

BREXIT BRIEF

Brexit Brief Issue 147

1 February 2023



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Introduction

Changing “Mood Music”

Speaking in Dáil Eireann on 25 January 2023, the Taoiseach, Leo Varadkar, welcomed a change in the dynamic of UK-EU relations, saying: “It is correct to say that there is an improved atmosphere between the European Commission and the UK Government. It is a much better atmosphere, a much better backdrop and a much better mood music than I have seen or heard at any period since Brexit was passed. There is increased trust. I think there is increased flexibility on both sides and there is also increased confidentiality, which is also very important.”

The Brexit “Hammer”

Historian Fergal Tobin, in his thought-provoking 2022 book, *The Irish Difference: A Tumultuous History of Ireland’s Breakup with Britain*, makes some interesting observations regarding the fragile peace process in Northern Ireland, and the disruptive impact of Brexit, which, as we approach an inflection point in the Protocol negotiations, are worth revisiting:

The Northern Ireland peace agreements were rickety but enough of them just about held together to stop most of the killings. Formal politics was horribly difficult, with the two tribal extremes now thrown together in a kind of local government. How could Ian Paisley’s successor party, the Democratic Unionists [...] find common ground with Sinn Fein? That they managed even as little as they did for a few years was remarkable.

This was the porcelain-delicate politics into which Brexit threw a large hammer. It was the old story. The Brexiteers were not paying attention to anything beyond their limited, provincial range: not to Scotland [...] certainly not to Northern Ireland, or Ireland in general for all that. And yet Ireland was so obviously material in the context of any arrangement required to detach the UK from the EU. It has been a tale long in the telling by now, and depressing. Everything, including careless forgetting, is bought at a price.

Section One: State of Play

Can Protocol deal be delivered?

"A Protocol deal is highly likely: the restoration of Stormont is still far from assured." This comment by Sam McBride in the *Belfast Telegraph* summarises the evolving position as voices in London, Brussels and Dublin are unanimous in predicting early agreement on a Protocol deal.

Once a deal is reached between the UK Government and the EU Commission, the hard-line wing of the Conservative Party (the ERG) and the DUP will have decisions to make. The ERG must decide whether to support or defy Prime Minister Rishi Sunak while the DUP must choose whether to accept the deal and go back into the Assembly and Executive, or remain outside the institutions and continue to oppose it.

The DUP's 'seven tests' on economic and trading arrangements remain the party's consistent position on any deal. And the party is in agreement with the ERG that there can be no role for the European Court of Justice as arbiter of disputes. "The DUP and ERG position on the ECJ is indistinguishable." Thus, a deal that reduces border checks and meets the concerns of Northern Ireland business but which maintains some role for the ECJ will face continued opposition. The Sunak Government's plan to scrap hundreds of EU rules incorporated in legislation already before Parliament may gain goodwill and support from some on the Tory right wing, but it is far from certain that this can overcome the significance of the ECJ issue for both the ERG and DUP.

Prime Minister Sunak is seen to be walking a 'Brexit tightrope'. Backing for a deal might be possible in Westminster with the support of Labour in the division lobbies but this would not bind the DUP. Jeffrey Donaldson might attempt to sell changes to the Protocol as a 'DUP win' but he would still face the opposition of Jim Allister's TUV. "The notion that unionists would take the view that if they got anything half-plausible they would accept it doesn't seem to reflect the history of unionism" said a DUP voice.

Alex Kane, in the *Irish Times*, has written:

There is an argument that the Protocol in and of itself does not represent an existential threat. Ironically, though, it could be the unionist response that becomes the greatest long term threat. The greater the gap between political unionism in Northern Ireland and the broader policy interests of UK governments, then the greater the difficulty for unionists in making the case for equality of treatment as UK citizens. Unionism must not allow itself to become the existential threat to its own existence.

Taoiseach / Prime Minister Phonecall, 23 January 2023

The Taoiseach, Leo Varadkar, and the UK Prime Minister, Rishi Sunak, spoke at length by telephone on 23 January 2023. Both leaders issued Statements following the call:

The Taoiseach's office released the following:

Taoiseach Leo Varadkar and the UK Prime Minister Rishi Sunak had a good conversation by telephone this

afternoon. They discussed a range of issues including restoring the democratic Institutions in Northern Ireland, the ongoing EU-UK negotiations on the Protocol, and British-Irish relations more broadly.

