

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

The Protocol on Ireland/Northern Ireland (the Protocol) impasse continued through the third and fourth rounds of Frost-Šefčovič conversations in Brussels and London. All of this must be set against the background of COP26, COVID-19 challenges and a growing sleaze controversy in the UK, leading some cynics to suggest that the UK government might see continuing rows with Brussels as useful distractions.

The Irish Times, in an editorial on Tuesday, 9 November 2021, made an important point on the 'consent' issue so often raised by the Democratic Unionist Party (DUP) and other loyalist voices: "unionists and loyalists are correct in feeling betrayed by the British government, which sought a hard Brexit at all costs despite ample warning (though sadly not

from the largest unionist party, the DUP) that was not in Northern Ireland's best interests. But complaining that Northern Ireland did not consent to the Protocol is a weak argument when that Protocol is designed to mitigate the damage of a decision – Brexit – which the majority in Northern Ireland actually opposed".

Section One: State of Play

Intensity

The third and fourth rounds of team negotiations followed by face-to-face Frost-Šefčovič meetings were seen to produce some progress on a number of technical issues but without movement on either side on the key questions. Lord Frost continued to insist that significant gaps remained and that the full range of British concerns - in particular the role of the European Court of Justice (ECJ) –

had to be addressed. Maroš Šefčovič insisted that his European Council mandate limited his options to those within the framework of the Protocol and that the position on the ECJ was unchanged. With the UK side indicating a welcome willingness to continue efforts to find “a consensual way forward”, the spokesmen indicated that a fifth round would go ahead, with increased intensity.

As the EU-UK talks continued the Protocol debate maintained its intensity on the island of Ireland. The DUP leader, Sir Jeffrey Donaldson MP, still threatened to suspend the Stormont Assembly and confronted Vice-President Šefčovič, describing the Vice-President’s comments on the “serious consequences” of invoking Article 16 as “intemperate, ill-judged and very ill-advised.” The Traditional Unionist Voice leader Jim Allister MLA, spoke of the Protocol dismantling the Union “before our eyes” while the SDLP leader, Colum Eastwood MLA, warned that the Trade and Cooperation Agreement (TCA) is at risk of unravelling if the UK moves to suspend the Protocol.

The Protocol continued to give rise to serious concern in Dublin. The Taoiseach, Tánaiste and Minister for Foreign Affairs all warned of the consequences of triggering Article 16, in particular highlighting the potential threat to the TCA. The government initiated a series of direct contacts between senior officials from the Irish and British administrations, with the Irish side arguing against unilateral action by London.

Frost- Šefčovič Meeting 12 November 2021

The chief negotiators met again on Friday, 12 November 2021 in London. Vice-President Šefčovič spoke to media after the meeting:

I just held my fourth meeting with David Frost on the EU package of ambitious solutions that the EU proposed to facilitate the implementation of the Protocol on Ireland/Northern Ireland on the ground.

My message has been clear and consistent – the European Union is committed to finding practical solutions for the people and stakeholders in Northern Ireland; our package is a direct response to concerns they raised and makes a tangible difference. Right now, we need the UK government to reciprocate the big move the EU has made. So that we give stability and predictability to Northern Ireland – a key ingredient for the local economy to flourish. So that the enhanced opportunities that the Protocol and the EU’s package provide are realised.

I acknowledge and welcome the change in tone of discussion with David Frost today – and I hope this will lead to tangible results for the people in Northern Ireland.

With this aim, I also continue to engage with businesses and civil society in Northern Ireland.

I held two roundtables just yesterday and am grateful for their constructive and valuable contributions. Talking to them always strengthens my belief that we can – and must – arrive at the agreed solution that Northern Ireland truly deserves. That is also why I raised forcefully that we need to make serious headway in the course of next week.

This is particularly important as regards the issue of medicines. An uninterrupted long-term supply of medicines from

Great Britain to Northern Ireland is the Protocol-related issue on everyone's mind in Northern Ireland. But it is also on my mind – and I stand by my commitment to do whatever it takes to address this issue in line with what industry tells us.

