

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 logic of Brexit is being brought to its inexorable conclusion in relation to the Protocol on Ireland/Northern Ireland, with the UK's announced intention to introduce unilateral legislation disapplying the Protocol. In Belfast, a democratic crisis looms as the DUP blocked the appointment of a Speaker for the newly elected Assembly. Meanwhile, the European Commission has spoken of "a lot of spinning by the UK" which has left Brussels confused. And, in an aside during a visit to Belfast, Boris Johnson has accepted that the political impasse in Northern Ireland is a "direct consequence" of the Brexit deal he signed up to.

Section One: State of Play

No Speaker – No Assembly

When the 90 members of the newly elected Northern Ireland Assembly assembled at Stormont on 13 May 2022, the DUP indicated that it would not assent to the appointment of a Speaker which meant that the Assembly was unable to conduct business and was adjourned indefinitely. Two candidates were nominated – Mike Nesbitt of the UUP and Patsy McGlone of the SDLP – but no election was possible.

The DUP insisted that the party would not agree to the appointment of a Speaker until there was "decisive action" from the London Government on the Protocol. The other parties

were at one in condemning the DUP action with Naomi Long of the Alliance Party saying that “while it is a sad day for the people of Northern Ireland it is a shameful day for the DUP.”

The UUP leader, Doug Beattie, has called on the UK Government to introduce legislation to prevent any party blocking the election of an Assembly Speaker. Such a law would mean that no party would have a veto over Stormont. “It’s not just the DUP. For three years Sinn Féin did exactly the same thing.”

The Northern Ireland Secretary, Brandon Lewis, has warned that he could act swiftly to cut MLA salaries if the DUP does not lift its block on nominating a Stormont Speaker and allow the assembly to function: “We’ll see where we are in the next few weeks at most.”

UK Government Declaration on Protocol, 17 May

On 17 May 2022, Foreign Secretary Liz Truss, on behalf of the UK Government, made a Statement in the House of Commons, setting out an intention to introduce legislation to set aside parts of the Northern Ireland Protocol. No timetable for the legislation, which could take months to proceed through the Houses of Commons and Lords, was announced.

The Foreign Secretary told the House that “the Belfast Good Friday Agreement is under strain. And, regrettably, the Northern Ireland Executive has not been fully functioning since early February. This is because the Northern Ireland Protocol does not have the support necessary in one part of the community in Northern Ireland.” Ms Truss went on to say:

I would also note that all of Northern Ireland’s political parties agree on the need for changes to the Protocol.

Mr Speaker, our preference is to reach a negotiated outcome with the EU. We have worked tirelessly to that end and will continue to do so. I have had 6 months of negotiations with Vice-President Maroš Šefčovič. This follows a year of discussions undertaken by my predecessor. The UK has proposed what we believe to be a comprehensive and reasonable solution to deliver on the objectives of the Protocol.

Our proposed solution would meet both our and the EU’s original objectives for the Protocol. It would address the frictions in East-West trade, while protecting the EU Single Market and the Belfast Good Friday Agreement. The challenge is that this solution requires a change in the Protocol itself, as its current drafting prevents it from being implemented, but the EU’s mandate does not allow the Protocol to be changed. This is why their current proposals are not able to address the fundamental concerns.

That is why I am announcing our intention to introduce legislation in the coming weeks to make changes to the Protocol. Our preference remains a negotiated solution with the EU. In parallel with the legislation being introduced, we remain open to further talks if we can achieve the same outcome through negotiated settlement. However to respond to the very grave and serious situation in Northern Ireland we are clear that there is a necessity to act to ensure the institutions can be restored as soon as possible.

The Government is clear that proceeding with the Bill is consistent with our obligations in international law – and in support of our prior obligations in the

Belfast Good Friday Agreement. And before any changes are made we will consult businesses and people in Northern Ireland as our proposals are put forward.

I want to be clear to the House that this is not about scrapping the Protocol. Our aim is to deliver on the Protocol's objectives.

