

BREXIT BRIEF

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Tony Brown

Introduction

The Brief seeks to provide up-to-date information on the progress and content of the UK-EU negotiations, and bring together relevant statements and policy positions from key players in Ireland, the UK and the EU.

The Brief is part of a wider communications programme covering the work of the IIEA's UK Project Group – including commentaries, speeches, texts and event reports – which are highlighted on the Institute's website. (www.iiea.com)

Section One: State of Play

“Summer Break”

The latter days of July saw the publication of the important UK Government Command Paper on the Protocol on Ireland/Northern Ireland (the Protocol) and the effective re-issuing of EU proposals for simplifying aspects of the Protocol. There was a clear recognition on both sides that no in-depth consideration on these documents would take place until after the August holiday break which would see Brussels closed down and UK ministers on holiday. The need to get down to serious talking in September was accepted, having regard to the Protocol timelines.

Nevertheless, two major issues interfered with the holiday plans of ministers, parliamentarians and media. COVID-19 continued to demonstrate that it operates to its own schedule and the global significance of the political and humanitarian crisis in Afghanistan dominated, and continues to dominate, the political scene.

With London and Brussels due to re-engage in September, the implications of the Protocol remain at the centre of political concern and contention in Northern Ireland and across the island. A *Belfast Telegraph* commentary has argued that “a brief interlude in loyalist protests against the Protocol may have lulled some into believing that the issues has been resolved”. “However, this is far from the case and with the summer recess almost over and

the Stormont Assembly preparing to sit again, DUP insiders say a decision has already been made as to the course of action. It seems the DUP are preparing to ramp things up in the autumn", it suggested

Post-Command Paper Exchanges

The immediate response in Brussels and Dublin to the publication of the Command Paper was in the form of 'holding' statements with a commitment to studying the UK text and entering into dialogue after the summer break.

Nonetheless, the European Commission moved on two fronts by pausing its legal action against the UK on alleged infringements of the Protocol and by publishing details of proposals, made to the UK administration in June, for simplification of certain aspects of the Protocol. The Commission spoke of the pause in legal moves as "providing the necessary space to reflect on these issues and find durable solutions." The detailed proposals refer to significant issues such as a plan for ensuring the continued supply of medicine from Great Britain to Northern Ireland. Other proposals refer to pets and livestock standards. Commission Vice President Maroš Šefčovič commented that while the EU was "ready to continue to seek creative solutions within the framework of the protocol in the interest of all communities in Northern Ireland". However, we will not agree to a renegotiation of the protocol" he added.

The EU response was quickly criticised and rejected by London and by unionist politicians in Northern Ireland. A UK Government spokesperson said that the two sides needed "comprehensive and durable solutions" while the EU proposals represented "only a small subset of the many difficulties caused by the

way the protocol is operating" and Sir Jeffrey Donaldson of the DUP described them as "superficial and with strings attached."

Issues have become more complicated as the UK Government announced on Monday, 6 September, its intention to indefinitely extend its grace periods. For the Irish Government the Tanaiste has indicated that there would be no objection to extending grace periods but that this would not solve the underlying difficulties which would require further discussion.

Significantly, the UK Government has issued recruitment adverts for four permanent senior civil service positions in the Northern Ireland Directorate of the Department for Environment, Food and Rural Affairs (DEFRA), charged with implementation of the Northern Ireland Protocol.

British-Irish Association, 2-3 September 2021.

From Thursday 2 September to Friday 3 September 2021, the British-Irish Association meeting in Oxford heard substantial contributions from the Taoiseach, Micheál Martin, and the UK Cabinet Office Minister, Lord David Frost. They addressed the evolving situation in respect of the Protocol. The Taoiseach said the following:

"Brexit fundamentally alters the EU-UK relationship and, as we have seen, has profound implications for relationships on these islands and for the context in which we pursue our bilateral relationship. At the core of our relationship is the role of the two Governments in joint stewardship of the Good Friday Agreement. I believe now is the time to reaffirm – and embody – that commitment."

