

BREXIT BRIEF

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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)

Introduction

Two Rounds inconclusive – Third Round Scheduled

Two rounds of the high-level talks on the Protocol on Ireland/Northern Ireland (the Protocol) have taken place without agreement and a third will take place. The UK Government has insisted that the major issues must be settled by late autumn, "one way or the other", with Prime Minister Boris Johnson saying that problems with the Protocol need to be "flushed out pretty fast".

Lord Frost has argued that Britain's problem with the governance of the Protocol went beyond the role of the European Court of Justice and that a resolution had to address the entire system beneath it. "The problem is far too much EU applies directly in Northern Ireland.

That's the core of the problem. We don't see that so much of it should apply. If you maintain a system where lots of EU law applies without consent in the end you set up divergence between Northern Ireland and Great Britain as we legislate in a different way. And therefore, it's not a stable system.", he argued.

Lord Frost has warned that the EU proposals do not go far enough to stop the UK from suspending part of the Withdrawal Agreement by triggering Article 16. The problem with the EU proposals "is that they don't go far enough."

Foreign Minister Simon Coveney has voiced the Irish Government view that negotiations on the Protocol cannot go on forever. Speaking between the two high-level meetings on the Protocol, the Minister said that he believed a deal was possible and that "a window is now on offer to the British government if they want

to use it". It's up to the UK government to take that window and we'll have to wait and see how that progresses in the next few weeks. I think there's a window between now and late December when the EU, I think, will be open to continuing dialogue and trying to find a way of making this work", he added.

Section One: State of Play

Anglo-French Confrontation

A major Brexit-related row between the UK and France has escalated sharply from a dispute over fishing licences with President Macron warning Prime Minister Johnson that the international reputation of the UK is on trial on both fishing rights and the Protocol. While he expressed confidence in British "goodwill", he said that other nations were watching closely. "Make no mistake, when you spend years negotiating a treaty and then a few months later you do the opposite of what was decided on the aspects that suit you the least it is not a big sign of your credibility", he averred.

France has threatened to take strong measures in retaliation to UK limitation of fishing licences for French vessels in UK coastal waters. Paris has spoken of enhanced customs and other controls on UK freight, rigorous checks on UK trucks and prohibition of UK trawlers landing their catch in French ports, The UK is speaking of an appropriate and calibrated response to what it sees as a breach of the EU-UK Trade and Cooperation Agreement.

In Rome, at the G-20 Summit, Boris Johnson and Emmanuel Macron have met to discuss the issues – a meeting which produced two contrasting versions of the outcome – and the Prime Minister has appealed to European

Commission President von der Leyen to help sort out the differences. The Prime Minister characteristically remarked that the UK has "bigger fish to fry" emphasising the importance of avoiding a continuing Anglo-French dispute as the leaders move to Glasgow for the crucial COP26 summit.

Protocol: Frost/Šefčovič meeting, London, 29 October 2021

Lord Frost and Commission Vice-President Šefčovič met in London on Friday, 29 October to continue their dialogue on the UK Command Paper and the European Commission's package of bespoke arrangements for Northern Ireland.

The meeting failed to produce agreement and the participants indicated that they would meet again, for the third time, in Brussels in the first week of November.

The UK side issued a brief statement:

The week's talks have been conducted in a constructive spirit. While there is some overlap between our positions on a subset of the issues, the gaps between us remain substantial. As we have noted before, the EU's proposals represent a welcome step forward but do not free up goods movements between Great Britain and Northern Ireland to the extent necessary for a durable solution. Nor do they yet engage with the changes needed in other areas, such as subsidy policy, VAT, and governance of the protocol, including the role of the Court of Justice.

Our position remains that substantial changes to the protocol will be needed if we are to find a sustainable solution that

works in the best interests of Northern Ireland and supports the Belfast (Good Friday) Agreement. Lord Frost and the vice president, and their teams, will meet again in Brussels next week."

A Commission spokesman commented that it believed that the UK was not taking its "unprecedented and far-reaching" proposals seriously enough. The proposals "address the concerns raised by the people and businesses of Northern Ireland" and that, after the most recent talks, Maroš Šefčovič "called on the UK government to engage constructively with these proposals.

