my Lord and Saviour, Jesus Christ, and I know I am not



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going to hell. That is the only way you get to hell. You only go to hell if you have not got that personal relationship and that is how it works. He said that all Brexiteers were going to hell. Would you condemn that comment?

David Henig: I thought it was ill advised.

Q311 **Jim Shannon:** Dr Tannam, would your opinion be the same?

Dr Tannam: I do not think he meant it literally. It is not language I would use.

Q312 **Jim Shannon:** You would still condemn it, would you?

Dr Tannam: I thought it was ill advised as well.

Q313 **Jim Shannon:** It was a public letter. We can all see what the issue was.

Colin Murray: Yes, I would agree that it was singularly ill advised, but it comes against a background of, shall I say, robust exchanges between the UK and the EU, going back to headlines like "Up Yours Delors" in the 1980s and 1990s. There is no excuse for escalating language, but I think it was seen as being a symbol of the frustration of the time. No, I would not condone it.

Q314 **Jim Shannon:** Donald Tusk's comments would be condemned by you. That is what you are saying.

Colin Murray: Yes.

Q315 **Jim Shannon:** The reason why I asked the question is because it is all to do with trust and how we can build relationships. Do you accept that the majority of people in the United Kingdom of Great Britain and Northern Ireland took a decision to leave the EU, and therefore that has to be honoured, or do you just ignore that referendum?

David Henig: I will have a go. The referendum question asked, "Do you want to leave?" The referendum said, "We will leave". It did not tell us about how we leave, but it was an instruction to leave. I take that fully. I just want to add another point, which is that I try to maintain a neutral commentary. I have been accused of being a remainer, a leaver and a traitor by both sides. I have even been accused of being a member of your party when I was arguing against the original backstop. I want to just make that point.

Jim Shannon: If you have not paid your money, you are not a member.

Colin Murray: Since you proffered the question to all of us, 71% of the people of Northern Ireland signed up to the Belfast agreement in 1998. Again, what is happening with Brexit is an effort to find a solution that respects that democratic exercise as well as the democratic exercise that took place in June 2016. The UK Government have said that the form that Brexit takes will be conditioned by the Belfast agreement. Again, like Mr Henig, I am trying to give you an academic commentary of this and



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not a political position. I am not going to turn around and say to you that the Good Friday agreement stops Brexit, because I cannot make that point on my academic analysis, but it does condition Brexit if the UK Government are going to say they remain bound by that international agreement and it also has a democratic imprimatur of direct democracy in a referendum.

Dr Tannam: I am not British, obviously, so, yes, I respect the decision made by the British electorate to leave and the aim is just to manage it in the context of the Good Friday agreement as well.

Q316 **Jim Shannon:** It is very important we go about it in the right way. There has been much talk about the Malthouse alternative. I do not know if any of you has had an opportunity to look at that as a possible deal or way forward. If you have, what would your thoughts be on it?

David Henig: Again, I feel as if I have written articles on practically everything related to the border. I find that the foundations of it, in terms of what it says about a technology solution with regard to Ireland, unconvincing. But I also would like to draw attention to the fact that one of the documents sitting underneath the Malthouse alternative, a document called *A Better Deal*, says there will need to be checks near the border for sanitary and phytosanitary—in other words, animal origin—products. It is quite odd that when you dig into it, it starts talking about checks at or near the border.

Q317 **Jim Shannon:** The Malthouse alternative plan looks at a way forward and perhaps the other two might make some comment about that. As the last national opinion poll in Northern Ireland indicates, it is quite clear that the majority of people in Northern Ireland want the backstop removed. It is quite clear in this Parliament that the backstop needs to be removed, but we have two Governments who have to come together in some way. I ask this in a kindly way, but do you accept that if the majority of parliamentarians here do not want the backstop to go—and that is Parliament's opinion at the moment and it has not changed—the EU should try to make some solution and, therefore, look at how it would either time limit the backstop or remove it entirely?

Dr Tannam: The backstop was included in the withdrawal agreement and we saw in the media there was concern and disappointment that that then appeared to be reneged on. That is the first point; it was included in the agreement that was signed or ratified by Theresa May.

Secondly, yes, Parliament has voted in favour of dropping it, but the EU has also made it clear, having negotiated the withdrawal agreement with the British Government, that it is not going to amend it in the withdrawal agreement. To me, although I am also not a legal expert, that makes sense given the fact that the agreement had been negotiated and signed off, and given the issue, the sensitivity and the problem of the border, which we have all been talking about today.



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Colin Murray: The Malthouse compromise is, in many regards, a rebranding of maximum facilitation. We can look at its pros and cons by comparison to the withdrawal agreement and the backstop. It is about deep regulatory alignment. Those two things are not the same and they will not achieve the same thing. Customs facilitation, as opposed to a deep regulatory arrangement, takes you to a very different place. When you are talking about strand 2 of the Belfast agreement and all the north-south bodies, they rely on deep regulatory alignment. That is not my position; that is the UK Government saying repeatedly, "We are following the letter and the spirit of the Good Friday agreement". In fact, Dominic Raab, having left the UK Government, maintained that position before you just a couple of weeks ago in this Committee: "the letter and the spirit".