It is through the two Governments working together that the peace process, and peace and stability in Northern Ireland, is best supported and fostered. History has shown us, time and time again, that it is partnership which is the solution – not unilateral action. Brexit - and the UK decision to leave the Single Market and Customs Union - was a unique and significant challenge for the island of Ireland.

The Protocol, reached after long and pain-staking negotiations, is a response to that challenge. It is an intrinsic part of an international agreement. My consistent position has been to get the Protocol working as smoothly as possible for people and for business in Northern Ireland. We have been engaging closely with stakeholders in Northern Ireland, and are listening carefully to concerns.

I have encouraged the European Commission to engage closely and I welcome Vice President Šefčovič's recent useful engagement with the Assembly and other stakeholders in Northern Ireland and his commitment to maintain regular contact. The EU is listening to Northern Ireland and it has demonstrated its ability to respond positively to the concerns of people in Northern Ireland. With the right political will, I believe that it will be possible to find sensible solutions to some of the outstanding issues, within the framework of the Protocol.

I have no doubt that there is a willingness from the EU to engage and to work in good faith to minimise friction. And in my view progress is best made in the bodies set up under the Agreement, in a spirit of partnership, working at EU-UK level for

agreed ways to resolve the issues that arise. A positive and constructive future partnership is in everyone's interest. But it will only be delivered if there is a relationship of trust, and a willingness to deliver on commitments entered into."

Lord Frost, in his lengthy address, dealt with many of the issues raised in the difficult debates in the weeks prior to the August break. His concluding remarks dealt with the weeks ahead.

"Our view of what must happen next is based on two possible routes – both, to be clear, centred in the Protocol.

One solution envisaged in the Protocol is set out in Article 16 – a provision for appropriate safeguard measures. It is clear that the threshold for triggering Article 16 has been met and it is open to the UK Government to take a range of safeguard measures on this basis. That is simply a statement of fact.

The other solution envisaged in the Protocol is the one which we would, for now, prefer to work on. It is the one set out in Article 13(8) – the explicit provision that a subsequent agreement may replace parts of the existing text.

That is where we need to put our efforts. We are now beginning a process of working out with the EU whether we can see a path forward that delivers a sustainable and enduring arrangement.

Let me finish by urging everyone to take these proposals seriously. You should be in no doubt about the centrality of this problem to our politics and to this Government. The issue needs to be fixed and we are determined to fix it. It is, as

the PM made clear to allies at the G7 Summit, inseparable from our view of our own territorial integrity and of what is best for Northern Ireland in the decades ahead. It is important everyone grasps the opportunity, looks at the risks of not doing so, and acts constructively. We are absolutely ready to do so.

There is no doubt this is a challenging moment. But it is also a moment of huge opportunity. When one looks at the Protocol and sets it against other international challenges that we face, one wonders what future generations would say of us if we were unable to make the small muscle movements needed to get this right. If we can work to put the Protocol on a better footing, we can create a new dynamic - between us and the EU, but also of course between the UK and Ireland. If we approach this in the right way, we can move forward to a better relationship and one which truly delivers for everyone - Northern Ireland and Ireland above all."

Taoiseach / Donaldson Talks

The DUP leader, Sir Jeffrey Donaldson, met the Taoiseach, Micheál Martin, in Dublin on Friday, 27 August for the first time after taking over from Edwin Poots and Arlene Foster.

Following what was described as a "frank and open discussion", Sir Jeffrey said that he "made it clear to the Taoiseach that unionist concerns are growing and certainly not diminishing in relation to the harm that the Protocol is doing to our relationship with the rest of the United Kingdom, the harm it is doing to trade between Great Britain and Northern Ireland, and, indeed, very importantly, the political harm the protocol is causing, and has the potential to cause", particularly in light of

the forthcoming Assembly election. Asked if the DUP would walk away from the Stormont institutions if the situation was not resolved he replied that "I don't want to be in a position where political institutions collapse, but I don't want to be in a situation where we sustain a situation where our relationship with the rest of the UK is harmed on a daily basis."

