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Secretary of State for Northern Ireland  
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27 February 2018

Dear Secretary of State

## House of Lords EU Committee – Brexit: UK-Irish relations follow-up

*Brexit: UK-Irish relations follow-up*

1. In December 2016, we published a report on *Brexit: UK-Irish relations*. This was our first report on the impact of Brexit across a number of policy areas, reflecting our sense both of the importance of this issue, and of the fact that the profound implications of Brexit for Northern Ireland, Ireland and UK-Irish relations had not received the attention they deserved during the referendum campaign. Since our report was published, the issue has risen to the top of the Brexit negotiating agenda, as one of the three issues on which sufficient progress needed to be made before negotiations could move on to consideration of the future UK-EU relationship. The December 2017 Joint Report on progress made during phase I of the negotiations embodies significant commitments in relation to Northern Ireland and Ireland. In recognition of this, we decided to undertake a short follow-up inquiry.
2. We were grateful to you and Robin Walker MP, Parliamentary Under-Secretary of State, DExEU, for appearing before us on 23 January 2018. In addition, we heard evidence in London from Dr Graham Gudgin, Economic Advisor, Policy Exchange; Professor John Garry, Queen's University Belfast; representatives of Nestlé, the Freight Transport Association and the Food and Drink Federation; and officials from the Swiss and Norwegian customs authorities. The Committee also held a highly informative three-day visit to Ireland and Northern Ireland, in the course of which we met the Irish Tánaiste, Simon Coveney TD; representatives of the DUP and Sinn Féin; Irish parliamentarians; the Police Service of Northern Ireland; business (including small business), trade union and consumer group representatives; cross-border agencies; representatives of the farming, energy and healthcare sectors; academic and economic experts; and local authority representatives.
3. As well as holding meetings in Dublin and Belfast, the Committee also visited Derry/Londonderry and the surrounding border region, where, as well as visiting the border itself, we met the Chief Executives of Derry City and Strabane District Council and Donegal County Council, Londonderry Chamber of Commerce, and visited local businesses (O'Neill's and LacPatrick, both located close to the border with significant cross-border logistical operations and supply chains), the Loughs Agency and Altnagelvin Hospital.

4. This letter summarises the evidence put to us and our conclusions (in bold text). We would be grateful for a response to our findings and substantive conclusions by **27 March 2018**.

*The political challenge of Brexit for Northern Ireland, Ireland and UK-Irish relations*

5. Our work has underlined the politically charged and multi-layered nature of the debate over the impact of Brexit on UK-Irish relations, on Ireland and Northern Ireland. First, as in the UK itself, the question of Brexit itself is divisive. Yet in Northern Ireland this is magnified by the fact that a majority of voters in Northern Ireland voted to remain in the EU, and because, as Professor John Garry pointed out, the divide between leavers and remainers was, at least to some extent, mapped on to the unionist/nationalist divide. As a result, the question of the impact of Brexit on UK-Irish relations has become entangled with the constitutional question of the status of Northern Ireland. As Dr Katy Hayward, Queen's University Belfast told us, this has aggravated existing political divisions, which means that the space for identifying solutions which all sides can accept is extremely narrow.
6. This political challenge is exacerbated by the fact that the power-sharing institutions have been in abeyance for over a year, and, as both the DUP and Sinn Féin told us, Brexit is itself one of the fissures between the parties. Sinn Féin's John O'Dowd MLA said that "even if the Executive is restored, there will not be a unified voice coming out of the Executive in relation to Brexit. We and the DUP are in completely different places as regards this matter." He thought that the DUP's relationship supporting the Government at Westminster made this even harder. The DUP's Sammy Wilson MP did not think that common ground could be found on Brexit, because "one of the reasons why we do not have an Administration up and running is that one of the very hard decisions that Sinn Féin would have to make would be to play a part in trying to ensure that the negotiations on leaving the EU were progressed."
7. Our witnesses also reflected on the fact that the Brexit negotiations had placed relations between the UK and Irish Governments under strain, in particular in the build-up to the December Joint Agreement on progress made during phase I of the negotiations. Mr Walker acknowledged that "there are times—we saw this in the run-up to the joint report—when there are challenges for them, but the depth of those relationships means that we find ways through that. That is down to an investment of time and effort over decades to improve British-Irish relations." We also welcome your own observation that "the relationships are deeper and stronger than what you may see through the prism of Brexit, and they need to continue for the sake of all people on the island of Ireland, irrespective of whether they are in Northern Ireland or the Republic."
8. **The Belfast/Good Friday Agreement established a delicate equilibrium, encapsulated in the power-sharing institutions, and the mechanisms for enhanced North-South and East-West cooperation. It is imperative that Brexit does not weaken this equilibrium or the commitment and confidence of both unionist and nationalist communities in the political process. Political stability in Northern Ireland must not be allowed to become 'collateral damage' of Brexit. We welcome your statement to the House of Commons on 20 February reasserting the Government's commitment to upholding the**

**Belfast/Good Friday Agreement. We call on the Government to continue to stress its unreserved commitment to upholding the Agreement in its entirety. All sides, including the UK and Irish Governments, the EU, and the political parties in Northern Ireland, must work together to ensure that solutions are identified that all sides can accept.**