I prefer to have a joint solution with the UK Government. But if we are to amend our own EU legislation – something we are committed to do – we need to find this solution quickly. We will therefore intensify our talks next week. I am convinced that the issue of medicines could be a blueprint for how to approach and solve together the remaining outstanding issues.

So next week, we will also discuss other issues, including significant reduction of customs-related red tape, with a view to making serious progress. I do hope that practical solutions will prevail over any temptation at political calculation. The EU, for its part, is working around the clock to deliver such solutions – and stability and predictability to Northern Ireland. David Frost and I will meet again in Brussels next Friday.

The UK side commented by tweet:

Lord Frost and EU Commission Vice President Sefcovic met today in London to consider the state of play in discussions on the Northern Ireland Protocol. Lord Frost noted that there remained significant gaps to be bridged between the UK and EU positions. He noted that, as set out to the House of Lords on 10 November, it remained the UK's preference to find a consensual way forward, but that Article 16 safeguards were a legitimate part of the Protocol's provisions.

Lord Frost also underlined the need to address the full range of issues the UK had identified in the course of discussions, if a comprehensive and durable solution was to be found that supported the Belfast (Good Friday) Agreement and was in the best interests of Northern Ireland. In this context, although talks had so far been conducted in a constructive spirit, Lord Frost underlined that in order to make progress, it was important to bring new energy and impetus to discussions. Accordingly, intensified talks will take place between teams in Brussels next week on all issues, giving particular attention to medicines and customs issues. Lord Frost and the Vice President will meet at the end of the week to consider progress.

Frost-Šefčovič Meeting 5 November 2021

Following the meeting of the chief spokesmen in Brussels on Friday, 5 November 2021, a brief UK statement indicated that they would meet again on the following Friday. The statement said that Lord Frost underlined that progress had been limited and that the EU's proposals did not currently deal effectively with the fundamental difficulties in the way the NI Protocol was operating. In the UK's view, these gaps could still be bridged through further intensive discussions.

Vice-President Šefčovič issued a longer statement:

This was our third meeting at our level, following the Commission's package of far-reaching solutions for Northern Ireland three weeks ago.

The Commission has been engaging intensively with the UK to find common ground between our respective positions – and to bring stability and predictability for the people and businesses in Northern Ireland. We have spared no effort in preparing this package and bringing it across the finishing line. Our package, as a whole, will provide significant changes for operators on the ground. In practice, our proposal would create a type of ‘Express lane’.

Customs-related red tape would be cut in half. A significant range of retail goods would also benefit from simplified certification. This would result in a reduction of up to 80 percent of SPS checks. It is a whole new model for how goods can be moved from Great Britain to Northern Ireland. It would result in strengthened opportunities for the people of Northern Ireland. This was a big move by us. But until today, we have seen no move at all from the UK side. I find this disappointing and once again, I urge the UK government to engage with us sincerely.

From this perspective, I see next week as an important one. We should focus all efforts on reaching a solution as soon as possible. Our aim should be to establish stability and predictability for Northern Ireland.

We hear a lot about Article 16 at the moment. Let there be no doubt that triggering Article 16 – to seek the renegotiation of the Protocol – would have serious consequences. Serious for Northern Ireland, as it would lead to instability and unpredictability. And serious also for EU-UK relations in general, as it would mean a rejection of

EU efforts to find a consensual solution to the implementation of the Protocol.

Discussions will continue at expert level and I am committed to travelling to London on 12 November. I am equally committed on the issue of medicines – and remain ready to do whatever it takes to ensure their long-term uninterrupted supply to Northern Ireland, by changing our own EU rules.

