

BREXIT BRIEF

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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

Post-Summer Positioning

As political business resumed after the August break the position in respect of the ongoing Protocol on Ireland/Northern Ireland (Protocol) debate became one of positioning by all sides. Statements, speeches and media opportunities were used by Lord Frost, Maroš Šefčovič, Jeffrey Donaldson, Doug Beattie Jim Allister, Simon Coveney and others to set out their several positions. In particular, the Democratic Unionist Party (DUP), with its new leader, has set out a position on its participation in the Stormont Assembly which introduces a serious question mark over its future.

October will be a critical month – as deadlines approach and tempers fray – and the key institutional players in London and Brussels are challenged to find what Lord Frost calls “a meaningful negotiating process” to resolve differences consensually and to avoid “other ways forward” by triggering Article 16.

Significantly, and worryingly, the Minister for Foreign Affairs, Simon Coveney, speaking at a Presbyterian Church event in Belfast marking the centenary of Northern Ireland, remarked that he “would say that the relationship between the British and Irish Governments is probably as distant as [he] can remember it being....it's not a close one in the way that it has been in the past.”

Lewis / Frost retain positions

The Northern Ireland Secretary, Brandon Lewis, and Cabinet Office Minister with special responsibility for the Protocol, Lord Frost, remain in post following the wide-ranging autumn reshuffle of Ministers by Prime Minister Boris Johnson. Conor Burns has replaced Robin Walker as Minister of State at the Northern Ireland Office.

Liz Truss, formerly International Trade Secretary has been appointed Foreign Secretary, replacing Dominic Raab who becomes Justice Secretary and Deputy Prime Minister.

Key Policy Statement by Lord Frost in House of Lords 16 September

Lord Frost made a major policy statement in the House of Lords on Thursday, 16 September in which he set out the UK Government plans to avail of the opportunities the country now has now that it has left the European Union.

He announced a decision to conduct a review of so-called "Retained EU law" – "the very many pieces of legislation which we took onto our own statute book through the European Union (Withdrawal) Act of 2018 and we must now revisit this huge, but for us, anomalous, category of law." The Government would review all such laws and normalise those it decides to retain by giving them a UK legal status. He spoke also of a new series of reforms to the legislation we inherited on EU exit and putting in place much more rigorous tests within Government before we take decisions to regulate.

A Guardian commentary described the Government approach as "a bonfire of EU laws" in which such issues as the rules on

genetically modified farming, medical devices and vehicle standards would be among the first to be ignited. Printing the Crown Stamp on pint glasses will be an early, symbolic, measure.

Lord Frost concluded:

My Lords, Brexit was about taking back control. The ability to remove the distortions created by EU membership, to do things differently, in ways that work better for this country, and promote growth, productivity, and prosperity and that is what we intend to do. I do recognise Brexit was not a choice originally supported by all in the country, or even it seems by some in this House. But Brexit is now a fact. This country is now embarked on a great voyage. We each have the opportunity to make this new journey a success - to make us as a country more contented, more prosperous, and more united and I hope everyone will join us in doing so in the future.

Jeffrey Donaldson sets out DUP Strategy

In a lengthy keynote speech in Belfast on Monday, 9 September 2021, the DUP leader Sir Jeffrey Donaldson, issued a clear threat to collapse the power-sharing Stormont Executive unless there are acceptable changes to post-Brexit arrangements, in particular the Protocol. He stated that his party will pull out of the Executive, triggering a snap Assembly election, "within weeks" if the Protocol issues remain.

While the DUP will first seek a legal challenge to the checks on Great Britain to Northern Ireland trade under the terms of the Protocol, Jeffrey Donaldson argued the following:

In the final analysis.... if our ministers cannot prevent these checks taking place and if the protocol issues remain then I have to be clear, the position in office of DUP minister would become untenable. Within weeks it will become clear if there is a basis for the Assembly and Executive to continue in this current mandate and I want that to happen. But, equally we will also need to consider whether there is a need for an Assembly election to refresh our mandate if action is not taken to address and resolve the issues related to the Protocol.