Both recognised the importance of the ongoing engagement between the EU and the UK on the Protocol. The Taoiseach repeated the need for a solution which avoids a hard border on the island of Ireland and protects the integrity of the single market.

They spoke about the positive cooperation between the EU, UK and US in responding to the war on Ukraine, and the Taoiseach recognised the UK's leadership role on the matter. Finally, the Taoiseach reiterated our concerns about the UK's Legacy legislation and the impact of the proposed introduction of Electronic Travel Authorisation on third country nationals travelling across the border.

Downing Street released the following on behalf of the Prime Minister:

The Prime Minister spoke to the Irish Taoiseach Leo Varadkar this afternoon. The leaders reflected on the close relationship between the UK and Ireland, and the Prime Minister said it was clear both nations were highly aligned when it came to shared values and challenges. He pointed to cooperation on areas like research and development and offshore wind. The leaders discussed the invasion of Ukraine, and the Prime Minister updated on the UK's plans to accelerate

its support to help the country secure a lasting peace.

They also discussed the Northern Ireland Protocol, and the need to find solutions to the problems being faced by communities in Northern Ireland. Both leaders reflected on the need for Northern Ireland to have a power-sharing government up and running as soon as possible. The leaders agreed to stay in close touch.

Leo Varadkar on Protocol 'Regrets'

The Taoiseach, Leo Varadkar, has said he regrets that the Northern Ireland Protocol he agreed with Boris Johnson to end the post-Brexit impasse was concluded without the agreement of unionists and nationalists.

The Taoiseach told the *BBC* at the World Economic Forum in Davos:

The regret that I have is that in the same way Brexit was imposed on Northern Ireland without the support of both communities, the Protocol was imposed on Northern Ireland without the support of the two communities. Economically, broadly speaking, the Protocol is working: there's no hard border between north and south; the single market's integrity has been protected; the Northern Ireland economy is outperforming the UK economy.

The Taoiseach added that he understood how "unionists and unionist politicians feel that the Protocol has lessened the links, weakened the union between Northern Ireland and Britain and also that [it] exists

without them having a proper say as to how it operates". He said he was therefore "keen", as part of the EU, "to be flexible, to be reasonable to see what modifications and changes we can make that might ensure we have broader support in Northern Ireland for the current settlement, even if it is the case that a majority of people in the Assembly support the Protocol". For Northern Ireland to "work well", he said, "you want to have cross-community support and we don't have that at the moment".

The DUP leader, Jeffrey Donaldson commented:

Whilst the Taoiseach's comments are welcome, rather than focus on the past, London, Dublin and Brussels must now redouble their efforts on replacing the Protocol with arrangements that unionists can support. We want to see fundamental changes which can command the support of both communities and can provide a stable foundation for devolution to be restored.

BIIGC Meeting 19 January 2023

A meeting of the British-Irish Intergovernmental Conference (BIIGC) took place at Farmleigh House, Dublin, on 19 January 2023. The Conference was established under Strand Three of the Belfast / Good Friday Agreement "to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of the UK and Irish Governments".

The Conference discussions covered several current issues, including:

- **Political Stability.** The UK and Irish Governments agreed on the critical importance of restoring to full operation all of the political institutions established by the Belfast / Good Friday Agreement. The Conference discussed developments in this context and the serious and deepening consequences for people in Northern Ireland arising from the ongoing absence of a fully functioning Northern Ireland Assembly, Executive and North South Ministerial Council. The Conference agreed to continue close co-operation in accordance with the three stranded approach established in the Belfast / Good Friday Agreement.
- **Security Co-operation.** The Irish and UK Governments discussed the current security situation in both jurisdictions. They welcomed the excellent ongoing cooperation between the PSNI and An Garda Síochána in tackling terrorism, paramilitarism and associated criminality. The Conference considered the fifth report of the Independent Reporting Commission, including their recommendations on possible mechanisms to progress the transition and disbandment of all remaining paramilitary groups.
- **Legacy.** The UK and Irish Governments discussed the UK Government's proposed legislation on dealing with the legacy of the Troubles in Northern Ireland, and the Irish Government's concerns in relation to it. The UK Government raised the amendments it has proposed to the Bill.
- **25th Anniversary of the Belfast / Good Friday Agreement.** The Conference looked ahead to the range of events and activities planned for the Belfast/Good Friday Agreement's 25th anniversary year and the Irish and UK Governments

reiterated their commitment to appropriately and collectively marking, reflecting on, and celebrating this foundational achievement for present and future generations. The Conference underlined the continuing fundamental importance of the Agreement today in the constitutional principles it enshrines, the institutions that it establishes and the rights that it guarantees for the people of Northern Ireland.

