

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

Dialogue on the Protocol on Ireland/Northern Ireland (the Protocol) continues, but is yet to yield results. Six sessions of team talk and face-to-face Frost-Šefčovič discussions have so far failed to produce a mutually acceptable outcome. However, both sides continue to speak about the possibility of reaching a deal by Christmas.

Lord Frost, in a strongly worded speech on many aspects of Brexit, argued the following:

The current problems with the protocol go to the heart of our territorial integrity, of what it means to be one country and one market. They will not just disappear.

I still hope the EU can show the ambition needed to fix the problem by agreement. If they can't, of course we will have to safeguard our position in other ways". Maroš Šefčovič responded by urging David Frost to end his "political posturing" in the Protocol negotiations and insisting that in respect of EU policy on goods movements "we cannot undo the Brexit."

London was reported to be surprised by developments in Germany where three parties reached an agreement which contains a specific reference to Northern Ireland in the context of "a common European policy towards the United Kingdom" and "close bilateral cooperation within this framework".

The agreement was reached on Thursday, 25 November 2021 and sees Social Democrat Olaf Scholz replace conservative Angela Merkel as chancellor.

The agreement then says:

We insist on full compliance with the agreements that have been concluded, in particular with regard to the Northern Ireland Protocol and the Good Friday Agreement. In the event of non-compliance with the agreed standards and procedures, we are committed to the consistent application of all agreed measures and countermeasures.

Section One: State of Play

Lord Frost in Northern Ireland

The UK's point person for EU relations, Lord Frost, spent two days in Belfast, on Tuesday, 16 November – Wednesday, 17 November 2021, meeting the political parties and representatives of the business community.

All of the parties urged Lord Frost to reach an agreement with the EU, but remain deeply divided over the future of the Protocol. The Democratic Unionist Party leader, Sir Jeffrey Donaldson, insisted that there must be decisive action "within a reasonable time".

The DUP MP, Ian Paisley, argued that the onus is on the EU to find an agreement:

If they continue with their stubborn refusal then the United Kingdom will not only be justified in taking the necessary unilateral action to restore Northern Ireland's place within the UK internal market, but it will have no other option than to do so. " For Sinn Fein, Declan Kearney MLA called on the UK government "step back from

the brink. It is essential at this point in time that the rhetoric around threats of triggering Article 16 are discontinued, and we said that very clearly to David Frost this morning.

The Social Democratic Labour Party (SDLP) leader, Colum Eastwood, said that triggering Article 16 "would be extremely short-sighted" and cause Northern Ireland "serious economic harm". The Alliance Party leader Naomi Long said she stressed to Lord Frost "the importance of taking the negotiations seriously, of trying to find a landing zone that we can all agree on so we can remove the instability that is currently hanging over the institutions and businesses and start to move forward".

In an interview on BBC Radio Ulster, it was put to Lord Frost that the Northern Ireland public do not support him in negotiations with the EU since "poll after poll" showed that they backed keeping the protocol as it is. A poll for Queen's University was quoted, which shows growing support for the protocol – with 52 per cent of respondents saying the post-Brexit arrangements are a "good thing", up from 43 per cent in June .

Lord Frost responded by saying that he does not think that "it's true from the polls I've seen that there's widespread support for the way the protocol is working". Admitting that there is a division of opinion on the subject he argued that "one of the things we have learned in Northern Ireland is that it is very important, if you can, to try and proceed by consensus, with cross-community support with the maximum possible of buy-in to solutions and that appears not to be the situation with the protocol at the moment, and we would like to design, to negotiate, to agree something that everybody can get behind". The UK government position is that that there would

have to be some sort of treaty arrangement between the UK and the EU covering Northern Ireland but that it must be an arrangement that everybody could get behind.

