

BREXIT BRIEF

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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)

Section One: State of Play

Lord Frost Appointment

On 17 February 2021, the Prime Minister's Office announced that Lord David Frost had been appointed as a Minister of State in the Cabinet Office, with the status of a full member of the Cabinet, with effect from 1 March 2021.

Lord Frost takes up the position of Minister in charge of Britain's institutional and strategic relationship with the European Union. He is tasked by the Prime Minister with "driving through changes to maximise the opportunities of Brexit, including on international trade and economic issues" and with coordinating relations with the EU institutions and the 27 EU Member States.

He replaces the Chancellor of the Duchy of Lancaster, Michael Gove, as the UK co-chair of the Joint Committee on implementation of the Withdrawal Agreement – including the Northern Ireland Protocol – and as the UK chair of the Partnership Council established under the Trade and Cooperation Agreement to oversee the future relationship between the EU and the UK. In both cases his co-chair will be the Commission Vice President, Maroš Šefčovič.

Michael Gove has been given the task of tackling the post-COVID-19 backlog in public services and guiding the national recovery taskforce through a cabinet sub-committee. He will prioritise strengthening ties with Scotland and Northern Ireland.

David Frost commented that he was “hugely honoured to have been appointed to take forward our relationship with the EU after Brexit. In doing so I stand on the shoulders of giants and particularly those of Michael Gove.”

RTE’s Tommie Gorman wrote of the Frost appointment: “Keep an eye on him. Unionists will feel they have a kindred spirit on the pitch.”

Unionist Opposition to NI Protocol

Unionist opposition to the protocol gathered pace with activity on each of the DUP’s stated five key actions:

Working with other Unionists to send a united message that Northern Ireland must be freed from the Protocol and its problems.

Within the Northern Ireland Assembly, active opposition to any negative measures, laws or bills that continue to flow from the Protocol and which undermine Northern Ireland’s place in the UK internal market.

Members of the Commons and the Lords will actively work to hold the Government to account in support of Northern Ireland’s place in the internal UK market as well as building support to free us from the Protocol and its problems.

A Parliamentary e-petition setting up debate calling on the UK Government to use all powers at its disposal to immediately remove any barriers to unfettered trade within the United Kingdom.

A strong signal to be sent to the Government of the Republic of Ireland that North-South relationships are also impacted by the Protocol, DUP members cannot and will not continue to act as though relationships are normal.

Westminster Debate, 22 February 2021

The DUP Petition calling on the UK Government to trigger a mechanism to override the Protocol passed 140,000 signatures, leading to an allocation of debating time in the Westminster petitions programme. Arlene Foster commented that the scale of support was a clear demonstration to the parties supporting the Protocol that it is flawed and must be replaced. She wrote to every MP in the House of Commons seeking support for the party’s campaign to remove the Protocol, referring to “significant anger” over its implementation.

The Westminster debate took place on 22 February 2021. More than twenty MPs, including all Northern Ireland members, attended and spoke. The Minister of State at the Northern Ireland Office, Robin Walker, replied for the Government.

For the DUP, Sir Jeffrey Donaldson MP made the case against the Protocol:

This is not just about trade; it is also about Northern Ireland’s relationship with the rest of the United Kingdom. As Lord Trimble wrote very clearly at the weekend, this damages the Belfast agreement and undermines a core principle of it: the need to respect Northern Ireland’s place in the United Kingdom. If the stated objective of the protocol is to protect the peace process and the agreement, then I have to say it is not having that effect. It is creating economic instability in Northern Ireland, and has the potential to create political instability. That is why we need the Government to deal with the issue. In this, the centenary year of Northern Ireland, we expect the Prime Minister and the Government to address and resolve these issues, and to replace the protocol with arrangements that respect Northern Ireland’s place in the United Kingdom.

The SDLP leader, Colum Eastwood MP, responded, highlighting the absence of reasonable alternatives to the Protocol:

The only alternative to the protocol is a border in Ireland. If people want that, they should say it; they should say it out loud, and they should explain to the public how there would not be even worse difficulties, in terms of our supply routes and getting goods to people, if that were the case.