He further argued that unionists cannot "reasonably be expected to work as normal on a North-South basis when our relationship with the rest of the United Kingdom is being harmed on a daily basis by this Protocol. Sir Jeffrey concluded that "The Taoiseach recognises the need to find a solution" and that he therefore wants to see the Irish Government being more proactive.

The Taoiseach, speaking separately, described the meeting as "honest and open" and said that he acknowledges that the concerns of the unionist community are clear but did indicate that the mechanisms are there in the EU-UK trade agreement to resolve the issues around the Protocol. "Our sense has been that the EU Commission has been consistently flexible in getting this situation resolved" he posited. "We also need to see some flexibility from the UK Government side", he continued.

President Macron in Dublin

Speaking following talks in Dublin on Thursday, 26 August with the Taoiseach, French President Emmanuel Macron addressed the issues surrounding the Protocol. He made it clear that the European Union would remain united on the implementation of the Protocol, arguing that "It is an existential issue for the solidarity and the unity of the European Union... so we will make sure that agreements which are signed after very lengthy negotiations will be complied with..." He told the Taoiseach that "from the beginning of this British referendum

the EU has been united and stood in solidarity... we will remain united...to put it bluntly, we will never let you down."

The Taoiseach commented that sensible solutions to current disagreements could be found, arguing that "a positive and constructive future partnership is in everyone's interest, but it will only be delivered if there is a relationship of trust, and a willingness to deliver on commitments."

Tánaiste in Northern Ireland

The Tánaiste, Leo Varadkar, travelled to Northern Ireland for two days of talk from Thursday, 2 September to Friday, 3 September 2021. He spoke to Stormont leaders and business representatives. He met Finance Minister Conor Murphy who replaced Sinn Féin Vice-President Michelle O'Neill after she tested positive for COVID-19. He met the DUP leader, Sir Jeffrey Donaldson; SDLP leader, Colum Eastwood; UUP leader Doug Beattie and Alliance leader, Naomi Long. He visited the InterTrade Ireland offices in Newry and met business leaders to discuss an agenda covering Covid-19, cross-border economic issues and the Protocol.

The UUP leader, Doug Beattie, said the following:

We pointed out the negative effects the protocol is having on community relations and the fine balance of the Belfast Agreement. We also acknowledged that, for some businesses, access to both the EU and the UK single markets was extremely positive, but checks were having clearly detrimental effects on other businesses. We pointed out that we believe that the UK command paper published in July had many positive aspects contained within it and should be viewed as a template for a way forward.

Sir Jeffrey Donaldson told the Tánaiste of the need to adopt a "fresh" approach to the protocol. He said that Mr Varadkar "has championed a protocol which fundamentally undermines the Belfast Agreement, and he has dismissed economic and constitutional concerns with patronising comments about the colour of our post boxes".

When it was put to Leo Varadkar that he was a "hate figure" in unionism over his role in the Brexit negotiations, he said there were a lot of people who saw him as the "architect" of the protocol. "For me, the protocol was only ever a means to an end," he said.

House of Lords Report

The recently-formed sub-committee of the House of Lords European Affairs Committee dealing with the Ireland/Northern Ireland Protocol has called on the UK and the EU to act urgently to resolve differences over the implementation of the protocol, accusing both sides of taking a 'fundamentally flawed' approach, lacking flexibility on key issues.

The group's Introductory Report, on 29 July, concluded that:

The Preamble to the Protocol on Ireland/Northern Ireland acknowledges that "the United Kingdom's withdrawal from the [European] Union presents a significant and unique challenge to the island of Ireland"; that "the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there"; that the Belfast/Good Friday Agreement and subsequent agreements "should be protected in all its parts"; and that there should be "no customs and regulatory checks or controls and related physical infrastructure at the border between

Ireland and Northern Ireland". But it also stresses "the importance of maintaining the integral place of Northern Ireland in the United Kingdom's internal market", and that "the application of this Protocol should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland.