Lord Frost in House of Lords, 10 November 2021

On Wednesday, 10 November 2021, Lord Frost made a Statement in the House of Lords on Brexit issues, including the Anglo-French fishing dispute and UK participation in the Horizon research programme. On the Protocol, he debated with several speakers. The former SDLP leader, Margaret Richie MP, who sits with the Labour Party, referred to the Liverpool University survey:

That survey was quite clear: that issues to do with Covid and health waiting lists were more important to the people of Northern Ireland than the Protocol. As somebody who lives there, I can say that nobody talks about the Protocol that I can hear of. Only this morning, Stephen Kelly from Manufacturing NI said that there were many benefits from the Protocol. It is very important that there is a negotiated solution to the Protocol.

Lord Frost replied:

I have looked very carefully at the polling produced by the University of Liverpool. It is inevitable that at the top of people’s agenda, in almost any poll, would be questions such as health, education and day-to-day issues. I do not think

that that distracts from the fact that the Protocol is self-evidently a major issue in Northern Ireland's politics. What I took from that and other polling I have seen is the high level of division on the question of the Protocol. There is a very clear division in most polls about support for the Protocol or a wish to change it. In the environment of Northern Ireland, that very stark division is what makes things difficult. Obviously, I do not agree that triggering Article 16 would undermine stability. We would do it only if it was necessary to support stability in Northern Ireland. It is a safeguard and should be seen in that context.

Belfast Bus Hijackings

Loyalist paramilitaries have hijacked – and set alight – buses in Newtownards, County Down on Monday, 1 November 2021, and Newtownabbey, County Antrim on Sunday, 7 November 2021 in a form of anti-Protocol activism. The 'Protestant Action Force' claimed that the masked gunmen who terrified bus drivers and passengers were from their ranks and were starting a campaign against the Protocol. The buses were destroyed but the drivers and passengers were unharmed. A number of evening bus services in the Belfast area were suspended or diverted for a period following the hijackings. These included some of the city's busiest routes.

The 'Protestant Action Force' has been a cover name used by loyalist paramilitary groups such as the UVF to avoid direct responsibility for terrorist actions.

The bus hijackings were followed by an outbreak of street violence in Belfast with PSNI officers attacked by a number of youths who directed volleys of missiles and fireworks close to the site of previous violence in April.

Up to 100 people on both sides of an interface were involved. A number of arrests followed.

These incidents were strongly condemned by politicians from all sides, including some loyalist spokespersons. Local unionists in the two areas where buses were attacked have been quoted as expressing understanding of frustrations over the Protocol- and over "not being listened to" – but also expressing anger over the violent hijackings.

An Irish Times editorial argued that the hijackings "highlight the need for political leaders to ensure that warnings about the destabilising effects of current tensions do not become self-fulfilling prophecy".

PUP questions support for Good Friday Agreement

On Monday 8 November 2021, Billy Hutchinson, the leader of the Progressive Unionist Party (PUP) – politically aligned to the Ulster Volunteer Force – stated that there is "no basis" for unionists to continue to support the *Belfast (Good Friday) Agreement*, arguing that the consent principle, central to the 1998 Agreement, had been undermined by the Protocol and exposed as "little more than a deceptive snare". "It is my view that, if as is currently the case, the constitutional guarantee is not as was promised to the unionist community then there is no basis for unionist support for the Belfast Agreement", he added.

Billy Hutchinson did not say that the party would withdraw support for the Agreement – saying that this was not the party's position – but that it was withdrawing from what the Agreement "has been turned into." The PUP would work with the other unionist parties to secure the removal of the Protocol. He emphasised the PUP's commitment to peace, saying the party was "entirely and

unequivocally committed to the complete absence of violence and to the rule of law.”

The DUP leader, Sir Jeffrey Donaldson MP, responded by warning that unionist support for the peace process agreements is “falling away”. “I’ve been warning that this is one of the consequences of the Protocol because the Protocol upsets the very delicate constitutional balance that is at the heart of the agreement”, he added. The Ulster Unionist Party leader, Doug Beattie MLA, said that withdrawal of support for the *Good Friday Agreement* would be a “huge strategic mistake for unionism”. “The UUP will not withdraw support for the Agreement in protest against the Protocol”, he insisted. Alliance MP, Stephen Farry, argued that “Brexit itself was always going to damage the Agreement and this is one of the many reasons why Brexit was such a dangerous path. The Protocol is the response to the challenges posed by Brexit to Northern Ireland”.