Donaldson further stated that the DUP would withdraw from north-south political bodies other than those related to cross-border cooperation on health issues. Arguing that the Protocol had undermined Strand Three (the east-west relationship element) of the Good Friday Agreement and that, in such circumstances, "unionists cannot be expected to operate Strand Two (the north-south element) as though nothing had changed".

He concluded:

And if the EU in particular are serious about protecting the agreements, about protecting political stability in NI, I think they need to – if I may say so – rise above their sense of regret (I'll put it no stronger than that) that the UK has left the EU and stop using Northern Ireland as a political football. It is a dangerous game.

Following his major statement, Jeffrey Donaldson expanded on his main themes in a series of media opportunities and in briefing a Westminster committee. He expressed hope that the British Prime Minister, Boris Johnson, would move "in the next few weeks" to

implement radical changes to the Protocol. He then insisted that action was needed within weeks, setting a November deadline. "I think that's the sort of timetable we're working to now", he added. He also spoke of party colleagues and community activists working to prevent violence on the streets in the weeks ahead: "I'm simply saying that if politics fails and if we don't find the solutions then I fear that there will be others who may decide to step into the gap", he said.

Coveney Response

On Friday, 10 September 2021, the Minister for Foreign Affairs, Simon Coveney, replied to Jeffrey Donaldson's speech in a Statement from Iveagh House:

We take unionist concerns in relation to the protocol seriously and we have consistently sought to listen and engage with those concerns, just as we have with the perspectives of everyone across Northern Ireland. The Taoiseach and Tánaiste met with Jeffrey Donaldson to discuss these issues in detail in the last two weeks. However, no positive agenda is served by blocking practical North/South Cooperation or by the breakdown of the other institutions of the Good Friday Agreement.

The North South Ministerial Council has an important agenda this autumn including on improving health services, managing environmental challenges, cooperating in education and investing in infrastructure. As we emerge from the Covid pandemic, we should be focussed on working together to support communities and businesses across the island.

We believe people want to see a positive commitment from everyone to resolve issues, not the creation of any new cliff edges or instability. The EU is already listening closely to concerns in Northern Ireland and is ready to work in good faith to minimise friction.

Reaction in London

A Downing Street spokesperson commented that the threat to collapse Stormont and stated the following:

...real pressures that the Protocol is causing in Northern Ireland and the lack of cross-community support for the current arrangements. Without this support the Protocol cannot be sustainable for the long term. That's why we've published a Command Paper setting out the significant changes needed to put the Protocol on durable footing, and we're engaging with talks with the EU to determine whether a constructive process can be established that addresses these issues.

Reactions in Northern Ireland

The Donaldson speech had a mixed reception within Northern Ireland with the Irish Times columnist Alex Kane arguing that the DUP leader's intended audience was unionism and loyalism in all its forms. "He's speaking to them because a series of opinion polls since last October has indicated a slump in DUP support from 23% to 13%. Indeed, the latest poll has the party behind the more liberal Ulster Unionist Party and the harder line TUV. But with the next election due by May 2022 Donaldson doesn't have a great deal of time to reverse his party's fortunes and ensure the DUP retains the role of First Minister."

Among unionists Donaldson received strong support from Jim Allister's TUV but the new UUP leader, Doug Beattie said that, while his party opposed the Protocol they wanted to provide "pragmatic solutions and engagement" proposing the creation of a cross-border protocol body dealing with trade issues. He argued that "we simply cannot afford to have the Stormont institutions collapse [...] we continue to lobby rather than threaten".

The SDLP leader, Colum Eastwood, accused the DUP of holding the people of Northern Ireland to ransom for "their own narrow self-interest" and said unionist concerns were not about Brexit but identity. These concerns should be addressed with goodwill and political generosity but not dressed up as a problem with supply chains.

Lord Frost at British-Irish Association, Oxford, 4 September 2021

Lord Frost addressed the British-Irish Association conference in Oxford on Saturday, 4 September 2021. He dealt in detail with the Protocol impasse from the UK Government viewpoint.

"Yet here we stand once again, two years later, with so much settled, and yet with the vexed question of the Protocol on Ireland and Northern Ireland apparently as controversial as ever. Why are we here and is it reasonable that this question won't go away?"

