

# BREXIT BRIEF

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Tony Brown

## Introduction

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](http://www.iiea.com))

## Section One: State of Play

### Vaccine and the Protocol

A major post-Brexit crisis was avoided when the European Commission reversed a plan to use the emergency provisions under Article 16 of the Ireland/Northern Ireland Protocol, to restrict exports of COVID-19 vaccines moving across the border between Ireland and Northern Ireland, as the dispute on contracts and vaccine deliveries between the Commission and the Oxford/AstraZeneca pharma firm escalated dramatically.

On Friday 29 January 2021 the Commission announced its intention to introduce vaccine export control regulations, including activation of Article 16. There was no prior notification of the Irish and UK authori-

ties or the Northern Ireland Executive. The Taoiseach at once contacted Commission President Ursula von der Leyen who was also approached by UK Prime Minister Boris Johnson, expressing "grave concern" over the move. The Taoiseach and Prime Minister discussed the situation and agreed a clear joint approach.

In Northern Ireland, the First Minister, Arlene Foster, denounced the Commission plan as an "absolutely incredible act of hostility towards those of us in Northern Ireland." The leaders of all five parties in the Northern Ireland Assembly also spoke of their serious concern, describing the move as a "grave error". Michel Barnier, who had negotiated the Protocol on behalf of the EU, expressed his deep misgivings about the

implications of the Commission move.

Just before midnight the Commission issued a Statement saying that the Northern Ireland Protocol would not be affected by the steps taken to control vaccine exports. Article 16 would not be triggered. A revised version of the control regulations was issued on 30 January.

The Taoiseach told the BBC that he first became aware of the EU's plan to put checks on the Irish border when the Commission issued a public announcement which effectively blindsided the Irish and UK Governments and the Northern Ireland Executive. He immediately contacted the Commission President, Ursula von der Leyen and made clear the serious implications of the EU move for the operation of the Protocol and the Protocol itself. President von der Leyen "took on board" his concerns and "thankfully" the Commission pulled back from its stance.

The Taoiseach told Andrew Marr that the Commission move was not a hostile act but that "only four weeks into the operation of the Protocol, there are bound to be teething problems but I do acknowledge the need for engagement here on all sides, between the European Union, the United Kingdom and the Irish Government and the Northern Ireland Executive."

Foreign Affairs Minister Simon Coveney commented that "lessons should be learned: the Protocol is not something to be tampered with lightly, it's an essential, hard won compromise, protecting peace and trade for many."

The former UK Northern Ireland Secretary, Julian Smith, commented that "years have been spent trying to ensure there will be no hard border and last night the EU pulled the

emergency record without following any of the process that are in the Protocol if one side wants to suspend it. And they did that, in my view, without anywhere near the understanding of the Good Friday Agreement, of the sensitivity of the situation in Northern Ireland and it was an almost Trumpian act."

The events of 29 February have brought immediate criticism of the Commission with talk of 'misjudgement', 'mismanagement' and 'blunder'. The failure to consult the Irish and UK Governments and the Northern Ireland leaders has been highlighted by critics as well as the lack of consultation with those in the Commission with direct knowledge of the post-Brexit situation in Ireland, such as Michel Barnier and members of his negotiating Task Force. Commissioner Mairead McGuinness has accepted that the initial plan was mistaken and that there would be a serious internal review of the process leading to the Article 16 reference.

## Fallout in Northern Ireland

The immediate comments of Northern Ireland's First Minister, Arlene Foster, reflect the growing frustration and anger in DUP, and wider unionist circles, with the working – and indeed the very existence – of the Protocol.

The First Minister has reiterated calls for the UK Prime Minister to trigger Article 16 to enable action on the serious issues of food supplies and general freight movement problems arising in the early post-Brexit weeks. Hauliers have faced difficulties transporting stock from Great Britain such as essential spare parts and manufacturing components. The Agriculture Minister has spoken of empty shelves and greater shortages when the initial grace period ends in March, and pet owners complain of unnecessary veterinary procedures.

Arlene Foster has spoken of “the great unrest and great tension within the community here in Northern Ireland [...] this Protocol that was meant to bring about peace and harmony in Northern Ireland is doing quite the reverse. The Protocol is unworkable, let’s be very clear about that and we need to see it replaced otherwise there is going to be real difficulties here.” The PSNI has told a House of Commons Committee that discontent was brewing in loyalist communities due to the Protocol, suggesting that if it wasn’t for COVID-19 there would be street protests.