If you are going to say there is that commitment, that has to take account of how north-south bodies work. You will expect your opposite partner in a negotiation to want to cash in that commitment. The UK has made that commitment. The EU is simply saying, "Put your money where your mouth is", in negotiating terms. How can you come up with something that secures the same arrangements as the withdrawal agreement, the same benefits as the withdrawal agreement does? Malthouse does not do it; it is not a deep regulatory alignment.

Q318 **Jim Shannon:** I have one final comment to you, Dr Tannam. You referred to the withdrawal agreement that the Prime Minister negotiated with the EU. It was not endorsed by the House of Commons or by this House of Parliament. That is where the real say lies and that is why we expressed, through this House, extreme disappointment about the withdrawal agreement, the retention of the backstop, which constitutionally changes the position of Northern Ireland within the United Kingdom of Great Britain and Northern Ireland. We have deep concerns over that. Those are the facts of life for us, as parliamentarians, as a representative of Northern Ireland and the people we represent.

Dr Tannam: Just to make it clear, though, for obvious reasons, not everyone is represented in Parliament from Northern Ireland. That is the issue too, which gets into a whole other debate.

Q319 **Jim Shannon:** The reason they are not here is their choice. They are not here; they cannot represent their people; that is their problem. The people who are here represent the people; that is how it works.

Dr Tannam: I understand that.

Q320 **Maria Caulfield:** I wanted to go back on a couple of things. Mr Henig, you said that in the document *A Better Deal* it says that there need to be checks near the border. Whereabouts in the document does it say that?

David Henig: From recollection, it is article 63.

Q321 **Maria Caulfield:** In referring to phytosanitary checks, article 63 says that checks should be done on the premises of the exporter or the



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importer. It does not say "at the border".

David Henig: It goes on to say "or near the border". That may not be the exact article, but I have been through the document and there is a clear reference that checks may be done at the border or near the border. I do not think it says "at the border".

Q322 **Maria Caulfield:** Are you clarifying that that is not what it says in the document?

David Henig: I would need to check it, but there is a reference to checks near the border.

Q323 **Maria Caulfield:** Okay. We had evidence from Lars Karlsson and Hans Maessen, who are not only experts in the field; this is what they do for a job and they are customs experts around the world. They both gave an example of where, in Rotterdam, there are checks done 20 kilometres from the port and they are not talking about introducing new technology or new systems; these are systems in place. They both agreed with you that it takes time to introduce these systems and commented that HMRC has not started the process of that. Can you understand why HMRC would not have started looking at these systems months ago?

David Henig: I cannot comment. I have not been involved with HMRC. I do not know what it is looking at. What I will say is that Hans Maessen and Lars Karlsson are not considered by many in the customs expert community to be representative of the customs expert community.

Q324 **Maria Caulfield:** Even though they do this for a living, on a day to day basis.

David Henig: I am being very careful in what I say. Whether or not they are doing it as a living, they are not considered by many in the customs field to be representative. There is a lot of scepticism about the evidence they are providing and the solutions they are suggesting. On that basis, I can understand why people are being cautious. My own view, just to repeat it again, is that we should be saying there will be an expert report, bringing in these and others, and saying what can and cannot be done. We have not seen that. It would be a very detailed and very good piece of work for somebody to do, and then everybody has a common basis on which to proceed on this question.

Q325 **Maria Caulfield:** Dr Tannam, the work you are doing at the moment is looking at British-Irish relations and I probably agree with you that the trust issue has somewhat broken down. Do you agree that, whether it was the "burn in hell" comment or turning up with a big "thank you" card to a press conference, this has not been helpful in building that trust in the British-Irish relationship?

Dr Tannam: The "burn in hell" comment was not the Irish Government, obviously. The "thank you" card I did not think about until I saw a picture of it. I did not think that was particularly detrimental. I think both Governments have managed the situation relatively well. I honestly think



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that it has had some low points, but both Governments are bargaining with each other and there are always strategic aspects to that. Within the constraints of what has been happening, the language has been quite measured and there has been sympathy, as I said, both from Theresa May to the Irish Government and from Simon Coveney and Leo Varadkar to the British Government and Theresa May. It has been relatively measured over time.

Q326 Maria Caulfield: Do you think the relationship has deteriorated since Enda Kenny left? When he was Taoiseach, there was a very much more positive relationship. He very much wanted the same things as Leo Varadkar, but his approach to the negotiations had a different tone.

Dr Tannam: No, I do not. I have heard that said before. There have been ups and downs. Charlie O'Flanagan, who was Minister under Enda Kenny, had some hard-line rhetoric as well at times. Really, what occurred was that the British Government have so much on their policymaking agenda that there was concern, I assume, looking at it from the side-lines, that Northern Ireland needed to be focused on. For a long time, even in the Brexit referendum campaign, Northern Ireland was not an issue. At times when there are apparent escalations, whether initially in the Enda Kenny Government or after, it is to do with trying to get focus on Northern Ireland and to make sure the British Government do engage about Northern Ireland. I do not think there is any difference underlying that between Enda Kenny and Leo Varadkar.

Q327 Maria Caulfield: Colin Murray, do you think there is a political agenda on Irish domestic issues that is underpinning the breakdown in trust between the British Government and the Irish Government? Do you think there is an underlying political motive that is apart from Brexit?