Yes, it is reasonable. Despite our best attempts, the issue is not settled. Our valiant efforts, in hugely challenging circumstances in 2019 and then in 2020, did not find the right balance. The fact that the arrangements have begun to come apart so quickly this year, albeit under

the pressure of certain unhelpful actions which could not have been predicted in advance, shows that we have to look at this again. To repeat - it does not mean we got everything wrong. It means that we can learn from experience, that the balance is not right, and that a new balance needs to be found.

The reality is that the problems we have run into on the Protocol go to the core of modern-day politics. I recognise that to many across Europe beyond these islands they will be parochial and frustrating. But we here know what is involved – existential issues of territory, of identity, of borders, all against a background of a peace process and institutions in Northern Ireland which can only bear so much weight. The stakes are high. The arguments can be bitter. And I worry this process is capable of generating a sort of cold mistrust between us and the EU which could spread across the relationship. It's holding back the potential for a new era of cooperation between like-minded states in a world which needs us to work together effectively.

To be clear: these difficulties flow from implementation of the Protocol - not 'failure' to implement it. We have problems precisely because we are imposing customs checks, not because we aren't. That is why solutions which involve "flexibilities" within the current rules won't work for us. The difficulties come from the way the Protocol is constructed, not just the way it is being implemented. 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.

So the current governance arrangements have to evolve to reflect the reality that this is an agreement between two sovereign and autonomous entities, not a relationship of subordination or one where one party's rules have to be applied mechanically by the other. Better ways are available and have to be found, and they exist in most other international treaties.

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."

Maroš Šefčovič Visits Ireland and Northern Ireland

European Commission Vice-President Maroš Šefčovič visited Ireland and Northern Ireland on an official visit from Wednesday, 8 September to Friday, 10 September 2021. This was his first visit in person, previous encounters being by video links due to COVID-19 rules.

The Vice-President met the Taoiseach, Micheál Martin, in Dublin on Wednesday, 8 September 2021 ahead of his visit to Northern Ireland. Following their dinner conversation, the Taoiseach spoke of a "very good, comprehensive discussion" and said the following:

In terms of the meeting I had with Vice-President Šefčovič last evening and meetings I had on the weekend, with the UK side, I am clear that Europe is in solution mode, and that Europe wants to work hard within the existing arrangements to make the protocol work for the people of Northern Ireland. I hope that Vice-President Šefčovič went up today to listen and engage. From our perspective, we have listened to party views and met with all the other parties on this issue. What is clear I think all parties would like to see a streamlining and more flexible operation of the protocol. The UK Government is saying to me they want to get a solution.

In Northern Ireland, the Vice-President met political, business and civic leaders. He delivered a major speech to an audience in Queen's University, starting by quoting the

author Terry Pratchett who said: "The best research you can do is talk to people. For that, you cannot beat a face-to-face conversation".

He went on to say:

I am here today in my role as the EU's co-chair of the EU-UK Partnership Council and Joint Committee – the bodies that oversee our new relations with the United Kingdom. The EU has an unshakeable commitment to the people of Northern Ireland to ensure that the peace, stability and prosperity they have enjoyed over the last twenty plus years is preserved. After all, the EU is a peace project itself.

If we are to chart a course forward, like any good researcher, we should start by establishing how we arrived where we are today. So let's look at this objectively. The UK voted to leave the European Union; the UK government decided that this meant leaving the Single Market and the Customs Union; by triggering Article 50 on 29 March 2017, it chose the moment it wanted to leave the EU; it decided not to extend the transition period; and it also decided the type of future relationship it wanted, by excluding a more advanced, closer relationship similar to the European Economic Area.

The UK government negotiated, agreed and signed the Protocol on Ireland and Northern Ireland. Its Parliament ratified it. The exercise of sovereign right to enter into international agreements goes hand in hand with the responsibility to respect them once they are concluded. These are the facts.

