

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

With the Russian invasion of Ukraine overshadowing all other matters, attention in the debate over the Protocol on Ireland/ Northern Ireland (the Protocol) has turned to the growing series of anti-protocol rallies organised with the involvement of the Orange Order and loyalist groups. Meanwhile, the Truss-Šefčovič talks have continued and the UK-EU Withdrawal Agreement Joint Committee met for the ninth time, after an eight month interval.

Recent opinion polling has produced interesting results, pointing to Sinn Fein emerging as the largest Assembly party and to a "notable shift" in attitudes towards greater acceptance of the Protocol.

## **Section One: State of Play**

Joint Committee Meeting 21 February 2022

The UK-EU Withdrawal Agreement Joint Committee met in Brussels on 21 February 2022. The meeting was described as "intensified and constructive" with both sides expressing "ongoing determination" to resolve outstanding issues and underlining the importance of further engagement. It was clear that Brussels and London remain far apart on fundamental aspects with the EU describing the meeting as neither a "breakthrough" nor a "breakdown".



The two sides agreed a Joint Statement:

Guaranteeing the rights of UK nationals resident in the EU and of EU citizens resident in the UK has always been a top priority for both sides. The implementation of the citizens' rights Part of the Withdrawal Agreement is therefore of particular importance. While most aspects of the citizens' rights Part are being implemented satisfactorily, both sides raised issues requiring further attention.

In relation to the Protocol, Vice-President Šefčovič and Foreign Secretary Truss underlined that the UK and EU share an overriding commitment to protect the Good Friday or Belfast Agreement of 10 April 1998 in all its dimensions. Vice-President Šefčovič and Foreign Secretary Truss took stock of the intensified and constructive talks that have taken place between them over the last months. They underlined the ongoing determination of both parties to ensure that the outstanding issues in the context of the Protocol are addressed, and durable solutions found for the benefit of citizens, businesses and stability in Northern Ireland. In addition, Vice-President Šefčovič and Foreign Secretary Truss reiterated the importance of further engagement, including with the Northern Ireland Assembly and Executive, and wider Northern Ireland civic society and business.

Vice-President Šefčovič and Foreign Secretary Truss noted that the joint bodies established by the Withdrawal Agreement should meet regularly, and agreed to discuss any point raised by the EU or the UK that is of relevance to the Withdrawal Agreement in general. Vice President Šefčovič also made the following remarks to the press following the meeting:

Turning to the Protocol on Ireland/ Northern Ireland: we took stock of the intensified talks that have taken place over the last few months. In short, I would describe them as neither a breakthrough, nor a breakdown. So hard work continues.

My team will continue to work flat out on the outstanding issues within the Protocol, while particularly building on the farreaching solutions that the EU presented to facilitate the implementation of the Protocol. These solutions offer remarkable simplification and a big permanent impact on the ground.

My continued outreach to Northern Irish businesses, civil society and institutional actors has reassured me that we should stay laser-focused on practical solutions, particularly on the area of customs and the movement of sanitary and phytosanitary goods. I can see that all stakeholders want us to succeed. And this also remains the EU's intention.

### New Opinion Poll

A poll by the Liverpool University Institute of Irish Studies / Irish News has indicated that Sinn Féin is on course to become the largest party at Stormont after the May Assembly elections.

The survey puts Sinn Fein at 23.2% of first preference votes, ahead of the DUP on 19.4%. The Alliance Party is in third place with 15.6%. The UUP is on 14%, the SDLP on 9.9%. the TUV on 6.4% and the Green Party on 6.3% One in five of those surveyed did not know who they will vote for and 12% said they will not vote.



If the poll results are replicated in May, Michelle O'Neill would be on course to become First Minister. However, neither of the main unionist parties have indicated that they would nominate one of their MLAs for the role of Deputy First Minister.