Minister Coveney in Seanad Éireann, 17 November 2021

Foreign Minister Simon Coveney addressed broader considerations in relation to the Protocol in an address to Seanad Éireann discussion on Wednesday, 17 November 2021:

We must not forget that from the perspective of the Irish Government, while Northern Ireland and its stability is, of course, the primary concern, this is about more than just Northern Ireland. It is also about Ireland's place in the EU Single Market. If we allow a situation where important elements of the protocol are set aside, at some point the question will be raised as to whether there is a gaping hole that is, effectively, unguarded, without any form of checks, data sharing or anything, in the EU Single Market through Northern Ireland. If it is the case that a hole exists between Ireland and Northern Ireland, where stands Ireland's status within the EU Single Market? That is why this is an all-island concern.

It is a Northern Ireland concern in terms of political tension but it is also a concern for us in terms of our economic model and so on because Ireland's place in the Single Market cannot be called into question on the basis of decisions of the British Government. That is not acceptable to me, particularly when two British Prime Ministers have put agreements in place with the EU to ensure that Ireland's place

in the Single Market remains guaranteed and that no Border infrastructure on the island of Ireland would be seen as acceptable. Those are the two benchmarks we must overcome for the people of Ireland and businesses here.

On top of that, we must find a way to implement a protocol in a way that I hope unionists will be able to accept in the future. The implementation of the protocol must not undermine their Britishness and must reduce, to the maximum extent possible, the number of checks and trade disruption on goods coming one way, from east to west, Great Britain to Northern Ireland. I totally agree that we must be careful not to slide back into any kind of groupthink that is, in some ways, anti-British because that is not helpful. However, at the same time, we must articulate the truth about how we got here and why. We must also insist that international agreements matter, particularly when our core interests are at stake and if they are undermined, with consideration of both the peace process and our economic model.

British-Irish Council, 18 November 2021

The British-Irish Council (BIC) held its 36th Summit meeting in Cardiff, hosted by the Welsh Government. The First Minister of Wales, Mark Drakeford, presided. The Taoiseach and Tánaiste represented the Irish Government, while the UK Government was represented by Local Government Secretary Michael Gove and Minister of State for Northern Ireland, Conor Burns. Agriculture Minister Edwin Poots led the Northern Ireland Executive delegation to the Council and Scotland's First Minister Nicola Sturgeon attended. The Summit also included

representatives from Guernsey, Jersey and the Isle of Man.

The Council reflected on the latest political developments and took the opportunity to engage on a number of topics of mutual interest, including the economy, trade, ongoing relations with the EU and the 26th UN Climate Change Conference of the Parties (COP26). Ministers discussed the continuing impact of the COVID-19 pandemic and the progress of post-pandemic recovery programmes.

Secretary Gove told a press conference that there were sufficient signs of progress after five weeks of talks on the Protocol and that his government would not need to follow through on its recent threats: "I do believe that there is a constructive approach that's being taken by the Commission and Lord Frost has signalled that while, of course, it's always possible that Article 16 may require to be invoked, we're confident that we'll be able to make progress without it".

Ritchie - Frost Exchange in House of Lords, 18 November 2021

In a House of Lords debate on the Protocol on Thursday, 18 November 2021 the former SDLP leader, Margaret Ritchie, questioned Lord Frost. She stated that "It looks very much as if the Minister is negotiating only for unionists". Lord Frost rejected the charge and argued that the UK is negotiating on behalf of everyone in Northern Ireland and in the best interest of the prosperity and stability of Northern Ireland. Although the EU and UK interpret the Protocol "in rather different ways", Lord Frost said he still hoped that an agreement could be reached.

Frost- Šefčovič Meeting on Protocol, 19 November 2021

The fifth face-to-face meeting on the Protocol between the chief negotiators – Lord David Frost for the UK and European Commission Vice-President Maroš Šefčovič for the EU - took place in Brussels on Friday, 19 November 2021. The talks were reported as ending without any apparent breakthrough. Vice-President Šefčovič's statement expressed hope that the UK's recent change in tone will lead to "joint tangible solutions within the framework of the Protocol. The statement acknowledged progress on customs but also stressed the urgency of resolving differences around the area of sanitary and phytosanitary measures and the supply of medicines from Great Britain to Northern Ireland.

