

Written evidence submitted by Oliver Garner (FRE0017)

The key tasks that the Joint Committee and the Specialised Committee need to execute before the end of the transition period are determining the criteria for the functioning of the Protocol on Ireland/Northern Ireland, implementing the citizens' rights provisions of the Withdrawal Agreement, and deciding whether to extend the transition period. COVID-19 has compelled the Joint Committee to operate via videoconference. This may facilitate decision-making especially in light of the UK's statutory bar on decision making via the written procedure. The UK has no legal framework for scrutiny of the Joint Committee beyond a requirement for Minister to report annually on disputes. In contrast to the European Parliament, this means that the UK Parliament's scrutiny has been limited to ex post review of meetings. The Government and Parliament should facilitate ex ante scrutiny of the Joint Committee. It is also crucial for accessibility and clarity of the law that the Government makes publication of all decisions and recommendations the default practice.

About the Bingham Centre for the Rule of Law

The Bingham Centre was launched in December 2010 to honour the work and career of Lord Bingham of Cornhill KG – a great judge and passionate advocate of the rule of law. The Centre is dedicated to the study and promotion of the rule of law worldwide. It does this by defining the rule of law as a universal and practical concept, highlighting threats to the rule of law, conducting research and training, and providing rule of law capacity-building to enhance economic development, political stability and human dignity.

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Introduction

This evidence submission by the Bingham Centre for the Rule of Law has been prepared by the Brexit Research Fellow Oliver Garner. The submission addresses questions regarding the EU-UK Joint Committee sent by the House of Commons Committee on the Future Relationship with the European Union to the former Senior Research Fellow in Parliaments and the Rule of Law Dr Jack Simson Caird on 1 May 2020. The author has responded on behalf of the Bingham Centre as he is the researcher responsible for the legal issues concerning the United Kingdom's withdrawal from the European Union. He has co-authored reports with Dr Simson Caird on [The European Union \(Withdrawal Agreement\) Bill and the Rule of Law](#) in January 2020 and [The EU-UK Future Relationship and the Rule of Law](#) in March 2020.

In summary, the Bingham Centre submission on the EU-UK Joint Committee recommends that:

The Government should exercise the option to publish all Decisions of the Joint Committee to ensure clarity and accessibility of the law;

The Government should accept discussion of an extension of the transition period on the agenda for the next Joint Committee meeting;

The Government should consider continuing videoconferencing to adopt decisions in light of the bar on the written procedure;

The Government should advocate the publication of summaries of minutes of meetings and suggest holding meeting in public where possible;

The Government and the EU co-chair should consider designating videoconferences as 'Brussels' or 'London' meetings for expenditure purposes;

Parliament should use the time-frames in the Joint Committee Rules of Procedure to structure ex ante scrutiny of the Joint Committee;

The Government should continue the practice of publishing potential areas of disagreement in the Joint Committee and the Specialised Committees.

What work will be carried out by the Joint Committee and its specialised committees at formal meetings, what work will be carried out during the periods in between, and who will be involved?

The EU-UK Joint Committee supervises and facilitates the implementation and application of the Withdrawal Agreement (WA art 164).¹ The specific functions are deciding the tasks and supervising the work of the specialised committees, preventing problems or resolving disputes, considering any matter of interest, adopting decisions and recommendation, and adopting amendments to the Agreement. (WA art 164). The Joint Committee is the institution responsible for an extension of the transition period before 31 July 2020 (WA art 132). Responsibilities may be delegated to the six Specialised Committees but the Specialised Committees cannot adopt decisions and recommendations (WA art 164(5)).

The Rules of Procedure in Annex VIII of the Withdrawal Agreement defines the tasks between meetings. The EU and the UK shall send correspondence to the Joint Committee Secretariat (Rule 6). The Secretariat should draw up a draft provisional agenda and transmit it no later than 15 days before a meeting (Rule 7). The EU and the UK may request the inclusion of items no later than 21 days before the meeting. No later than 10 days before a meeting the co-chairs shall decide on a provisional agenda. After the meetings, the Secretariat must draft minutes within 21 days, unless the co-chairs decide otherwise (Rule 8). The co-chairs must approve the minutes in writing within 28 days of the meeting or by a mutually agreed date. The Secretariat also prepares a summary of the minutes.