Together, we indeed found such a solution – the Protocol on Ireland and

Northern Ireland. It serves a number of purposes: It protects the Good Friday (Belfast) Agreement in all its parts; respects the constitutional order of the United Kingdom; avoids a hard border on the island of Ireland; and preserves the integrity of the EU's Single Market; while ensuring that the UK as a whole leaves both the Single Market and the EU's Customs Union – a key demand of Prime Minister Boris Johnson. This solution was shaped, agreed and approved, together – by both sides – and therefore, we also share responsibility for making it work on the ground.

I will not mince my words. The Protocol is not the problem. On the contrary, it is the only solution we have. Failing to apply it will not make problems disappear, but simply take away the tools to solve them.

I am, of course, acutely aware of how some in Northern Ireland feel about the Protocol, in particular in the Unionist community. That is why my team and I have been actively engaging with political representatives, stakeholders, civil society and people in Northern Ireland from all communities since the beginning.

But I also need to be honest: while we will continue looking for solutions to minimise the effects of Brexit on your everyday lives, we will never be able to remove them entirely – such are the consequences of Brexit and of the choices of the UK Government. As you know, the UK published their command paper on 21 July. And we have been engaging constructively with our UK partners on what can be done to limit the impact of the Protocol on everyday life in Northern

Ireland, while maintaining its access to the EU's Single Market.

The EU and the UK must continue these discussions in order to reach an understanding. I believe that our focus should be on those issues that matter the most to the people of Northern Ireland, and not on requests, such as removing the role of the European Court of Justice.

At the close of his visit, Maroš Šefčovič addressed a press conference and said the following:

It comes as no surprise that the Protocol on Ireland and Northern Ireland has been the main reason for my being here. We are facing a number of challenges in its implementation – it was therefore important to me to listen to and engage face-to-face with business, civil society and political representatives, having previously been limited to online platforms.

If there is one main takeaway from all my exchanges, it is the clear call for stability and predictability – so that the people and businesses in Northern Ireland can benefit from opportunities that the Protocol offers. I am, of course, acutely aware of how some people in Northern Ireland feel about the Protocol. That is why the EU has spared no effort to find creative, practical solutions – that foster stability, while minimising the inevitable disruption caused by Brexit, and protecting the EU's Single Market.

But we must be honest: the European Union cannot be blamed for the costs of Brexit. Brexit made it necessary to find an agreement on how to avoid a hard border on the island of Ireland. After years of

long, complex negotiations, we found a solution with the UK in the form of the Protocol. Removing the Protocol will not solve any issues. It is the best solution we found with the UK to address the unique situation of the island of Ireland, and the challenges created by the type of Brexit that the current UK government chose.

Failing to apply the Protocol will not make problems disappear, but simply take away the tools to solve them. We will therefore continue to engage tirelessly with the UK during September. But the spirit of compromise needs to be a mutual one, as our responsibility is also a shared one. If we were to accept the UK's command paper in full, it would amount to a renegotiation of the Protocol. We will not do that.

His concluding remarks were: "I do not need any political victory here. I want to find a solution which would represent win-win. That's the goal, why I came here".

The BBC Northern Ireland Editor, John Campbell, commented on the visit, listing five key 'take-away' points. The EU is taking a more conciliatory approach to Northern Ireland/ The EU will suggest new flexibilities. Northern Ireland politicians could get a bigger role. The EU is still keen to push protocol benefits. The role of the European Court of Justice is a red line.

Lord Frost Responds to Vice-President Šefčovič in House of Lords, 13 September 2021

Lord Frost was replying during a debate on a Report from the Lords' European Union Committee 'The Protocol on Ireland/Northern

Ireland' (9th Report, Session 2019–21, HL Paper 66)

A real negotiation does not mean the EU coming up with its own plans for solutions within the framework of the existing protocol and presenting them to us, take it or leave it. To be honest. I have been a bit concerned by a couple of the comments I have heard from Commission representatives in recent days, which seem to suggest they might be considering that way forward. The noble Lord, Lord Kerr, picked up the comment by Maroš Šefčovič the other day, when he said: "A renegotiation of the protocol ... would mean instability, uncertainty and unpredictability in Northern Ireland."

Unfortunately, we already have all those things in Northern Ireland. The question is: how do we move on from them? I do not take Commissioner Šefčovič's words as a dismissal of our position. I take them as acknowledgement of it, but also as a fairly clear indication that there is more to be done. I urge the EU to think again on that point and consider working to reach genuine agreement with us so that we can put in place something that will last.

