Dear Lord Boswell,

Thank you for your letter which outlined the observations made by the European Union Committee on the draft Withdrawal Agreement published on 19 March.

Please find below the answers to the 24 questions asked in the letter. I trust that this response will be helpful in providing the further clarity that the Committee is seeking.

I look forward to my appearance before the Committee at the beginning of May.

RT HON DAVID DAVIS MP
SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

17 April 2018
1. Was the text of the Agreement published on 28 February 2018 the work of Commission lawyers, or did UK lawyers contribute to its preparation, as mandated by the European Council in its December 2017 Conclusions?

Since December 2017 the UK has prioritised converting the commitments made in the Joint Report into legal text. The text published on the 28 February was the EU’s draft Withdrawal Agreement and was based on negotiations between officials and lawyers from the UK and the European Commission. Working closely with the EU we have made quick progress on the development of the text, including finalising all of the chapters on the Implementation Period, Citizens’ Rights and Financial Settlement. This progress was demonstrated in the text published on the 19th March.

2. Will negotiations on issues that have yet to be agreed (e.g. the Protocol on Ireland and Northern Ireland, or the provisions on dispute settlement) continue on the basis of the published Commission text, or will UK lawyers prepare alternative draft articles? If the latter, when and how do you expect to publish such articles?

Both the UK and EU negotiating teams have reaffirmed that they stand behind the commitments made in December. In relation to Ireland and Northern Ireland, as the Prime Minister set out in her letter to Donald Tusk, we have agreed that the so-called ‘backstop’ option should be translated in legally binding form in to the Withdrawal Agreement.

Following March European Council, the UK and EU negotiating teams will now continue discussions on all the remaining issues and scenarios set out in the Joint Report. We are confident that we will continue making progress across these areas and the wider Withdrawal Agreement, towards our aim of reaching final agreement by October.

3. Do you share our concern that the process has been lacking in transparency thus far? What steps will you take to ensure that, as negotiations on the text of the Agreement progress, parliamentary committees are kept abreast of the Government’s position on issues of substance?

I have set out on a number of occasions the commitment of the Government to ensure that Parliament and the public are kept updated on the progress of our negotiations to leave the EU. I firmly believe that we are meeting this commitment.

There have been regular statements given either by myself or the Prime Minister at appropriate points in the negotiations, and following significant milestones.

I have appeared five times before the Exiting the EU Committee and a further four times before the House of Lords EU Committee. In total, ministers from the Department for Exiting the European Union have given evidence to a wide range of committees on 30 occasions.

We have also set out our approach to key issues in a number of speeches by Cabinet Ministers. Furthermore, the Government has published 14 position and future partnership papers to address current issues in the talks since we triggered Article 50.
These detailed papers covered issues such as Future Customs Arrangements (15 August 2017); Civil Judicial Cooperation (22 August 2017); Enforcement and Dispute Resolution (23 August 2017); Data Protection (24 August 2017); Science and Innovation (6 September 2017); Foreign Policy, Defence and Development (12 September 2017); and Security, Law Enforcement and Criminal Justice (18 September 2017).

4. Do you accept that the UK will, by virtue of the Articles agreed on 19 March, enter into binding commitments on 29 March 2019, for instance in respect of the financial settlement, without either side having at that point entered into legal commitments in respect of future relations?

Alongside the Withdrawal Agreement, which will give legal standing to the terms of our withdrawal, and which we aim to conclude with the EU by October, Article 50 provides for the EU and UK to take into account the framework for the future relationship. Therefore, while the final terms of our future relationship can only be concluded once the UK has officially left the EU, we expect to first agree the terms of our future security and economic partnerships.

In her Munich and Mansion House speeches, the Prime Minister set out the UK’s ambitions for the future economic and security partnerships, and at the March Council the EU agreed new negotiating guidelines on the future. We will build on the explanatory talks and start discussions on the future agreement in earnest. We are confident these guidelines provide the flexibility to allow the UK and the EU to think creatively and imaginatively about our future partnership.

5. Are you content that the CJEU should have an indefinite jurisdiction over disputes relating to the Agreement, including, for instance, disputes relating to future UK payments arising out of the financial settlement?

The dispute resolution mechanism for the Withdrawal Agreement is a matter for negotiation. We are clear it must respect the autonomy and integrity of both the UK and the EU.

For specific areas of the financial settlement, we have agreed that existing enforcement mechanisms will apply – but only in relation to budget contributions made up to 2020 and to programmes the UK participated in during the 2014–2020 period, and not to the financial settlement as it relates to the period after implementation.