*The economic implications of Brexit for Northern Ireland and Ireland*

9. Our first report drew attention to the serious economic consequences of Brexit for Ireland, North and South. Fifteen months on, we sought to test this conclusion by asking each of our witnesses what opportunities and concerns they foresaw arising from Brexit.
10. Some opportunities were identified. In relation to Northern Ireland, some witnesses pointed to the ability of its industries to meet latent demand in the UK market post-Brexit. It was argued that there were particular opportunities in the agri-food sector. They also stressed the opportunities (along with the rest of the UK) to take advantage of potential future access to third country markets. Others pointed to the short-term benefits to exporters and businesses close to the border of exchange rate fluctuations, or saw opportunities for Northern Ireland, with the right outcome from the Brexit negotiations, to take advantage of its economic relationships both with the rest of the UK and with the Republic of Ireland. Tina McKenzie, representing the Federation of Small Businesses, suggested that Brexit would also mean that the taxpayers of Great Britain would have to accept a greater responsibility to Northern Ireland.
11. For Ireland, we note that opportunities have been identified in terms of its attractiveness as a destination for Foreign Direct Investment as an English-speaking member of the EU, for diversification of trade relationships away from dependence on the UK market towards remaining EU partners, and as a potential destination for the relocation of jobs in sectors such as the financial services industry which wish to retain a presence in the EU Single Market.
12. But the majority view from witnesses, on both sides of the border and across a variety of sectors, remains that the disadvantages of Brexit, both for Ireland and Northern Ireland, outweigh the advantages. As Danny McCoy, Chief Executive of Ibec told us, while there are opportunities, “they are really loss mitigators. The totality here is a negative-sum game. There is no upside for Ireland in Britain leaving the European Union.” Likewise, Wesley Aston, Chief Executive of the Ulster Farmers’ Union, saw more downsides than opportunities arising from Brexit.
13. Witnesses focused on the potentially detrimental impact of Brexit on complex cross-border supply chains, on the availability of labour, on the potential business costs resulting from a loss of regulatory alignment, and on the impact of tariff and non-tariff barriers upon the ability to trade easily both North-South and East-West. Tina McKenzie highlighted the challenge of Brexit for the 6,000 small businesses that she represented, many of whom were considering investing in the Republic of Ireland rather than in Northern Ireland because of the uncertainty over Brexit. In the view of many of our witnesses, the ideal solution was for the UK to remain in the Single Market and customs union. By contrast, Sammy Wilson MP argued that this would constitute “a betrayal of the referendum result.”

14. The potential negative impact was most apparent in the border regions. During our visit to Derry/Londonderry, John Kelpie, Chief Executive of Derry City and Strabane District Council, Seamus Neely, Chief Executive, Donegal County Council, and Jennifer McKeever, President of the Londonderry Chamber of Commerce, shared their concerns about the potential economic impact on the North West City Region (the border region in and around Derry/ Londonderry).
15. Mr Kelpie cited the way in which the two Councils had cooperated more effectively since 2015, in recognition of the need to work together to enable the region to fulfil its potential. This work enjoyed cross-party support on both sides of the border. On the Northern side of the border, prior to the Brexit decision they anticipated creating “between 13,000 and 15,000 new jobs as a result of this partnership; that our GVA will increase by approximately £500 million; that our tax-take to Treasury will increase by approximately £100 million; and that we will generate an additional £200 million of wages into the local economy through the range of interconnected projects that our strategic partnership has identified as the way forward ... Our analysis of the impact of Brexit on those ... suggests that there would be significant job loss in this region and that right along the border corridor this region would suffer disproportionately in that loss. It is projected that a quarter of the entirety of the job loss along the border corridor would be in this city region as a result of that.”
16. Mr Neely noted that the Donegal County Council and Derry City & Strabane District Council areas comprise just over 300,000 people, and as a city region serves a further 350,000 people beyond those council boundaries: “In some respects, this is a single functional economic area with a huge amount of interconnectedness”. Prior to the referendum, Donegal County Council had estimated that they would be able to add 15,000 jobs to the economy by 2030. However, their models suggested that, under a hard Brexit scenario, they would lose around 7,500 potential jobs up to 2030. He said that Brexit had already had a practical impact on the region by slowing down or delaying investment decisions on both sides of the border. Mr Kelpie agreed, citing two major FDI projects that were either stalled or lost following the Brexit referendum.
17. **A number of witnesses on both sides of the border foresaw economic opportunities arising from Brexit, in particular in the Northern Ireland context, to meet latent UK demand. However, the view of the majority of our witnesses remains that the disadvantages of Brexit far outweighed the opportunities, both for Northern Ireland and Ireland. Witnesses emphasised the negative impact of both tariff and, in particular, non-tariff barriers to effective trade relationships, both North-South and East-West. Brexit is likely to have a particularly damaging impact on the border regions, which anticipate slower future growth as a result. Uncertainty arising from Brexit has already had a negative impact on investment decisions in these regions.**
18. **Given that border regions already face a significant challenge in increasing historically lower levels of growth, what steps will the Government take to mitigate the effect on those communities that will be most negatively affected by Brexit? How will you work with the Irish Government and the EU to ensure that the economies of the border regions, in particular, do not suffer as a result of Brexit?**