Section Two: The Evolving Debate

Liverpool Study shows support for NI Protocol consensus

A survey by Liverpool University has shown that the majority of people in Northern Ireland – 65% of participants with just 10% disagreeing – believe that the Stormont Assembly and Executive should remain until next May.

The survey showed support for consensus on the issue of the Protocol, with improvements agreed between the EU and UK. 42% of respondents backed the proposals made by the EU to resolve the Protocol issues, with 21% supporting rejection. The UK Government proposal that goods should be allowed to circulate into and within Northern Ireland if they meet either UK or EU standards was backed by 75%.

The survey showed that 39.8% of respondents identified themselves as unionist, 26.8% as nationalist and 33.3% as neither. The poll showed support for Sinn Fein at 23.5% with the DUP at 20.6%. Results for the other parties were: UUP on 13%; SDLP on 11.4%; TUV on 5.6%; the Alliance Party on 17.3% and the Green Party on 3.9%.

Professor Peter Shirlow commented that:

This survey shows there is a breakdown of binary politics. There is dissatisfaction with identity politics. Those who are voting are voting beyond identity politics. What we are seeing is the outworking of the Good Friday Agreement. More people are choosing neither unionist nor nationalist as their identity. There are now three voting blocs in Northern Ireland. There’s unionism, nationalism and a third bloc which votes on issues. There are now three communities in Northern Ireland.

The survey further found that 58.6% of respondents support remaining in the UK compared with 29.8% who would vote tomorrow for a united Ireland. Constitutional issues were deemed the most important concern to just 1.4% of respondents.

Professor Shirlow concluded that “It is evident that respondents seek proportionality in north-south and east-west trade relationships”.

Newton Emerson, writing in *The Irish Times*, has pointed out that “only one in eight unionists say the Northern Ireland Protocol is the most important political issue to them. Four in 10 would accept the European Union’s recent offer of sea border mitigations “and move on” while only one-third would reject it.”

Northern Ireland Industry and Business

Manufacturing NI, the organisation representing most manufacturing businesses in Northern Ireland, has stated that the vast majority of its members view the Protocol as an opportunity rather than an obstacle. CEO Stephen Kelly said: "80% of manufacturers are Protocol pragmatists, they want the Protocol to work. They recognise that there are opportunities here, they want to get on with business. They need the mitigations and the simplifications that we're all aiming for". In contrast to unionist politicians who see the Protocol as "a constitutional and business wrecking ball", the majority of members of Manufacturing NI view it very differently, as "the best of both worlds" providing continued access to the EU Single Market as well as to Britain.

The trade advisory firm OCO Global argues that business people in Northern Ireland overwhelmingly support the Protocol, seeing a hard border as the alternative. Mark O'Connell of OCO described a meeting with businesspeople from both sides of the border with the consensus view being that the Protocol provides a unique opportunity.

Chartered Accountants Ireland expressed disappointment that the business voice seems to have been forgotten in the political debate. "Some pragmatic solutions to reduce the current friction in goods moving from Great Britain to Northern Ireland are on the table, and these solutions should be worked through without the threat of triggering Article 16 looming", it posited.

The Northern Ireland Retail Consortium says that the UK seems to be using threats around Article 16 for leverage and this is causing instability in the Northern Ireland business

community. "What we are asking for is one final push to get an agreed solution that removes friction GB to NI to keep costs down and keep availability for consumers in NI."

Maroš Šefčovič in The Telegraph

Commission Vice-President Maroš Šefčovič contributed an article to *The Telegraph* on Sunday, 31 October 2021.