Following the meeting, the UK Minister of State, Steve Baker, spoke of his pride in the role played by two former chairmen of the European Research Group within the Conservative Party – Chris Heaton-Harris and himself – in “completely transforming” the relationship between Ireland and Britain.

Chris Heaton-Harris in Irish Times, 19 January 2023

The Northern Ireland Secretary contributed a comprehensive article to the Irish Times on 19 January 2023, in which he noted the range of joint issues and shared priorities in the UK-Ireland relationship:

The BIIGC is the forum under the Belfast (Good Friday) Agreement where the UK and Irish governments come together to discuss Northern Ireland, but it's also an occasion to take forward wider shared priorities.

[...] Unfortunately, all of these discussions will be set against a backdrop of one overarching issue – the ongoing lack of a stable, accountable, devolved Government in Northern Ireland. The restoration of the devolved institutions

in Northern Ireland is an absolute priority for my Government. I know the Irish Government shares my desire to see the return of power sharing as soon as possible and we continue to urge all parties to take up their responsibilities. We also both want to see a resolution to the problems we face over the Protocol through negotiation between the UK government and EU Commission.

I am very conscious that the conference takes place on the final day of the Executive formation period, which expires at midnight. From tomorrow, if there is no Executive, I will once again be under a legal duty to hold elections to the NI Assembly in the next 12 weeks. I will use the next few weeks I have available to me to assess carefully all options about what happens next and to continue to talk to all interested parties before I make any decisions.

This is not a situation any of us want to be in. The people of Northern Ireland deserve to have the votes that they cast in May honoured, they deserve locally elected decision-makers getting back to work, delivering on the issues that matter most to them.

[...] As we approach the 25th anniversary of the Belfast Agreement, we should all be reflecting on the enormous transformation that the agreement enabled and commit ourselves again to the vision it set out for a prosperous and inclusive Northern Ireland in which everyone can participate and thrive. The absence of Northern Ireland institutions undermines this optimistic vision. The

UK government and Irish Government, therefore, share the fundamental objective of the return of the Belfast Agreement institutions, to build an even brighter future that people in Northern Ireland expect and deserve.

Cleverly – Blinken meeting in Washington, 17 January 2023

UK Foreign Secretary James Cleverly and US Secretary of State Antony Blinken met in Washington on 17 January 2023. Their extensive discussion included consideration of the Northern Ireland situation and the Protocol impasse. Their comments at a Press Briefing covered this aspect of their talks: Secretary Blinken offered the following remarks:

Our conversation also touched on Northern Ireland. I affirm President Biden's unequivocal support for the Belfast Good Friday Agreement, which over the past 25 years has been integral to preserving peace, stability, and prosperity for the people of Northern Ireland. The United States believes that there must be a negotiated settlement to the implementation of the Northern Ireland Protocol that's acceptable to all sides. And we're heartened that in recent days the United Kingdom and the European Union have made substantive progress towards the negotiated solution.

Last month, we appointed Joe Kennedy as our new Special Envoy to Northern Ireland for Economic Affairs. A career public servant, Joe will draw on his extensive experience to support economic growth in Northern Ireland

and to deepen our nation's people to people ties with all communities.

Foreign Secretary Cleverly noted the following:

We also spoke about Northern Ireland and our negotiations with the EU and our efforts to resolve the issues of the Northern Ireland Protocol. And we recognize the interest that the President of the United States has on this – on this issue, and his desire, which is shared of course by us, to see the institutions of the Northern Ireland back up and running.

With regard to the Northern Ireland Protocol and the negotiations with the European Commission, I did update Secretary Blinken on that. Those negotiations – as I have said publicly and Maroš Šefčovič has also said publicly – have been negotiated – have been conducted in good faith, with a genuine desire to get resolution to these important issues.