I am conscious of time and will wind up quickly. The negotiations need to begin soon. I will not put a timescale on that, but it needs to be urgent as the situation is urgent.

Finally, I would urge the Commission to be sensitive to the situation in Northern Ireland in its actions. The EU has a treaty with us, and as my noble friend Lord Moylan made very clear, that does not make it a part of the Government

of Northern Ireland. We are very happy to receive representatives of the Commission in Northern Ireland at any point, so that they understand the situation there, but I gently suggest that they should be cautious in coming to public judgments about the situation, or suggesting it is for the EU itself to decide how to resolve it. I do not think that will make the situation calmer; it will make it more difficult.

The situation we face is complex and challenging, self-evidently, but there is still a real opportunity for us both to find durable arrangements. That is our intention and our wish, and that is where we will be putting all of our effort in the next few weeks—in arrangements that can win the confidence of communities in Northern Ireland. We are ready to seize this opportunity and we urge, as strongly as we can, the EU to do the same. Bold action is needed to build a new, sustainable consensus.

Section Two: The Evolving Debate

East Belfast Loyalist Demonstration

A loyalist anti-Protocol protest in East Belfast on Friday, 17 September 2021 drew a crowd of about 350 people who heard a number of speeches setting out the opposition to the Protocol. The TUV leader, Jim Allister and the loyalist activist Moore Holmes were among the speakers. It was indicated that both Jeffrey Donaldson and Doug Beattie had been invited to attend.

Jim Allister said that the gathering was proof that opposition to the Protocol was not dying down:

If we do not kill this Protocol it will kill the union, that's the reality. This is the seminal moment, the seminal challenge of our generation and we're going to rise to it." Moore Holmes called for the collapse of the Stormont Assembly. "That is the only way in which one can put maximum pressure on the protocol, to coerce the British government into taking the unilateral action that they need to take.

Civil Society Open Letter to UK and EU

A group of more than fifty Northern Ireland civic and business leaders, trade unionists and academics have signed an open letter to the UK and EU administrations calling on them to work together with the Northern Ireland Executive and the Irish Government to deliver "balanced, bespoke and reasonable solutions" to the issues surrounding Brexit and the Northern Ireland Protocol. They argue that the re-establishment of trust between the UK and the EU is "central to dialogue" and "imperative to the peace process."

The letter stressed the significance of upcoming deadlines such as the ending of some Brexit grace periods and called for discussions in three key areas: proportionality; structured engagement, involving civic society; and focus on the opportunities offered by the Protocol.

The letter's signatories include leading figures from the Northern Ireland Chamber of Commerce, the Irish Congress of Trade Unions and Ulster University together with individuals including the former Alliance Party leader, John Alderdice. The text was drafted by the cross-border body, Co-operation Ireland and the Institute of Irish Studies at Liverpool University.

UK delays post-Brexit trade controls

The UK has announced a delay in implementing some post-Brexit import controls, pointing to pressures on businesses from COVID-19 and global supply chain difficulties. The checks had already been delayed for six months in April and the latest delay means that the full customs regime will not come into force until Saturday, 1 January 2022 with some other rules put back until Friday, 1 July 2022. “We want businesses to focus on their recovery from the pandemic rather than having to deal with new requirements at the border, which is why we’ve set out a pragmatic new timetable for introducing full border controls”, said Lord Frost.

Business Realities

Marks & Spencer has drawn up plans to close stores in France because of the impact of Brexit red tape. It also argues that Christmas supplies in Northern Ireland are threatened by the same regulations. Chairman Archie Norman says that the custom checks were “pointless and byzantine” and destructive for business and were not suitable for a modern fresh food supply chain.

UK Revenue data reveals that custom duties paid by UK businesses have increased by £600 million over the past year. The scale of the impact of duties on importers directly arising from Brexit “is now causing serious difficulties for many businesses who are already struggling to stay profitable in the face of mounting pandemic-induced costs”.

Section Three: Background Material and Further Reading

Background Material

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