

# THE PROTOCOL:

## STATE OF PLAY



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*Negotiations over the outstanding issues regarding the [Protocol on Ireland/Northern Ireland](#) (the Protocol) continue between the EU and UK. Whilst both sides have welcomed the compromises of their counterparts, an agreement is yet to be reached. The most recent meeting on the matter took place on Thursday, 13, January 2021. This paper assesses the current state of play with respect to the talks, the latest international developments as well as evolving unionist perspectives on the Protocol.*

### Talks on the Protocol

Talks have been further complicated by the recent resignation of Lord Frost from his role as Minister of State at the Cabinet Office. On the night of Saturday, 18 December 2021, Lord David Frost announced his departure with immediate effect. Having held the post since Monday, 1 March 2021, he was the top UK Government official responsible for the implementation of the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland (the Protocol). His resignation letter to the Prime Minister cited his concerns regarding the Government's handling of the COVID-19 pandemic as the reason for his departure. However, his letter also raised concerns over the "direction of travel" with respect to the UK's post-Brexit future. He subsequently denied that he has ever disagreed with the Prime Minister on Brexit policy.

On Sunday, 19 December 2021, The UK Government announced that the Foreign Secretary, Liz Truss MP would be assuming Lord Frost's cabinet responsibilities. Both the EU and UK had previously agreed to resume talks on the Protocol's implementation after the Christmas break. However, on Tuesday, 21 December 2021, both Secretary Truss and Vice-President Maroš Šefčovič spoke over the phone about the matter. On Thursday, 30 December 2021, Vice-President Šefčovič told the German news outlet, *Der Spiegel*, that Lord Frost and the UK Government had breached great trust over the Protocol through its insistence that the threshold to trigger Article 16 has been reached. The first meeting between the Vice-President and the Foreign Secretary, however, suggests a different atmosphere. A [joint statement](#) published by the European Commission and the Foreign,

Commonwealth and Development Office talked of a “cordial atmosphere” and a shared desire for a positive relationship. Looking forward, he said that he still believes that he and Secretary Truss can work together pragmatically to solve outstanding issues.

## Irish and International Perspectives

Ireland is one of the EU Member States most keen to see a resolution to the outstanding issues surrounding the Protocol. There has been an intensification of contact between the Irish and UK Governments on this matter. On Friday, 19 November 2021, the 36th summit of the British-Irish Council took place in Cardiff, at which Taoiseach Micheál Martin called for “a turning point” in EU-UK relations. On Thursday, 2 December 2021, Minister for Foreign Affairs Simon Coveney met with both Lord Frost and Northern Ireland Secretary Brandon Lewis in London. Minister Coveney expressed his hope that a deal would be reached by the EU and UK. In an [interview](#) with *The Financial Times* on Thursday, December 2021, he later went on to stress the urgency to find a deal before March 2022 in order to prevent the Protocol becoming a topic of debate in the May Northern Irish Assembly elections.

Meanwhile on the international front, on Wednesday, 1 December 2021, it was reported in several press outlets in Washington D.C. that the Biden Administration is hesitant to remove its country’s Trump-era ‘Section 232’ tariffs on UK steel and aluminium produce.<sup>123</sup> ‘Section 232’ tariffs were invoked by the Trump Administration in the interest of US

targeted at all 28 EU Member States in 2018, however the EU-27 successfully negotiated an end to these tariffs on Saturday, 30 October 2021. It is believed that the Biden Administration is hesitant to remove the tariffs on the UK out of concern about their approach to resolving outstanding issues with the Protocol and their threats to trigger Article 16 of the Protocol. The UK Minister of State for Trade has dismissed the claims about the delay as the creation of a “false narrative” about Brexit. In her [address to the IIEA](#) on Wednesday, 12 January 2022, US Trade Representative, Ambassador Katherine Tai, emphasised the importance of the EU and UK finding a solution that is “durable and maintains the peace in Northern Ireland” and added that the US will review the removal of their UK steel and aluminium tariffs “when the time is right”.