The survey deals with issues other than party preference. It shows that little more than one in ten unionists see the Northern Ireland Protocol as the most important issue in the election. The protocol occupies fourth place in the list of issues that matter to unionist voters. Health, at 29.6%, the Economy at 22.9% and recovery from the pandemic at 17% are all ahead of the Protocol at 11.7%. Health is the overwhelming concern for nationalists - at 41.5%.

The *Irish News* commented that "voters care more about bread and butter issues than big picture politics. For unionists, it is not fears about an existential threat to their constitutional position that keeps them awake at night. Like their nationalist countrymen, what matters most is health. They also want an economy in good shape, their children to get a good education, a job and a decent roof over their heads, just like in every other country."

### Queen's University Belfast Opinion Poll

A study published by researchers at Queen's University Belfast points to a "notable shift" in Northern Ireland towards greater acceptance of the Protocol. The researchers said this was "particularly evident" in opinion on the economic impact of the protocol, with 48 % of those surveyed regarding it as having a positive effect and 43% seeing it as a negative. As many as 63% agreed the protocol provided Northern Ireland with "a unique set of post-Brexit economic opportunities compared to the rest of the UK", with 26% disagreeing. However, nearly two-thirds of respondents – 64 per cent – said that they saw the UK and EU's failure to reach a solution to the outstanding issues on the protocol as putting peace and stability at risk. The protocol remains deeply divisive with 51% regarding it as an appropriate means for managing the impact of Brexit in Northern Ireland. Looking to the May Assembly election the poll showed 43 per cent of respondents saying they would vote for candidates who favoured the full application of the protocol with 37% saying they would vote for candidates who opposed it.

The survey is part of a three-year project funded by the Economic and Social Research Council (ERSC), which studies voter attitudes to a range of issues relating to Brexit, the Northern Ireland protocol and their implications for Northern Ireland.

### Minister Coveney in Northern Ireland

Minister for Foreign Affairs Simon Coveney went to Belfast on 17 February 2022 for a series of meetings with Northern Ireland political leaders and to Armagh for meetings with civic representatives. He met the leaders of Sinn Fein, the SDLP, Alliance and the UUP, but not the DUP as the party leader, Sir Jeffrey Donaldson was engaged in House of Commons business in Cameroon. A meeting will be arranged on Sir Jeffrey's return from Africa.

This was Minister Coveney's first visit since the collapse of the power-sharing Executive. Rejecting criticism of the apparent delay in responding to the crisis, Simon Coveney insisted that the Irish Government was "keenly involved in actually trying to find compromise positions and trying to find a way of reassuring people that the Northern Ireland protocol can be implemented in a way that everybody can accept. What is most important is that senior



politicians need to be talking to each other, understanding each other's positions and trying to be as accommodating as we can be."

Michelle O'Neill of Sinn Féin spoke of "very timely" discussions with Simon Coveney and also with Commission Vice-President Šefčovič – and of her hopes for progress at the scheduled meeting of the Joint Committee. The SDLP leader, Colum Eastwood said that "The only way there'll be an executive after an election is if the DUP win. That's the most undemocratic thing I've ever heard." Naomi Long of Alliance commented that "the prospects for forming an Executive post the election, if the DUP continue to redraw their red lines in the way they have been recently, is fairly bleak."

UUP Leader Doug Beattie issued a statement on his meetings with Simon Coveney and Maroš Šefčovič, in which he noted: "As Unionists we believe in more engagement, not less. It is important that we make our case and that we take our concerns on the Protocol wherever they need to be heard. The border in the Irish Sea will continue to undermine the Belfast Agreement until this issue is dealt with. We will continue to engage until we see the Protocol replaced. Unionists can win the argument on the Protocol without bringing down the institutions or creating instability."

## Truss – Šefčovič Meeting 11 February 2022

The UK and EU Chief Negotiators – Foreign Secretary Liz Truss and Commission Vice-President Maroš Šefčovič – met for the third time in-person in Lindon on 11 February.