There is no doubt that the European Union and the United Kingdom should cooperate. That is why I have invited our British friends to engage on a package of enhanced opportunities for Northern Ireland – a set of unprecedented and far-reaching practical solutions – designed to help people and stakeholders further benefit from the Protocol on Ireland/Northern Ireland, and ultimately, designed to protect the hard-earned gains of the Good Friday (Belfast) Agreement. I am increasingly concerned that the UK Government will refuse to engage with this and embark on a path of confrontation.

I must be honest. Not one of the business representatives I met in Northern Ireland that day, in Flurrybridge or elsewhere, asked me to scrap the Protocol. Rather, they asked me to fix practical challenges they experience in implementing it. And the European Union has done just that. But we also have to face facts. And the plain fact is that Brexit – notably the type of Brexit chosen by the current UK Government – has consequences. It has changed the way we do business, and the Protocol is the best answer we could come up with jointly, with the UK.

So the Protocol is not the problem. Rather, it is designed to offer a unique solution to a unique situation – ensuring free dual access to the EU and the UK Single Markets which could be a powerful magnet for foreign investment.

We heard a lot about the opposition to the Protocol and I fully respect the views of all politicians. At the same time, I was heartened to read the result of the latest QUB survey, showing that a majority of people can appreciate the positive benefits and opportunities that the Protocol brings. Thanks to the Protocol, Northern Ireland can capitalise on the peace process and become a shining example of what may be done together if people come together. So I invite the UK Government to engage with us and bring our talks over the finish line – giving Northern Ireland stability, predictability, and prosperity.

Policy Exchange The Origins of the Current Crisis (Roderick Crawford)

The London think tank *Policy Exchange* has published an extensive paper by Roderick Crawford on the emergence of the December 2017 Joint Report, described as “the key development in the negotiation of the Northern Ireland Protocol”.

Lord Frost contributed a Foreword to the publication, in which he wrote:

We got a deal that took the whole of the UK, including Northern Ireland, out of the EU. The deal restored genuine agency to us for the future, by removing the backstop, which would have locked the whole country in the Customs Union and much of the Single Market and

given the EU the key. But we could not in the end escape the EU’s insistence on imposing its customs and goods rules in Northern Ireland. The best we could do was include mitigations and balances in the new Protocol – and, crucially, given all these uncertainties and political novelties, insert the principle that the functioning of the Protocol beyond 2024 required the explicit consent of the Northern Ireland Assembly.

Unfortunately the operation of the Protocol has not been adapted to these underpinning realities. It has begun to damage the thing it was designed to protect – the Belfast (Good Friday) Agreement. The insistence of the EU on treating these arrangements as like any other part of its customs and single market rules, without regard to the huge political, economic, and identity sensitivities involved, has destroyed cross-community consent well before the four-year mark. We also have the lived experience of aspects that are simply unsustainable in the long-term for any Government responsible for the lives of its citizens – like having to negotiate with a third party about the distribution of medicines within the NHS. That is why we must return to the Protocol and deliver a more robust, and more balanced, outcome than we could in 2019. I hope the EU will in the end join us in that.”

An Executive Summary sets out the main arguments of the study:

“The EU had conducted its negotiations from a position of strength, and manoeuvred the negotiations very effectively. It had formulated a political

solution approximately nine months previously and had agreed it no later than June 2017. The EU's negotiations have been widely seen as a major success for both Brussels and Dublin. This report shows that to be far from the case. The EU 'forced' the UK to accept a solution that worked legally for the EU but worked neither operationally nor politically in the context of Northern Ireland. In imposing its solution it had forced one interpretation of a pre-existing and politically significant international agreement over another; it then populated this interpretation with assumptions and exaggerations to produce the case for alignment. It did all this while turning a blind eye to the complexities and fragilities of Northern Ireland. Its manoeuvres were effective but often little more than manipulative. It was a remarkable failure of politics and it has resulted in an unstable 'solution' to the border problem. The UK's judgement was that the solution could only be finalised in the light of the EU-UK future relationship and that it had to be based on a deep, properly balanced and fully nuanced reading of the Belfast Agreement. Events have proved that judgement right.