Colin Murray: Dominic Raab came before you a couple of weeks ago and said that he would not impugn the intentions of anyone within the negotiating process. I am not in the room and I am certainly not there to do that either. If the Irish Government were being brutal about their position on the negotiations, they have no basis with their constituents of trying to secure jobs in Belfast. They do not gain from that scenario or give Northern Ireland competitive advantages against the Republic of Ireland. I do not think what they are doing is out of altruism, but out of their role as co-guarantors of the Belfast agreement 1998. I would certainly be of the opinion that that is motivating their actions in this.

Q328 Maria Caulfield: We have heard some of the scare stories this morning over the blood products. As someone who worked as a nurse in a cancer specialty, to even suggest that blood products in the UK are not safe is highly irresponsible. That aside, we have heard—

Colin Murray: Ms Caulfield, I made absolutely no such suggestion. I said that in the future, when we come to regulatory divergence, there need to be checks. Those checks will have to be done on products like blood for exactly the reason you say about their importance.



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Q329 **Maria Caulfield:** I do not disagree that there will have to be checks, but to say that this is because UK blood products have a history of being unsafe is slightly irresponsible. Anyway, there have been other fear stories—

Colin Murray: We regulate because we learn from mistakes. That is why regulation builds up.

Q330 **Maria Caulfield:** Yes, absolutely, in all countries. As for this term “hard border”, I know you come from Southern Ireland; how many times—

Colin Murray: I do not come from the Republic of Ireland.

Q331 **Maria Caulfield:** Okay, so how many times, in your experience, has there been a physically hard border post the Good Friday agreement, given that there is a VAT border there, a currency border and a security border?

Colin Murray: At the moment, for all private purposes the border is invisible. That is how it exists at the moment, but that is not a function of the Belfast agreement. It is a function of what the Belfast agreement is based upon and the preamble to the Belfast agreement says that this is all about a history and a build-up of co-operation between Ireland and the United Kingdom. If you want the two legal pillars that the Belfast agreement is based on, one is the common travel area and the other is the single market, which was completed in 1993, allowing customs infrastructure to be removed at that date. Not simply within living memory, but within relatively recent memory there was a customs border simply because the customs union and the single market were not completed as entities.

Q332 **Maria Caulfield:** Do you think the common travel area is under threat then with Brexit?

Colin Murray: The common travel area is, in many ways, written in sand. There is no agreement or public treaty that underpins it, so we are in a scenario where a lot of people are expected to take on trust that laws will not change in the future.

Q333 **Maria Caulfield:** Even though that is going into the immigration Bill that is currently going through Parliament.

Colin Murray: That is simply one aspect of it. That is entry into the United Kingdom. Beyond that, there is status within the United Kingdom, what people can do, and that is in any amount of legislation. It is in the Representation of the People Act 1983, which allowed people to vote. It is in the Juries Act, which allows Irish citizens to sit on UK juries. There is a lot of legislation, but there is no international agreement that underpins it. What people might be concerned about is that in Parliament in the future, and I am certainly not imputing this of any MP in this room or their intentions, there could be divergence and a move away from that.

Q334 **Maria Caulfield:** Even though the Government are putting legislation



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through Parliament as we speak to underpin and to safeguard the common travel area.

Colin Murray: On one specific aspect of the common travel area and, in many regards, it is to correct a problem with it. When the Immigration Act of 1971 was enacted, the common travel area was thought mainly to be about movement from Ireland into the UK. It predated international air travel and so it does not create, in law, a clear legal right for an Irish citizen, say, flying from Dubai into the United Kingdom at Heathrow, to then maybe spend a couple of days in the UK and then take a flight to Dublin. It does not create a setup for that person coming from outside the common travel area to come in. The immigration Bill is a really useful piece of legislation in, as Dr Tannam was saying, trying to de-escalate rhetoric, trying to make this more responsible. It is a good will gesture to fix this.

Q335 **Maria Caulfield:** Do you agree that the UK Government acknowledge that there is a gap in the current common travel area legislation, and are bridging that gap, and supporting and upholding the common travel area? What may happen in the future none of us can predict, but at the moment the actions of the UK Government are to underpin and to safeguard that common travel area.

Colin Murray: And the actions of the UK Government in putting in place the withdrawal agreement were also to safeguard the Good Friday agreement. As I say, the 1998 arrangements rest on two legal pillars and the common travel area is just one of them, but I would acknowledge the UK Government are taking steps to show a lot of willingness to protect that. I expect, from talking to sources within Government in the UK and in Ireland, that there will be more coming out of that; there has already been a move towards more bilateral treaties. But what I would say is that the withdrawal agreement sets that up. Article 5 of it allows that and it is not part of EU competence.

Q336 **Maria Caulfield:** Do you not agree that when you wrote in your article, five months ago, for the UK Constitutional Law Association that there will be identity checks at the border, potentially, post Brexit, that was probably an irresponsible thing to do and does not reflect the actions of the UK Government in trying to underpin and safeguard the common travel area?

Colin Murray: Again, that is not what I wrote. I wrote that that had been a function of life under the common travel area previously, that there was nothing in law to prevent that.

Q337 **Maria Caulfield:** You said it could happen in the future.

Colin Murray: Again, I do not have a crystal ball. I did not know the immigration Bill was in train at that point. There were no moves to make new treaties to firm up the common travel area arrangements. I am acknowledging before you today that those moves are now being made and that they are very important, but we are very late in the day.