And of course we always welcome the visits from senior members of the United States Government, including of course the President himself. But I want to make it absolutely clear that our desire to get resolution on the issues of the Northern Ireland Protocol are because we want to see the institutions of the Good Friday – Belfast Good Friday Agreement up and running. We want to see devolved government in Northern Ireland in Stormont back up and running. We want to see a free flow of trade within the UK internal market whilst respecting the desire of the European Union to

protect its single market. And we do these things because they are the right things to do, not because we are trying to hit a particular date or anniversary.

We do these things for those reasons, and of course, as I say, we recognize the President and I think the whole of the U.S. Government's desire to see this resolution. It mirrors our desire to get these things resolved, and indeed, I believe very strongly mirrors the European Commission's desire to get these things resolved. And we will continue working hard and in that good spirit of cooperation.

New Poll suggests unionist opposition to Good Friday Agreement

A majority of unionists would vote against the Good Friday Agreement if the referendum was held today, a new opinion poll has suggested.

A LucidTalk poll for the *Belfast Telegraph* said that only one in three unionists now endorses the agreement as the 25th anniversary of the historic peace deal nears. The poll said that 64% of people in Northern Ireland would back the deal if another poll was held now. The results showed that while 95% of nationalists and 96% of Green Party and Alliance voters would vote yes, only 35% of unionists said they would do the same.

The agreement, which led to the establishment of the Stormont Assembly, was backed by 71% of people across Northern Ireland in a referendum in 1998. Just less than one third of poll respondents (31%) said they would vote no in a referendum today, including 54% of unionists.

The poll also suggested a majority of people across Northern Ireland believe the DUP should re-enter government at Stormont regardless of what happens in negotiations between the UK and the EU over the Northern Ireland Protocol.

Section Two: The Evolving Debate

Bertie Ahern at Commons Committee

Former Taoiseach Bertie Ahern addressed the House of Commons Northern Ireland Affairs Committee on 23 January 2023, telling MPs that it would be a "grave mistake" to put the Northern Ireland Protocol row on the "long finger" in the absence of political compromise. While unionist concerns over the post-Brexit trade deal "cannot be railroaded", the DUP's demands "can't be fully adhered to".

Mr Ahern described the present impasse as "beyond comprehension":

When you think of the things that we resolved: we got the IRA to decommission their arms, we released prisoners, I signed my name to release orders for some people who killed policemen and got 40 years, we reformed the old RUC to now a very competent international PSNI. Despite these agreements we can't find a way of working out how sausages and rashers will work on the internal market. I mean, it's beyond comprehension, there has to be a solution that is unique to Northern Ireland.

Responding to the concern raised by the DUP's Jim Shannon about the strength of Protocol opposition within the unionist community, Mr Ahern said:

So let's be clear, unionist concerns cannot be railroaded but the demands of unionists can't be fully adhered to in their 'seven points', because I don't see how you can answer all those points. And therein lies the problem. So in the absence of compromise, we're building a future that will be on quicksand, and that's my concern. So I am 100 per cent for compromise, 100 per cent for trying to accommodate the concerns of people, but I do not think we can long-finger this. I'm not talking about April and the 25th anniversary of the agreement. That's not the issue. We can't long-finger this into the dim and distant future. That would be a grave mistake.

He concluded that added that any referendum on a united Ireland would require "groundwork." He praised welcomed recent work by the Royal Irish Academy and University of Notre Dame on "what it would look like [...] having a referendum for the good of it is a waste of space. So the concept of an early referendum, in my view, doesn't arise."

SDLP Assembly Proposal

The SDLP is proposing changes to the process for the appointment of a Speaker in an attempt to clear the political logjam that has prevented the return of the Northern Ireland Assembly after elections held in May last year. SDLP Assembly Leader Matthew O'Toole will raise the party's proposal to amend the rules governing the election of an Assembly Speaker to allow for a two thirds majority with other parties and the Secretary of State during roundtable talks. The move, which would still require nationalist and unionist support for a candidate for Speaker, would prevent one party abusing Stormont rules to

maintain the suspension of the institutions.