*The scale and nature of cross-border trade and economic activity*

19. We asked our witnesses to give us a sense of the practicalities of cross-border economic activity and movement of goods, both across the Irish land border and by sea between the two islands. Dame Fiona Kendrick, Chairman, Nestlé UK and Ireland, said that they moved 22,000 tonnes of product into the Republic of Ireland each year, with 2,500 lorries crossing the Irish Sea to the port of Dublin each year. More than 80% of its products sold in the Republic of Ireland are manufactured in the UK. She told us that any delays in the movement of goods would disrupt the company's just-in-time model.
20. Leigh Pomlett, Executive Director of the CEVA Group and President of the Freight Transport Association, told us that there were 200,000 movements a year across the Irish border. He continued: "That is quite a big number, but the interesting thing about that border is that there are so many crossing points. There are more crossing points along the Irish [land] border than there are in Europe. It is like a colander. To manage that would be hugely complex. For the traffic flowing between the UK and the island of Ireland, you are looking at 400,000 movements per annum of roll-on roll-off heavy goods vehicles. It is quite a lot. It is about 10% of what goes under or over the channel, to give you some sense of the metrics we are talking about. At the moment it is seamless."
21. Mr Pomlett said that "if we have border controls that stop or slow the flow of material that will be a major concern, particularly when you are talking about just-in-time industries or perishable goods. Do not underestimate the problems of slowing vehicles down or checking them. Now it takes two minutes; it could take 20 or more. The implications of that are very significant for our ports and industry." In addition, workers in the industry will need to be trained in managing cross-border traffic and customs in a very short period of time.
22. Mr Pomlett also noted that use of the British 'land bridge' by companies trading between Ireland and the rest of the EU afforded a significant time saving, compared to a sea crossing direct from Dublin to Zeebrugge. Aidan Flynn, General Manager of the Freight Transport Association Ireland, said that while the journey could take 18 hours via the land bridge, it would take 38 hours via a direct sea crossing. This model could be disrupted if multiple checks were required in the movements of goods from Ireland to continental Europe.
23. James Hookham, Deputy Chief Executive, Freight Transport Association, warned that there was insufficient space to conduct customs checks at ports such as Holyhead or Liverpool handling the movement of goods by sea between Britain and Ireland. This in turn would lead to congestion and delays.
24. A number of our witnesses noted that, in numerical terms, the volume of trade between Northern Ireland and Great Britain, and between the Republic of Ireland and Britain, is more significant than cross-border trade on the island of Ireland itself. The UK Government's August 2017 position paper on Northern Ireland and Ireland states that, in 2015, there were £10.7 billion of external sales of goods from Northern Ireland to Great Britain (22% of all Northern Ireland's sales in goods by value). In 2016, Great Britain exported goods worth £13.6 billion to Ireland, and imported £9.1 billion. Sammy Wilson MP argued that such statistics demonstrated that it was in all sides' interests to ensure

that trade links between the two islands, as well as on the island of Ireland, are not undermined as a result of Brexit.

25. Nevertheless, movements on the island of Ireland, while smaller in relative terms, remain significant. The UK Government's position paper states that Ireland is Northern Ireland's biggest external trading partner, exporting £2.7 billion of goods to Ireland (6% of all Northern Ireland's sales in goods by value and 36% of its total goods exports). Aidan Flynn said that there were 30 million vehicle crossings on the main cross-border routes between Northern Ireland and the Republic of Ireland each year. There are 2 million HGV crossings and 2.6 million light goods vehicle crossings, which is approximately 12,000 vehicles a day. Including 11 national routes, there are 275 crossing points in total – more than along the entirety of the EU's eastern frontier from Finland to Bulgaria.
26. This is particularly evident in the agri-food sector. Joe Healy told us that 400,000 lambs cross from north to south for slaughter each year, with a similar number of pigs going in the opposite direction. Eight hundred million litres of milk cross the border for further processing. Wesley Aston confirmed that 30% of milk from Northern Ireland is processed across the border, while 40% of its lambs cross the border.
27. Our visits to O'Neill's in Strabane and LacPatrick in Artigarvan and the surrounding border region brought home to us both the invisibility of the border and the complexity of cross-border supply chains on the island of Ireland, wherein many goods cross the border multiple times during the production process. Eoin O'Neill, President, British-Irish Chamber of Commerce, cited Diageo, which brews its products in Ireland, cans them in Northern Ireland, and then transports them via Dublin and Holyhead into the UK. Joe Healy said that milk crossed the border five times in the production process of Bailey's cream liqueur. While many companies are taking steps to mitigate these issues, for cross-border industries more generally, any imposition of tariff or non-tariff barriers would complicate these supply chains considerably, possibly to the point of making existing supply chains unviable.
28. **We note that Great Britain is the largest market for trade both for Northern Ireland and the Republic of Ireland. It is therefore imperative for businesses, employees and consumers in Northern Ireland, Ireland and Great Britain alike that there are no new impediments to trade across the Irish Sea as a result of Brexit.**
29. **While smaller in volume than trade across the Irish Sea, cross-border trade and movement of goods on the island of Ireland, in particular (but by no means exclusively) in the agri-food sector, is also significant. We were struck from our conversations with business representatives across a range of sectors by the complexity of the cross-border supply chains, which may become unviable if new tariff or non-tariff barriers are erected. North-South trade links will not be able to prosper at the expense of East-West ties, and vice versa. A Brexit outcome which hinders the complex, interdependent and interconnected trade links and supply chains across these islands would have serious economic consequences.**