The Bill will contain an explicit power to give effect to a new, revised Protocol if we can reach an accommodation that meets our goal of protecting the Belfast Good Friday Agreement. We remain open to a negotiated solution, but the urgency of the situation means we can't afford to delay any longer.

We must restore the primacy of the Belfast Good Friday Agreement in all its dimensions as the basis for the restoration of the Executive. We will do so through technical measures designed to achieve the stated objectives of the Protocol, tailored to the reality of Northern Ireland. We will do so in a way that fundamentally respects both unions: that of the UK and of the EU. And we will live up to our commitments to all communities of Northern Ireland. As co-signatory and co-guarantor of the Belfast Good Friday Agreement, we will take the necessary decisions to preserve peace and stability.

The DUP responded to the Statement by describing it as "a good start" and stressing that "actions will speak louder than words" with everything depending on the progress of the promised legislation through Westminster.

The European Commission Vice President, Maroš Šefčovič, issued an immediate

Statement in response to the Commons Statement:

The European Commission stands ready to continue discussions with the UK government to identify joint solutions within the framework of the Protocol that would benefit people and businesses in Northern Ireland. The potential of the flexibilities put forward by the European Commission is yet to be fully explored, and the Commission remains keen to do that with the UK government.

The announcement by the UK government, however, to table legislation that would disapply constitutive elements of the Protocol, raises significant concerns. First, because the Protocol is the solution agreed between the EU and the UK to address the challenges posed by the UK's withdrawal from the EU for the island of Ireland, and to protect the hard-earned gains of the peace process. Second, because the Protocol is an international agreement signed by the EU and the UK. Unilateral actions contradicting an international agreement are not acceptable. Third, because the Withdrawal Agreement and its Protocol are the necessary foundation for the Trade and Cooperation Agreement, which the EU and the UK have agreed upon to organise their overall relationship after the UK's withdrawal.

Should the UK decide to move ahead with a bill disapplying constitutive elements of the Protocol as announced today by the UK government, the EU will need to respond with all measures at its disposal. Our overarching objective is to find joint solutions within the framework of the

Protocol. That is the way to ensure legal certainty and predictability for people and businesses in Northern Ireland.

The Irish Government also responded, with a Statement by the Minister for Foreign Affairs, Simon Coveney:

I deeply regret the decision of the British government to introduce legislation in the coming weeks that will unilaterally dis-apply elements of the Protocol on Ireland/Northern Ireland.

Such unilateral action in respect of an internationally binding agreement is damaging to trust and will serve only to make it more challenging to find solutions to the genuine concerns that people in Northern Ireland have about how the Protocol is being implemented.

At a time when people in Northern Ireland have chosen their elected representatives and want to get the Executive back up and running, the path chosen by the British government is of great concern. It undermines political stability and confidence in Northern Ireland's economy. The British and Irish Governments have a shared responsibility to support the institutions. This unilateral action is contrary to the wishes of people and business in Northern Ireland. I welcome that the Foreign Secretary has expressed her preference for a negotiated solution with the EU. The EU has indicated that it is ready and willing to resume talks with the UK at any time.

Boris Johnson Article, 16 May 2022

Prime Minister Boris Johnson contributed an article, entitled 'The Way Ahead', to the *Belfast Telegraph*, on 16 May 2022, addressing the

difficult issues arising from the post-Brexit negotiations:

It is because of these complexities that the Protocol exists. It is why the Protocol was agreed in good faith. And it is why those who want to scrap the Protocol, rather than seeking changes, are focusing on the wrong thing.

But there is no disguising the fact that the delicate balance created in 1998 has been upset. One part of the political community in Northern Ireland feels like its aspirations and identity are threatened by the working of the Protocol.

And the Protocol involves other responsibilities which also need to be lived up to by all sides, including the commitment to protect the Belfast Good Friday Agreement in all its dimensions.

We have been told by the EU that it is impossible to make the changes to the Protocol text to actually solve these problems in negotiations – because there is no mandate to do so.