Matthew O'Toole MLA said:

Progress in the negotiations between the European Commission and the British Government on the operation of the Northern Ireland Protocol this week are clearly welcome and should provide a basis for political generosity from all parties in Northern Ireland. Unfortunately, it appears highly likely that the DUP will continue to prioritise its cynical party-political wrecking strategy which has left people here without a functioning Assembly or Executive since last year - at least for the foreseeable future. That approach simply isn't good enough when thousands of people can't get a hospital appointment, when families across our communities are struggling to keep the heating on and they need help from their elected representatives.

That is why the SDLP is proposing a change to the process for the election of an Assembly Speaker that will end the one-party veto that has frustrated the mandates of every other MLA and frustrated the democratic wishes of the people of Northern Ireland. A Speaker should instead be chosen by a two thirds majority of MLAs which would require support from nationalists, unionists and others. This can be achieved quickly with agreement for the UK government to legislate at pace. Politicians cannot stand by while our health service collapses, while public sector workers endure pay regression and while inflation hurts hard working homes across our communities. We have a moral obligation and a political mandate to address these challenges. It is time for all parties to get back to work.

Alliance Party on EU Regulations Bill

Alliance MP Stephen Farry has tabled an amendment to the EU Regulations Bill, which he says is “aimed at protecting legislation in the Northern Ireland devolved space” from the actions of the London government. He estimates “as many as 500 pieces of local legislation will be subject to revocation under the bill. With Northern Ireland’s civil service already under huge pressure, it is madness to expect them to deal with the imminent upending of critical legislation.” He spoke of the Bill as “the Tories’ latest reckless attempt to become a deregulated Singapore on the Thames. I will be opposing this Bill every step of the way and urge the Government to scrap it.”

Sammy Wilson, David Jones in the Sunday Telegraph, 22 January 2023

On 22 January 2023, the DUP MP Sammy Wilson and the MP and European Research Group deputy leader, David Jones, cast doubt on the prospect of any imminent settlement with a joint article in the Sunday Telegraph, warning that any fudge that continued what they described as Northern Ireland’s “semi-colonial status” would be unacceptable.

It is a matter of regret that successive UK governments did not heed the warnings that pursuing such a deal with the EU would threaten the economic and constitutional integrity of the UK and lead to political instability in Northern Ireland. The Protocol was deemed necessary to avoid a hard border between Northern Ireland and the Republic. However, it is having a deeply adverse impact on the internal UK market and is consequently damaging the integrity of the UK.

The economic, social and constitutional damage that is being done to the UK as a whole, and to Northern Ireland in particular, cannot be allowed to continue. The Protocol cannot be tinkered with; it has to be removed and replaced by other arrangements that respect the UK’s integrity and protect the EU single market

[...] The ultimate test of any deal will be whether it ends Northern Ireland’s semi-colonial status as a client of the EU, automatically accepting EU laws without any input from elected representatives. That is a fundamental problem that can’t be fudged. A deal should address not only the symptoms of the Protocol by reducing the level of checks. It must also resolve the root cause of those checks, namely the fact that Northern Ireland is trapped in EU Single Market rules, semi-detached from the rest of the UK and subject to the constant threat of future regulatory divergence with Great Britain.

Ultimately, an agreement that serves merely the short-term interests of the UK and EU but does not represent a lasting settlement between both those parties and all traditions in Northern Ireland will be futile.

Danny McCoy on Gains of Belfast Agreement

Ibec will this year lead a campaign calling on stakeholders across the island of Ireland to use the 25th anniversary of the GFA as an opportunity to reflect upon the successes and prosperity of the past quarter century. Chief Executive, Danny McCoy, in the Irish

Times on 21 January noted the importance of the GFA in underpinning future prosperity:

If we are to meaningfully mark the 25th anniversary of the Belfast Agreement, it is imperative that the governments of the UK and Ireland, alongside the European Union, work with the respective business communities to establish detailed, innovative and workable solutions needed to protect and build on the benefits delivered by the all-island economy and ensure its future development is not hampered in any way. It is how, ultimately, Northern Ireland, Britain and Ireland, together with EU and US partners, can ensure that the full potential of the agreement is achieved.

Section Three: Background Material and Further Reading

Background Material

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The IIEA acknowledges the support of the Europe for Citizens Programme of the European Union



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