Lord Frost published his statement via Twitter. In the statement, he welcomed "the Vice-President's acknowledgement that the Protocol has led to unintended consequences in Northern Ireland". He said that there had not been any substantive progress regarding customs or sanitary and phytosanitary issues and that more needs to be done to reach agreement on medicines. Whilst he stressed the UK's preference to secure a solutions-based consensus, it still recognises the triggering of Article 16 as a legitimate course of action if no solution can be found.

Campaign at the Border

On Saturday, 20 November 2021 campaigners staged a protest at the border to warn the UK authorities against any move to trigger Article 16. In the days which followed, the group Border Communities Against Brexit (BCAB), protested at five locations on the border with the first at Carrickcannon on the South Armagh/North Louth border. A spokesman for the group told the crowd that "56 per cent in Northern Ireland voted to remain in the EU

and by any calculation that is a majority. And a majority also support the protocol, the DUP do not speak for us”.

The campaign argues that “communities along the border are determined not to be dragged back to the past, it is shocking after years of Brexit uncertainty for border communities that a deal that was signed only a very short time ago is being torn apart. We will not allow the peace process to be undermined.”

Loyalist Warning of Violence

David Campbell, chairman of the Loyalist Communities Council, has warned of likely “instability and potential violence” unless loyalists are satisfied with progress on Protocol concerns.

In response to Maroš Šefčovič’s comment that there had been a “change of tone” from the UK side of the ongoing negotiations, Mr Campbell said that, despite the “upbeat” rhetoric, what really matters is whether the EU is prepared to compromise on two core things – firstly, that any requirement for “permanent border infrastructure” between Northern Ireland and Great Britain is removed. And secondly, that the European Court of Justice must “no longer regulate trade disputes in Northern Ireland”. If Mr Šefčovič backs such proposals, “there may be the prospect of real progress”. But he added: “If the answer is negative however, then the European Commission is still requiring the Belfast Agreement to be breached and threatening a return to instability and potential violence in Northern Ireland.

Frost on Brexit and “European Model”, 22 November 2021

The Protocol row is the UK’s “most pressing

trade problem”, Lord Frost told the ‘Margaret Thatcher Conference’ hosted by the Centre for Policy Studies, a right-wing think tank, in London on Monday, 22 November 2021. He then spoke in some detail of the importance of Britain’s “divergence” from Brussels and warned against copying the “European social model”. He argued that the UK’s “most urgent and pressing problem” and “issue of the highest national interest” is the restoration of free trade within the UK itself. He also argued that Britain must deregulate areas such as data, gene editing, transport, medical devices and artificial intelligence to make them more dynamic and less bureaucratic than under the EU. “If we stick to EU models but behind our own tariff wall and with a smaller market, obviously we’re not going to succeed. That’s why I so often talk about divergence, not for the sake of it, but because it’s a national necessity.”, he said.

Taoiseach and Prime Minister Engagement, 24 November 2021

Taoiseach Micheál Martin and Prime Minister Boris Johnson spoke about the Protocol on Wednesday, 24 November. The Prime Minister issued a statement:

The Prime Minister raised his ongoing concern about the substantial distance between the UK and EU positions when it comes to resolving the issues with the Northern Ireland Protocol. The Protocol was rightly keeping North-South trade open but its implementation was damaging the much larger East-West dimension

The Prime Minister and the Taoiseach agreed that a negotiated outcome was the preferred outcome and to work hard

to achieve it. The Prime Minister was clear, however, that if talks were not able to deliver a rebalanced and sustainable outcome soon, the Government would be left with no choice but to use the safeguard measures under Article 16. This was a perfectly legitimate provision in the Protocol that had been agreed by all parties.

The two leaders agreed on the vital importance of the UK-Ireland relationship in finding solutions and in providing long-term stability in Northern Ireland. They agreed to keep in close contact.”

