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

Boris Johnson

Prime Minister Boris Johnson survived a noconfidence vote on Monday, 6 June 2022, and remains leader of the Conservative Party. He won the ballot by 211votes to 148 – 59% to 41%. The result was seen as indicating a strong, continuing challenge to his leadership and reflective of public sentiment that has been communicated to constituency MPs. Commentators agree that, with as many as 148 votes against him, the task of governing is likely to become more, not less difficult for Boris Johnson in the months ahead.

Protocol on Ireland/Northern Ireland

The Protocol saga is now concentrated on the signalled legislation which would unilaterally breach the Withdrawal Agreement – negotiated, signed and ratified by the UK – and establish an entirely new 'protocol' in line with UK demands.

What is unclear is the political motivation of the UK move and the methodology to be applied within the parliamentary system. Does Mr Johnson's government intend to drive the Bill through both Houses and seek to apply it in practice, inevitably provoking EU retaliation? Or is the reality that the move is part of a strategy related to the ongoing, but difficult, negotiation between



Foreign Secretary Truss and the EU's Maroš Šefčovič. A British government source has been quoted as having told the media that "We want a weapon on the table... it's like a nuclear deterrent."

There is general agreement that the preferred option is a negotiated agreement in which flexibility is demonstrated by both sides. It is widely argued that the EU must show willingness to change elements of the Protocol and that the UK must facilitate its implementation. Business interests in Northern Ireland are insistent that they need an end to uncertainty and the establishment of a working Assembly and Executive in Belfast.

Tony Blair, who signed the Good Friday Agreement, has written that "My judgement – with long experience of EU negotiations – is that things have reached such a state of distrust that the two bureaucratic systems will not settle this; it has to be done at the highest political level because, ultimately, it is not a matter of technical work but political will and leadership." And RTE's Tony Connelly has said that "Trust is an essential ingredient in political discussions. Trust that what is said is what is meant. Trust that an agreement is actually an agreement. It's a virtue that's clearly in short supply and one that could take some time to rebuild."

Another commentator, looking at unionist concerns about London's approach, has argued that it appears to some unionists that Brexit, rather than making Northern Ireland more distinct from the Republic of Ireland and preserving its place within the United Kingdom, is ending up making it more distinct from Britain and pushing it farther away into the Atlantic Ocean, concluding that "It's a terrible irony, unionists and loyalists

have always thought the main enemy was Irish nationalism, but it turns out it was really English nationalism, instead."

All of these developments are leading to increasing dismay and concern in Dublin, London and Washington that the Good Friday Agreement itself is under threat, not from day-to-day issues capable of solution with goodwill, but from calculated moves by loyalists in Northern Ireland and hard line Brexiters in London who never really accepted the Agreement.

Section One: State of Play

Stormont Stalemate Continues

On 30 May 2022 the appointment of a Speaker for the Northern Ireland Assembly was blocked by the DUP for the second time since the election. No business could be enacted and the Assembly session was adjourned. The DUP had signalled in advance that it would not agree to the nomination of a Speaker, and branded the recall of MLAs to Stormont as a "stunt". Paul Givan said that the recall was "another attempt at majority rule."

The DUP is expected to maintain its position prior to the publication by the London Government of draft legislation to overturn key elements of the Protocol. Sinn Féin has insisted that attempts to resurrect the Assembly will continue. Michelle O'Neill told reporters after the latest DUP veto that the party will "keep trying."

Foreign Secretary Truss in Irish Times 25 May 2022

The UK Foreign Secretary, Liz Truss, contributed an article on the Protocol to the Irish Times on 25 May 2022:



The fundamental basis for successful power-sharing remains strong following the recent Assembly elections. That is why I join our Prime Minister, the Taoiseach and others in saying it is time for all the Northern Ireland parties to get back to work and create an executive, without preconditions. But, realistically, the Protocol is now the biggest obstacle to that happening. All parties in Northern Ireland have recognised that it needs to work better, with the difference between them being how great a change they feel is necessary.