6. If not (and we note that Articles 162-165 have not been agreed), what proposals will the Government bring forward to ensure that the final Withdrawal Agreement includes provision for neutral arbitration and dispute resolution between the UK and the EU?

As stated in our position paper on enforcement and dispute resolution, the appropriate dispute resolution mechanism for the Withdrawal Agreement will depend on its final substance and context. In our future partnership paper on enforcement and dispute resolution, we set out our four key principles: to maximise certainty for individuals and businesses; ensure they can enforce their rights in a timely way; respect the autonomy of EU law and UK legal systems while taking control of our own laws; and continue to respect our international obligations.

The Withdrawal Agreement and the future partnership must respect the autonomy and integrity of both the UK and EU.
The detail of the overall governance arrangements for the Withdrawal Agreement, as well as the arrangements for individual separation issues, will be discussed in negotiations.

7. Are you satisfied that, given the constitutional importance of the Agreement, for instance in respect to Ireland or citizens’ rights, the Joint Committee model provides an appropriate level of oversight and accountability?

8. Will you bring forward proposals to ensure appropriate parliamentary involvement in or oversight of the work of the Joint Committee?

The Joint Committee that we have agreed will enable both parties to discuss and resolve any concerns that arise regarding the Withdrawal Agreement, and provide a means to ensure the smooth functioning of the implementation period. The Joint Committee will publish an annual report on the functioning of the agreement, and be composed of representatives from both the EU and the UK, thus ensuring oversight and accountability.

9. We note that you have agreed the list of specialised committees contained in Article 158. What is the rationale for this list? Would you see any scope (subject to the agreement of the governments of the relevant territories) for adding a specialised committee or committees on Gibraltar, and on issues affecting the Crown Dependencies and Overseas Territories more broadly?

The list of specialised committees set out in Article 158 was agreed by both the UK and the EU. They will support the work of the Joint Committee and be composed of expert representatives. As set out in Article 157 (5)(b), there is scope for the Joint Committee to establish other specialised committees if required. The UK is engaging directly with the Governments of Gibraltar, the other Overseas Territories and the Crown Dependencies to ensure that their interests are taken into account as we negotiate our withdrawal.

10. What steps is the Government taking, in discussions with the EU Chief Negotiator, with Gibraltar and with Spain, to confirm unequivocally that Gibraltar falls within the territorial scope of any Withdrawal Agreement, including the transition elements?

As the Prime Minister set out in the House of Commons on 26 March, “the draft agreement published jointly last week correctly applies to Gibraltar.” This includes the provisions on implementation. The Government has been consistently clear that people and businesses in Gibraltar should get the certainty of the implementation period just as much as other areas of the UK family. This will also bring benefits and provide reassurance to Spain and Spanish citizens, including around 8,000 who cross the border to work in Gibraltar every day.

We will continue to engage closely with the Government of Gibraltar and our European partners to resolve the particular challenges that our EU withdrawal poses for Gibraltar and for Spain.

11. What “specific functions” in respect of transition does the Government envisage being conferred upon the Joint Committee? What specific amendments will you bring forward to give effect to this proposal?
We have agreed that the Joint Committee will have the ability to discuss any issues that might arise concerning the management and operation of the Agreement during the implementation period. It will provide the UK with a means to raise concerns regarding new laws which we consider might be harmful to our interests. This will be underpinned in the Withdrawal Agreement by a duty of good faith, which will place an obligation on both sides to act with fairness and consistency in their application of the Agreement.

12. Does Article 4a in the revised draft Agreement published on 15 March, and confirmed on 19 March, satisfy your wish that the Joint Committee should have regard to a duty of good faith?

We have agreed that the whole Withdrawal Agreement will be subject to an article of good faith, to ensure that both sides support each other in delivering the Agreement. This is a standard principle of international law, creating an explicit obligation on both sides to approach the Agreement with a sense of fairness, consistency and sincerity. Either side will be able to raise concerns over the implementation of the Agreement, resulting in a referral to the Joint Committee.

13. Are you satisfied that Article 125 of the Agreement, as amended on 19 March, meets your concern over UK participation in the adoption of fishing quotas and in international fisheries negotiations during transition?

For the whole of 2019, we will apply the agreement reached at the Fisheries Council in December 2018, subject to an acceptable deal being reached. We will have been fully involved in this agreement as a Member State.