The Taoiseach commented on Twitter: detailed discussions with British Prime Minister this afternoon on the NI Protocol. During our call I told him it remained my view that every effort should be made to secure a successful outcome to the current EU/UK negotiations.” He later commented that the engagement with the Prime Minister was ‘positive’.

Frost- Šefčovič Meeting on Protocol, 26 November 2021

The sixth meeting between the chief negotiators – Lord David Frost for the UK and European Commission Vice-President Šefčovič – took place in London on Friday, 26 November 2021. The meeting failed to produce a breakthrough and talks will continue, at team level. Lord Frost and Maroš Šefčovič tweeted their statements. Most notably, Lord Frost’s statement warned that the UK is “ready to use Article 16 to protect the Belfast (Good Friday) Agreement if other solutions cannot be found”. Both statements reaffirmed the sides’ intention to meet again on Friday, 3 December 2021.

Section Two: The Evolving De-

bate

Simon Coveney in Dáil, 18 November

The Foreign Minister spoke in a Dáil debate on the Protocol , highlighting his various engagements with key stakeholders:

I met with Vice-President Šefčovič in Brussels on Tuesday. We agreed to maintain close contact as the European Commission continues its discussions. I strongly welcome the continuation of talks between the EU and the UK. We need to give these discussions every chance to succeed. To recall, the protocol is the joint EU-UK solution to mitigate the disruption Brexit causes for citizens and businesses on the island of Ireland. While concerns have been expressed about how the protocol is operating, it is important to note that support for the protocol remains strong in Northern Ireland. Recent polling in attitudes to the protocol in Northern Ireland show that a majority of people view the protocol as a good thing for Northern Ireland. People across communities support ongoing efforts to seek solutions and a pragmatic and flexible approach.

I remain in regular contact with business, civil society and political stakeholders in Northern Ireland. I am very aware of their views about the opportunities the protocol offers to Northern Ireland, giving them access to both the UK and EU internal markets. Surveys show that two thirds of Northern Ireland businesses see the opportunity here. We are seeing historically high foreign direct investment interest in Northern Ireland. We need to use the protocol to deliver on a prosperity agenda for the people of Northern Ireland.

Realising these opportunities should be the focus of our energy at this time.

The European Commission has listened carefully to the views of Northern Ireland. Last week, Vice-President Šefčovič held two round-table meetings with businesses and civil society to ensure their voices continue to be heard as talks with the UK progress.

The European Commission has acted in good faith. We now need a good faith response from the UK. I call on the UK Government to engage seriously and constructively in talks with the EU, so that we can provide stability and predictability for Northern Ireland. This is a point that I continue to make in my contacts internationally on the issue, including with my EU counterparts, whom I met in Brussels earlier this week - they have shown extraordinary solidarity and will continue to do so - and also in my contacts with the US Administration.

Bertie Ahern Criticised for ‘Ghetto’ comment

Former Taoiseach Bertie Ahern has said that loyalists in the “ghettos” of East Belfast – and in the areas where you are likely to get trouble – “don’t have a clue” about the Protocol and see it as a “trick by the South” to bring about a united Ireland. “They see it as about identity. They see it as a road to the Dublin government taking over again and this is a pathway to that. That’s the hard reality. The idea that the Protocol is about trade just passes them by, in fact they’re not interested. Even those who you might consider to be a bit more intelligent and articulate. That is the difficulty”, he said.

The DUP MP for East Belfast, Gavin Robinson,

criticised Mr Ahern for associating his constituency with a ghetto and said that the suggestion that loyalists were not able to understand the protocol was “demeaning and degrading”. He called on the former Taoiseach to apologise.

Taoiseach Micheál Martin played down the comments, pointing out that they were made in an academic conference, where “things get said”. He added that he did not believe that anyone in the unionist and loyalist community could accuse the Irish Government of not listening to them. The respected Belfast Telegraph commentator, Alex Kane, wrote that Ahern was right to point out that there were ideological and identity issues for unionism which needed to be acknowledged and addressed but that this would be “a far more difficult one to deal with” than some others.