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Q338 **Chair:** You are aware, of course, that checks are already carried out on people travelling between the two jurisdictions, but they tend to be evidence based and based upon intelligence received.

Colin Murray: Yes. In fact, in the latest legislation they were, once again, strengthened to give the PSNI, as the chief constable came before you recently to explain, a range of further powers in that regard.

Chair: Yes. Thank you.

Dr Tannam: What is coming into my mind from speaking to the Committee is an underlying difference about whether we need to legalise things for the unknown future. It is like making a will, where you write everything in because you do not know how things will progress. In my case, my son is disabled, so we are setting up a trust and there are so many unforeseen issues around that. That is the analogy. At the moment, regulation is the same. We would hope it will be; we all believe in health and safety standards, but we do not know the future. We hope it will not be bad; we hope these things will not happen, but what you are getting at is that we have to protect against an unknown future that could be negative, even if the risk is low.

Q339 **Lady Hermon:** It has been a very interesting morning, a very lively Committee, but also very, very good witnesses, if I may say so.

I will go through a series of issues. I will carry on with the common travel area, which of course only applies to British and Irish citizens. The Republic of Ireland will remain within the EU and, therefore, citizens of other EU member states will be perfectly entitled to come and work in the Republic of Ireland. While the common travel area is going to be put into legislative form, in some aspects, in the immigration Bill, what happens to the other EU nationals, who cannot benefit from the common travel area? How does the UK monitor this? That is what they want to do; they want to take back control of the border. How are they going to do that post Brexit?

Colin Murray: There has been a strengthening of the powers accorded to the chief constable of Northern Ireland at the moment. There has been a commitment to the PSNI, as Dr Murrison points out, to follow leads and look at checks beyond the border. The Gardai have been doing that now for some time on buses or vehicles crossing the border. I would suspect that on the A1 that will become a fact of life, at some point, presently: that there will be checks on buses passing from Dublin to Belfast. There is also now provision in legislation for checks at train stations across the border too.

Q340 **Lady Hermon:** What would happen if these were French or German citizens who were coming into Northern Ireland, but they were working in the Republic of Ireland?

Colin Murray: It very much then depends on the terms of the withdrawal agreement and whether it goes through. If there is no deal



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and they are third-country nationals, we get into the territory where that would be an illegal entry into the United Kingdom.

Q341 **Lady Hermon:** And the responsibility moves to the PSNI to deal with it. That is a very unfortunate situation for the PSNI to find themselves in.

What about smuggling? Mr Henig, at the beginning, you made some reference and you were asked about smuggling. What do you expect in terms of an escalation or, wishfully thinking, a reduction in smuggling? What would your prediction be, from your extensive experience and expertise in this area? Post Brexit, what do you expect to see?

David Henig: I am not an expert in smuggling, I should say.

Q342 **Lady Hermon:** No, but in combating and dealing with customs duties. Your expertise is in dealing with customs, not in smuggling, obviously, but very witty.

David Henig: It is very difficult. There is already smuggling. What are we talking about? Are we talking about individuals or business? What we are really talking about here are business issues. It is essentially trying to pass off something that has come into the UK at a low tariff.

Q343 **Lady Hermon:** Forgive me for interrupting. We are talking about organised crime. We are talking about organised criminal gangsters, which we have far too many of in Northern Ireland, who must see this as the potential for a very lucrative business. That is the issue I would like you to address.

David Henig: Yes. In the event that, for example, there is no deal, the UK got rid of all tariffs and there were still tariffs in the EU, you are looking at that being potentially a serious issue, because that becomes quite a lucrative opportunity. A lot will depend on what the UK chooses to do in a no-deal situation. I assume we are more talking about a no-deal situation than a deal situation. In a deal situation, where everything is still aligned, thinking about the withdrawal agreement as it is at the moment, I do not see why that makes a big difference. But in a no-deal situation, if the UK decides to suddenly start changing lots of regulations or changing the customs duties that we are charging to be, for example, below those of the EU, that clearly creates a much greater opportunity for organised crime. I will call it "organised crime" because that is what it is. Yes, there is that clear concern.

Q344 **Lady Hermon:** Colin, do you want to add anything?

Colin Murray: No. It would be very much to back up that concern that smuggling thrives in any circumstances where there are regulatory divergences or cost divergences. If it becomes lucrative to do it and there is definitely a criminal infrastructure in place to allow it to happen, the bigger those divergences, the more lucrative moving goods furtively across the border will become.

Q345 **Lady Hermon.** Yes, so yet another responsibility for the PSNI.



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Colin Murray: Or for customs officials, who are being vigorously recruited.

Q346 **Lady Hermon:** Vigorously recruited and tasked with specific duties in Northern Ireland?

Colin Murray: Again, this is the issue of the recent newspaper headlines as to how many customs officials need to be recruited and whether those targets are being met. But, yes, HMRC is part of the joint task force set up under Fresh Start. It is already about getting the Gardai, customs authorities in the Republic and in the UK to spot attempts to get round excise duties. Those teams are already at work in Northern Ireland.

Q347 **Lady Hermon:** Yes, but they are recruiting additional personnel.

Colin Murray: That very much is what the newspaper reports are leading us to believe.