*The wider impact on cross-border cooperation*

30. We also reviewed the wider impact of Brexit on cross-border cooperation. Mr Kelpie told us that, from the point of view of Derry City and Strabane District Council, “the invisibility of the border over the past two decades has dramatically improved community development on both sides of the border and has facilitated local and national trade both sides of the border, not to mention copper-fastening the peace agreement. The prospect of this invisible border suddenly becoming visible and tangible again has caused great concern and great fear, both economically and socially. ... There is a real, palpable sense of potentially returning to a state of isolation and peripherality. That is a central issue that we have dealt with in this part of north-west Ireland—the north-western part of the United Kingdom and the north-western part of Northern Ireland—over the decades.” Mr Neely agreed that, from Donegal County Council’s point of view, there was “a huge amount of interconnectedness not only across the public services but across the employee base for private companies on either side of the border and across many other services such as education and health.”

31. We heard evidence about a number of specific examples of cross-border cooperation.

#### Police and security cooperation

32. The Chief Constable of the Police Service of Northern Ireland, George Hamilton QPM, stressed the interdependency between Ireland and Northern Ireland with regard to criminal justice matters. He noted that there was no alternative extradition mechanism to the European Arrest Warrant between the UK and Ireland, and that a legislative replacement for this and other means of sharing information, evidence and biometric data was urgently needed. We also note in this context the decision of the Irish Supreme Court in *Minister for Justice v O’Connor* not to surrender an Irish citizen who was the subject of a UK-issued European Arrest Warrant, and to refer the case to the CJEU.

33. Chief Constable Hamilton was concerned that he was still having to make the same arguments as he had immediately after the referendum, and the issue was no nearer resolution: “Our concern, without moving to a panic stage, is that the clock is ticking and we are not that far away now from when we are going to need these instruments and pieces of legislation in place. Other than us flagging up what the issues are and asking for alternative arrangements to be put in place, we feel that we are treading water a little.” He was also concerned about the resource implications of any requirement for enhanced policing of the border. He pointed out that that the PSNI now had fewer than 7,000 officers compared to 13,000, as well as several thousand soldiers, at the height of the Troubles.

34. Detective Chief Superintendent Tim Mairs agreed that “from our perspective, 13 months is not a lot of time in which to prepare or plan. If there are resourcing implications for policing in supporting partner agencies, 13 months with a diminishing budget is just not achievable. In a worst-case scenario, where we are looking at day 1 planning, frankly, we are in difficulties.” Although the process was challenging, he thought that there was nevertheless an opportunity to construct a strong bilateral legislative framework between the two jurisdictions.

35. **We are concerned by the Chief Constable of the Police Service of Northern Ireland's evidence that there is no more clarity today on how the Government will address police and security issues than there was in the immediate aftermath of the referendum. How does the Government plan to manage UK-Irish extradition and sharing of information, evidence and biometric data post-Brexit? What consultation has the Government had with the Irish Government (or the EU 27) on this matter? On what timetable will these issues be resolved?**

*Healthcare cooperation*

36. Dr Ann Hogan, President of the Irish Medical Organisation, expressed concern about the impact of Brexit on the 1.6 million people who live in the border area, because of the possible impact on cross-border collaboration. She cited cooperation in radiation oncology and cardiology services at Altnagelvin Hospital, which provided services to the west part of Northern Ireland and Donegal, in children's cardiac services at Crumlin Hospital in Dublin, which supports children from Northern Ireland, in GP out of hours services in border areas such as County Monaghan, and joint cross-border dermatology and ENT clinics. She was particularly concerned as some of these services had been reliant on EU funding. Dr Hogan also raised concerns about the mutual recognition of qualifications in medical professions, as well as access to and the cost of medicines, given that 65% of the medicines that come into Ireland come through the UK. While there had been reassurances that such arrangements could continue as they were, there was uncertainty about how this could be achieved in practice.
37. **We were pleased to have the opportunity to visit the impressive radiology and cancer treatment facilities at Altnagelvin Hospital, and to hear first-hand from clinicians and practitioners about the positive impact that this service has had on the lives of citizens on both sides of the border. It is imperative that such cooperation is not undermined or threatened by Brexit, but that both Governments, and the Northern Ireland Executive, remain committed to their maintenance to the benefit of their citizens.**
38. **We draw your attention to our forthcoming report on *Brexit: reciprocal healthcare*, and look forward to the Government's response to that report.**

*Energy sector cooperation*

39. Rodney Doyle, of EirGrid, the state-owned company that manages and operates the transmission grid across the island of Ireland, stressed the value for consumers on both sides of the border of the single electricity market on the island of Ireland. Mr Doyle said that there was great support from all sides for continuing with an all-island approach to the electricity sector post-Brexit, and he was therefore confident that trade in electricity would continue after Brexit. Nevertheless there was uncertainty about how that trade will be governed, and more detail was needed so as to enable stakeholders to plan effectively. Citing the example of the EU Emission Trading Scheme, he warned that "if we all went from today and promised to make no further changes, we could all move forward, but the ETS is something else; as soon as a change is made in any jurisdiction that another decides not to adopt, you have a difference in the competitive forces between the two,

which would then require an action to equalise the competitive forces to allow them to operate. ... If additional costs are introduced, that will knock on down to consumers and businesses.”