Official History of Troubles

The UK Northern Ireland Office is reported to be planning to assemble a group of historians to produce an official history of the Troubles. This project is understood to be part of the overall package dealing with legacy issues announced by Prime Minister Boris Johnson and Northern Ireland Secretary Brandon Lewis. Sources in London were quoted as insisting that the official history would be independent of government ministers and that historians would be appointed to produce a balanced historical record.

Historian Diarmaid Ferriter responded to the report by highlighting that:

In 2014, the Stormont House Agreement stated: “The Executive will, by 2016, establish an Oral History Archive to provide a central place for people from all backgrounds (and from throughout

the UK and Ireland) to share experiences and narratives related to the Troubles . . . A research project will be established as part of the Archive, led by academics to produce a factual historical timeline and statistical analysis of the Troubles, to report within 12 months". That, to my eye, reads differently from the idea of an "official" history, so what has changed and what agendas are at play now?

Boris Johnson on Thatcher and Europe

Prime Minister Boris Johnson spoke to a conference on Margaret Thatcher at the Centre for Policy Studies in London on 22 November 2021. In his introductory remarks he said:

I'm very pleased to be here in addition because this is a great celebration of free trade and the critical role played by Margaret Thatcher, if I'm right, which I think I am. And I'm delighted to support that. But even her most ardent fans would have to accept that there was a blot on her record. But she had a blind spot. She actively campaigned to join what was then called the common market. And under the terms of the Treaty of Rome, I'm a Thatcher fan I can say this, she was part of the government that handed away this country's ability to control its own trade policy. And while she was always sceptical over the inexorable extension of European powers over those things, she was later persuaded that she needed to go further and agree to another cession of powers in the mid-1980s.

And I am not going to name the guilty men who talked her into it – I can't see any here tonight – but my fellow CPS disciples I am proud to tell you that thanks

at least partly to your assistance we have righted that spiritual wrong. We have freed Margaret Thatcher posthumously from the ideological prison in which she inadvertently locked herself.

And we have honoured the true meaning of her legacy and we have in the immortal phrase, taken back control.

UK 'Neutral on Border Poll' – Labour

Then Labour Party Shadow Northern Ireland Secretary, Louise Haigh, said that a British government should remain neutral on the question of a united Ireland in the event of a border poll. She argued that it would be for the people of Northern Ireland to decide such an issue, as provided in the Good Friday Agreement:

It is not my job to be a persuader for the union. That was an important principle that led up to the Good Friday Agreement. One of the important principles was that Britain should not have any strategic or selfish economic interest in the constitutional status of Northern Ireland. The principle of consent is still very much intact. It's up to the people of Northern Ireland to determine their own constitutional future and polls still suggest there is still a very firm majority of remaining in the United Kingdom. We're a unionist party in the Labour Party, but if there is a border poll we should remain neutral. I think that's an important principle.

Louise Haigh's comments drew criticism from both the DUP and the UUP. A DUP MP, Carla Lockhart, said the comments "demonstrate a fundamental misunderstanding of the principle of consent" while the UUP's Steve

Aitken said the idea that the UK Government would not campaign for Northern Ireland to remain in the union was “very puzzling”. “Nobody considers it even remotely likely that the Irish Government would adopt a stance of neutrality”, he added.

PUP Councillor on protocol ‘opportunities’

PUP councillor –and former party leader, John Kyle, has controversially argued that the Protocol could present “significant opportunities” if certain “serious problems” are not addressed.

He told BBC NI that, with a number of fundamental changes in the Protocol, businesses will be able to benefit from the best of both worlds:

Businesses in Northern Ireland will be able to export to the European Union without the regulatory restrictions that are placed on all other businesses in Great Britain. They will also have access to the UK internal market that other businesses in the EU do not have access to, so we are uniquely positioned to take advantage of the UK internal market and the EU market.

He called on unionism to “stand back and look at the opportunities” and said that he believed that much of ‘civic unionism’ agreed with him and that he had received messages of support from that source.

Section Three: Background Material and Further Reading

Background Material

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