It was reported that the UK had signalled to the EU that it could accept custom controls on goods destined only for sale in Northern Ireland. This was seen as its first significant concession in the lengthy series of talks with Brussels with British negotiators telling their EU counterparts they could accept controls, but far fewer than under existing arrangements or under the changes proposed by the EU side.

The UK team declined to comment but a source indicated that Liz Truss had "put forward a series of constructive proposals to address problems created by the Protocol" and to bring the two sides closer as the potential February deadline approached. The source added that there was no 'single offer' and that the UK's fundamental position had not 'shifted'.

On the EU side there appeared to be a cautious welcome for the UK move. A Brussels diplomat was quoted as saying "It's a positive move but we are not rolling out the red carpet yet. There is still a long way between the two sides."

### First Unionist Rally Against Protocol

An anti-protocol rally was hosted by the Orange Order in Dromore, Co. Down, on 10 February 2022. The speakers included DUP leader Jeffrey Donaldson, TUV leader Jim Allister and Baroness Kate Hoey.

Jeffrey Donaldson told the meeting that trade barriers could "succeed where decades of terrorism failed by driving an irrevocable wedge between Northern Ireland and other parts of the UK" and insisted that the days of unionists being "seen and not heard" were over. He argued that respect for both traditions seemed to have "vanished into thin air" with the protocol's implementation. "Unionism has stood together against the Irish Sea border. We need to ensure this translates to the ballot box, to transfers between candidates, in order to maximise unionist representation in the next Assembly."



Jim Allister said that no unionist "worthy of the name" could accept or implement the protocol. "The economic mischief is dire, but its constitutional mischief is terminal to the Union. Its clear purpose is to build Irish unity through the stepping stone of an allisland economy, whereby Northern Ireland's alignment to and affiliation with Great Britain is broken and the Irish unification anticipated in the Belfast Agreement is achieved. That is why I have always said to unionists, 'Either kill the protocol or it will kill the Union."

RTE reported that "most media outlets were denied access to the meeting." The Co Armagh village of Markethill, the scene of several largescale and often controversial demonstrations over the past year, is likely to see a major rally within coming weeks.

### Markethill Rally 18 February 2022

Several thousand people attended the second public rally/demonstration against the Northern Ireland Protocol at Markethill, County Armagh on Friday 18 February 2022. The rally was organised by the Mid/South Armagh Grassroots Unionist Collective.

The rally was addressed by the DUP MP Sammy Wilson, the TUV leader Jim Allister, the Loyalist activist Jamie Bryson and representatives of the Orange Order.

Mr Wilson – who was repeatedly booed and heckled by sections of the crowd critical of the DUP approach to the controversy - compared the EU's handling of Northern Ireland in the Brexit process to Vladimir Putin's annexation of Crimea in Ukraine. "Through the Northern Ireland Protocol, the EU, in effect, is annexing Northern Ireland just as much as President Putin has already annexed part of Ukraine and is seeking to undermine that country's independence further." Jim Allister, who intervened to call on the crowd to respect all speakers telling them that they will get their opportunity at the polls to express themselves – said that "foreign sovereignty over any part of the UK is incompatible with being an integral part of the kingdom. The basis of unionist cooperation, as set out in the Ulster Day Declaration, is, in its word, the "unalterable position that the Protocol must be rejected."

Jamie Bryson, a loyalist activist, spoke of a further rally planned for Portadown, and asserted that "removing the protocol is not even enough" and argued for "the fundamental reform of the Belfast Agreement that must take place before any unionist could credibly advocate a return to the power sharing institutions."

### Portadown Rally 23 February 2022

A third anti-protocol rally took place in a Portadown Orange Hall on 23 February 2022 at which the UK Government was criticised for failing to match its "tough talk" over Ukraine with meaningful action on the Northern Ireland Protocol.

Jim Allister, the TUV leader, told the rally that Northern Ireland's position as part of the UK had been "annexed" by the post-Brexit arrangement. "Sovereignty is the core issue, the right not to be ruled by a foreign power... sovereignty is the key issue when it comes to the iniquitous EU Protocol. Great Britain is now regarded under the protocol as a 'third country'the very epitome of our colonisation by the EU."