One thing that has been mentioned is the principle of consent. Let me deal with that as an Irish nationalist. The principle of consent is about whether or not we remain part of the United Kingdom. I will always defend the principle of consent; that will never change until the people of Northern Ireland and the people of the Republic of Ireland vote to change it, so there is no threat to it.

The chairman of the Commons Northern Ireland Affairs Committee, Simon Hoare MP, called for patience as the Protocol still needed time to “work out its creases” after less than two months in operation. “Calling for the triggering of Article 16 or the abandonment of the Protocol is, I would suggest, naïve and premature.”

Louise Haigh MP, Labour’s Shadow Northern Ireland Secretary, indicated her Party’s approach:

Recent weeks have clearly demonstrated the need for partnership from the EU and the UK to make the protocol work in the interests of all communities, and the need for recognition and sensitivity from both sides to respect all aspects of the Belfast/Good Friday agreement. But sadly, as we have also heard today, the

responsibility and leadership required to deliver politically and practically on those solutions has been absent, and briefings over the weekend suggest the Government are prepared to reignite the acrimony and instability of the last number of years.

Minister of State Robin Walker MP replied to the debate:

The protocol was agreed as a practical solution for Northern Ireland’s unique circumstances—both north-south and, just as importantly, east-west. At its heart is a consensual and pragmatic approach, the one that best protects the Belfast Good Friday agreement and one that supports businesses and Northern Ireland’s economy, that ensures that Northern Ireland should benefit from access to the UK and EU markets and the UK’s trade deals across the world, and that should protect both the EU single market and the UK internal market. This has been the basis on which the UK Government have given effect to, and will continue to give effect to, their obligations under the protocol. The Northern Ireland Office has been at the forefront of championing this approach.

That is a point that we have made unequivocally to the EU, and work with the EU is now underway at pace, with the shared objective of finding workable solutions on the ground. We want to use that process with the EU to find solutions to the issues that are faced, recognising the obligations on both the UK and the EU to make the protocol work in a way that avoids disruption to everyday lives. We want to take the opportunities that

a well-implemented protocol could offer Northern Ireland,

As such, we will always consider all instruments at our disposal, including invoking article 16 if necessary, to protect the interests of the people of Northern Ireland and to safeguard the effective movement of goods, people, services and capital throughout the United Kingdom.

Unionist Legal Case

The DUP has indicated its intention to launch a formal legal challenge to the Northern Ireland Protocol. Arlene Foster said that the party was joining with 'like-minded' unionists in a two-pronged – legal and political – campaign.

Arlene Foster stated that "the intention is to launch judicial review proceedings to challenge the Protocol "unless arrangements are put in place which are consistent with the Act of Union of 1800":

The Northern Ireland Act of 1998 and the Belfast Agreement. Fundamental to the Act of Union is unfettered trade throughout the United Kingdom. At the core of the Belfast Agreement was the principle of consent yet the Northern Ireland Protocol has driven a coach and horses through both the Act of Union and the Belfast Agreement. There was no consent from the Northern Ireland Assembly, the Northern Ireland Executive or the people of the North for the flow of goods from Britain to Northern Ireland being impeded by checks.

The DUP is supported by British unionists including the former Brexit Party MEP, Ben Habib, the Labour peer Kate Hoey and Jim Allister, leader of Traditional Unionist Voice.

The SDLP leader, Colum Eastwood, commented: "The DUP's legal action against the Ireland Protocol is ill-judged and will only further entrench the febrile political environment as well as creating further uncertainty for people and businesses. There will be few with sympathy for the argument that the Protocol, which prevents a hard border in Ireland and guarantees dual market access for local businesses, breaches the Good Friday Agreement."

Ratification of Trade and Cooperation Agreement

On 23 February 2021 the UK Government agreed to allow the European Union more time to finalise the formal ratification of the Trade and Cooperation Agreement. An additional two months – until 30 April – was agreed in correspondence between Chancellor of the Duchy of Lancaster Michael Gove and Commission Vice President Maroš Šefčovič.