Our firm preference is to reach a negotiated solution. I have led six months of talks with my EU counterpart, Vice-President Maroš Šefčovič to try to reach solutions on the basis of the EU's current mandate. Despite our intensive efforts in those talks, it has become clear that it will not be possible to resolve the issues Northern Ireland is facing on the basis of the EU's existing mandate. This is because the problems of the Protocol are baked into the existing legal text. Without changes to this mandate, we cannot fix the problems.

Our proposed solution will ease frictions in GB-NI trade, protect the Single Market and the Belfast (Good Friday) Agreement. It does not mean ripping up the Protocol, but it does mean changes to the Protocol itself so that it is achieving its aims of supporting the unique circumstances of Northern Ireland and the delicate balance created by the Belfast Agreement.

While our door remains open to talks, we cannot allow any more drift or delay. Without an Executive and no

prospect of one until these concerns can be addressed, we need to provide reassurance to Northern Ireland that the problems with the Protocol will be fixed one way or another. The UK has a duty to take the necessary decisions to preserve peace and stability. That is why I have announced our intention to introduce legislation in the coming weeks.

Minister Coveney in Dáil, 25 May

The Minister for Foreign Affairs, Simon Coveney, spoke in Dáil Eireann on 25 May 2022 in a debate on Developments in Northern Ireland. Some key sections of his remarks are reproduced below:

Right now, the Good Friday Agreement is under strain, along with the spirit of partnership that underpins it. It is under strain from unilateral action already taken and threatened. It is under strain from those who refuse to operate its institutions. It is under strain from those who wrap their actions in the language of defending it but whose actions do not match those words. That is why we are here this evening.

Along with others, the DUP has real concerns over the operation and impact of the Northern Ireland protocol – I readily acknowledge that and will return to it later – but those concerns are no reason not to stand up and operate the institutions of the Good Friday Agreement that we all say we are committed to. Elsewhere we have heard how the balance of the agreement must be protected and that east-west must match North-South. One of the key east-west institutions of the agreement is the British-Irish Council. The



agreement provides that the British-Irish Council will meet at summit level twice per year. The council does meet but the current British Prime Minister has yet to attend.

[...] From the outset, it was always clear that Brexit would profoundly impact Northern Ireland and relationships on this island. At an early stage, both the EU and UK agreed that a unique solution was required for Ireland as a whole. Reaching that solution required a long, detailed and difficult negotiation, with a shared focus on minimising disruption and a great spirit of compromise. The solution agreed jointly by the EU and UK became known as the protocol. Despite all this and the fact that the British Government negotiated it, it now claims that implementing the protocol that we agreed together is incompatible with the Good Friday Agreement. This is disingenuous and dangerous.

This month the UK National Institute of Economic and Social Research found that Northern Ireland's economy was outperforming the rest of the UK and that this is attributable, in part at least, to the protocol. This corresponds with the clear message I hear in my engagement with Northern Ireland businesses, which have no desire to be caught up in the politics of Brexit or the protocol. They want stability and certainty so they can plan for the future. Unilateral action or the threat of it does not deliver this, but the opposite. I spoke to Foreign Secretary Truss last Friday, when I made clear Ireland's opposition to the UK breaching international law and said the UK needs to get back to talks with the EU.

This Government, through my office and others, is already working with the European Commission to try to ensure we respond to legitimate concerns in Northern Ireland, particularly on the issue of making a significant differentiation between goods we know are staying in Northern Ireland to be purchased and consumed there and those at risk of travelling into the EU Single Market, crossing the Border moving south. We can take a significant step forward in meeting the demands of many in the unionist community who want to see unnecessary checks gone on goods staying within the United Kingdom but, without a partner, it is hard to find a way forward.

US Congressional Delegation in Dublin. Belfast

A bipartisan US Congressional Delegation, led by Richard Neal, Chair of The House Ways and Means Committee, visited Dublin and Belfast in late May.