The Commission has insisted that the Protocol, negotiated and agreed by the EU and UK, is "exceptional" and not replicated in any agreement with a third country and that "under these circumstances the Court of Justice needs to play its role as provided in the Protocol in respect of all matters of interpretation and application of those provisions of EU law which the Protocol makes applicable in the United Kingdom."

Protocol: Frost/Šefčovič meeting, Brussels, 15 October 2021

The chief EU and UK negotiators – Commission Vice-President Šefčovič and Minister of State at the Cabinet Office Lord David Frost – met in Brussels on Friday, 15 October to initiate a formal programme of discussions and negotiations on the serious challenges related to the Protocol and on the analysis and proposals contained in the July UK Command Paper and the October Commission policy papers. No statements appeared on the day because of the terrorist murder of the UK parliamentarian, Sir David Amess. Individual statements were subsequently published on 18 October.

The statement by Lord Frost:

Lord Frost and EU Commission Vice President Šefčovič met on 15 October in Brussels for a discussion of the continuing difficulties in relation to the Protocol on Ireland / Northern Ireland.

They discussed the proposals published by the EU on 13 October. Lord Frost recognised the efforts Vice President Šefčovič had made in bringing these forward, and underlined that we would discuss them constructively and in a positive spirit. Lord Frost set out the UK position and reaffirmed the need for significant changes to the current arrangements, as set out in the 21 July Command Paper, including on governance.

Further talks will continue at official level in Brussels this week. The UK's focus will be on finding durable solutions, rapidly, that safeguard the Belfast (Good Friday) Agreement in all its dimensions.

The statement by Vice-President Šefčovič read:

On Friday, 15 October, European Commission Vice-President Maroš Šefčovič hosted Lord David Frost in Brussels to start an intensive period of discussions on the package of far-reaching, practical solutions that the EU proposed on 13 October, in order to reach common solutions with the United Kingdom on the implementation of the Protocol on Ireland / Northern Ireland. The EU's proposals aim to help Northern Ireland deal with the consequences of Brexit, while further benefitting from the Protocol.

Vice President Šefčovič welcomes that both sides have agreed to engage intensively and constructively at both expert and political level, with a set of meetings scheduled this week in Brussels with the UK team. The EU seeks to focus on the areas that matter most to Northern Irish people and businesses, and where we can find common ground. Swift joint solutions would bring the stability, certainty and predictability that Northern Ireland deserves, ultimately protecting the Good Friday (Belfast) Agreement in all its dimensions.

Lord Frost in House of Lords, 21 October 2021

In the House of Lords on Thursday, 21 October 2021 Lord Frost replied to questions on various aspects of the Protocol. Lord Frost commented on the EU proposals:

My team has been in discussion with the EU on this subject all week. We are seeking to understand the detail that underlies some of the headline claims that the EU has made. It is possible that we do not fully understand that detail yet, but perhaps that will come. One aspect of the EU proposals that I am excited about is that they show that what previously it has considered impossible—changing its own laws for the special circumstances of Northern Ireland—is now possible. That is a very important and welcome step, and I hope the EU might be able to go further than the proposals it put on the table last week.

Replying to comments on international opinion, he said the following:

I am of course in no way unmindful—quite the opposite—of our international

reputation but, in the end, I cannot do anything about how others perceive us. I am not complacent about things that are in our hands, which is the situation in Northern Ireland. I am in no way complacent about that and it is the focus of the activity we are trying to pursue. This Government are responsible for the prosperity and security of Northern Ireland. That is why we are pursuing the task as we are and that, along with the support of the Good Friday agreement, is our primary objective as we go forward.

When asked why the UK is “cultivating uncertainty” in its relationship with the EU, Lord Frost replied:

My Lords, I did indeed say that, because it is my job to get the best outcome for this country in the negotiations that I am charged with conducting. That is what we did over the previous 18 months and that is what I intend to do now. I do not think it would be particularly good tactics to reveal to the other side exactly what we are going to do or how we are going to go about it.