The Cabinet Office Minister, Michael Gove, has commented that he is seeking to “reset” relations with the EU over Northern Ireland. There is an acceptance in London that there must be a wide-ranging agreement between London and Brussels on the significant number of issues which are making life difficult for people in Northern Ireland. The former Northern Ireland Secretary, Theresa Villiers, has commented that “It is vital that the government uses this as an opportunity to talk quite toughly with the EU about how the Northern Ireland protocol is working.”

The DUP and UUP have been further exercised by an apparent Protocol-related requirement of customs declarations for movements of military equipment from Great Britain to Northern Ireland. DUP leader Arlene Foster has described this as “another example of the hundreds of problems with the Protocol.” A UUP MLA, Doug Beattie, has called for urgent action by the UK Government to “protect military operations” in Northern Ireland.

## **European Commission Statement on the vaccine export authorisation scheme**

Late on 29 January 2021, the European Commission issued a Statement on the Vaccine Export Authorisation Scheme:

*To tackle the current lack of transparency of vaccine exports outside the EU, the Commission is putting in place a measure requiring that such exports are subject to an authorisation by Member States.*

*In the process of finalisation of this measure, the Commission will ensure that the Ireland / Northern Ireland Protocol is unaffected. The Commission is not triggering the safeguard clause.*

*Should transits of vaccines and active substances toward third countries be abused to circumvent the effects of the authorisation system, the EU will consider using all the instruments at its disposal. In the process of finalising the document, the Commission will also be fine-tuning the decision-making process under the implementing regulation. The final version of the implementing regulation will be published following its adoption tomorrow.*

## **President von der Leyen response**

In an interview published in the Irish Times on 2 February, President von der Leyen indicated her regret regarding the mention of Article 16, but declined to apologise for it on the basis that the document was a provisional one. She also explained the rationale behind the incident:

*Of course, I am fully aware of the sensitivity related to the protocol on Ireland and Northern Ireland. I fought for this protocol and its implementation over the past year, and am determined to ensure it is upheld. Our sole aim in designing the export transparency and authorisation scheme is to achieve transparency on shipments of vaccines abroad, so as to make sure that this is not done to the detriment of expected deliveries in the EU.*

*The commission was looking for a solution that stems from the specific nature of Northern Ireland's position in the single market but also as a part of the United Kingdom. It is in that context that initial consideration was given to the need to track deliveries to Northern Ireland specifically, since they can then leave the EU without further checks. This is how the discussion on invoking article 16 of the protocol arose.*

## **EU Seeks Extension of time for Ratification of EU-UK Trade Deal**

The EU is seeking an extension of the deadline by which the Trade and Cooperation Agreement with the UK must be ratified. The EU wants the agreed target date of the end of February to be advanced to the end of April. Both sides must agree on any extension as the February date is written into the deal.

The Agreement is being provisionally applied and formal ratification is dependent on the decision of the European Parliament. The call for an extension is intended to give the European Parliament and the Member

States more time to scrutinise the 1,200 page text, and, specifically, to allow the text to be translated into the EU's 23 official languages. Concern has been expressed that provisional translations were done in great haste in December and required careful checking. Political sensitivities exist – not least in France - about moving to ratify the deal on the basis of the English language document,

The UK argues that the February deadline remains the right one and looks to the EU to complete all formalities within the agreed timeframe but has indicated that a request from Brussels for extension would be considered. It is likely that the case for an extension will be among the first issues to be dealt with by the new EU-UK Partnership Council to be established to oversee the implementation of the Agreement.