A further option for work between meetings is the adoption of decisions or recommendations by written procedure (Rule 9), but there is a statutory bar upon a UK co-chair or designee consenting to the written procedure (EU(WA)A, s 35).² Further work outside of meetings is the drawing up of the annual report on the functioning of the Agreement by the Secretariat by 1 May of each year (Rule 14). It is unclear whether the

¹ [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community \[2019\] OJ C 384/1](#) (herein referred to as 'WA').

² [European Union \(Withdrawal Agreement\) Act 2020](#) (herein referred to as 'EU(WA)A').

adoption and signing of the report by the co-chairs requires a Joint Committee meeting or not.

They key personnel at meetings are the co-chairs (Rule 1). The EU co-chair is a Member of the European Commission, the Vice-President for Interinstitutional Relations and Foresight Maroš Šefčovič. The UK co-chair is the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office Rt Hon Michael Gove MP. The co-chairs may nominate 'high level officials designated to act as their alternatives' (Rule 1(3)). Only a Minister of the Crown may be designed as a replacement by the UK co-chair (EU(WA)A, s 34). The UK alternate co-chair is the Paymaster General Penny Mordaunt. The EU alternate co-chairs are the Head of UK Taskforce Michel Barnier and the Deputy Head Clara Martinez Alberola

The Specialised Committees are co-chaired by representatives designated by the European Commission and the UK Government (Rule 13(2)). The UK co-chair of the Specialised Committee on the Ireland/Northern Ireland Protocol is civil servant Brendan Threlfal. Further personnel are the officials of the European Commission and the UK Government that constitute the Secretariat (Rule 2). The EU and the UK shall inform each other of the intended composition of their delegations (Rule 3). Experts or other persons who are not members of delegations may participate in order to provide information on a particular subject (Rule 3(2)). One or more Member States may request a representative to participate 'in case particular matters to be addressed at that meeting are of a specific interest' (WA Council Decision, art 2(1).³ Representatives of Ireland, the Republic of Cyprus and the Kingdom of Spain have the right to request participation in the Specialised Committees on the Protocol on Ireland/Northern Ireland, the Protocol relating to Sovereign Base Areas in Cyprus, and the Protocol on Gibraltar respectively.

What is the current state of play of the operation of the Joint Committee and its specialised committees and what are the next steps?

The Joint Committee held its first meeting on 30 March. [The Statement by the European Commission following the first meeting](#) indicated that explicit concerns were raised over citizens' rights and stability in Ireland. The Commission statement reiterated the importance for the UK to set out its plans for the implementation of the Protocol on Ireland/Northern Ireland. The [UK Government readout from the first meeting](#) stated that the UK emphasised its commitment to EU citizens in the UK and ensuring that UK nationals in the EU would have their rights protected. The UK reiterated its commitment to protecting the Belfast/Good Friday Agreement and to upholding the commitments under the Northern Ireland Protocol. The parties agreed that the Specialised Committee on Ireland/Northern Ireland should engage without delay in discussing and preparing the decisions that the Joint Committee has to adopt before the end of the transition period.

The Specialised Committee on Ireland/Northern Ireland held its first meeting on 30 April 2020. [The UK statement following the meeting](#) outlines that the co-chairs exchanged updates on the implementation of the Protocol and discussed the preparatory work for future decisions. The co-chairs also agreed to convene the Joint Consultative Working Group under the Protocol as a further forum for discussion. The Specialised Committee will need to

³ [Council Decision \(EU\) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community \(Text with EEA relevance\) \[2020\] OJ L 29/1](#) (herein referred to as 'WA Council Decision').

work on the criteria for considering that a good brought into Northern Ireland is not at risk of subsequently being moved into the Union (Irish Protocol, art 5).⁴ The Joint Committee must establish these criteria by the end of the transition period on 31 December 2020.