Responding to comments on the positive elements of the Protocol, Lord Frost said the following:

My Lords, opinions differ on the innumerable benefits of the protocol. I certainly hear concern from business about the imposition of EU law without consent that the Court of Justice of the European Union is at the summit of. The difficulty is that it is not true to say, as some do, that the protocol gives the benefit of both worlds. It gives access to the EU single market for goods but at the very significant price of restricted access to Northern Ireland’s major trading

partner, which is Great Britain and the rest of the United Kingdom. That is the unsatisfactory balance that we currently have, one that needs to be redressed.

Lord Liddle made a substantial intervention, in which he said:

My Lords, in the Minister's recent speech, which he made in Lisbon, not in this House, he said that "the Protocol represents a moment of EU overreach when the UK's negotiating hand was tied". But are the facts not somewhat different? Is it not the case that the Johnson Government, on the Minister's recommendation, accepted an arrangement that Theresa May said no British Prime Minister would ever accept; that the Johnson Government, presumably on the Minister's recommendation, decided to prioritise a hard Brexit over the sustainability of the Good Friday agreement and peace and security in Northern Ireland; and that the Johnson Government, perhaps on the Minister's recommendation, signed a treaty in the full knowledge that they had no intention of implementing its full provisions? Is it not about time that the Minister accepted some personal responsibility for the mess we are in in Ireland?

Lord Frost replied with the following:

So, my Lords, I reject the implication of the question that there is any contradiction between a so-called hard Brexit, which is the only real Brexit and the only form of Brexit that allows this country the freedom it needs, and peace and security in Northern Ireland. Those two objectives are perfectly and absolutely compatible. We agreed a protocol that we hoped would do the job; it needed sensitive handling; it was highly

uncertain in some of its mechanisms; and unfortunately it has not had the sensitive handling it needed. Therefore, we need to come back to the question. That is a pity, but unfortunately it is the reality.

Lord Frost also spoke of the 'sovereignty' issue:

My Lords, the difficulty we have with the protocol is not so much the sovereignty issue, because the territorial integrity of the UK and the integrity of the internal market of the UK are very clearly protected in the protocol, but the difficulty it has generated in movements of goods and trade within the United Kingdom. If the protocol was to work, it would have required very sensitive handling. Unfortunately, it has not had that sensitive handling, and therefore we have a political problem.

Frost on Horizon Europe Programme

Lord Frost, opened a fresh row with Brussels with an accusation that the EU was close to breaching the 2020 Trade and Cooperation Agreement. He stated that the UK was "getting quite concerned" about a perceived delay in Brussels in ratifying UK participation in the €95 billion Horizon Europe research programme.

Arguing that London's patience was running out, Lord Frost said that "it's not a very happy place". "We are getting quite concerned about this, actually. There is an obligation in Article 710 of the Trade and Cooperation Agreement to finalise UK participation. It uses the word 'shall'. It is an obligation. It would be a breach of the treaty if the EU doesn't deliver on this obligation" he claimed.

Lord Frost said that he had asked Vice-President Šefčovič "many times" why there

was a delay when other countries – including Norway and Iceland – had been ratified. While he could “guess” the reason he had not received an answer, MPs in the House of Commons European Scrutiny Committee had suggested that the delay in Horizon ratification was punishment for the dispute over the Protocol.

Horizon Europe, the EU research and innovation programme (2021-2027) is one of the main tools to implement Europe’s strategy for international cooperation: *the global approach to research and innovation*. It is open to researchers and innovators from around the globe who are encouraged to team up with EU partners in preparing proposals

It tackles climate change, helps to achieve the UN Sustainable Development Goals and boosts the EU’s competitiveness and growth. The programme facilitates collaboration and strengthens the impact of research and innovation in developing, supporting and implementing EU policies while tackling global challenges. It supports creating and better dispersing of excellent knowledge and technologies and optimises investment impact within a strengthened European Research Area.

Association to Horizon Europe is the closest form of cooperation with non-EU countries, which allows entities of associated countries to participate in programme actions on equal terms with entities of EU countries. Negotiations are ongoing with many more non-EU countries that have expressed interest to become associated to Horizon Europe and further announcements will be made in the coming weeks.