EU Member States requested more time to prepare legally valid translations of the lengthy treaty text in all 24 official languages – known as 'legal scrubbing'. The European Parliament has also requested more time for examination by the relevant committees. A UK spokesman commented that "It is disappointing the EU has not completed its internal processes in the agreed timeframe. We expect the EU to meet the new timeline."

Meeting of EU-UK Joint Committee, 24 February 2021

The Joint Committee met (virtually) on 24 February 2021 with co-chairs Gove and Šefčovič and with participation by the Northern Ireland First and Deputy First Ministers. The EU and UK reaffirmed their joint commitment to the Good Friday Agreement and to the full implementation of the Ireland//Northern

Ireland Protocol. There was no agreement on the UK request for extension of the grace periods for checks on goods entering Northern Ireland from Great Britain some of which will expire at the end of March. The Committee will meet again before the end of March.

A Joint Statement was issued following the meeting:

The parties welcomed the progress made on citizens' rights in recent weeks in implementing the rights of UK nationals in the EU and EU citizens in the UK under the Withdrawal Agreement, and reiterated the importance of communication and support to the most vulnerable.

Further to the meeting of the Joint Committee co-chairs on 11 February 2021, the EU and the UK also took stock of the implementation of the Protocol on Ireland and Northern Ireland and of work to find pragmatic solutions. The parties acknowledged the importance of joint action to make the Protocol work for the benefit of everyone in Northern Ireland. In that spirit, the EU and UK reiterated their full commitment to the Good Friday (Belfast) Agreement in all its dimensions, and to the proper implementation of the Protocol.

Building on the recent outreach by the Joint Committee co-chairs, there would be further joint engagement with business groups and other stakeholders in Northern Ireland. The UK and the EU underlined their shared commitment to giving effect to those solutions agreed through the Joint Committee on 17 December 2020, without delay. The UK noted that it would provide a new operational plan with respect

to supermarkets and their suppliers, alongside additional investment in digital solutions for traders in accordance with the Protocol. Noting the need for ongoing engagement and the shared desire to act at pace, the UK and EU agreed that a further Joint Committee would be held to provide further steers and where appropriate approvals, and would liaise on timings.

Following the meeting, First Minister Arlene Foster accused the European Commission of being 'tone deaf' about the impact of the Protocol and described the meeting as "hugely disappointing." She argued that it was now time for the British Government to "act unilaterally" to step up and protect the UK internal market. The Deputy First Minister, Michelle O'Neill, said the meeting had been "a positive and constructive engagement" with recognition that there are issues that need to be resolved and commitment by both sides to define practical solutions.

Vice President Maroš Šefčovič at Oireachtas Committee 16 February 2021

Commission Vice President Maroš Šefčovič participated by video link in a meeting of the Oireachtas Committee on European Affairs on 16 February 2021. He expressed deep regret concerning the 'administrative mistake' which led to the inclusion of reference to Article 16 of the Northern Ireland Protocol in a draft EU regulation on COVID vaccine exports. The mistake was caused by the 'enormous pressure' to deal with vaccine supply issues.

The Vice President avoided direct answers to questions from TDs and Senators on who was responsible for the mistake, insisting that it would be better not to engage in a blame

game. The Commission President had accepted responsibility, apologised and introduced a clearing house mechanism to assess political issues arising in respect of implementation of the Protocol together with monthly meetings of Commissioners “with the highest stake in this new EU-UK relationship” to ensure a similar blunder would never be repeated.

Vice President Šefčovič told the Committee that the Protocol “is the only way to protect the Good Friday-Belfast Agreement in all its dimensions, preserving peace, stability and preventing a hard border on the island of Ireland while preserving the integrity of the Single Market and the customs union. The protocol on Ireland and Northern Ireland, that is, the entire island of Ireland, has been the core of the discussions on the withdrawal of the United Kingdom and it remains the centrepiece of the new relationship of the Union with the United Kingdom as a third country. I assure the committee that the full, faithful and effective implementation of the protocol is of paramount importance to the Union and it constitutes a top priority for EU-UK relations.