## Unionism and the Protocol

Ever since the Protocol entered into force in January 2021, it has been largely met with vehement opposition from political unionism in Northern Ireland. Recent developments, however, seem to suggest that some unionists do see benefits in the Protocol, or at least might be willing to ultimately accept its existence if solutions to outstanding issues can be found.

In October 2021, the University of Liverpool commissioned a [survey](#) of 1000 people across every council area in Northern Ireland. The survey attempted to identify the level of support for the Protocol within local communities as well as the degree of support that exists for the UK and EU’s respective approaches to solving outstanding

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1 <https://www.ft.com/content/608e5634-9894-449d-9a09-4f903f0e7169>

2 <https://www.independent.ie/news/the-us-delays-deal-to-remove-tariffs-on-uk-steel-due-to-concerns-regarding-northern-ireland-protocol-41109498.html>

3 <https://news.sky.com/story/us-intervenes-in-uks-post-brexite-northern-ireland-trade-spat-with-eu-12484251>

issues. The findings of the survey were published in November 2021. Most notably, Professor Peter Shirlow, Director of the University's Institute for Irish Studies, submitted that there is evidence of inter-community consensus around the Protocol. Furthermore, he argues that consent for it can be achieved if the ongoing discussions offer practical alternative solutions to the outstanding issues.

With respect to the ongoing discussions on the Protocol, there are a number of issues where unionists agreed with nationalists and others. Almost 72% of unionists, 80.7% of nationalists and 66.5% of others, for example, all agreed that there should be a practical resolution and more frictionless goods movement vis-à-vis both the UK Internal Market and the EU Single Market. On the issue of SPS checks in particular, (when removing those who neither agreed or disagreed, and those who did not know) 55.7% of unionists find the EU's most recent proposals to be acceptable. Just under 72% of unionists strongly agree that the EU's proposals on pharmaceuticals is a positive development. There is no majority support within the pro-union community to reject the EU's package of bespoke arrangements or to reject the process of solution seeking moving forward as a whole.

More recently, similar findings were laid out in a [study](#) conducted by the *UK in a Changing Europe* think tank. They found that 52% of the population of Northern Ireland believe that the Protocol is, on balance, "a good thing" for Northern Ireland. The same amount of poll participants agreed that the Protocol provides appropriate means of managing the effects of Brexit on Northern Ireland. Together, both studies indicate that there might be support for the Protocol and there is an appetite to make the deal

work. This could prove to become a key consideration in the May Assembly elections in Northern Ireland. As Alliance Party Deputy leader Stephen Farry MP acknowledged in his address to the IIEA on Friday, 7 January 2022, unless the outstanding issues are resolved soon, the elections risk becoming a *de facto* referendum on the Protocol.

The fact that unionist recalcitrance to the Protocol is not a black and white issue is not just evident in unionist communities, but also within political unionism too. Whilst numerous unionist politicians still speak out against the Protocol in its current format, some have begun to adjust their rhetoric to take aim at specific aspects of the Protocol which they now argue should be amended, as opposed to scrapped in its entirety. Most notably, the Democratic Unionist Party (DUP) and its leader Sir Jeffrey Donaldson have refocused their opposition on the "Irish Sea border" as opposed to the Protocol itself. This stands in stark contrast to their *Free Us from the Protocol* statement of February 2021 in which they argued the Protocol was wholly untenable, a statement which has since been removed from their website. The DUP have also not proceeded with their threat to withdraw from the Northern Ireland Executive over the Protocol. Sir Jeffrey Donaldson has denied that the DUP has back-tracked on the matter.

Whilst the Ulster Unionist Party (UUP) also continue to oppose the Protocol, its leader, Doug Beattie, conceded in a [September 2021](#) interview with The Irish News that "some form of the agreement is here to stay". He went on to argue for the creation of a cross border mechanism or body to manage issues arising from the Protocol. Such a body, he suggested would complement the already existing North-South cooperation infrastructure which already exists as part

of the Belfast (Good Friday) Agreement. That said, he subsequently told UUP party conference in October 2021 that the Protocol damages the *Belfast (Good Friday) Agreement* and sows division between communities in Northern Ireland.