Prime Minister’s Questions, House of Commons, 27 October 2021

Sir Jeffrey Donaldson asked the Prime Minister:

The Prime Minister will be aware of the harm that the Northern Ireland protocol is doing to the political and economic stability of Northern Ireland and the very delicate constitutional balance created by the Belfast or Good Friday agreement. In the Command Paper published by the Government in July, they committed themselves to addressing these issues, and recognised that the protocol was simply not sustainable. Does the Prime Minister accept that the conditions now exist to trigger article 16 of the protocol in the event that the current negotiations with the European Union fail to arrive at an acceptable outcome?

Prime Minister Boris Johnson replied:

The right hon. Gentleman is completely right, I am sad to say. We are working hard to secure an agreement by negotiation, but we need to see real progress, because, as the right hon. Gentleman knows, the real-life issues on the ground in Northern Ireland have not gone away. As we have been saying for some months, if we cannot see progress—rapid progress—in the way that we spelt out in our Command Paper, I think it will be clear to everybody that the conditions for invoking article 16 have already been met.

Section Two: The Evolving Debate

The Debate in Unionism

Unionist politicians continue to debate the appropriate response to the continuing negotiations on the Protocol. With the UUP leader, Doug Beattie, taking a nuanced stance and supporting continued dialogue, the TUV's Jim Allister maintains his confrontation with the DUP, insisting that Jeffrey Donaldson honours his summer threat to collapse the power-sharing Executive.

Jeffrey Donaldson is playing a waiting game and refusing to comment on his next steps while commenting on various elements of the overall debate. He has spoken of the "very divisive" nature of a border poll and has insisted that the election of a nationalist First Minister would spell disaster for unionism. He told the MacGill Summer School that "it is highly likely that Sinn Fein will emerge as the largest party, the question is will the other parties agree to go into government with them."

Responding to Jeffrey Donaldson, the former Northern Ireland Secretary, Julian Smith, said that the UK Government would accept a nationalist First Minister. He saw the coming election as "a moment of truth on the Good Friday Agreement".

Opinion Polling

An opinion survey conducted in October for Queen's University reveals that 52% of Northern Ireland respondents view the Protocol as positive for the region, an increase from the 43% indicated in the corresponding poll in June. The results of the survey show that while the Protocol is a continuing cause of sharp division in the population there are

indications of a growing acceptance of the Protocol arrangements.

A report by the Centre for Cross Border Studies has found that conditions for north-south cooperation have deteriorated due to political instability. The politicisation of Brexit and the implementation of the Protocol were highlighted by respondents as the cause of an erosion of relations. The Centre's Director, Anthony Soares, commented that "it is alarming that cooperation has stagnated during a period when we need it most. All parties must come to an agreement on the working of the Protocol and governments must engage on cross cutting issues."

The latest *Opinium* poll for The Observer reports that twice as many voters now believe that Brexit is having a negative effect on the UK economy as think it is producing benefits. The *Opinium* result is in line with other recent polls which have seen concerns about the impact of Brexit increasing significantly, with 44% thinking Brexit is having a bad impact compared with 25% who think it is having a positive effect. This result is also in line with the view of the Office for Budget Responsibility (OBR) that the impact of Brexit on the UK economy will be worse than that caused by the COVID-19 pandemic, with Brexit reducing the long run GDP by around 4%..

First Minister Givan criticised

First Minister Paul Givan was subjected to harsh criticism for his attendance at the cross-community Centenary Service in the Church of Ireland Cathedral in Armagh. A Free Presbyterian minister argued that Givan had taken part in an "unbiblical" event "under the auspices of the combined apostate denominations here in Ulster". The Free Presbyterian Church had stated that the

service was “deliberately planned to promote the unbiblical ethos of religious ecumenism.”

The DUP leader, Jeffrey Donaldson, said that he hoped that lessons could be learned from the service. Referring to the decision of President Michael D. Higgins to decline an invitation to attend the event, Jeffrey Donaldson said “It’s not about politics... but actually about all of us coming together to reflect on the journey we have been on. I hope we have learned lessons from today, that we will reflect upon the future and when we’re given the opportunity to stand shoulder to shoulder to reflect, to speak of hope, that in the future we will do it together.”