When we speak about Article 16, particularly with regard to 29 January, I would like to be very clear. The bottom line is that mistakes were made in the process leading up to the decision and we deeply regret this. However, in the end, in a matter of three hours we got it right. Article 16 was never activated. I reassure the committee that the Commission has learned its lesson and it will do its utmost to protect peace in Northern Ireland, as it has done throughout the entire Brexit process.

We should also look forward, and this is what our discussion should also be about. We need to make sure that mistakes are not repeated. To this end, the European Commission has set up a clearing house where all of the issues with

an impact on the UK, Ireland and Northern Ireland will be assessed and evaluated. There is also the commitment that I will continue permanent contact with the Minister, Deputy Coveney, and representatives of Ireland. Together with Mr. Michael Gove, we decided to establish a hotline so we can be in frequent touch and, hopefully, deal with problems when they are still at a technical level so they do not reach a political dimension. I realise the relationship between the EU and UK and proper implementation of the protocol on Ireland and Northern Ireland require day-to-day care.”

Brendan Howlin TD said that the Committee was trying to understand what mistakes were made and how could such a fundamental issue happen without political awareness? “We need to understand, so that the processes of decision making will improve into the future.” He referred to the clearing house mechanism: “Who constitutes that clearing house? Where is it? How will it be put into operation, in reference to member states and Commission members? How will that work?”

Dara Calleary TD said that the Committee would be remiss in its job if it did not pursue what happened in the days leading up to 29 January. “The Vice-President said Article 16 was never activated. With complete respect I say he is splitting hairs because the signal was given that it would be activated. Were it not for the intervention of the Taoiseach and the Minister, Deputy Coveney, it probably would have been activated. However, giving the signal was enough to do the damage my colleagues have mentioned.”

Commentary on the meeting spoke of a “sudden outbreak of EU bashing” and of “overreaction that threatens damaging consequences for the country’s credibility in the years ahead.” Irish politicians – including

Irish MEPs - were seen to "vie with each other in the indignation stakes". In Brussels an EU official argued that "We stood by you to preserve your open border, now stand by us to protect the single market."

Vice President Šefčovič meets Northern Ireland business leaders

Commission Vice President Šefčovič, with his UK counterpart, Michael Gove, held a video meeting with Northern Ireland business and community leaders on 18 February 2021. Afterwards, they said that they had a constructive discussion which would help guide the UK-EU Joint Committee in its deliberations.

The business leaders - representing the Federation of Small Business, the NI Retail Consortium, Manufacturing Northern Ireland and the Institute of Directors - indicated a degree of pleasant surprise at the understanding shown by Šefčovič and Gove following weeks of problems. "They were positive about everything that we put forward... they have given a genuine commitment to work with us." The leaders argued for an extension of the grace periods, certainty through long-term solutions, simplification of border checks and mitigation of cost increases for business and consumers.

Maroš Šefčovič remarked that he understood that business needed predictability, stability and a clear legal framework. He was committed to finding pragmatic approaches which would lead to permanent solutions. The meeting was the start of a comprehensive dialogue including the establishment of a consultative mechanism to ensure that the EU and UK can hear business concerns.

The Vice President also met a senior representative of the Orange Order, Mervyn Gibson, who repeated the unionist political position that the Protocol must be scrapped.

Section Two: The Evolving Debate

ERG on Protocol

The European Research Group of Europhobic Conservative MPs has joined the hard line Unionist call on Prime Minister Boris Johnson to scrap the Northern Ireland Protocol, replacing it with a system of "mutual enforcement" to void border friction on the island of Ireland. All members of the ERG voted in favour of the Prime Minister's Withdrawal Agreement, including the Protocol.

The ERG report argued that the EU threat to trigger Article 16 of the Protocol created a 'unique political opportunity' to renegotiate it. ERG chair, Mark Francois, said that "We will no doubt be told that the EU will never renegotiate the Protocol just as we were repeatedly assured they would never reopen the withdrawal agreement or indeed abandon the dreaded backstop...when they did both." The UK should tell the EU that it will enact a new law "to redress trade diversion and societal pressures caused by the Protocol."