The next Joint Committee meeting is currently foreseen for June ([Commission Statement](#)). This coincides with the planned high level meeting between the EU and UK future relationship negotiation teams to take stock of progress ([Terms of reference on the UK-EU future relationship negotiations](#)). An important next step for the June Joint Committee meeting is whether discussion of extension of the transition period will be on the agenda. Despite the prohibition on a Minister agreeing to an extension (EU(WA)A, s 33), either the UK or EU co-chair could still request inclusion on the agenda up to 21 days before the meeting. The requirement for the Secretariat to draft a provisional agenda 15 days before the meeting, and the co-chairs to decide the agenda 10 days before, means that this work will need to be conducted imminently. The co-chairs may decide to derogate from these time-limits 'in exceptional cases' (Annex VIII, Rule 7(5)).

The Bingham Centre emphasises that the establishment of clear and accessible legal criteria for the functioning of the Protocol on Ireland/Northern Ireland is the most important task for the Joint Committee before the end of the transition period on 31 December 2020.

The most immediately pressing task for the Joint Committee is the decision whether to extend the end of the transition period by 31 July 2020. Despite the legislative bar on Ministers consenting to an extension, the UK Government should accept inclusion of extension discussion on the agenda to enable the EU co-chair to express its position and facilitate constructive dialogue. The one-off possibility to extend the transition period by the specific deadline of 31 July 2020 means that it would fall within the condition of 'exceptional cases' to enable derogation from the time-limits regarding the agenda.

Do you foresee any ongoing impact of COVID-19 on the work of the Joint Committee and its specialised committees?

The Rules of Procedure enable the co-chairs to hold meetings by videoconference or teleconference (Rule 4(2)). Correspondence may be sent to the Secretariat in the form of electronic mail (Rule 6). These rules meant that no changes to the legal procedure were necessary to enable remote communications and meetings in response to COVID-19. However, the United Kingdom's statutory bar on decisions and recommendations being adopted by the written procedure (paragraph 1 above) may cause complications as it means meetings will need to be convened for this purpose. Expenditure in connection with the organisation of meetings and the reproduction of documents shall be borne by the EU for meetings in Brussels and for the UK for meetings in London (Rule 12).

Videoconferencing in response to COVID-19 may actually mean that meetings take place more frequently than they otherwise would have. The Joint Committee should meet at least once a year (WA art 164(3)), whereas the co-chairs have decided to meet again in June after their March meeting. This may also be a function of the time-pressure of the 31 July 2020 deadline for an extension of the transition period, and the 31 December deadline to adopt decisions under the Protocol on Ireland/Northern Ireland. COVID-19 has contributed to pressure to extend the transition period due to the lost negotiating rounds for the future

⁴ Withdrawal Agreement, [Revised Protocol on Ireland/Northern Ireland](#) (herein referred to as 'Irish Protocol').

relationship. This may impact the discussions in the Joint Committee on an extension, if this is included on the agenda for the next meeting.

We believe that this division of expenditure responsibilities may be more difficult to ascertain when meetings take place by videoconference. Therefore, it may be efficacious that the co-chairs still designate video meetings as either 'Brussels' or 'London' meetings for the purposes of expenditure.

The Bingham Centre recognises that videoconferencing may facilitate the adoption of decisions under the Protocol before the end of the transition period in light of the UK statutory bar on the written procedure. The parties may wish to continue this practice in such circumstances even beyond the present COVID-19 emergency.

How much transparency are we likely to see with regards to the work of the Joint Committee and specialised committees?

The Rules of Procedure determine that 'unless otherwise decided by the co-chairs, the meetings of the Joint Committee shall be confidential' (Rule 10(1)). Information submitted that is considered confidential or protected from disclosure must also be treated as confidential by the other party (Rule 10(2)). The co-chairs have the discretion whether to make the provisional agenda public before the beginning of the meeting (Rule 7(3)). They have a similar discretion over whether to make a summary of the minutes of the meeting public (Rule 8(5)). Furthermore, the EU and the UK may each decide individually whether to publish the decisions and recommendations adopted by the Joint Committee in their respective official publication journals (Rule 10(3)). The Rules of Procedure do not impose any obligations for the parties regarding transparency.