## **Dail Motion on Trade and Cooperation Agreement, 20 January 2021**

On 20 January 2021, Dáil Éireann debated a Government Motion supporting the Trade and Cooperation Agreement:

*Dail Eireann supports the Trade and Cooperation Agreement between the European Union (EU) and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (UK), of the other part, done on 30th December, 2020;*

*welcomes that:*

*– the Trade and Cooperation Agreement, together with the Withdrawal Agreement, including the Protocol on Ireland/Northern Ireland have ensured the achievement of Ireland's*

*key objectives in the Brexit process, including Ireland's continued commitment to our place at the heart of Europe and protection of our place in the Single Market;*

*— the Protocol on Ireland/Northern Ireland, which protects the Good Friday Agreement and the gains of the peace process, including avoiding a hard border on the island of Ireland, is now also in effect as of 1st January, 2021; and*

*— the Trade and Cooperation Agreement explicitly takes account of the Common Travel Area between Ireland and the UK, pursuant to which current bilateral arrangements are protected so that Irish and British citizens can continue to live, work, study, access healthcare, social security and public services in each jurisdiction; and*

*— acknowledges that while the UK has left the EU, including the seamless trading environment provided by its Single Market and Customs Union, the Agreement provides stability to underpin a new EU-UK relationship, notably tariff and quota free trade and crucially avoids the alternative of a no deal scenario.*

Sinn Fein tabled an Amendment calling on the Government to take action to deal with the implications of the Agreement for the Fisheries sector and to seek changes to the EU Common Fisheries Policy.

The Taoiseach introduced the Motion, saying:

*There was nothing inevitable about the agreement reached between EU-UK on Christmas Eve. The finalisation of the trade and co-operation agreement, together with the withdrawal agreement, including the protocol on Ireland and Northern Ireland, means that all of Ireland's key objectives in the negotiations were achieved. In particular, these agreements ensure the protection of the Good Friday Agreement and the gains of the peace process; avoid a hard border on the island of Ireland; facilitate the maintenance of the common travel area; enshrine the best possible outcome, given UK choices, for trade and the economy, notably tariff-free and quota-free trade with the UK; protect Ireland's place in the Single Market; protect the Single Market itself; and ensure fair competition and a level playing field for Irish businesses.*

*The trade and co-operation agreement creates a new stable relationship with the UK for the Irish transport and energy sectors and ensures co-operation between police services on these islands can continue, based on protecting fundamental rights and the rule of law. Importantly, it allows EU-UK relations to move forward into 2021 from an agreed starting point, rather than from a point of division and rupture.*

The Sinn Fein Amendment on Fisheries was defeated (27-18) and the Motion was adopted without a vote.

## Dail Eireann Q and A on Agreement, 21 January 2021

On 21 January 2021 Dail Eireann held a Q&A session on aspects of the Brexit deal which demonstrated the complex and controversial questions arising from the early post-Brexit experience.

The Minister for Foreign Affairs, Simon Coveney, and the Minister for European Affairs, Thomas Byrne, engaged with TDs on the content, implications and impact of the Trade and Cooperation Agreement. More than twenty Deputies took part, raising a wide range of individual issues, including: bilateral relations with the UK; the Northern Ireland Protocol; treaty review arrangements; transition periods; the Brexit Adjustment Fund; major problems of trade connectivity; land bridge and sea routes and capacity; supply chains; Customs Clearance procedures and cost; the Common Travel Area; health cooperation with Northern Ireland; public procurement; and a range of specific sectoral issues (education, steel imports, milk processing, car insurance, workers' rights, drivers licences and online purchases from UK.). A separate session devoted to Fisheries, with Minister Charlie McConalogue, also involved almost twenty Deputies.

In the Dail session, Minister Simon Coveney made a number of comments on the general post-Brexit situation:

*The honest message that we have to get across here today is that companies have got to adjust to the new realities, although it is somewhat difficult, rather than pretending that there is a magic political solution to put all this off for six months to give everybody more time. That is very unlikely to happen.*

*There are multiple issues here that people are trying to work out at the moment in terms of how we respond to that but, again, it is essentially a consequence of the complexity of the trading environment to which Brexit leads.*

*Some of the new realities, including disruption to trade, increased bureaucracy, paperwork and preparation, are here to stay. We will be able to work the systems more efficiently as time goes by, but we are never going to get back what we had before, which was a seamless trading market that the UK was part of in a shared EU Customs Union and Single Market.*

## Reorganisation of Commission Services

The EU Chief Negotiator, Michel Barnier, had been appointed as Special Adviser to the Commission President, Ursula von der Leyen, to advise the President on the implementation of the EU-UK withdrawal Agreement and provide expertise on the finalisation of the EU ratification process of the EU-UK Trade and Cooperation Agreement.

Commission Vice President Maroš Šefčovič has been appointed the Commission Member to co-chair and represent the European Union in the Partnership Council between the EU and UK, established under the terms of the Trade and Cooperation Agreement.