The Minister for Foreign Affairs Simon Coveney T.D. hosted a working lunch for the delegation and several Irish Government and political representatives, which focused on Northern Ireland, Brexit, the future of Europe and the transatlantic relationship, and the deep ties between Ireland and the United States of America. The Delegation was received by President Michael D. Higgins and met the Taoiseach, Micheál Martin.

Commenting on the visit, Minister Coveney said: "The return of in-person visits between Ireland and the United States is crucial as we embark on re-engaging and rebuilding economically post-Covid. I welcome this



hugely positive opportunity to engage with and brief this Congressional delegation on key international issues that are affecting Irish citizens. I look forward to an exchange over lunch on Northern Ireland, ahead of the delegation's visit there next week, and on all aspects of Ireland-US relations."

In Belfast, the Delegation met the principal political parties. While there was controversy over Richard Neal's statement that the Protocol issue was "not a real crisis" there was a welcome from both Jeffrey Donaldson and Doug Beattie for his acceptance that unionist apprehensions over the protocol and the border in the Irish Sea were "legitimate".

Throughout the visit the Delegation urged all involved in the current impasse to continue negotiating until a solution is found. It was argued that unilateral action on the Protocol by the London Government "will not work."

Richard Neal in Seanad

The leader of the US Congressional Delegation, Richard Neal, addressed Seanad Eireann on 24 May 2022:

While I of course respect the UK's decision to leave the European Union, it has inevitably posed unprecedented challenges for the island of Ireland. I hope we can all focus on this because I think we are losing institutional memory in the UK. A grim reminder is that 30 years ago there were 30,000 British soldiers in an area the size of our state of Connecticut. Anybody who travelled there knew clearly what the watchtowers meant and what the Royal Ulster Constabulary, RUC, meant in that small geographic area. The longest standing political dispute in the history of the

western world was proceeding unabated in the Six Counties of Northern Ireland.

Through good work and goodwill, we helped to find a path forward. We have found solutions time and again to shortterm disruptions. Now it is the protocol. A solution through an extended set of negotiations on Northern Ireland and Ireland can be enhanced. Any incautious move to undo the protocol, which was agreed to by all sides to address these issues, would put at risk this durable agreement that we helped to create and which now we should all be celebrating. On the eve of the 25th year of the Good Friday Agreement, everything in our power to protect the unrelenting gains should be acknowledged. In the context of the moment, the way forward is the same as it has been. We need courage, dialogue and leadership from all sides to keep Northern Ireland secure and prosperous.

The Good Friday Agreement worked because it had something in it for all sides. It happened because those involved acted together in good faith and the hardest men and women had to make that agreement. Everybody gave up something to agree to this place. The Republic of Ireland relinquished Articles 2 and 3 of its Constitution, which laid claim, at the request of de Valera, to the North. The UK gave up the Border. The world was a witness to these proceedings. Unilateral actions, intransigence and ultimatums are not solutions, nor have they ever been. America will continue to nudge and nurture this agreement. After all, the Good Friday Agreement is America's too.



Section Two: The Evolving Debate

Tony Blair Institute Report on Protocol

The Tony Blair Institute has published a significant report on the Northern Ireland Protocol which proposes practical solution to the issues of concern arising from the implementation of the Protocol and argues that the UK and EU must show flexibility in negotiating a clear and permanent agreement.

In his Foreword to the report, Tony Blair, co-signatory of the Good Friday Agreement, wrote:

There is no escaping the following: that the Northern Ireland Protocol, described at the time by Boris Johnson as an "excellent deal" that resolved all the issues around Northern Ireland, was a bad deal and didn't resolve those issues; that this was apparent at the time to anyone studying the detail; that the UK government is now effectively in disorderly retreat from the agreement it made; and that, if left unresolved, the issues at the heart of the protocol have the capability of causing an enlarged trade conflict between the UK and the EU, or undermining the Good Friday Agreement - and quite possibly both.