Perhaps the most explicit affirmation of acquiescence to the Protocol has come from the former leader of the Progressive Unionist Party (PUP) leader Dr John Kyle. In an interview on BBC radio's *The View* programme that should the Protocol be reworked; the Protocol will yield "unique advantages" for Northern Ireland. The PUP subsequently distanced themselves from Dr Kyle's comments and reiterated the PUP's opposition to the Protocol.

## Towards a Landing Zone

Talks between the UK and EU to solve the current impasse have gone on longer than most had initially anticipated. Lord Frost had previously suggested that all matters should be resolved by Christmas, however this is looking increasingly unlikely. Minister Coveney remarked in a meeting with Secretary Lewis that he expects that there will be an agreement by the end of January, at the earliest. Assuming both parties are acting in good faith, the most logical option in this sense would be to continue with the talks in earnest. Both sides have issued expressly stated on numerous occasions that such an amicable outcome remains their preference. This, however, will most likely require the UK to concede that there are red-line issues on which the EU cannot compromise, such as the role of the European Court of Justice (ECJ), and the EU to concede that the rules of the Single Market will be applied in a *sui generis* manner in Northern Ireland and with a much more trust-based approach than any other territory where the rules of

the Single Market apply.

Whilst the UK continues to insist that the threshold to trigger Article 16 of the Protocol has been met, the fact that [Lord Frost's Lisbon speech of October 2021](#) and subsequent discussions with the EU suggest that the UK, at most, favours revising the Protocol, not dismantling it. Increased pressure from valued trade partners such as the United States will continue to push the UK in this direction. Ultimately the future of the Protocol will be decided by the UK and EU as they are the only two parties to the Withdrawal Agreement and Protocol. Unionist parties in Northern Ireland, whilst consulted within the framework of the EU-UK Joint Committee, do not hold decision making power on this matter. As such, a hard-line and uncompromising position on the Protocol becomes a very risky strategy for any Northern Irish political party to hold. In this sense, supporting a mutually agreeable solution on outstanding issues within the confines of current talks may be the best way for unionists to secure gains without politically marginalising themselves months out from an Assembly election.

## Implications for Ireland

Both the outcome of the ongoing discussions on the Protocol and the stances that unionist parties in Northern Ireland take on the Protocol will have ramifications for Ireland's East-West and North-South relationships. Of all 27 EU Member States, Ireland is most exposed politically and economically to a deterioration in EU-UK relations. An ultimate failure to implement the Protocol resurrects the spectre of the border trilemma. Irrespective of the talks' outcome, or potential lack thereof, the EU will ultimately need to enforce the rules of the Single Market on the Irish Sea, on

the Celtic Sea or across the land border on the island of Ireland. Were the EU to terminate the Trade and Cooperation Agreement (TCA), which both the European Commission and the Irish Government have indicated are real possibilities, Ireland will bear the brunt of tariffs given the intensity of trade between Ireland and the UK. Additionally, the composition of the Northern Ireland Assembly after the May elections may ultimately shape the fate of the Protocol given the fact that the Assembly must confirm their consent to the Protocol Articles 5-10 in 2024.<sup>4</sup>

Ireland should also be paying close attention to unionist stances in relation to the Protocol. North-South relations have suffered considerable damage in 2021 as a result of DUP ministers refusing to engage in cooperation with the Irish Government, most notably in the North-South Ministerial Council. The absence of a close working relationship also threatens to jeopardise the Taoiseach's [\*Shared Island Initiative\*](#) which was intended to bring about positive social, environmental and economic change for all communities on both sides of the border. Irish understanding of what unionists oppose in the Protocol and unionist recognition of some of the potential benefits of the Protocol could be a much-needed catalyst to improving cross-border relations.

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