Q348 **Lady Hermon:** Dr Tannam, I was very struck by something you said in relation to the common interest and overall diplomacy between the British and Irish Governments, and you felt that, in fact, it had been used very well, with which I agree. You also made the point that, going forward, we should have more robust use of the institutions of the Good Friday agreement. In the continued absence of a functioning Assembly for over two years, do you see any evidence of any will at all to make more robust use of the institutions of the Good Friday or Belfast agreement among political parties in Northern Ireland?

Dr Tannam: At the moment, no. I have heard Lord Trimble saying that this cannot be resolved until after the Brexit negotiations are resolved, that the Executive will not be in place until this period has been resolved. That is a big factor and a big impediment to more robust use of the institutions. Back to legitimacy and Northern Irish people having a voice, that is a huge problem.

I still would emphasise British and Irish Governments keeping their eyes on the ball in trying to incentivise co-operation. If we look at the peace process, it was very much British and Irish Governments who created incentives and had a carrot and stick strategy to encourage and reach the conclusion of the Good Friday agreement. Dedication is needed at that level, at elite level and at prime ministerial level, because that really has been absent, particularly on the British side. Even in the peace process, after the St Andrews agreement, the Irish Government were not taking their eyes off the ball, but were less involved because there was peace and everything seemed fine.

It can be done. There is a huge problem about the Executive not being in place, but the British-Irish dimension to that is essential and that was the whole underpinning of the Good Friday agreement as well. The strand 3, east-west dimension was not just a package deal; it was central to creating incentives within Northern Ireland for co-operation at a higher level, at elite level from both Governments.



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Q349 **Lady Hermon:** How detrimental do you feel it has been during the two years of Brexit negotiations that we have not had a functioning Assembly? The SDLP lost its seats in this House in the 2017 general election, but for other, smaller parties and, indeed, Sinn Féin, which does not take its seats in this House, their voices have not been heard at Stormont. How detrimental has that been?

Dr Tannam: It is very detrimental. As Mr Shannon said, it is Sinn Féin's choice not to take its seats, but overall the situation is very detrimental. That there is no Executive in place to have a coherent voice and a level of co-operation is hugely detrimental. Even if it was in place, I suppose there would be a risk that Brexit would become a divisive issue that could impede that voice. It is very detrimental, yes.

Q350 **Lady Hermon:** Colin, following on from what you said, how has Brexit impacted on identity in Northern Ireland?

Colin Murray: If I can bring it back to this idea of the letter and the spirit of the Good Friday agreement, when David Trimble gave his Nobel prize acceptance speech, he talked about Northern Ireland prior to the agreement as having been a "cold house for Catholics". There was definitely something in the rhetoric around the agreement that set up an offer that Northern Ireland would be a space that was, in many ways, like Ireland. You would have north-south health care and environmental or agricultural co-operation over the border, to take the sting out of the issue of nationalism, to try to put an offer in place that said, "Stay within the United Kingdom. Look, you can have the best of both worlds. Northern Ireland is a special constitutional space where this cross-border co-operation works".

But that was built on, and it is shown in the mapping exercise that both the UK Government and the EU did going into the withdrawal agreement that those elements of strand 2 are based upon EU design co-operation and EU measures. That is where identity is knocked out of kilter. If those foundations are removed, a profound part of the offer that was made in 1998 begins to erode. Northern Ireland begins to feel like somewhere that has been moved on its centre of gravity.

The withdrawal agreement is an effort at stasis in its core, to keep Northern Ireland, in important ways, where it is at the moment. It is not just on trade; it is on non-discrimination law, rights, safeguards and equality of opportunity. All of that is built into the withdrawal agreement. If we just talk about it in terms of trade and customs, we get into what Tom Paulin described as a "fictionary universe", where the laws are not the same as the ones in this place that we call real. We miss a really key point about what those arrangements are and how they were set up. That is why this has become more and more an orange and a green issue, why this has become an issue that is so divisive.

The Belfast agreement is supposed to be an agreement that—you have talked about this in previous sessions—lasts in perpetuity or that comes



to an end when circumstances are met, a vote on a border poll that would bring alignment. But even then there would be protections for the birth-right of people who would call themselves unionists to still describe themselves as British and claim a UK passport even if, sometime in the future, Northern Ireland joined the Republic of Ireland to become a united country. The Good Friday agreement would not end at that point and there is no stop on its operations.

But you cannot have it the other way either. You cannot erode a lot of things that people who are Irish citizens in Northern Ireland regard as being core to their identity without risking that whole edifice.

Q351 Lady Hermon: Is there a feeling that their identity is being eroded in the way Brexit negotiations have taken place?

Colin Murray: It comes to Heaney and the idea that, if you take away one part of my identity, you take away part of me. If we look at the way EU citizenship rights have changed from the joint report in 2017 through to the withdrawal agreement, Northern Ireland is now very much seen as being external to the European Union. Your European Union citizenship rights still exist, as an Irish citizen, but they would exist in the same way as if you were in Canada. It only is through the withdrawal agreement and its hard-wiring in of, say, EU counter-discrimination law that there is more of a move towards trying to maintain the rights, safeguards and equality of opportunity part of the agreement. It is not as in a whole, "You will get to retain your EU citizenship and everything that means today, after 29 March", even in the withdrawal agreement.