The UK and the EU were able to agree these underlying principles in theory: the difficulty has come in upholding seemingly contradictory principles, as the Protocol has become a reality. The upshot has been economic disruption and further political division, which has contributed to community unrest. This has undermined the advantages of dual access to the UK and EU markets that the negotiators sought to preserve. It has also led in turn to a breakdown in trust between London, Brussels, Belfast and Dublin.

Technical solutions to ease some of the burden of the Protocol's practical operation can be found, as long as there is goodwill and flexibility on all sides. Yet addressing the issues of conflicting identity that first Brexit, and then the Protocol, have brought to the fore seems for the moment an insoluble problem. That was also true of the political situation in Northern Ireland during the Troubles. But through a slow and painstaking process led by political leaders in Northern Ireland and successive governments in London and Dublin, the peace process took root and flourished, leading to the Belfast/ Good Friday Agreement and the subsequent steps towards a power sharing arrangement.

This process took time, patience, dialogue, and most of all trust. The same is true in

addressing the problems that Brexit and the Protocol present for Northern Ireland. There is therefore an urgent imperative for all sides to make concerted efforts to build trust by recommitting themselves to that process of dialogue, repairing the damage caused to relations across these islands during the past five years, in the interests, as the Protocol rightly acknowledges, of communities in both Ireland and Northern Ireland.

We conclude with the words of Jackie Redpath, who has been working in the loyalist Shankill community for 50 years: 'The peace process ... continues to be a tender plant that needs to be carefully looked after by all who have been involved in it— locally, nationally and internationally ... The way forward ... is to create a new ground of engagement. That is not primarily [about] the Protocol ... It is not even about the Good Friday/ Belfast Agreement. The ground of engagement needs to be something that all parties can buy in to, and that is the peace process.'

North-South Ministerial Meeting, 30 July 2021

A Joint Communique was issued following the twenty-sixth plenary meeting of the North South Ministerial Council (NSMC) which was held at the NSMC Joint Secretariat Offices, Armagh, and by videoconference on Wednesday, 30 July 2021:.

The Irish Government was led by the Taoiseach, Micheál Martin TD, who chaired the meeting. The Northern Ireland Executive was led by the First Minister, Paul Givan MLA, and the Deputy First Minister, Michelle O'Neill MLA.

Ministers expressed their best wishes to all athletes from the island of Ireland competing in the Summer Olympic Games in Tokyo, and to those preparing to compete in the upcoming Summer Paralympic Games.

The Council received updates on the NSMC meetings which had taken place since the last plenary meeting in the Health, Food Safety, Trade and Business Development, Transport, Inland Waterways and Education sectors. Ministers noted that cooperation between the two Administrations continues across all the NSMC sectors and that further updates will be provided at future meetings.

Ministers noted that the intention is to return to 'in person' meetings of the Council at sectoral level, taking account of public health guidelines, as soon as it is safe to do so, and that the Joint Secretariat will arrange future meetings on this basis. The Council approved an indicative schedule of future NSMC meetings and agreed that the next NSMC plenary meeting will be held in December 2021.

The Annual Report of the North-South Ministerial Council has been published by the Joint Secretaries (Tim Losty (North) and Mark Hanniffy (South)):

We are pleased to present this report on the work of the North South Ministerial Council in 2020. The fifteen meetings of the Council held in the course of the year brought the number of meetings held since the inaugural plenary meeting in December 1999 to almost 300. For more than two decades, the Council has

worked across twelve areas of policy and through the North South Bodies to develop consultation, co-operation and action in areas of relevance to both the Northern Ireland Executive and the Irish Government, and to deliver social, economic and cultural benefits for people in both jurisdictions.

At the joint press conference following the meeting there was a 'robust' exchange between the new First Minister, Paul Givan, and the Tánaiste Leo Varadkar on the Northern Ireland Protocol.

Paul Givan commented that "Nobody should be under any illusion as to the implications that the protocol has had, the manner in which it was foisted upon the unionist community and the way in which there was engagement for the European Union where we had photographs of border posts being bombed in the 1970s in order to get the European Union on side when it came to this protocol. That caused huge damage within the unionist community by the way in which the Irish Government at that time engaged in the process.