The Commission's EU Task Force will cease to exist on 1 March and will be replaced on that date by a new Commission Service for the EU-UK Agreements (UKS), within the Secretariat-General of the Commission, charged with supporting the efficient and rigorous implementation and monitoring of

the Agreements with the UK. The UKS will closely cooperate with the High Representative/Vice President for Foreign Policy and Security. The mandate and duration of the UKS will be reviewed on a continuous basis.

Michel Barnier tweeted: "Honoured to continue at EU Commission for a few weeks, as Special Adviser to President von der Leyen. I will continue working closely with the European Parliament and Council to ensure smooth ratification on the EU side."

## David Frost Appointment

The UK Chief Negotiator, Lord David Frost, has been appointed Brexit and International Policy Representative in the Prime Minister's office. His planned move from EU-UK business to the post of National Security Adviser will now not take place.

Frost will head a new international policy unit in No.10, leading the UK's institutional and strategic relationship with the EU and helping to drive through changes to maximise the opportunities of Brexit, including on international trade and economic issues. The Prime Minister, Boris Johnson, commented that "I am thrilled that he has agreed to be my representative for Brexit and International Policy as we seize the opportunities from our departure from the EU."

A senior civil servant, Sir Stephen Lovegrove, has been appointed National Security Adviser.

## Dispute over status of EU Ambassador to UK

The UK is refusing to give the EU Ambassador to London the full diplomatic status accorded to other ambassadors. The UK Foreign Office has insisted that it would set a precedent if it treated what is an international body in the same way as a nation

state. The EU High Representative for Foreign Affairs, Josep Borrell, has written to UK Foreign Secretary Dominic Raab, expressing serious concerns about the situation and arguing that "the arrangements offered do not reflect the specific character of the European Union, nor do they respond to the future relationship between the EU and the UK as an important third country." The Foreign Secretary has insisted that the EU is an "international organisation".

A spokesman for Prime Minister Boris Johnson indicated that "The EU, its delegation and staff will receive the privileges and immunities necessary to enable them to carry out their work in the UK effectively. It's a matter of fact that the EU is a collective of nations, but it's not a state in its own right."

Speaking after a Foreign Affairs Council meeting on 25 January, Josep Borrell said that ministers shared a "clear view" on the apparent snub. "It's not a friendly signal [...] the first one the United Kingdom has sent to us immediately after leaving the European Union. If things continue like this there are no good prospects." The Council had discussed EU-UK cooperation in matters of common foreign, security and defence policy and stressed that the EU stands ready to engage with the UK on major global issues – on climate change or by working together on the global response to the coronavirus pandemic.

The EU has postponed an inaugural meeting with the recently appointed head of the UK mission in Brussels in direct response to the UK action. The courtesy meeting was to prepare for the formal presentation of credentials to the President of the European Council.

In 2010, when the EU External Action Service was established, UK Ministers agreed

to the proposal that EU diplomats would be granted “privileges and immunities equivalent to those referred to in the 1961 Vienna Convention on Diplomatic Relations.” The EU now enjoys full diplomatic status in more than 140 countries around the world. In the US, the Trump administration downgraded the status of the EU mission in Washington in 2018 but reversed the position a year later.

## Section Two: The Evolving Debate

### Post-Brexit Opinion Poll

A *Sunday Times* poll has indicated that people across the UK believe that Scotland is likely to vote for independence within the next decade and that more than half of those in Northern Ireland want a referendum on a united Ireland in the next five years. These results point to the difficulties facing Prime Minister Boris Johnson and the UK Government in ensuring that the United Kingdom stays together after its departure from the European Union – an outcome strongly opposed by voters in Scotland and Northern Ireland in the 2016 referendum.

In Scotland the poll found that 49 per cent backed independence, with 44 per cent against – a margin of 52-48 if undecideds are excluded. In Northern Ireland the poll found that 47 per cent favour remaining in the UK, while 42 per cent in favour of a united Ireland with 11 per cent undecided. 51 per cent supported the holding of a ‘border poll’. In Wales, just 23 per cent backed leaving the UK.

Three polls in Scotland have been published since the UK’s departure from the EU on 1 January. They show an average 53 per cent level of support for independence, down from the 55 per cent in the same three polls

towards the end of 2020.