That said, in the interests of broader European harmony and trade – especially at a time when Europe, including the UK, has come together impressively over Ukraine – both the EU and the UK should show maximum flexibility in order to reach an agreement.

In this paper, we set out a practical way through, one that would obviate

the vast majority of checks on goods moving between Britain and Northern Ireland, provide a compromise on the involvement of the Court of Justice of the EU, and give greater opportunities for consultation on draft EU laws affecting Northern Ireland to representatives from all sides of the community. It is, at least, a possible landing zone for resolution of the dispute. It could be done within the framework of the protocol, but would require significant movement from the EU on its stated position around the protocol's interpretation.

My judgement – with long experience of EU negotiations – is that things have reached such a state of distrust that the two bureaucratic systems will not settle this; it has to be done at the highest political level because, ultimately, it is not a matter of technical work but political will and leadership.

The report proposes new governance arrangements to avoid friction in the future as Britain diverges from EU regulations and for more consultation with British and Northern Irish representatives ahead of changes in EU rules that affect the North. It suggests that the arbitration mechanism of the Withdrawal Agreement could be extended to the trade-related parts of the protocol, removing the role of the European Court of Justice (ECJ).

The report concludes that there is a viable compromise to be struck between the UK and the EU, but the key challenge is how to get there politically. It also notes the risk that 'tactical posturing overtakes pragmatism', with the UK not accepting responsibility for the agreement that it negotiated and signed and the European leaders unwilling to signal more flexibility within EU rules for the unique



circumstances in Northern Ireland: "If this happens, the Protocol will remain a thorn in the side of their mutual relations for the years to come. Acting unilaterally will not only put the UK in breach of its international commitments, but it will also put a halt to any serious efforts to fix the protocol for a very long time."

Orange Order Parade, 28 May 2022

The Orange Order of Ireland staged a major display of its power and determination in a celebration of centenary of the birth of Northern Ireland which was also a statement of the organisation's total, unyielding opposition to the Protocol. "No surrender!" was the message from the Rev Mervyn Gibson, keynote speaker at the organisation's rally at Parliament Buildings before a crowd estimated by organisers to number between 20,000 and 25,000. "Let me make it clear. If the Protocol is not sorted then make no mistake - no mistake there will be no next 100 years for Northern Ireland. We will not tolerate any system, process or structure that will allow checks on any goods trading within the UK for use within the UK. Equally critically is we will not be mastered by no foreign power nor subject to laws and regulations made by foreign governments. Until these injustices that make Northern Ireland a place apart from the rest of the United Kingdom are removed then those we elect will opt out and stay out of the Executive".

Bobby McDonagh on British selfconfidence

In an Irish Times article on 2 June 2022, the former Irish Ambassador in London wrote of an apparent loss of self-confidence by the British government in its international dealings.

A remarkable phenomenon throughout the long saga of the Brexit process has been the UK's loss of self-confidence in its own ability to defend its interests through negotiation.

The recent announcement by British foreign secretary Liz Truss that her government intends to introduce legislation purporting to permit it unilaterally to tear up the Brexit protocol, a binding international agreement, demonstrates precisely the same lack of national self-confidence in Britain's own negotiating abilities that has driven the entire Brexit process. In other words, the Johnson government so lacks the confidence in its own negotiating ability to reach agreement, fairly and legally, on the necessary flexibilities within the protocol, that it has chosen to threaten action outside the negotiations with the EU and indeed outside the law.

It is true that, early in the Brexit negotiations, the UK government seemed to be brimming with selfconfidence. British ministers claimed the negotiations were set to be "the easiest in history" and that Britain "held all the cards". However, it is now evident that their brazenness amounted to no more than whistling in the dark. In retrospect, British negotiators have entirely changed their tune about that period, with some British representatives now claiming the UK should not feel itself bound by what it signed up to because it negotiated the protocol from a position of weakness or under duress. Even the swagger of ministers at the outset of the Brexit negotiations turns out to have been a cover for a lack of self-confidence.