Taoiseach in Dáil 3 November

The Taoiseach, Micheál Martin, answered Questions in Dáil Éireann on Wednesday, 3 November 2021:

The interaction between European Commission Vice President Šefčovič and the main sectors in Northern Ireland has confirmed that operational issues concerned them most, specifically checks and the operation of the Protocol. We have acted in good faith and the European Commission has acted in good

faith. A good faith response is required from the United Kingdom Government.

It would be irresponsible, unwise and reckless to invoke Article 16 as a response to the proposals from the European Commission. If such an act was taken by the British Government, it would have far-reaching implications for the relationship between the United Kingdom and the European Union. It would also have implications for the relationship between the United Kingdom Government and the Irish Government as such action would not be in accordance with the spirit of partnership that has informed the peace process from the get-go and the creation of the entire architecture that underpins the Good Friday Agreement. That is my very strong view.

We are hearing, as Deputies Richmond and Haughey have outlined, similar vibes and sabre-rattling. I met with the President of the European Commission, Ursula von der Leyen, at COP26 yesterday and with the President of the European Council, Charles Michel, the day before, who briefed me and updated me on the discussions between the EU and the UK. They were clear on the implications that would arise if such a decision were to be taken. I spoke with other EU leaders also, including briefly with the British Prime Minister, Boris Johnson, who was very involved in COP26. He is very aware that this issue needs to be resolved.

At the COP26 summit, President Biden called me over to have a brief conversation with me after one of the sessions. He reiterated to me, in the strongest possible terms, how the Good Friday Agreement matters deeply to him and his administration. He said that he made

this unequivocally clear to the British Government. I hope I have brought the Deputies up to date on the current situation. It is a very challenging and serious situation because international agreements have been entered into and signed off on. We must keep the needs of the people of Northern Ireland foremost in our minds as we proceed.

Labour Party Proposals

The UK Labour Party has proposed that Stormont should implement a commitment made in the *New Decade New Approach* agreement by convening a Citizens' Assembly to discuss options for integrated education and housing in Northern Ireland.

The Party's Shadow Northern Ireland Secretary, Louise Haigh MP, told a Belfast audience that it was time "to bring people back into the peace process and help rekindle the spirit of reconciliation. A properly designed Citizens' Assembly focusing on integrated education and housing could be a decisive step to building a shared future and consensus. The decade ahead must be a decade of integration if Northern Ireland is to decisively move forward and deliver the reconciliation the *Good Friday Agreement* promised."

Louise Haigh, told the Irish Labour Party conference at the Dublin Mansion House that the threatened invocation of Article 16 by the Johnson administration meant now was "a perilous moment for Northern Ireland. The Tory government in Westminster is determined to continue to use Northern Ireland as an arena for their own poisonous game-playing and provocation. There is also endless provocation with the European Union in order to satisfy their own political agenda in Britain. I've been in Northern Ireland and in Dublin today meeting with political parties,

and with the Government to talk about the way forward."

'Colossally Stupid' - Sir John Major

The former Prime Minister, Sir John Major, has warned his successor at No 10, Boris Johnson, that triggering Article 16 of the NI Protocol would be dangerous and "colossally stupid". Such a move would damage relations with the European Union and the United States and could lead to further destabilisation within Northern Ireland itself.

Sir John told the BBC that "This Protocol is being denounced week after week by Lord Frost and the Prime Minister. Who negotiated the wretched Protocol? Lord Frost and the Prime Minister. They negotiated it, they sign it, now they wish to break it. This is silly politics to placate a few extreme Brexiteers and the price will be paid by businesses, people in Northern Ireland and the reputation of the United Kingdom".

Section Three: Background Material and Further Reading

Background Material

European Commission Press remarks by Vice-President Maroš Šefčovič following his meeting with David Frost, 12 November 2021. https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_5984

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