The former UK Chancellor of the Exchequer, George Osborne, now editor-in-chief of the *London Evening Standard*, has written in his paper that Northern Ireland is “heading for the exit door” from the United Kingdom and “slowly becoming part of a united Ireland.” The Northern Ireland unionists have feared that Britain was not fully committed to their cause but “their short-sighted support for Brexit and the unbelievably stupid decision to torpedo Theresa May’s deal that avoided separate Irish arrangements has made those fears a reality.” Should a united Ireland come about “most here will not care”. He argued that “By unleashing English nationalism, Brexit has made the future of the UK the central political issue of the coming decade.” The departure of Scotland would be a more serious matter, representing the end of the United Kingdom and the London Government must advance new, powerful arguments against separation.

The Northern Ireland First Minister, Arlene Foster, has said that it would be “absolutely reckless” to be distracted by discussion of a border poll when the priority must be working together to fight the pandemic.

### UK Labour Party Initiative on Good Friday Agreement

The UK Labour Party has launched an education programme on the Belfast/Good Friday agreement, highlighting the party’s role in negotiating the agreement and the role of women and trade unions in the peace process.

The Party Leader, Keir Starmer, said that the Agreement must never be taken for granted. The programme “will tell the story of peace, Labour’s proud role in it and why the work to deliver the promise of peace goes on.” The Shadow Northern Ireland Secretary, Louise Haigh, described the Agreement

as “one of our proudest achievements. It is Labour’s responsibility, inside and outside of office to safeguard the agreement and build understanding of it. Our commitment to the political settlement is steadfast and unshakeable.”

The programme will include a four-part webinar series outlining the path to peace, looking at the role of women, trade unions and civil society, hearing from people who have grown up in Northern Ireland since the Agreement and reviewing the unfinished business of the peace process.

## Workers’ Rights

The controversy about the post-Brexit intentions of the UK Government on workers’ rights reached the floor of the House of Commons on 25 January 2021 with the introduction of a Labour Party Motion:

“That this House believes that all existing employment rights and protections must be maintained, including the 48-hour working week, rest breaks at work and inclusion of overtime pay when calculating some holiday pay entitlements, and calls on the Government to set out to Parliament by the end of January 2021 a timetable to introduce legislation to end fire and re-hire tactics.”

The recently appointed Secretary of State for Business, Kwasi Kwarteng, indicated that the Government would not oppose, or seek to amend, the Labour Motion. He said: “I just want to make something very clear and unequivocal at the outset: we will not reduce workers’ rights. There is no Government plan to reduce workers’ rights. As the new Secretary of State, I have been extremely clear that I do not want to diminish workers’ rights, and on my watch there will be no reduction in workers’ rights. I do not want there to be any doubt about my or the Government’s intentions in this area.

(Labour Party spokespersons) were kind enough to send me a letter in my first week in the job asking for reassurances on this matter. I am happy to report that I have provided those reassurances, and I am very willing to provide them every time.

We will not row back on the 48-hour weekly working limit derived from the working time directive. We will not reduce the UK annual leave entitlement, which is already much more generous than the EU minimum standard. We will not row back on legal rights to breaks at work. I will say it again: there is no Government plan to reduce workers’ rights.”

After a lengthy discussion the Motion was passed without opposition.

The Government position on workers’ rights and other areas of EU regulation has changed significantly, in the face of strong opposition from both the Labour Party and the trade union movement, and of a clear indication from the CBI employers’ federation that the business community had little appetite for deregulation

The Business Secretary, Kwasi Kwarteng, told an ITV news programme that the “better regulation” review which had been reported, and admitted, was now a matter for the Chancellor of the Exchequer and “no longer happening” within his Department. The Chancellor, Rishi Sunak, indicated that the review is now concentrated on improving future rules and making the most of new sectors and not on “ripping up” old rules.

## Section Three: Background Material and Further Reading

### Background Material

**European Commission** Statement on the vaccine export authorisation scheme, 29 January 2021. [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_21\\_314](https://ec.europa.eu/commission/presscorner/detail/en/statement_21_314)

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## Further Reading

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**The Institute of International and European Affairs,**

8 North Great Georges Street, Dublin 1, Ireland

T: +353-1-8746756 F: +353-1-8786880

E: [reception@iiea.com](mailto:reception@iiea.com) W: [www.iiea.com](http://www.iiea.com)