We will always keep the door wide open to genuine dialogue. And we will continue to protect the single market – as it has been protected throughout the existence of the Protocol so far – and the open border with the Republic of Ireland which will always be of paramount importance. There is without question a sensible landing spot in which everyone's interests are protected. Our shared objective must be to create the broadest possible cross-community support for a reformed Protocol in 2024.

I hope the EU's position changes. If it does not, there will be a necessity to act.

The Government has a responsibility to provide assurance that the consumers, citizens and businesses of Northern Ireland are protected in the long-term. We will set out a more detailed assessment and next steps to Parliament in the coming days, once I return from discussions with the local parties. In doing our part, we expect all elected representatives to get back to work and deliver for the people of Northern Ireland.

Following the House of Commons Statement and the EU response, the Prime Minister dismissed the risk of retaliation from the European Union. Saying, of the Protocol, that “We don’t want to nix it, we want to fix it, and we will work with our EU partners to do it.”

Queen’s Speech, House of Lords, 10 May 2022

The Queen’s Speech, setting out the UK Government’s legislative programme for the year ahead, made only brief reference to the evolving situation in Northern Ireland.

“The continued success and integrity of the whole of the United Kingdom is of paramount importance to Her Majesty’s Government, including the internal economic bonds between all of its parts. Her Majesty’s Government will prioritise support for the Belfast (Good Friday) Agreement and its institutions, including through legislation to address the legacy of the past.”

In the ensuing debate in the House of Commons, there were significant interventions:

The former Prime Minister, Theresa May, said:

I note that there was no reference to what has been referred to in the papers as a

Bill in relation to—I am going to use this phrase—the Northern Ireland Protocol and possibly to varying the terms of the treaty unilaterally. I say to my right hon. Friend the Prime Minister—he will not be surprised to hear this—that I do not feel that that would be the right move for the Government. The Government need to consider not just some immediate issues, but the wider sense of what such a move would say about the United Kingdom and its willingness to abide by treaties that it has signed.

I put a deal before the House that met the requirements of the Good Friday agreement and enabled us not to have a border down the Irish sea or between Northern Ireland and the Republic of Ireland. Sadly, the Democratic Unionist party and others across the House chose to reject that, but it was an opportunity to have what the right hon. Gentleman wanted.

Sir Jeffrey Donaldson. Leader of the DUP, said:

I believe in Northern Ireland, I believe in the future and I believe I can play a role in strengthening the political institutions. That is why, in response to the points that have been made, I am prepared to commit the remainder of my political career to going back to those institutions and working with my colleagues to make them work. I am prepared to leave this House, which I have been a Member of for 25 years and I would dearly love to continue being a part of, because I want to invest in the future of our people. I want to work for our people. I want to deliver good government. But I have to say to you, Madam Deputy Speaker, that I will not leave this House until the

Protocol issue is resolved. I will not leave this House until I can be sure that our political institutions in Northern Ireland have a stable foundation. In conclusion, I say to the Government that the words in the Queen's Speech are there, but they have to be matched by actions.

For the European Commission, Vice President Maroš Šefčovič issued a Statement:

The European Union wishes to have a positive and stable relationship with the United Kingdom. The Protocol on Ireland / Northern Ireland of the Withdrawal Agreement is an integral part of that relationship. It is the solution found with the current UK government in order to protect the 1998 Good Friday (Belfast) Agreement in all its dimensions and therefore also avoid a hard border on the island of Ireland, whilst protecting the integrity of the EU Single Market.

The EU has been open to joint work with the UK on implementing the Protocol to bring long-term legal certainty and predictability to the people and businesses in Northern Ireland. The EU remains open to such discussions. Only joint solutions will work. Unilateral action by the UK would only make our work on possible solutions more difficult.

From the very beginning, the EU has worked tirelessly to propose creative and durable solutions, showing flexibility on how the Protocol should be implemented. It has shown that solutions can be found without changing the Protocol. For instance, the EU has ensured that the same medicines continue to be available in Northern Ireland at the same time as in the rest of the UK. We want to finalise these solutions as quickly as possible. But

to do this, we need the UK government to show the same level of determination and creativity. With political will and genuine commitment, joint solutions to legitimate practical issues raised by people and businesses in Northern Ireland can be found within the framework of the Protocol.