Q352 Lady Hermon: If you follow that argument through, does that bring a border poll—you mentioned it earlier—that bit closer if people are feeling their identity is being undermined by the Brexit negotiations and the impact of Brexit?

Colin Murray: That is a question that is above my pay grade. It would be speculation on my part to go there and I am not going to do that to this Committee.

Dr Tannam: Back to the spirit of the Good Friday agreement, the principle of consent is hugely important. A border poll would not be advisable, because that, as we know from referenda, becomes a very black and white issue. I would argue and I think it would be the Irish Government's position not to prioritise a border poll. It is not on the agenda.

Q353 Lady Hermon: Well, it is not for the Irish Government to prioritise a border poll, absolutely not.

Dr Tannam: No, but there has been talk, though: "Are there being plans made and scenarios for unification?" I believe the Irish Government would be very against that, from what I can gather, because it would be seen as destabilising and against the spirit of the Good Friday agreement, where there is recognition of two identities and of the need for consent.



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My interpretation is that 51%, for example, would not be a very consensual outcome for Irish unification. As regards a border poll, people are saying it could be more likely. I know some American senators have also said it. Obviously, we see why, but it is not on the agenda and it definitely is not something that would be prioritised. Even Sinn Féin has gone to and fro about this. Hedging my bets, it could be more likely, but there is no political motivation, and the Irish Government are important there, even if officially they do not have the role.

Q354 **Lady Hermon:** The power to call a border poll lies with the Secretary of State for Northern Ireland. It is nothing to do with the Irish Government.

Dr Tannam: Yes, I know, but in terms of planning, et cetera, they are still important and they are not doing so.

Q355 **Chair:** It is worth pointing out that Sinn Féin, on Radio 4 this morning, was certainly not indulging in any to-ing and fro-ing on this particular matter.

Dr Tannam: Maybe they went one way—fro-ing.

Chair: Indeed.

Q356 **John Grogan:** I have two brief questions for Mr Henig and then one general question, but first a very brief preamble. I must say I have found the evidence as robust and as compelling as the questioning. Who knows how long max fac solutions will take? I tend to think it will be nearer 10 years than two. All I am sure of is it took 80 years to get peace on the island of Ireland and, coming from a different point from some of the Committee, I would like Parliament to have votes on other options. The evidence today has reinforced in my mind that, if we get down to no deal or the Prime Minister's deal, I would have to vote for her deal, if it got to that point. That is not just because of the impact on the economy of the Keighley constituency I represent, but because I just could not risk soldiers from Keighley having to go back to Northern Ireland, as they did for many years. I found the evidence very compelling.

I have a couple of questions. At the beginning, we were talking about technology and you said "trust" and "processes"; if you were going to have a solution where you did not need borders, you would have to look at processes. Just to be clear in my mind, what sort of processes are we talking about? It may be obvious.

David Henig: When you are putting in place technology, what is the technology doing? What is it there for? Let us say a trader has their goods, they are trading them into Ireland; what steps do they need to go through? You run through steps and see how technology can help each of those steps. What happens if they do not go through those steps, for one reason or another? What if they are illegal trades? You run through each of those process steps in turn and say, "Where can technology play a part? What happens if something breaks down? Do we need some trust here or do we need some law in this place?" You really have to map out all the different potential scenarios for all the different regulations. That is



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the process part, and then where does the technology fit into all those different flows?

Q357 **John Grogan:** I see. It might have been you or one of the other witnesses who made an interesting point: if you did get into the backstop, is it not true that Northern Ireland would have many competitive advantages in the circumstances of the backstop? If the backstop lasted 10 years while we are working out the technology and other things, there is the potential for a boom time in Northern Ireland. It would have a competitive advantage over the Republic in terms of one of its main customers, England, Scotland and Wales, and yet it would have a back way into the European single market. It would be boom time, would it not? If I was a big American investor, I would be thinking, "Let this not last 10 years but 50 years".

David Henig: It is an interesting point of view. I have heard it said quite a bit by a number of people that Northern Ireland could get the best of all worlds and, economically, could really benefit from this. I am slightly unconvinced. I can see the argument. I am just unconvinced in terms of the uncertainty factor of it and whether everything would stay in place. If you knew that that was going to be the case and you had a long-term advantage, clearly that is something that would be looked at by inward investors. But, if there is some uncertainty there, you would be saying, "Is there some uncertainty? Would it not be better to do something slightly different?" There is no question that there are business groups in Northern Ireland that have said, "We should be taking advantage of this. We should be shaping it in a way we would benefit from". Perhaps that is not the argument we have heard to date.

Colin Murray: It is important to look at the limits to the withdrawal agreement. If you look at articles 6 through 9, it keeps Northern Ireland in the single market for goods, so that will affect certain businesses, but not others.

Chair: That is a very good point.

Dr Tannam: I was going to emphasise that in all this there are different sectors that lose and win.

Q358 **John Grogan:** I might start a campaign for Yorkshire to join the backstop and for it to be 50 years.

As a general question to you all, on behalf of the Committee, I attended an interesting committee meeting, which was led in the House of Lords. It was an attempt by the different Parliaments to have some oversight of the process. It had many limitations and so on. You have all referred to the fact that, if we do the deal, we go to the withdrawal agreement and so on, it is not quite clear what role the different Parliaments and Assemblies should have. If you were writing the piece of paper as to what the arrangements should be, what suggestions would you make?