40. Mr Doyle stressed that an ideal scenario was for the UK to remain in the internal energy market, in particular given that it had played a central role in designing it. The next-best option would be to maintain the all-island approach to energy, with Northern Ireland and Ireland acting together. He said that if the UK leaves the internal energy market, a set of arrangements will be needed that are as close as possible to allow efficient trading to continue and to allow system security to be supported from country to country. Any changes to systems, processes and procedures would require two years.
41. **In its August 2017 position paper, the UK Government acknowledged the strategic importance to Northern Ireland and Ireland of maintaining affordable, secure and sustainable supplies of electricity and gas for businesses and domestic consumers, and its support for the continuation of the single electricity market on the island of Ireland, and of efficient electricity and gas interconnection between the island of Ireland and Great Britain. We welcome this acknowledgement, and draw your attention to our recent report on *Brexit: energy security*. I look forward to the Government’s response to that report, and in particular to our recommendations on the island of Ireland.**

*The December Joint Report*

42. We asked our witnesses to reflect on the provisions relating to Northern Ireland and Ireland in the December Joint Report on progress made during phase I of the negotiations. While they broadly welcomed the agreement, there was also a high level of uncertainty about its implications, and a sense that the difficult decisions had been put off. Dr Graham Gudgin said that its wording was “extremely confusing ... Exactly how that plays out is very difficult to know. Perhaps the wise thing to say is that we will not really get back to this for two or three years, by when the scene will have changed a lot.”
43. Several of our witnesses saw the Joint Report as an internally inconsistent agreement that would prove difficult to translate into a legal text. Professor John Garry called it “a bundle of contradictions. You are committing to maintaining the integrity of the United Kingdom, which is not having a sea border, you are committing to not having a north/south border and you are committing to leaving the European Union. If this was a mathematical equation, it seems quite difficult to solve.” Dr Mary C Murphy, University of Cork, noted that “the extent to which what is in this particular report can be translated into a legally binding document is preoccupying the Irish Government. Some of what is in the report shows a certain incompatibility, I would suggest, in relation to the ambition for the UK to remain outside the customs union and the single European market, and at the same time for there not to be a hard border on the island of Ireland. That incompatibility is quite challenging and problematic.” Professor Gavin Barrett, University College Dublin, described it an “impossible trilemma in that commitments have been made in three different directions. There is a commitment to Ireland in relation to there being no hard border, a commitment to the Democratic Unionist Party in relation to the trading relationship between Northern Ireland and the British mainland, and commitments that are not found in the joint report but that date from an earlier stage ... that Britain would

leave the customs union and the single market. It may be possible to reconcile those commitments technically, but not substantively.”

44. The Government remains confident that solutions will be found to deal with issues relating to Northern Ireland and Ireland in the context of a wider UK-EU deal. Some of our witnesses, such as Dr Graham Gudgin, were optimistic that many of the issues pertaining to the Irish border could be resolved in the context of an overall UK-EU Free Trade Agreement. However, more were sceptical that, given the Government’s decision to leave the Single Market and customs union, this would be possible. While some thought that, with enough imaginative thinking, it would be possible to identify bespoke arrangements taking account of the situation on the island of Ireland, others were of the view that the so-called ‘backstop’ option of “full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement” would inevitably be brought into play.

45. A number of witnesses were concerned that, because of these tensions, the Government was backtracking on the commitments it made in December. The concerns centred on the difference in interpretation between the UK and Ireland (and the EU) on the areas in which regulatory alignment will be required under the backstop option, how likely it is that the backstop option will be necessary, and what full alignment means in practice.

46. Several witnesses reflected on the comments made to us by the Secretary of State for Exiting the European Union, Rt Hon David Davis MP:

“Full alignment is really about alignment of regulatory outcomes. This relates particularly to the north-south arrangements. In the north-south arrangements ... there are half a dozen specific areas, one of which is agriculture, which is the most important. Another one is the environment, which in this context basically means waterways. Another is transport, which in this context means road and rail. In each of those areas, we would seek alignment of outcomes.”

47. Sammy Wilson MP was confident that “regulatory alignment refers to only a limited range of things—the areas laid out under the Belfast Agreement.” On the other hand, Joe Healy, President of the Irish Farmers’ Association, said:

“Minister Davis said that the joint report on the Article 50 negotiations allowed the UK the flexibility to diverge from EU rules. In our eyes, this is a totally unacceptable attempt by the UK to rewrite the December agreement and escape its commitments. ... We are very clear that Ireland and the EU cannot allow the UK off the hook. There can be no flexibility or deviation away from full alignment within the EU rules. We have to maintain full alignment within those rules. This is what we signed up to: maintaining full alignment with the rules of the internal market and the customs union to support the all-island economy.”

48. Professor Barrett noted the significant differences between the UK and Irish Government’s (and EU’s) understanding of the meaning of regulatory alignment: “The United Kingdom Government’s view, which I believe you heard ... from David Davis, was

that alignment refers to only a limited number of areas and is limited to outcomes. That would not be the Irish understanding of it. My understanding is that the Commissioner listening to the various elements of the *acquis* in a comprehensive exercise indicated that it intended to put that into the agreement.” Professor John Doyle, Dublin City University, agreed that “both Irish officials and European officials believe that it is any regulation that impacts on goods entering the customs union from an area that will be outside the customs union, which is pretty much everything.” In this context, we recall reports that the UK-EU mapping exercise has identified 142 areas of North-South cross-border activity that would potentially be affected by Brexit.