Jamie Bryson, said that the time was coming when civil servants should refuse to carry out protocol checks on goods at ports. He argued that "There is no longer majority unionist consent for power sharing and nor will there ever be whilst the framework of such arrangements remains fundamentally structured in favour of nationalists."



## DUP / TUV deal on election cooperation

The DUP and TUV have reached an agreement on cooperation in the forthcoming Assembly election. The UUP was invited to join them.

DUP leader Jeffrey Donaldson spoke of the deal at the Dromore anti-protocol rally, responding to calls from Baroness Hoey and others for unionist unity in the election. "Let me be clear, I am not going to say that a political party should step aside or not. I think every political party has the right to contest an election in a democracy. But we need to cooperate. And I am happy to say Jim (Allister) and I have already agreed this. Unfortunately it is not yet agreed by all the unionist political parties. We are agreed that we will jointly call for all the people who vote for our parties to transfer their votes to pro-Union anti-protocol parties."

The TUV leader, Jim Allister commented that, while he would not define the agreement as a pact, "TUV has always been clear that unionists need to vote down the ballot for all pro-Union candidates in the order of their preference. With the protocol a live issue this is all the more important. We welcome the fact that Sir Jeffrey made a commitment to encourage voters to transfer down the ballot to other unionists."

The UUP initially declined to comment on the deal but later informed media that it would not be adopting the DUP-TUV policy. "We are offering fresh leadership to Northern Ireland so we are asking people to vote for their UUP candidates. The UUP believes the Northern Ireland electorate are more than capable of deciding for themselves who they should give their transfers to. They need to be trusted more and dictated to less."

## Northern Ireland (Ministers, Elections and Petitions of Concern) Bill

On 7 February 2022 the House of Commons passed the final stages of the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill which allows for the Northern Ireland Assembly to continue without a functioning Executive for at least six months. During that time Ministers would continue to run their respective departments. It could also come into effect following the scheduled May Assembly election if the parties fail to fill the posts of First and Deputy First Minister.

The legislation, in line with a House of Lords amendment, allows for retrospective application which will cover the resignation of First Minister, Paul Givan. The Minister of State at the Northern Ireland Office, Conor Burns, told the House of Commons "that means that if Royal Assent is given [...] the relevant provisions of the Bill will apply retrospectively, and instead of the sevenday period for filling the offices of First and Deputy First Minister applying, the new period of up to 24 weeks will apply, as agreed under New Decade, New Approach."

## Stormont 'Double-Jobbing' Plan Scrapped

A plan to allow MPs in Northern Ireland hold seats in the Stormont Assembly at the same time has been scrapped.

The plan provided that Northern Ireland MPs would be able to 'double job' as MLAs because of the temporary return of dual mandates after the May Assembly election. MPs elected to the Assembly in May would be able to keep their Westminster seats with the arrangement remaining in place until the next Westminster election due by December 2024 at the latest.



The plan produced fierce opposition from some Northern Ireland politicians, including the UUP leader Doug Beattie. The initiative by the UK Government was seen by many as designed to assist the DUP leader, Sir Jeffrey Donaldson, in his bid to return to Stormont by taking a seat in the Assembly and avoiding an early Westminster by-election in the Lagan Valley constituency. The 'double jobbing' rule could also have boosted the DUP campaign by allowing other high profile MPs to stand in the Assembly poll. The plan was abruptly scrapped when it appeared that, in Westminster, only the DUP supported the return of dual mandates.

The *Irish News*, in December 2021, wrote of the conundrum facing Jeffrey Donaldson: "In addition to having to select two assembly candidates from a shortlist that also includes sitting MLAs Paul Givan and Edwin Poots, the DUP is preparing to defend a Westminster seat where Alliance made big inroads at the last election. The return of dual mandates would have made the switch a lot less complicated and delayed the party any potential embarrassment in the Lagan Valley by-election triggered by Sir Jeffrey's return to Stormont."