The European Commission published the [agenda for the first meeting](#) of the Joint Committee. However, it seems that the co-chairs did not decide to publish the summary of the minutes; instead, the parties decide to publish the separate press releases (paragraph 6 above). Ahead of the meeting, the United Kingdom co-chair also provided a [written statement to the House of Commons](#) on 25 March 2020 outlining the agenda and UK delegation.

The Bingham Centre emphasises that the option whether to publish decisions and recommendations is problematic from a Rule of Law Perspective. The Joint Committee has not yet taken any legally binding decisions but it will need to before the end of the transition period. These decisions and recommendations will include legal acts that will be binding upon and within the UK and the EU with the same force as the Withdrawal Agreement. Specifically, in relation to the Protocol on Ireland/Northern Ireland the decisions will establish criteria that individuals and businesses must follow when moving goods. The clarity and accessibility of the law are benchmarks of the Rule of Law. We would strongly recommend that the UK Governments makes the publication of all decisions and recommendations a default practice.

Also, the functioning of the Joint Committee is opaque. Information regarding the Specialised Committees has not been published online. The Bingham Centre recommends that the UK Government advocates the publication of the summary of the minutes of meetings. The co-chairs also may decide meetings are held in public. These actions would ensure greater transparency of the discussions within the Joint Committee and would assist parliamentary scrutiny.

How might Parliament and this Committee scrutinise both the Government's decisions on the Joint Committee and specialised committees?

The only statutory base for scrutiny of activity within the Joint Committee requires a Minister each year to lay before each House of Parliament a report setting out the number of times that the Joint Committee has received notice to commence consultations to resolve a dispute (EU(WA)A s 30(5)). A rejected [amendment proposed by Joanna Cherry QC MP](#) would have required the UK's co-chair to be approved by Parliament, the co-chair would have to always have requested for Joint Committee meetings to be held in public where possible, decisions would need to have been published, and a Minister would need to have made an oral statement to the House of Commons ahead of each meeting. The Government response in the Commons was that it believed that the clause should not be pressed because of the obligation that all decisions must be made by a Minister in person (EU(WA)A s 35) and that Minister will be accountable to Parliament. This ad hoc political scrutiny has commenced with the appearances of Rt Hon Michael Gove MP before the [Committee on the Future Relationship](#) on 27 April 2020 and the [House of Lords EU Select Committee](#) on 5 May 2020.

As argued in the Bingham Centre report [‘The European Union \(Withdrawal Agreement\) Bill and the Rule of Law’](#) the Bingham Centre believes that ‘This ministerial oversight is positive but parliamentarians may wish to consider whether in the absence of a scrutiny reserve, or a similar mechanism to provide ex ante supervision, there will be effective facilitation of parliamentary oversight’ (para 34).

The timelines from the Joint Committee Rules of Procedure may provide a means to structure the Committees' scrutiny. If a meeting date is known in advance, Select Committee could ask for oral evidence from the co-chair before the 21-day limit to request the inclusion of items on the agenda. The specific date of 1 May for the annual report on the Joint Committee also provides Parliament with a useful planning milestone. The Select Committees could schedule oral evidence sessions immediately after this date to scrutinise the Government's work in the Joint Committee over the period. It may also be produce to schedule the Ministerial reports on disputes (see para 19 above) for May in order to enable parliamentarians to scrutinise Ministers in each House on the contents of the annual report. Finally, if ‘experts or other persons’ are called ‘to provide information on a particular subject’ to the Joint Committee (Rule 3), the Select Committee may also wish to summon the individuals to provide evidence on the subject.

How will the European Parliament be scrutinising the work of the Joint Committee and its specialised committees?

The European Parliament will be ‘put in a position to exercise fully its institutional prerogatives...in accordance with the Treaties’ (WA Council Decision, art 2(3)). The Council receives all information and documents relating to meetings of the Joint Committee and the Specialised Committees, and receives draft minutes (WA Council Decision, art 2(2)). It is unclear whether the above wording means that the European Parliament has similar privileged access to this information. The Commission shall report annually to the European Parliament and the Council on the implementation and application of the Withdrawal Agreement during the first five years of its operation (WA Council Decision art 2(4)).