Leo Varadkar responded that the protocol is an honouring of a commitment made by the UK Government that Brexit would not result in a hard Border. He said the following:

That is how and why the protocol came about, a decision by the British people to leave the European Union. Nobody in the Irish Government or the previous Irish Government has ever wanted any barriers to trade, north, south, east, west or between Britain and Northern Ireland. Any barriers, checks or controls that exist are a consequence of Brexit.

Deputy First Minister Michell O'Neill, arguing that "those that delivered the hardest possible Brexit have to shoulder some of the responsibility for where we are". She said that she sees the Joint Committee established under the Withdrawal Agreement as "the forum in which we can iron out some of the issues that need to be resolved".

Sir Jeffrey Donaldson Leading from Westminster

The DUP leader, Sir Jeffrey Donaldson, has indicated that he will remain in his Westminster seat until next year's Northern Ireland Assembly election, when he will seek an Assembly seat in the Lagan Valley constituency with a view to talking the position of First Minister if his party wins a majority. He argues that "many of the issues that confront us are Westminster-based, not least on the Northern Ireland Protocol and dealing with legacy".

Sir Jeffrey has conceded that there are currently no vacancies in the Assembly, but with the possibility that the former First Minister, Arlene Foster, might step down before the election. "There are no vacancies. I am content to continue in my role. I think it is important right now that the leader of unionism is at Westminster."

A significant element of the Lagan Valley situation is the clear indication that Sir Jeffrey's short-lived predecessor, Agriculture Minister Edwin Poots, will stand again in the constituency in the 2022 Assembly election. This could mean the DUP running three of its most high-profile candidates in a constituency where it now holds two of the five seats – with current First Minister Paul Givan and Edwin Poots. Mr Poots has commented that "the feeling that I am getting is that my

constituency want me to stay on and do the job and I will work with them on that." He has also indicated that he "wouldn't rule out" standing in a Westminster by-election if and when Jeffrey Donaldson steps down as an MP to seek election to the Assembly.

On Monday, 23 August 2021, as MP for Lagan Valley, Jeffrey Donaldson has been handed the task of selling the UK's trade to Cameroon in addition to an existing position as trade envoy to Egypt. He commented that "these roles are undertaken in my capacity as a member of parliament, they don't interfere with my other roles particularly as leader of the DUP. I will do this work allocated within the time I set aside for my work in parliament. I am hoping to see a significant increase in trade with Cameroon." Trade Envoys are parliamentarians appointed by the Prime Minister, drawn from both Houses and across the political spectrum. The roles are unpaid and voluntary. They are tasked with building on the UK's strong relations with key trading countries and work with the Department for International Trade's global network to break down barriers to trade.

Section Two: The Evolving Debate

Significant Opinion Polls

The latest *LucidTalk* poll for the *Belfast Telegraph* reveals a dramatic plunge in electoral support for the Democratic Unionist Party (DUP). The poll sees the DUP on just 13% with both the UUP – on 16% - and Jim Allister's TUV – on 14% - ahead among unionist voters. The UUP has risen to be the second largest party in Northern Ireland.

The poll shows Sinn Fein consolidating its position on 25% support, 12% ahead of its

partner in the Executive. The SDLP is up one point at 13% but well behind Sinn Fein.

The Alliance party has lost three points – down to 13% – with unionist voters moving back to the UUP which has gained significantly from its leadership change, with Doug Beattie bringing new messages and new energy to the job. Smaller parties – Green Party, People Before Profit – have remained static at 2% – while there is no more than 2-3% support for independent candidates.

The most popular politician in Northern Ireland remains the Health Minister, Robin Swann, with 75% saying he is doing a great or good job. Doug Beattie scored 44%, Naomi Long 38%, Colum Eastwood 34% and Jim Allister 33%. Michelle O'Neill was rated 29% with Jeffrey Donaldson, just after winning the DUP leadership, at 20%.