49. Paragraph 50 of the Joint Report states that “the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland.” The DUP’s Sammy Wilson MP set out the rationale behind the paragraph, stressing that, in order to “ensure that there is no economic division between Northern Ireland and the rest of the United Kingdom, there will be no customs or trade border down the Irish Sea, because ... that would separate us economically from the rest of the United Kingdom. We will not be separated either constitutionally or politically, or economically or regulatorily, from the rest of the United Kingdom.”
50. John O’Dowd MLA said that Sinn Féin did not wish to see a border up the Irish Sea: “We want to see unhindered trade between this island and Britain, because it is of economic benefit to both islands for that to happen. That does not set aside our desire to see a constitutional change, but that constitutional change does not involve us turning our back on our nearest neighbour. We want to see free movement of people, goods and services around these islands, and good working relationships across these islands.”
51. **The December Joint Report was a significant step forward in dealing with the implications of Brexit for Northern Ireland and Ireland. Nevertheless, we note the widespread view that there is at best a tension, and at worst an outright contradiction, between the commitments set out in the document that the UK will leave the Single Market and customs union, that a hard border on the island of Ireland will be avoided, and that there will be no new regulatory barriers between Northern Ireland and the rest of the UK.**
52. **While we accept that a degree of constructive ambiguity can be helpful during a negotiation, we are particularly concerned at the significant difference in interpretation between the UK Government on the one hand, and the Irish Government and the EU on the other, of the meaning of the so-called ‘backstop’ commitment to full alignment. Can you clarify the Government’s understanding of the extent to which, and in which sectors, regulatory alignment will be required under this backstop option? Is it limited to the six areas of North-South cooperation that the Secretary of State has identified, or does it extend to the 142 (or more) areas of cross-border activity identified by the Government and EU in their mapping exercise? Will you share the findings of this mapping exercise, and details of the 142 (or more) areas of cross-border activity that could be affected by Brexit that have been identified?**

53. **Given the ongoing work to convert the Joint Report into a legal text, and the imminent publication of the European Commission's first draft text, such significant differences of interpretation need to be settled now. If they are not, not only will the fundamental issues relating to Brexit and the Irish border remain unresolved, but there is a danger that mutual trust between the negotiating parties will be undermined at a crucial stage of the Brexit negotiations.**
54. **At the same time, we are encouraged by the evidence we heard that all sides, including the UK and Irish Governments, the EU, and both the unionist and nationalist political parties in Northern Ireland, are committed to ensuring that there is no hard border on the island of Ireland. We also welcome paragraph 50 of the Joint Agreement, which acknowledges the political and economic imperative of ensuring that there are no regulatory barriers between Northern Ireland and the rest of the UK. The avoidance of a hard border on the island of Ireland cannot be at the expense of new barriers between Northern Ireland and the rest of the UK.**
55. **The challenge now is for all parties to work together to translate apparently contradictory political commitments into a feasible solution which will satisfy all sides.**

*The Government's position paper on Northern Ireland and Ireland, and 'technological solutions'*

56. The answer that is frequently put forward to solve these apparent inconsistencies are so-called technological solutions at the Irish land border. We heard a range of views on the feasibility of such solutions, reflecting in particular on the UK Government's August 2017 position paper on Northern Ireland and Ireland, and its related proposals for trusted trader schemes and exemptions for small traders.
57. Some of our witnesses were optimistic that a solution was feasible. Sammy Wilson MP noted that there were already different VAT and excise rates affecting UK-Irish trade without physical checks to collect the revenue. He also noted that the vast majority of trade from outside the customs union to the UK is registered electronically, with only 4% requiring physical checks or deeper documentary checks. He suggested that the EU's proposed reforms to its customs code allowed for customs checks to be based on self-assessment. He thought that this, allied to "some imagination and political will" for local traders working across the border, and inspection areas away from the border, could solve the problem. He and Graham Gudgin, who also thought that technological solutions were feasible, both criticised the Irish Government for moving away from its previous efforts to work in concert with the UK Government to develop solutions to these issues, and Mr Wilson stated that "if we are going to have a frictionless border, there must be co-operation and working on both sides."
58. Professor Neil Gibson, Chief Economist, EY, said that the pace of technological developments should not be underestimated, and that many of his corporate clients already had sophisticated tracking software. He noted that large firms had the resources to invest in software, although he conceded that there were greater challenges for smaller firms. He observed that "a number of people have said there is no possible technological

way, but, if you drill a bit further, they have not actually thought it through; they just feel uncomfortable with the concept. ... It is at least incumbent on us ... to make every effort, which requires close collaboration between Governments, to exhaust completely any possibility for technological solutions. That means looking line by line at the problem and the solution, and at whether technology can help us.”