Mutual enforcement would require the authorities on each side of the border to ensure that their exporters abide by agreed rules to protect the EU single market without imposing checks at ports in Northern Ireland.

Loyalist Communities Council

In a highly controversial move the DUP party leadership has held talks with representatives of the Loyalist Communities Council (LCC), an organisation which represents loyalist paramilitary groups, including the UDA and UVF. The party said the meeting in Belfast discussed opposition to the Northern Ireland Protocol. Describing the discussions as "constructive and useful" the party said that

"we listened to the views expressed and the need for political and constitutional methods to safeguard the UK single market and ensure there is unfettered flow of trade between Great Britain and Northern Ireland."

The Alliance Party leader, Naomi Long, tweeted that "proscribed terrorist organisations are not a legitimate part of our community. They aren't stakeholders to be consulted. They are a malignant force destroying our community. Our job as Ministers is to eradicate paramilitarism, not give them a platform or legitimacy."

The LCC was established in 2015 in response to the "neglect" of loyalist communities and as a means to help bring an end to loyalist paramilitarism. The LCC chairman, David Campbell, has been criticised for a recent statement that loyalists would "fight physically" to maintain "freedoms" within the UK.

David Trimble and Monica McWilliams

Lord David Trimble, broker and signatory of the Good Friday Agreement, and Monica McWilliams, member of the Northern Ireland Women's Coalition delegation to the Agreement negotiations, have clashed on the NI Protocol in the columns of the Irish Times.

Lord Trimble argued that the Protocol "changes fundamentally" the constitutional relationship between Northern Ireland and the rest of the United Kingdom and ignores the principle of consent enshrined in the Good Friday Agreement. He said that he personally felt betrayed by the Protocol arrangements as did "the majority unionist population in Northern Ireland".

Monica McWilliams countered that "claiming the protocol undermines the Belfast Agreement by ignoring the principle that consent is required for a change in the status of Northern Ireland is false. The current problems originated from

Brexit- a change in the status of Northern Ireland that was actively opposed by a majority of people who live in Northern Ireland."

Universities and Brexit

UK universities are lobbying Government to permit them to stay fully involved in a key EU scheme – European Universities Initiative (EUI) which has funded more than forty alliances of universities in developing common curricula and research activities, sharing ideas on sustainability and equality and promoting student and staff mobility. At least seven UK colleges became full members of alliances before Brexit and many more are associate members. Government spokespersons have indicated that they are seeking clarity from the European Commission about what projects UK institutions may be eligible to participate in the future."

The European Commission has ruled out allowing Scotland to stay in the EU's Erasmus+ student exchange scheme. Replying to a European Parliament request for continued Scottish and Welsh participation the Commission insisted that the only possibility is for the UK to associate as a whole or not at all. The UK has launched a domestic replacement scheme –the Turing Scheme. Northern Ireland students are allowed to continue through an arrangement with the Irish Government.

Strengthening British -Irish Relations

Speaking at the 60th plenary session of the British-Irish Parliamentary Assembly the Taoiseach, Micheal Martin, argued that new structures must be developed to underpin British-Irish relations after Brexit. More work is needed to ensure reconciliation between the different traditions on the island. Deeper cooperation is essential on a range of challenges from climate change and biodiversity to recovery from the COVID crisis.

Stressing the reality that the UK's departure from the EU is a "moment of dramatic and profound change" the Taoiseach said that "We will need to develop structures to underpin this engagement, with regular meeting by heads of government and at ministerial and senior official levels in order to build relationships and deliver on agreed programmes of work."

On 24 February 2021 the Minister of State for European Affairs, Thomas Byrne, made a virtual visit to Great Britain to engage with UK interlocutors, including Ministers, MPs and think tanks. He met the Minister of State for Northern Ireland, Robin Walker, and the Parliamentary Under-Secretary for European Neighbourhood, Wendy Morton and, after talks with MPs, had engagements with the Institute for Government and the Centre for European Reform.

Section Three: Background Material and Further Reading

Background Material

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