The Protocol, as a cornerstone of the Withdrawal Agreement, is an international agreement. Its renegotiation is not an option. The European Union is united in this position.

Prime Minister and Taoiseach call, 10 May 2022

An Taoiseach Micheál Martin and Prime Minister Boris Johnson spoke by phone on 10 May 2022. Two Statements followed:

From the Department of the Taoiseach:

The Taoiseach and Prime Minister Johnson had an extensive discussion this morning.

They agreed on the importance of having a strong functioning Executive in place to deliver for the people of Northern Ireland. The Taoiseach emphasised the importance of the two Governments working together in support of the full operation of the institutions of the Good Friday Agreement.

The Taoiseach urged the Prime Minister to engage in intensified EU-UK discussions to address issues relating to the implementation of the Protocol. He set out clearly his serious concerns at any unilateral action at this time, which would be destabilising in Northern Ireland and erode trust.

The Taoiseach pointed out that the EU has engaged constructively in the Protocol discussions, addressing the issue of medicines, and last October putting forward a substantial package of flexibilities and mitigations, including on customs and SPS arrangements. The Taoiseach stressed to the Prime Minister that the way forward should be through continued engagement with a view to arriving at agreed EU-UK solutions that address the practical issues arising around implementation of the Protocol.

From No. 10 Downing Street:

The Prime Minister spoke to Irish Taoiseach Micheál Martin this morning. Following last week's Northern Ireland Assembly elections, they both agreed on the vital importance of restoring the devolved institutions, both the Assembly and Executive, as soon as possible. The Prime Minister said that the UK Government would remain in close contact with the parties following initial engagement yesterday.

The Prime Minister made clear that the situation in respect of the Northern Ireland Protocol was now very serious. The balance of the Belfast (Good Friday) Agreement was being undermined and the recent elections had further demonstrated that the Protocol was not sustainable in its current form.

Despite repeated efforts by the UK Government over many months to fix the Protocol, including those sections related to the movement of goods and governance, the European Commission had not taken the steps necessary to help address the economic and

political disruption on the ground. The Prime Minister reiterated that the UK Government would take action to protect peace and political stability in Northern Ireland if solutions could not be found.

Truss / Sefcovic 12 May 2022

Foreign Secretary Truss and Commission Vice President Šefčovič spoke by phone on 12 May 2022. Each side issued a Statement on the content of the discussion.

The Foreign Secretary Truss reiterated that the UK's overriding priority is to protect peace and stability in Northern Ireland and upholding the Belfast (Good Friday) Agreement. She argued that the Commission bore a responsibility to show more pragmatism and ensure that the Protocol delivered on its original objectives. According to her, the situation in Northern Ireland is a matter of internal peace and security for the UK and if the EU would not show the requisite flexibility to help solve those issues the UK Government would have no choice but to act.

Vice President Šefčovič insisted that unilateral action, effectively disapplying an international agreement such as the Protocol is simply not acceptable: "This would undermine trust between the EU and UK as well as compromise our ultimate objective – to protect the Good Friday Agreement in all its dimensions." The EU had proposed an ambitious calendar for intensive discussions and have made clear that there is still potential to be explored in its proposals The Commission is still awaiting the response from the UK side.

Section Two: The Evolving Debate

Taoiseach in Belfast

The Taoiseach, Micheál Martin, visited Belfast on 20 May 2022 for meetings with the political parties and business interests. Following his talks with four Assembly parties – his discussions with the DUP were by zoom – he told a press briefing that there is “no substitute for substantive, serious negotiations” between the EU and UK to deal with the issues surrounding the Protocol. Calling for restoration of the power-sharing institutions he said that there should be “parallel discussions” on the key agenda issues.

The Taoiseach repeated his view that the UK Government had “moved too far in a unilateral way in its “our way or no way” approach to the Protocol which was contrary to the spirit of the Good Friday Agreement. “You don’t negotiate with the European Union on that basis particularly when you have signed off on an agreement that you now don’t like.”