The terms of the implementation period will apply only to negotiations in 2019, for the setting of 2020 fishing quotas. We have agreed a process of bilateral consultation between the UK and EU ahead of the negotiations with coastal states and ahead of the December 2019 Fisheries Council, and will continue to input into development of scientific advice. The Withdrawal Agreement includes an obligation on both sides to act in good faith throughout the implementation period. Any attempts to harm the UK fishing industry would breach that obligation.

The revised text clarifies that the UK’s share of catch cannot be reduced during the implementation period. During this period, the UK will be able to join the Regional Fisheries Management Organisations including the North East Atlantic Fisheries Commission (NEAFC), to inform the discussions of Total Allowable Catches, manage the straddling and migratory stocks, and actively negotiate when it impacts after the implementation period.

In December 2020 we will be negotiating fishing opportunities as a third country and a fully independent coastal state, deciding who can access our waters and on what terms for the first time in over 40 years.

14. Do you agree that under the Agreement EU citizens resident in the UK will, like British citizens, lose the right to vote in the 2019 European Parliament elections? Will you be making any representations to the Commission on this issue?
Once the UK leaves the EU, UK representation in the European Parliament will end. As such, no European Parliament elections will take place in the UK after our exit. The rules that govern the ability of European citizens living in the UK to vote for candidates standing in European Parliamentary elections in their home country will remain a matter for individual Member States to determine.

15. The first scenario described in the Joint Report refers to the Government’s wish to maintain North-South cooperation and avoid a hard border through the “overall EU-UK relationship”. Yet the Protocol represents an attempt by the Commission to identify a ‘fall-back’ position, as part of the Withdrawal Agreement. Do you agree that a fall-back position is required, ahead of UK withdrawal, to guard against the possibility that negotiations on future UK-EU relations do not succeed?

16. Do you accept that an agreement on transition would mean that such a fall-back position would not need to become operational until 1 January 2021? If so, how should any text on Northern Ireland/Ireland relate to the Withdrawal Agreement, which will need to be ratified no later than March 2019?

17. Why has the Government not yet formally proposed “specific solutions to address the unique circumstances of the island of Ireland”, as envisaged in the second scenario described in the Joint Report? When will you do so?

18. In respect of the third scenario, Paragraph 49 of the Joint Report says that “the United Kingdom will maintain full alignment” with relevant EU rules. Does this mean that the entire United Kingdom will maintain such alignment, or just Northern Ireland? If the latter, how would this be reconciled with the avoidance of a hard border in the Irish Sea?

19. The onus to bring forward proposals to implement the third scenario in paragraph 49 of the Joint Report appears to have been placed upon the United Kingdom, not the Commission. When will the Government bring forward its own proposals, or are you content to take the Commission’s proposed text as the basis of negotiations?

The Joint Report issued by the UK and EU in December sets out our plan to address Northern Ireland’s unique circumstances in the context of the wider UK-EU deep and special partnership. We want a deal that works for all parts of the UK. The Joint Report gives a clear commitment to avoiding a hard border between Northern Ireland and Ireland and retaining the constitutional and economic integrity of the UK.

The UK will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the UK will maintain full alignment with those rules of the internal market and the customs union which, now or in the future, support North-South co-operation, the all-island economy and the protection of the 1998 [Belfast] Agreement.

As the UK has stated on numerous occasions, the Government is committed to avoiding a hard border, including any physical infrastructure or related checks and controls.
The Government’s intention is to achieve these objectives through the overall EU-UK relationship. It is important to now move on to negotiations about our future partnership as soon as possible.

Both the UK and EU have reaffirmed that we stand behind all the commitments we made in December. As the Prime Minister set out in her letter to Donald Tusk, we have agreed that, at least, the so-called ‘backstop’ option should be translated in legally binding form in to the Withdrawal Agreement in a form to which the UK can agree.

There are some aspects of the Commission’s proposals which we agree with – particularly the preservation of the Common Travel Area. The Prime Minister has made our position on the other elements of the draft text clear, and said that we could never accept this. There is agreement that the scope of the issues covered by the draft Protocol – focusing on goods and agriculture – reflects the right set of issues.

We are now engaging on an intensive work programme with the Commission to negotiate in detail on all the issues and scenarios set out in the Joint Report.

20. In the event that Northern Ireland were to remain in the EU internal market for goods, as envisaged in the Protocol, would you expect the United Kingdom to make budgetary contributions to the EU, as is the case for other non-EU states that belong to the Single Market?