Colin Murray: If I take the slightly flippant point first of Yorkshire joining



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the backstop, essentially that takes you into Norway-plus territory.

John Grogan: Yes, indeed. That would not happen.

Colin Murray: I know the DUP Committee Members, who have now left, are intensely concerned about the idea of divisions springing up in the Irish Sea between Northern Ireland and Great Britain on the basis of the special arrangements that are put in place, the deeper protections that are there for goods in Northern Ireland and how that would affect particularly west-east trade. If the entire of the UK exited into the EEA, it would deal with those concerns. That is not to suggest that as the fix, because it would be a Norway-plus solution.

A lot of the checks that are at the Norway border, at the moment, are on livestock. Norway is not, say, in the common agricultural policy and there are checks in that area, so there could be, say, bolt-ons like keeping the all-Ireland SPS measures arrangement to create that sort of setup. Beyond that, you would have a whole-UK approach rather than the backstop approach. What I will say is that the backstop approach is a function of Parliament's red lines, as laid out in the withdrawal Act and the cross-border taxation Act.

Dr Tannam: For Northern Ireland, assuming the Executive is in place, apart from whatever devolution arrangements are reached, there would have to be clear connection with the institutions of the Good Friday agreement. What comes to mind is the British-Irish Council, which has not been utilised very fully, but it represents the Crown dependencies. Well, you all know this. That would be an avenue where you would have the connections made between Northern Ireland's voice and the Good Friday agreement, and the devolved institutions through the Good Friday agreement. That is what comes to mind. There would have to be that connection, assuming the Executive was in place, which I hope it will be.

David Henig: To add to that and not wanting to introduce more division, as somebody from Lancashire, I just want to put that on the record.

What I was saying about the inadequate consultation is, in respect of the transition period and then the backstop, the way that the UK is going to be subjected to all manner of things and there is no expectation that anybody from the UK is going to attend any of the meetings in Brussels that are attended at the moment where these laws are set. I would have made a much bigger point about making sure that you could have attendance. There is a question of treaty in terms of the UK's right to be there and then there is a question of UK internal politics and procedure to say, "If the UK is to have consultation rights, how do we bring into play the devolved Assemblies and others with an interest?" That is something that, again, we have not fully gone into detail on. On the assumption of leaving with a deal, we need to look urgently at how the UK is going to contribute. What underlying bodies are going to make sure the UK position has the widespread support of the devolved Assemblies and others?



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Q359 Chair: To what extent do you think the Republic of Ireland would welcome such a thing? One of the things that the Republic of Ireland is concerned about is that its somewhat unique position with respect to corporation tax may look even more unique on the departure of the United Kingdom from the European Union. It would have very few friends supporting its position and we know that Brussels is looking rather enviously at its current stance in relation to taxation. There is mounting pressure to deal with it in some way, which would clearly not be in the interest of the Republic of Ireland, particularly if the UK outside the European Union decided to adjust its own corporation tax rate; that might make Belfast look very attractive indeed, as we have touched on previously. To what extent do you feel Dublin is likely to wish to encourage representation, outside the European Union, by the UK in Brussels after Brexit?

David Henig: You touch on an interesting and politically sensitive issue within Brussels. If Dublin wished to do that and wished to maintain UK influence, a number of other countries would say, "Hang on a minute; we definitely do not want that". As you have just said, if the UK has continuing influence in Brussels, it may be able to help Ireland do something that is unpopular with other member states. You start to see why other member states, led by France, as we are led to believe, did not want the UK to be present at these meetings for fear that we would be able to exert more influence than a non-member should have by being in the room. This is one that is going to rumble on.

I think we would want to start small and more modestly than that and say, "We would like to be part of the technical committees" and not suggest that the reason we wish to be in the rooms of Brussels is so that we could make representations and try to control things from outside. I do not think that would go down very well.

Dr Tannam: I do not think the Irish Government would support that either. They would be very against that, just because of the emphasis they have had, so far, on being part of the EU family, so to speak. There would be big wariness and opposition.

Colin Murray: On the technical issue of the corporation tax rates in the Republic of Ireland, in the Lisbon treaty the Republic of Ireland got a very clear commitment from the EU with regard to retaining its tax status and that that would be outside EU competences to change it, certainly to change it against Ireland's will. It is perhaps not a circumstance, outwith a major treaty revision that was accepted by Ireland in the future, where UK influence could ever be brought to bear.

Q360 Nigel Mills: Speaking as somebody who represents a seat and a county that borders Yorkshire, I am not sure the customs processes in the backstop would be very popular on the M1 when you had to have a paper customs declaration for every truckload. Maybe, John, you want to think carefully about how long the queues would be.



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I have a couple of questions. When we talk about “hard border”, are we all talking about infrastructure, fences and stuff at the border? We are not talking about other things, or do you have different definitions in mind?

David Henig: I try not to use the phrase “hard border”. I try to use the phrase “border infrastructure”, because that is a more helpful definition, so that is how I have been defining it.

Dr Tannam: “Physical infrastructure” is the term used in a lot of Government statements.

Colin Murray: There was a rather flippant story last week about roaming charges returning as soon as the UK leaves the EU and how that is going to affect holidaymakers. I suppose, at the border in Ireland, that is not a holidaymaker issue; that is a day-to-day, lived reality. Your phone will keep flipping between different providers. Everything that changes the arrangements at the moment and makes life more difficult you could characterise as a hardening, long before we ever get to concrete blocks and helicopter gunships.