The TUV said that the Taoiseach had no business lecturing unionists on what they can and cannot do regarding the Protocol. “His belligerent meddling should be met with the contempt it deserves and frankly unionists should not even be meeting him.”

Prime Minister in Belfast

Prime Minister Boris Johnson visited Northern Ireland on 16 May 2022 to meet political party leaders and business representatives.

Following discussions on the Protocol with the five parties he remarked that “None of the parties – not one of them likes the way its operating, they all think it can be reformed

and improved. We would love this to be done in a consensual way with our friends and partners in Brussels, ironing out the problem, stopping some of these barriers [...] but to get that done, to have the insurance, we need to proceed with a legislative solution at the same time.” Saying that he did not want to scrap the Protocol and that he thought it could be fixed, the Prime Minister urged the parties to “get back to work to deal with the bread-and-butter issues.”

The Prime Minister used the visit to give an undertaking to deliver three commitments, on the language and culture package, on access to abortion services and on new measures to deal with legacy issues.

US Delegation in Europe

A delegation from the US Congress, led by Congressman Richard Neal, chair of the Congress Ways and Means Committee, which deals with Trade Agreements, is visiting Brussels, London, Dublin and Belfast, with the Northern Ireland Protocol high on the agenda.

At the delegation’s meeting with the UK Foreign Secretary, Liz Truss reaffirmed the UK’s “cast-iron commitment” to the Good Friday Agreement, insisted that the Protocol was having a severe impact and that she could not let the “situation drag on” if the EU did not produce a reasonable solution. The delegation also met the Labour Party leader Sir Keir Starmer. They had met the EU Commission Vice President Maroš Šefčovič in Brussels, who tweeted “We’re equally committed to protecting the Good Friday Agreement, joint solutions implementing the Protocol are the only way to do so.” Arriving in Ireland the delegation stressed the urgent need for a return to direct UK-EU negotiation.

Earlier, the US Speaker, Nancy Pelosi, had described the UK Government's unilateral moves in respect of the Protocol as "deeply concerning" and reiterated that the US Congress would not support a free trade agreement with the UK if they were implemented.

Little Pengelly Co-option

The former DUP MP, Emma Little Pengelly, has been co-opted to replace the party leader, Sir Jeffrey Donaldson, in the NI Assembly. This move followed Jeffrey Donaldson's decision to remain at Westminster as an MP until the party's issues with the NI Protocol are resolved. Ms Little Pengelly commented that Sir Jeffrey had "an important task to complete in addressing the continued problem of the Protocol. This requires him to be in London and working closely with the UK Government."

Business, Economy, Healthcare

Northern Ireland business groups have called for a negotiated outcome to the Brexit/Protocol impasse, arguing that anything other than such an outcome is sub-optimal. CBI Northern Ireland insisted on the need for the EU and UK to recommence discussions "without delay." Business people who speak of the practical problems arising from implementation of the Protocol are quoted as arguing that "it is not beyond man to tidy up a few bits and pieces and for the EU and UK to sit down and talk to us in business and see if we can get them negotiating."

Healthcare leaders in Northern Ireland have urged the elected representatives to "put patients first" and immediately form a new Executive at Stormont.

SDLP and UUP after the Assembly Election

Writing in the Irish Times, Denis Bradley – in an article arguing that the SDLP and the UUP had "sacrificed their political future on the altar of peace" - commented that "in the wake of the Northern Ireland Assembly elections there is much talk of life and death. 'Can you think of a dignified way of allowing the SDLP to die?' was a question put to me as the results revealed the wound the party had suffered. Meantime, a former member of the UUP chastised me for suggesting that unionism should 'discuss its own death' by entering talks about the future of this island. Whatever of the sensibility of such exchanges there is no avoiding that the election has confronted these two local parties with their own mortality. The SDLP and the Ulster Unionists have indicated their intention of fighting the next election. Irrespective of whether they struggle on or slowly fade away, the rest of us should raise a glass to both parties in appreciation."

Section Three: Background Material and Further Reading

Background Material

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Further Reading

Alan Duncan In the Thick of It. William Collins.

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