A British government source is quoted as having told the media, in relation to its proposed legislation to override the protocol, that "We want a weapon on the table... it's like a nuclear deterrent.

Politico on Northern Ireland Economy

A *Politico* economics feature on 2 June 2022 reported what it described as "unusual gains for Northern Ireland, the only UK region still able to trade goods barrier-free with the EU.

The Northern Ireland economy is growing faster than Britain's, according to new regional analysis.by the UK Office of National Statistics found that Northern Ireland's gross domestic product grew 1.4 percent in the July-September quarter of 2021, compared with gains of 0.9 percent and 0.6 percent in Scotland and England, respectively. Economic activity in Wales shrank 0.3 percent over the same quarter.

The analysis — based chiefly on the quarterly VAT returns on sales of goods and services at 1.9 million firms — offered no judgment on why the economy of Northern Ireland, normally a laggard, is outpacing other parts of the U.K. this year. However, another recent U.K. economic analysis explicitly credited Northern Ireland's continued access to barrier-free trade with the 27-nation EU as a key driver.

That picture is reinforced by reports from Ireland's Central Statistics Office, which has documented record high trade figures between Northern Ireland and the Republic since the January 2021 launch of post-Brexit trade rules. Those rules include the U.K.-EU trade protocol that keeps Northern

Ireland within the EU single market for goods. While unionist leaders oppose the protocol because it requires EU controls on British goods arriving in Northern Ireland, this arrangement also allows Northern Irish firms to avoid this red tape when trading with their Irish neighbours and the wider EU.

Developments in Business

Official figures show that UK exports to the EU remain significantly below pre-Brexit levels, despite some recovery from an initial plunge in January 2021 at the end of the transition period. Exports had fallen 40% on the month as traders adapted to the new Brexit red tape and border delays, but came back to finish last year down 11% compared with 2018 – the year used by the Office for National Statistics as the most reliable comparison, before Brexit, stockpiling and the COVID pandemic affected trade flows.

Concern is seen to be mounting that fresh Brexit roadblocks are likely to emerge as the government threatens to effectively tear up the Northern Ireland Protocol, covering trade between Great Britain, Northern Ireland and Ireland. Despite Prime Minister Johnson's claim that the Withdrawal Agreement, including the Protocol, had "got Brexit done", his government now views this central plank of his deal as broken.

Raoul Ruparel, Theresa May's special adviser on EU Affairs, during the first round of Brexit negotiations, is quoted as saying that companies could start dusting down their old 'no-deal Brexit' plans if the situation worsens. "Any business will tell you it's unhelpful. A lot of them are just getting on with it and they just have to make the best of it. But what they don't



want is constantly changing trade rules with the UK and the EU."

The head of the Confederation of British Industry, Belfast-born Tony Danker, has stated that politicians from all the major parties in Northern Ireland, including the DUP, recognise the competitive advantages of Northern Ireland's access to both the British and European markets. Following talks with the parties in Belfast, Tony Danker said that "the major political sides in this country and in London and Brussels accept that Northern Ireland is going to remain part of two trading jurisdictions."

Dutch Prime Minister on Protocol

On a visit to Dublin the Dutch Prime Minister, Mark Rutte, said that the European Union had shown "maximum flexibility" on the Northern Ireland Protocol and argued that it is crucial that the UK returns to negotiations. He expressed regret that the UK planned to introduce legislation that would override the protocol "especially in these times when cooperation and solidarity are crucial. It is not unreasonable for us to expect the UK to comply with that agreement. It is all about preserving the Good Friday Agreement and preventing a hard border on the island of Ireland and safeguarding the integrity of the single market." The Taoiseach commented that Mark Rutte's remarks were evidence of a "deep well of support from our partners across the world" for the EU and UK to come to a "joint, pragmatic solution" over the protocol.

Section Three: Background Material and Further Reading

Background Material

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