Where the Joint Committee is called upon to adopt acts having legal effects, the positions to be taken on the Union's behalf must be established in accordance with [Article 218\(9\) TFEU](#). (WA Council Decision, preamble, para 5). The Council adopts a decision establishing this

position. The European Parliament must be ‘immediately and fully informed, as provided for in Article 218(10) TFEU, on the basis of practical modalities of cooperation allowing it to exercise fully its prerogatives in accordance with the Treaties’ (WA Council Decision, preamble, para 10).

The reference to the ‘institutional prerogatives’ of the European Parliament suggests that the usual mechanisms for scrutiny of the Commission will apply to the Joint Committee. This includes a ‘Question Hour’ for Members of the Commission before the European Parliament (EP-COM Agreement, para 46).⁵ The EU co-chair of the Joint Committee is the Vice-President for Interinstitutional Relations and Foresight. He should have a particular interest in ensuring that the scrutiny mechanisms for the European Parliament function.

Multiple Committees of the European Parliament are issuing reports on the recommendations on the EU-UK future relationship negotiations. The draft opinions of the [Committee on Civil Liberties, Justice and Home Affairs \(LIBE\)](#) and the [Committee on Constitutional Affairs \(AFCO\)](#) request that the European Parliament is fully informed of all the discussions held and decisions taken by the Joint Committee. The AFCO draft opinion recalls ‘the commitment made by the President of the European Commission to Parliament’s plenary on 16 April 2019 that the Commission will closely involve Parliament and take utmost account of Parliament’s views in the work of the Joint Committee, and nothing can be decided without taking full account of Parliament’s position.’

Despite the more rigorous legal procedure for scrutiny by the European Parliament, the EU co-chair did not provide oral or written statements before or after the first meeting in contrast to the UK co-chair’s statements to Parliament. Informal dialogue may be occurring between the Commission’s UK Task Force and the European Parliament’s UK Coordination Group chaired by David McAllister. The legal framework allows senior figures in the European Parliament to request the forwarding of confidential information, and the Commission may forward this information on its own initiative (EP-COM Agreement, Annex II).

The Bingham Centre emphasises that the EU legal framework implies that the European Parliament will be informed of the EU position in the Joint Committee before the adoption of decisions and recommendations by the Joint Committee. We would like to warn the Committee that there is no such legal mechanism to ensure advance notice for the UK Parliament over possible decisions and recommendations. In contrast to the ex ante scrutiny in the European Parliament, scrutiny in the UK Parliament has only occurred ex post. We would encourage the Select Committee to extend scrutiny to before meetings as much as possible.

Were such an arrangement to be agreed, how might joint scrutiny of the Joint Committee and its specialised committees by the UK and European Parliament work?

The European Commission’s [draft text of the Agreement on the New Partnership with the United Kingdom](#) makes provision for a Parliamentary Partnership Assembly. However, its remit would relate to the ‘Partnership Council’ established for the future relationship agreement, rather than the Joint Committee which is a creature of the Withdrawal Agreement. If the Parliamentary Partnership Assembly were established, it may be possible

⁵ [Framework Agreement on relations between the European Parliament and the European Commission](#) [2010] OJ L 304/47 (herein referring to as ‘EP-COM Agreement’).

to include scrutiny of the Withdrawal Agreement Joint Committee within its scope. The UK Parliament and the European Parliament, or the relevant Committees, could establish a new institutional framework for joint scrutiny but this could take too much time to be effective.