59. Others were more sceptical. Wesley Aston, of the Ulster Farmers’ Union, said that EU colleagues had made it clear that technological solutions would not be sufficient to meet their concerns about preventing products manufactured outside the UK and EU with lower standards from being transported through Northern Ireland into Ireland and potentially on into the rest of the EU.
60. Many questioned the feasibility of implementing solutions in the time available. Aidan Flynn noted that there were at present only 130 Authorised Economic Operator registered companies in Ireland, because not many of them traded with non-EU countries. He also noted that there could be 20-30 different types of product on the back of a container, truck or lorry, which meant that it would be difficult to avoid physical checks entirely. Danny McCoy said that it was unreasonable to expect businesses to expend resources on “what at this point is ‘hit and hope’ that there might be a technological solution ... to be asked to invest in technical solutions that are uncalibrated is, frankly, a nonsense.” Several witnesses pointed out that the logistics would be particularly challenging for SMEs.
61. Sinn Féin’s John O’Dowd MLA stressed the economic costs of any customs barriers, whatever form they took. He cited an international company with a plant in Belfast which had estimated that it would need to spend from £11-15 million to cover the costs of being a trusted trader under the Government’s proposals.
62. Jennifer McKeever noted that some local traders crossed the border a dozen times a day. She was also concerned that any physical infrastructure such as cameras would immediately become a security risk. She said that even the light touch model on the Norwegian-Swedish border was still a border, with a system of checks. She was also concerned about the lack of detail as to what such technological solutions would actually entail. John Kelpie, Chief Executive of Derry and Strabane District Council said that such solutions came from the wrong starting point of an assumption that there was not going to be regulatory alignment. From the point of view of the North West City Region on either side of the border in and near Derry/Londonderry, he said that there needed to be regulatory alignment for the region to function effectively. He said that such an arrangement would not be countenanced in a city region in Britain.
63. Professor Duncan Morrow, University of Ulster, said that, while technological solutions may be technically feasible, it would be difficult to make them work in the context of a contested border, a contentious policy decision in Brexit, and “where people are looking to subvert or create opportunities for their own business growth or to undertake criminal enterprise ... The geography of the referendum is that every constituency touching the border is anti-Brexit, and I have the feeling that technology that is seen as invasive in any manner will not be voluntarily complied with at a community or social level ... To ignore that is not to be real about what life is like in south Armagh, on the border with Fermanagh, in Derry or in the 275 border crossings that everyone locally knows about ...

I am absolutely sure there are elements of society that would see it as their business to subvert it.”

64. While they were careful not to overplay the risk, the PSNI agreed that any reinforcement of the border would be unhelpful from a policing and security perspective, and would increase the threat and risk. They warned that “a lot of hard infrastructure around the border would create opportunities for those who wish to attack the police and any representation of the state.”
65. We asked the Swiss and Norwegian customs authorities about the experience on their borders, and whether their experience was transferable to the Irish border situation. We were told that, in contrast to the porous nature of the Irish land border, all commercial traffic between Norway and Sweden needs to use one of just 11 crossings served by a customs office. While the process is smooth and efficient, all trucks have to stop, present for formalities and be cleared. Swiss authorities said that they had 120 official border crossings (all with EU or EEA states), and at significant crossings operated a highly automated system whereby trucks stopped for 90 seconds, during which clearance was completed. They used number plate readers and mobile controls that could move on both sides of the borders, and there was an arrangement between the Swiss and German authorities for common controls. While they had some specific rules for local trade crossing the border, that was becoming more difficult under the new EU customs code.
66. In terms of technological developments, we were told that Norway was rolling out licence plate recognition on all border crossings, and was piloting a project later in the year with the aim of allowing for the automatic passing of trucks at the border, that would involve collecting in advance information on goods being transported, the means of transport and the ID of the driver. Norwegian officials stressed that the success of the project was dependent on cooperation from the Swedish authorities, and would be challenging to implement in the short term. In Switzerland, the Swiss Parliament has voted in favour of a transformation project for its customs operations, including digitisation and obtaining information in advance to allow a smooth flow of traffic. Swiss officials too stressed the long-term nature of these developments, and estimated that this project could be completed over a period of approximately nine years.
67. Leigh Pomlett told us that, while technological solutions had a role to play, “I currently cannot envisage us being able to deliver in the timescale that we are talking about. The technology that exists for Norway/Sweden is fine, but we are talking about volumes that blow that apart. Their technological solutions might have some capability, but I would not necessarily assume that at this stage because we are talking about vast volumes here, whereas in Norway and Sweden we are not. How do you cope with the sheer volume of transactions crossing these borders? Technology would have to play its part. My concern would be the sheer time that it would take to implement.” He said that, while securing Authorised Economic Operator Status would be helpful, “there will be hundreds of thousands of businesses wanting to get that recognition in a very short space of time. Today it takes about a year or more to get it, but when you have tens of thousands of companies looking to get that recognition very quickly, I am trying to communicate that that is going to take some managing.”