In a *Lucid Talk* poll for *The Observer*, voters were asked about the holding of a referendum on Northern Ireland's place in the UK, with two-thirds believing there should be a vote but not within the next five years. On the key question the fundamental division of opinion in Northern Ireland was clear with 49% saying they would support remaining in the United Kingdom and 42% backing a future united Ireland. Nine per cent did not offer an opinion. The managing director of *LucidTalk*, Bill White, commented that "Once again, and as with all polls about the NI border issue, we see that approximately 50% of Northern Ireland support the union and remaining in the UK. This pro-union score has been remarkably consistent."

Dialogue on Protocol

The August summer break saw a number of individual contributions to the discussion, debate and contest surrounding Brexit and the NI Protocol.

Arlene Foster: This superior attitude emanating from Brussels has been the problem all along. As recently as this month, when Ursula von der Leyen visited Dublin, we were treated to the well-worn mantra of the protocol protecting the peace in Northern Ireland Out Prime Minister, to his credit, recognises that this claim is nonsense. The EU continues to stick its head in the sand.

Jim Allister: It is wrong to say the protocol isn't working, because it is – just as planned. This is the living manifestation of the repeal of Article 6 of the Act of Union which our recent High Court action exposed. When our forefathers were faced with being manoeuvred out of the Union they risked everything, leaving no one to doubt their resolve. All we in this generation are called to do is to refuse to implement our own constitutional destruction.

Neale Richmond TD: The Protocol is not the problem. Brexit is. Indeed, the Protocol presents the solution to the problems caused by Brexit for the island of Ireland. The Protocol safeguards the Good Friday Agreement, avoids a hard border on the island of Ireland, protects the Single Market and Ireland's place in it.

Peter Robinson: We in Northern Ireland should understand the betrayal of the Afghan people and welcome them here. Those of us who live here should have understanding, sympathy and compassion for the deceived people of Afghanistan. We and they both know what it is like to be given countless assurances which are later trashed. We and they both know what it is like

to be left a prey to our adversaries. We and they both know how it feels to demonstrate loyalty and not have it reciprocated. We and they both know what it is to be betrayed.

Alex Kane in the Irish Times: The choices facing unionism aren't easy. Bring down the Assembly (Which means direct rule). Embark on a course of incremental instability (which some in loyalism favour). Reset policy on the protocol and learn to live with it (which would seriously divide key sections of unionism and loyalism)/ Pursue one strategy after another and hope one succeeds. Trust Johnson. Or just pray for a miracle (which would probably have to involve Johnson anyway).

Candidate Michel Barnier

Michel Barnier, former European Commissioner and the EU's Brexit negotiator, has indicated that he intends to participate in the primaries of his centre-right political faction, *Les Républicains*, as a candidate for next year's Presidential Election.

He told French TV that "In these dark times, I took the decision to run for the French presidency, to be president of a reconciled France." To date – less than a year before the April first round of the election none of the former mainstream centre-left and centre-right parties have chosen candidates to contend the presidency as Emmanuel Macron seeks a second term.

Brexit Consequences

The implications of Brexit, in terms of trade, regulation and communications continue to prove controversial and challenging. Some recent headlines point to issues arising in

various sectors:

'UK manufacturers to get big concession on post-Brexit quality mark'- *Irish Times*; 'City of London grapples with a wave of post-Brexit regulation' – *Financial Times*; 'Business chief calls on PM to save north-east from Brexit damage' – *Guardian*; 'Emergency Brexit powers for lorry queues to be made permanent' – *Guardian*; 'Supply chains lengthen ahead of expected rise in Brexit red tape' – *Irish Times*; 'Treasury prepares for bonfire of EU red tape' – *The Telegraph*; 'EU recognises UK data protection rules as 'adequate''- *RTÉ*.

Section Three: Background Material and Further Reading

Background Material

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The Institute of International and European Affairs,

8 North Great Georges Street, Dublin 1, Ireland

T: +353-1-8746756 F: +353-1-8786880

E: reception@iiea.com W: www.iiea.com