The Bingham Centre suggests that there are three other options for joint scrutiny:

- i. The pre-existing institutional framework of the [Conference of Parliamentary Committees for Union Affairs \(COSAC\)](#) could be used. There is some precedent for non-Member State participation as the national parliaments of the EU candidate countries are invited to participate with three observers each. This seems an unwieldy means to conduct joint scrutiny, however, as plenary meetings take place only twice a year.
- ii. A further option could be for members of the UK and European Parliaments to develop an informal framework of joint scrutiny. This could be conducted through bilateral exchanges between relevant European Parliament officials and the civil service representatives of the UK Parliament who are still based in Brussels.
- iii. A further means to facilitate joint scrutiny could be through UK and European Parliamentarians providing evidence to each other's committees. This could enable a bilateral exchange of the major concerns driving the UK and European Parliament in their scrutiny to identify synergies, in addition to enabling a bilateral exchange of best practices.

What lessons might be drawn from how the EU-Switzerland Joint Committee works, particularly as regards its effectiveness at managing the relationship, transparency and parliamentary scrutiny?

The European Commission's [trade policy webpage on Switzerland](#) states that the EU-Switzerland Free Trade Agreement Joint Committee meets regularly to discuss issues and best practices when applying the agreement. The Joint Committee is responsible for the administration and implementation of the Agreement (EU-Swiss FTA, art 29).⁶ The webpage includes links to the Agenda and Reports from the 65th and 66th meetings on 13 November 2018 and 21 November 2019. This suggests a similar procedure to the Joint Committee whereby meetings take place at a minimum once a year with the publication of an agenda and a summary of the meetings. There are [23 distinct Joint Committees](#) managing the different areas of EU-Swiss co-operation.

Despite the fact that the EU-Switzerland Free Trade Agreement Joint Committee has been established since 1972, concerns have been raised over the transparency of the various Joint Committees by Swiss parliamentarians. On 21 March 2019 Thomas Aeschi [submitted a question](#) requesting that the Swiss Federal Council shed light on the joint Swiss-EU committees and to provide the name and domicile of the officials who were members of the committees. In particular, he raised concerns over the capacity for the Joint Committee decisions to override judgments of the Swiss Federal Supreme Court. The Swiss Federal Council provided a comprehensive answer to the query.

The Bingham Centre suggests that the Swiss experiences shows how transparency deficits may be perceived even after decades of operation of a Joint Committee. To prevent such concerns, the UK Government should facilitate a culture of parliamentary involvement in the operation of the Joint Committee before it starts making decisions. The UK Government

⁶ [Agreement between the European Economic Community and the Swiss Confederation](#) [1972] OJ L 300/189 (herein 'EU-Swiss FTA').

should also follow the example of the responsiveness of the Swiss Federal Council to parliamentary queries.

How will the operation of the Joint Committee and its specialised committees interact with Future Relationship negotiations?

The Commission statement after the 30 March 2020 meeting stated that ‘a new partnership can only be built on the faithful and effective implementation of the withdrawal agreement’. The draft future relationship agreement published by the European Commission envisages a ‘Partnership Council’. This would be a separate body that plays an analogous role to the Withdrawal Agreement Joint Committee. Furthermore, progress on the future relationship negotiations has a direct impact on the work that will need to be carried out in the Specialised Committees. For example, the agreement on tariffs in the future agreement could impact how the rules are established for checks between Great Britain and Northern Ireland.

It should be emphasised that the legal base for the Joint Committee is the Withdrawal Agreement and is separate from the future relationship negotiations. The ‘Partnership Council’ for the future relationship and the Joint Committee will be separate bodies that will both be operational at the same time. No indication has been provided that the Partnership Council will subsume the Joint Committee.

Despite the separate legal bases, there are clear functional connections between the Joint Committee and its Specialised Committees and the future relationship negotiations. It is important, however, that the distinct purposes of the Joint Committee and the future relationship negotiations are not conflated in parliamentary scrutiny, especially as Rt Hon Michael Gove MP has provided evidence on both topics during Select Committee hearings. Parliamentarians must also focus on the Government’s position on the implementation of the Withdrawal Agreement, including issues such as the residence rights of UK citizens in EU Member States under the Withdrawal Agreement which may not be addressed in the future relationship negotiations.

Do you foresee any potential disagreements arising in the Gibraltar, Cyprus and Citizens’ Rights specialised committees? If so, what are they key issues and how challenging might they be to reconcile?