68. **Robin Walker MP** told us that the **Government** did not envisage any physical infrastructure at the border, and instead planned to use technology to facilitate the frictionless movement of goods. While we welcome the **Government's** commitment to avoid any physical infrastructure at the border, this begs the question of what the alternative would be, and how feasible it would be.
69. The evidence we have received suggests that there is potential in the longer term to develop technological solutions, not only at the **UK-Irish** border, but at all **UK-EU** borders, so as to streamline the cross-border movement of goods. We therefore do not dismiss the **Government's** proposals out of hand. Indeed, it is incumbent on all sides, including the **UK Government**, the **Irish Government** and the **EU**, to examine whether technology can help mitigate the issues that **Brexit** gives rise to, in the context of the **Irish border** in particular, but also more widely.
70. Nevertheless, there is a need for realism. We note that, while customs processes have been streamlined and made more efficient, the **EU** external border, for instance with **Switzerland** and **Norway**, retains a physical manifestation. The evidence we received from **Swiss** and **Norwegian** customs authorities indicates that many technological developments are a long-term aspiration. We therefore see little prospect that the technology required entirely to resolve the **Irish border** issue could become operational under the timetable for **Brexit** currently envisaged. Any new declaration requirements would create costs for businesses, and, if applied to them, would be particularly burdensome for **SMEs**. In any case, such solutions can only mitigate, not eliminate, the system of controls that will be necessary if the **UK** leaves the **Single Market** and customs union.
71. There is also a distinction between identifying solutions that are theoretically possible and applying them to a **300-mile** border with hundreds of formal and informal crossings, and the existence of which is politically divisive. Any physical infrastructure at the border would be politically contentious and, in the view of the **PSNI**, a security risk.
72. Thus, notwithstanding the proposals set out in the **Government's** position paper, and reiterated by **Mr Walker**, we remain concerned at the lack of detail as to how technological solutions would work, and the lack of time available to implement them. We also doubt, on the basis of the **Swiss** experience, that such solutions would be acceptable to the **EU**. We therefore conclude that, while proposals for technological solutions, trusted trader schemes and small firm exemptions may be helpful by way of mitigation in the long term, they can only ever be a partial solution to the issues raised by **Brexit**. A fundamental solution is urgently required, but, given that the **Government** has ruled out continued membership of the **Single Market** and customs union, it is difficult to see what that solution would be.

73. Two areas where our witnesses felt more reassured were the retention of the rights of British and Irish citizens under the Common Travel Area, and EU funding. Gina McIntyre, Chief Executive of the Special EU Programmes Body, highlighted the transformative impact that PEACE and Interreg funding had had on communities on both sides of the border. She welcomed assurances of continued support from the UK and Irish Government, as well as from the European Commission, which “sees our PEACE programme as one of the jewels in its crown and has given us unconditional support throughout this whole process.” The commitment in the Joint Agreement to “look favourably at continuation of the programmes and indeed ensure the programmes were complete were excellent and have been a positive boost to this region and the people involved in the programmes.” She also noted that the Commission had subsequently stated that it wished to see both PEACE and Interreg funding provision reflected in the next Multiannual Financial Framework budget: “from our point of view, this is great news. It means that these programmes will be continued and people can still access them, whereas we thought there was a cut-off date of March 2019.” Nevertheless, those running projects still had concerns about employment issues, the impact of regulatory divergence and the impact on their future work. More broadly, a number of witnesses highlighted uncertainty about the future of post-Brexit agricultural funding for Northern Ireland, beyond the Government’s commitment to honour funding up to the end of this Parliament.
74. Similarly, our witnesses were, in general, reassured that the rights of British and Irish citizens under the Common Travel Area would be protected post-Brexit—although Ruth Taillon, Director of the Centre for Cross-Border Studies, said that there remained uncertainty about whether the right of citizens of Northern Ireland to claim Irish (and therefore EU) citizenship would extend to such practical manifestations as healthcare entitlements. She feared that it would only be “after Brexit when people really find that the departments do not know what their entitlements should be. As much as possible must be written down and made legally binding and very explicit in the withdrawal treaty”. Sinn Féin’s John O’Dowd MLA raised concerns about the protection of citizens’ rights and access to the Court of Justice of the European Union post-Brexit, and questioned how the 600-700,000 people with Irish passports (and therefore EU citizens) would be represented in the EU structures after Brexit.
75. **We welcome the progress that has been made in negotiations so far to ensure that the rights of British and Irish citizens under the Common Travel Area are maintained post-Brexit, and that EU funding remains available for cross-border projects. Nevertheless, there remains uncertainty about how these issues will be practically resolved. We therefore urge the Government, in concert with the EU negotiators, to seek to bring legal clarity to these issues as soon as possible.**

### *Conclusion*

76. **The December Joint Report was a welcome step towards identifying solutions to some of the issues that Brexit raises for Northern Ireland, Ireland and UK-Irish relations. Yet the inherent tensions within the Joint Report are still to be resolved. The continued lack of detail and clarity about how such issues as the cross-border movement of goods and police and security cooperation will be affected by Brexit is a widespread and mounting concern.**

77. This in turn is creating uncertainty for businesses, employees, communities, and service providers including the police, energy providers and healthcare professionals. We were particularly struck by the concerns of those living and working at or near the border.
78. Brexit has also heightened political tensions and divisions, in Northern Ireland, between North and South, and between the UK and Irish Governments. These should not, however, be overstated: there is much common ground, notably the wish to avoid the imposition of barriers to trade and to maintain cross-border cooperation both North-South and East-West. In the febrile atmosphere of the Brexit negotiations, there is an overriding need for cool heads, to identify solutions that all sides can accept.
79. We reiterate the conclusion of our first report: closer UK-Irish relations and stability in Northern Ireland are too important to be put at risk, as collateral damage of the Brexit decision. In an era of blossoming bilateral relationships, after long years of mistrust and misunderstanding, we urge the Government to be sensitive to the implications of its actions for the people and communities of Ireland, North and South. Anything less would diminish the efforts of all those who have worked so hard for peace and good relations across these islands.

*Yours sincerely,*

*Tim Boswell*

Lord Boswell of Aynho  
Chairman of the European Union Committee