# Section Two: The Evolving Debate

#### UK in a Changing Europe Study

The think tank UK in a Changing Europe has published a study by Alan Wager and Anand Menon on 'Five Lessons from Brexit', arguing that "leaving the EU was not simply a matter of ending the UK's membership – though Lord alone knows that turned out to be far more complex than many had assumed."

The third Lesson – 'We're a complex country' – addressed the Northern Ireland situation:

Of course, one reason why positions became so polarised was because the Brexit process itself dragged on for so long. This was partly a result of the constitutional complexity of the UK, not least the situation in Northern Ireland.

The UK had three mutually incompatible objectives: an exit from the single market and the customs union; no hard border on the island of Ireland; and an all-UK approach to Brexit. The difficulty in resolving the tension between these objectives came to be known as the 'Irish trilemma'.

Imposing a border on the 310-mile frontier between Northern Ireland and the Republic threatened a return to sectarian violence. However, treating Northern Ireland differently from the rest of the UK would not only create the kind of problems with which we are now becoming all too familiar but was, according to Theresa May, something to which no British Prime Minister could ever agree.

Yet the only alternative – remaining in the single market and the customs union – would lead to accusations that the Brexit vote was being frustrated. The trilemma haunted the negotiations and continues to do so to this day.

That the complexities around Northern Ireland were not flagged earlier speaks to a lack of expertise within the British state about the workings of the territorial constitution. As former senior civil servant Philip Rycroft puts it it is "quite extraordinary how little Whitehall understood about its own country". But the constitutional conundrums thrown up



by Brexit go further than simply Northern Ireland.

Brexit of course, is not 'done', and we aren't done learning lessons from Brexit either. There are outstanding issues to be settled over Northern Ireland – issues that could undermine even the loose trading arrangements negotiated by Boris Johnson. Events – most notably the Russian invasion of Ukraine – will help determine the degree to which the UK and its EU partners can, must and do work together.

### Office of National Statistics on UK Trade post-Brexit

The UK Office of National Statistics (ONS) has reported that UK exports of goods to the EU have fallen by £20 billion compared with the last period of "stable trade" with Europe. The ONS report showed that the combined impact of the pandemic and the UK exit from the EU single market caused a 12% fall in exports between January and December last year compared with 2018. Exports to the rest of the world dropped by a much smaller figure, about 6% compared with 2018 levels. The EU remains the UK's largest trading partner but - for the first time since comparable records started in 1997- the UK imports more goods from the rest of the world than it does from the EU27. UK goods imports from the EU were down by 17% - about £45billion - compared with 2018 while imports from the rest of the world increased by 13% - about £28 billion.

The ONS chief economist, Grant Fitzner, commented that "There is a lot more friction on trade, which you would expect to have a more medium-to-long-term impact." Business leaders are quoted as warning that border restrictions and reams of red tape are

pushing up costs and adding to delivery times, undermining UK competitiveness on continental markets. ONS surveys show 67% of firms experiencing challenges when exporting and 72% when importing in recent months.

(The ONS used the comparison with 2018 because that was the last year before distortions caused by firms stockpiling ahead of Brexit deadlines).

## Section Three: Background Material and Further Reading

#### **Background Material**

**GOV.UK** Joint Statement on the meeting of the Withdrawal Agreement Joint Committee: 21 February 2022. <u>https://www.gov.uk/</u> government/news/joint-statement-on-themeeting-of-the-withdrawal-agreement-jointcommittee-21-february-2022

**European Commission** Press remarks by Vice-President Šefčovič after the meeting of the Joint Committee of the Withdrawal Agreement, 21 February 2022. <u>https://</u> ec.europa.eu/commission/presscorner/detail/ en/SPEECH\_22\_1261

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## **Further Reading**

**Royal Irish Academy** Irish Studies in International Affairs.

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