We have been clear from the start that we are leaving the Single Market and the Customs Union as one United Kingdom. The Prime Minister made clear, the UK does not seek membership of the EU’s Single Market after we leave the EU, but rather a bold and ambitious FTA as part of a new, deep and special partnership. The deeply integrated nature of trade, both domestically between Northern Ireland and Great Britain, and across the land border between Northern Ireland and Ireland, highlights why the UK is prioritising finding a solution that protects businesses’ ability to access these markets and avoid a return to a hard border.

In our position paper on Northern Ireland and Ireland we have put forward our key principles for delivering our shared objective for a seamless and frictionless land border.

We are committed to working with the EU to find a creative solution that recognises the particular economic, social and cultural context of the land border with Ireland that allows current trade and everyday movements across the border to continue as they do today.

21. Can you confirm that under the 19 March text of the Agreement EU citizens resident in the UK and UK citizens resident in the EU 27 before the end of the transition period will enjoy in full the rights conferred by Part Two (Citizens’ Rights)?

To confirm, we have agreed that all EU citizens resident in the UK, and UK nationals resident in the EU, before the end of the implementation period, will fall under the citizens’ rights part of Withdrawal Agreement.
EU citizens who arrive in the UK during the implementation period must register with the Home Office after three months residence in the UK, and those individuals who want to stay beyond the end of the implementation period will have to apply to remain in the UK by June 2021.

22. **Article 9(1) of the Agreement appears to extend family reunification rights to all future family members, including future spouses, regardless of when they entered into the family relationship. Is this your understanding?**

The Agreement does not include provisions for future spouses who will be subject to the relevant UK immigration rules that apply.

We have agreed reciprocal arrangements on family reunification for those covered under the Withdrawal Agreement. We believe it is fair that we respect life choices already made and provide certainty to existing families, even if they are not currently living together in the UK.

Close family members, as defined under EU law, including spouses, civil partners, unmarried partners, children, grandchildren and dependent parents and grandparents, of an EU citizen living in the UK will be able to join them here after the end of the implementation period on the same basis as current EU rules, where a genuine relationship existed before the end of the implementation period and continues to exist on the date they wish to come to the UK.

Family members who are legally resident with an individual covered under the agreement before the end of the implementation period will also be covered under the Withdrawal Agreement. As will both the current and future children born to, or legally adopted by, those covered.

All of these arrangements have been agreed on a reciprocal basis for UK nationals living in the EU.

23. **Article 17 of the Agreement provides that economically inactive individuals and students may be required to provide evidence of “comprehensive sickness insurance cover” in order to secure settled status. The Government has given an undertaking to waive this requirement, insofar as it might require private medical insurance.**

   **Does that undertaking still hold good? And has a similar undertaking been given by the EU in respect of UK citizens resident in the EU 27? Would you see any merit in recording such undertakings in the text of the Agreement?**

As part of the UK’s pragmatic approach to administrative procedures for settled status, I can confirm that the Government has decided not to request evidence of comprehensive sickness insurance, nor to apply a genuine and effective work test on applicants.

The Government is currently in the process of designing the settled status system. Over the past few months the Government has listened carefully to the feedback received from EU citizens groups’ representatives, and is working with users to develop a system that is digital, streamlined and low cost. As the design develops, the Government also expects to undertake rigorous user testing of the system with individuals.
Further details of the administrative procedures for settled status can be found in the technical note published by the Government in November 2017.

Details of how the Withdrawal Agreement will be implemented in the European Union will be a matter for Member States. Nevertheless, we are monitoring this closely.

24. The original draft Agreement would have precluded UK nationals living in the EU 27 from exercising onward free movement rights, but we note that Article 32 of that draft has now been deleted. How did this change came about, and can you explain its significance? Does the Government intend to seek onward free movement rights for UK citizens resident in the EU, and if so, how?

The UK pushed strongly for the inclusion of onward movement rights during the first phase of negotiations, but the EU was not ready to include them. This issue has not been forgotten, and we share the European Parliament's interest in this area.

The provision in the initial draft of the Withdrawal Agreement that set this out, Article 32, was removed as it was agreed that it was not necessary to include legal text on areas that were not covered by the Agreement.

The reciprocal agreement reached on UK and EU citizens who move during the implementation period will mean that UK nationals currently living in the EU who want to move to a different Member State during the implementation period, in order to obtain permanent residence, will be able to do so. Going forward, we will seek to reach a final deal that is in the mutual interests of citizens living across the continent.