Q361 **Nigel Mills:** It is just that the withdrawal agreement does refer to a hard border, but then, unhelpfully, does not define it. It seems that two of you, at least, are thinking that a hard border means infrastructure.

Dr Tannam: I agree with the holistic definition, particularly in the context of Northern Ireland, the peace process, cultural and work links and all of that. In terms of the security risk, there has been a focus on the physical side because of dissidents targeting that if there is physical infrastructure, but it is a broader concept.

Q362 **Nigel Mills:** Okay. Mr Henig, you are not a big fan of this agreement, looking through some of your Twitter posts about it. Probably the most generous you have been is referring to the Prime Minister appearing to be proposing blackmailing Parliament to support her bad deal at the last minute because no deal would be even worse. That was just before this Committee session started, so we can conclude you are not a supporter of the deal. Is that fair?

David Henig: It is fair to say that, having read the agreement, I was disappointed with large parts of it. I want to be clear about this. I felt that you understand the deal as being a landing zone between the red lines that both parties set, and those red lines included with regard to the border in Ireland, but it is also the job of negotiators to make sure that that landing zone is somewhere comfortable for both parties. I find that the deal, as it is, is rather devoid of comfort and it is in areas like the consultation, because this is about the future. This is not something we are going to debate; we are going to live with this for years to come, so we really need to make sure this is right.

Q363 **Nigel Mills:** What is your suggestion for the way forward from here if we cannot fix this? Is a three-year transition while we try to work out what



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the future partnership looks like a better way forward than ploughing on with this awful deal, in your words?

David Henig: Given where we are at the moment, we might look to find a way to say, "We will move into a transition period. We will then intensively work on these questions together. We will see what the scope of the possible is. We will also try to negotiate some future relationship, but in a rather more informed way than we have done to date". We are not going to rewrite the withdrawal agreement now, much though I would like to. Therefore, short of an extension for a year, which I do not think people really want, I suspect the best bet is to go into a next stage and try to put as much right in the next stage as possible. That means an intensive process of reviewing where we have got to, defining the future relationship in a much clearer way. That report on what options are available in Ireland is potentially part of a slightly separate process I have argued for, for Ireland.

Q364 **Nigel Mills:** Mr Murray, having read Mr Henig's Twitter, I was having a little flick through a publication you jointly authored, *Bordering Two Unions*. On page 22, there is a quote: "There is a profound risk in such circumstances that Ireland could be presented not as acting as a co-guarantor of the peace process, but as manoeuvring in an international organisation to 'coerce' an end of partition, stoking age-old unionist fears and grievances". Do you fear that that prediction you had may have come to pass now?

Colin Murray: There could certainly be that interpretation. It is an interpretation that some people who have been in this room have very much put upon Ireland's position in the negotiations. To be fair to the Irish Government and to respond, perhaps, to some of the DUP's criticisms, even if their members are no longer in the room—

Chair: I should say, just in case you might interpret that as discourtesy, that there is an Urgent Question on a Northern Ireland-related matter and I suspect that is where they have gone. I am sorry to interrupt.

Colin Murray: To try to take that on, the Irish Government, insofar as they have been involved in the negotiations, have been involved at one stage behind the EU negotiating team. They have been there to try to set out what they believe the Good Friday agreement requires. If you go through the withdrawal agreement and the red lines that David Henig has set out very clearly, there has been an effort not to extend beyond the boundaries of what the Good Friday agreement requires. That, if you like, has almost seen a lessening of some of the protections that were in place or that were suggested by the joint report of December 2017. That report pointed towards the possibility of Irish citizens still being able to use, to actively bring into play, their European Union citizen rights within Northern Ireland even though it was a space outside the EU. You could found a company in Belfast, as an Irish citizen, even though Belfast was not now part of the European Union.



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There has been an awful lot of focus in the last year, between Dublin and the EU team, on trying to work out what the limits of EU competences are and how that structures the agreement. If you like, on page 22 of the book I am setting out the concern. That is how I think the Irish Government have moved to address it.

David Henig: Can I add one more thing, because I had not realised I had what I have set out as a possible compromise plan in front of me? There is one more thing that I would say. You sign the withdrawal agreement on condition that we have a joint process to report on what is possible in the Northern Ireland border, and that both sides agree that the backstop could be reopened depending on what a joint report would say. That would give us some comfort that perhaps, in the future, you are not going to get trapped. You can debate these things, but that is the sort of thing I was thinking of as to how to fix this.

Dr Tannam: As background, Professor Oran Doyle, who is a law expert at Trinity, has a book recently out about how the Irish state developed from 1921 as a separate 26-county state. It had this rhetorical thing about a united Ireland, but gradually, and in every way, that declined. In terms of the history of the state, aspirations towards unification very much declined. I know Brexit has raised these things again, but I just wanted to make that clear.

Chair: Good. Well, we have kept you for two hours, which is quite a marathon. The questioning has been robust and you have been more than equal to that. We are really grateful to you for being with us today and what you have said we will certainly reflect upon carefully in preparing our report on this matter. It just remains for me to say thank you again for taking the trouble to be with us today. Thank you.