The implementation of citizens’ rights has been raised as a concern both within the United Kingdom and within the EU Member States. At the first Joint Committee meeting, the EU co-chair welcomed the UK commitment to ensuring EU citizens can register as lawful residents, and stated that the Commission will continue to make sure UK nationals in the EU are able to exercise rights under the Withdrawal Agreement. The LIBE Committee report (see paragraph 25 above) calls upon the Joint Committee and the Commission to monitor relevant developments on issues with the EU settlement scheme in the United Kingdom. The UK co-chair Rt Hon Michael Gove MP has written a [letter](#) to the EU co-chair on 14 May 2020 expressing concerns over the schemes to safeguard the rights of UK nationals in EU Member States. The sensitivities around citizens’ rights may be exacerbated by the Commission infringement action instituted against the United Kingdom issues on 14 May 2020 for failure to comply with the Free Movement Directive 2004/38/EC, freedom of movement of workers and freedom of establishment.

Spain and Cyprus did not raise concerns over the Protocols on Gibraltar and the Sovereign Base Areas in Cyprus sufficient to jeopardise the ratification of the Withdrawal Agreement.

This could mean that there are not concerns that could lead to disagreement, or alternatively it could mean that there is disagreement and that this will be displaced to the specialised committees. The specific authorisation for Spain and Gibraltar to send Member State representatives to these specialised committees could increase the possible sources of contestation (see paragraph 7 above). The coordinating committee between Spain and the United Kingdom established to monitor matters relating to employment and labour conditions under the Protocol on Gibraltar provides a further institutional forum to resolve disagreement. Article 8 of the Protocol relating to the Sovereign Base Areas enables the UK and Cyprus to make further arrangements concerning the implementation of the Protocol. Council to authorise Ireland, Cyprus or Spain to negotiate bilateral agreements with the United Kingdom in areas of exclusive competence of the Union if the agreement in question is necessary for the functioning of the Protocols (WA Council Decision, art 4). This recourse to international law could provide a means to resolve challenges that arise, especially as the Protocols on Gibraltar and the Sovereign Bases in Cyprus are only operable until the end of the transition period.

The Bingham Centre welcomes the publication of the UK Government's position on potential disagreements in the Specialised Committees. The UK Government should continue to provide foresight to Parliament over potential conflicts to enable ex ante scrutiny to complement the ex post scrutiny of the annual Ministerial reports on disagreement resolution in the Joint Committee. The Government should also inform Parliament if it believes international agreements with Ireland, Cyprus or Spain will be necessary

May 2020



Committee on the Future Relationship with the European Union

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01 May 2020

Dr. Jack Simson-Caird
Senior Research Fellow in Parliaments and the Rule of Law
Bingham Centre for the Rule of Law

Dear Dr Simson-Caird,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our call for evidence, which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Such submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

- What work will be carried out by the Joint Committee and its specialised committees at formal meetings, what work will be carried out during the periods in between, and who will be involved?
- What is the current state of play on the operation of the Joint Committee and its specialised committees and what are the next steps?
- Do you foresee any ongoing impact of COVID-19 on the work of the Joint Committee and its specialised committees?
- How much transparency are we likely to see with regards to the work of the Joint Committee and specialised committees?
- How might Parliament and this Committee scrutinise both the Government's decisions on the Joint Committee and its specialised committees and their operation going forward?
- How will the European Parliament be scrutinising the work of the Joint Committee and its specialised committees?
- Were such an arrangement to be agreed, how might joint scrutiny of the Joint Committee and its specialised committees by the UK and European Parliament work?
- What lessons might be drawn from how the EU-Switzerland Joint Committee works, particularly as regards its effectiveness at managing the relationship, transparency and parliamentary scrutiny?
- How will the operation of the Joint Committee and its specialised committees interact with the Future Relationship negotiations?
- Do you foresee any potential disagreements arising in the Gibraltar, Cyprus and Citizens' Rights specialised committees? If so, what are the key issues and how challenging might they be to reconcile?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours sincerely,

Hilary Benn
Chair of the Committee