British Social Attitudes Survey 38

The latest British Social Attitudes Survey has shown that Brexit divisions in UK society appear to be as entrenched as ever. Nine in ten of leave and remain voters said they would vote the same way again:

The same is true if we examine how people say they would vote if there were to be a rerun of the 2016 referendum on the UK’s membership of the EU. No less than 92% of those who voted Remain in 2016 say in our latest BSA survey that they would vote the same way again, exactly the same proportion as in our 2019 survey. Just 6% say that they would vote Leave. But similarly, as many as 85% of those who voted Leave in 2016 say they would vote the same way (slightly higher than the 82% who in 2019 said they would do so), while just 10% indicate that they would vote Remain.

In short, it is still the case that relatively few of those who voted in the EU referendum have changed their minds, while among those who did not participate in the

referendum, more than twice as many (43%) say they would now vote Remain than indicated that they would back Leave (18%). Meanwhile, as many as 46% say in our latest BSA that they identify ‘very strongly’ as either a ‘Remainer’ or as a ‘Leaver’, much the same proportion as the 45% recorded in 2019.

Northern Ireland Bill in House of Commons

The House of Commons has devoted considerable time to debate on the Northern Ireland (Ministers Elections and Petitions of Concern) Bill which is designed to deliver key elements of the *New Decade New Approach* deal relating to the governance of the Northern Ireland Executive. Provisions are intended to deal with Ministerial appointments, extraordinary Assembly elections, the Ministerial Code of Conduct and petitions of concern in Northern Ireland. The Second Reading debate was divisive with clear difference between the DUP MPs and those from the SDLP and Alliance.

The Northern Ireland Secretary, Brandon Lewis, told the House the following:

The UK Government and this Parliament have a duty to ensure good and functional governance in Northern Ireland. Today, through this Bill, we discharge that duty by bringing forward measures that will help continue to enhance the public’s confidence in the Northern Ireland institutions through increased transparency and improved governance arrangements. Those measures will ensure that the institutions will be more sustainable, more resilient and for the benefit of the people of Northern Ireland.

A key element of the Bill refers to the controversial issue of ministerial appointments. On this point, Secretary Lewis indicated the following:

In short, we are legislating, first, to provide up to four six-week periods for the appointing of new Northern Ireland Ministers, including the First Minister and Deputy First Minister, after an election; secondly, to provide up to four six-week periods for the appointing of a First Minister and Deputy First Minister after they cease to hold office—for instance, in the case of one of them resigning; thirdly, to provide, if the First Minister and Deputy First Minister cease to hold office, that other Northern Ireland Ministers remain in office for a maximum period of 48 weeks after the First Minister and Deputy First Minister ceased to hold office, or for 24 weeks following any subsequent election, whichever is the shortest, unless the Secretary of State triggers the sufficient representation provisions.

The Bill will also implement reforms to the petition of concern mechanism in the Assembly, including a new 14-day consideration period before a valid petition can be confirmed and a requirement that petitioners to come from more than one Northern Ireland political party. It will update the code of conduct for Northern Ireland Ministers in accordance with a request from the Northern Ireland Executive and in line with the New Decade, New Approach transparency and accountability recommendations.

The Bill has passed Second Reading and moves on to detailed consideration in both Houses of Parliament.

Welsh Relations with the rest of the UK to be considered by Labour Party Commission

Welsh Labour Party ministers have announced the formation of a commission to examine Wales' future relationship with the rest of the United Kingdom. The group, to be co-chaired by the former Archbishop of Canterbury, Rowan Williams, and Cardiff University Professor Laura McAllister, will hold the "most wide-ranging national conversation about Wales' future." Concerns about the future of the UK after Brexit have led some political leaders, like First Minister Mark Drakeford, to call for a more radical restructuring of the UK devolution arrangements.

While the formal announcement of the commission stated that it will develop options for reform "of the constitutional structures of the UK in which Wales remains an integral part" it was made clear that the group will look at the independence option. Prof. McAllister argued that "Independence means different things depending on different contexts."

Section Three: Background Material and Further Reading

Background Material

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