

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

Von der Leyen and Poots on the Protocol

As technical experts from both sides – the UK Cabinet Office, led by Minister of State Lord David Frost and the European Commission, led by Vice-President Maroš Šefčovič – continued their detailed, line by line discussions on the Protocol on Ireland/Northern Ireland (the Protocol) a range of opinions, assessments and warnings have been expressed and publicised.

The President of the European Commission, speaking after the recent special meeting of European Council, and the new Leader of the Democratic Unionist Party (DUP) in a BBCNI

interview, provided contrasting views on the Protocol.

The BBC's Stephen Nolan put it to Edwin Poots that given the DUP's support for Brexit the protocol was an inevitable consequence to the UK leaving both the EU Single Market and Customs Union. He replied: "I am not owning the Protocol because the Protocol is something that was pushed and forced upon us by the Irish Government in conjunction with Sinn Fein, SDLP and Alliance". The Protocol is an absolutely unnecessary part of the Brexit process", he added. Edwin Poots blamed Irish Ministers Leo Varadkar and Simon Coveney in particular, "who had sought to create barriers between Northern Ireland and Great Britain, our main trading partner". Great

Britain is Northern Ireland's most significant single market in terms of external sales from Northern Ireland itself.

President von der Leyen commented that "it is important to reiterate that the Protocol is the only possible solution to ensure peace and stability in Northern Ireland, while protecting the integrity of the European Union Single Market. If we see problems today, we should not forget that they do not come from the Protocol, but they result from Brexit – that is the reason why the problems are there". Her opinion was strongly supported by French President Emmanuel Macron who argued that "if these situations are difficult to manage it's precisely because of Brexit and in no case because of the EU".

Edwin Poots confirmed as DUP Leader

The Northern Ireland Minister for Agriculture, Edwin Poots, was confirmed as leader of the DUP at a meeting of the Party Executive on 27 May 2021. The meeting was described as revealing the extent of divisions within the DUP, following the ousting of First Minister, Arlene Foster as leader of the DUP. Mr Poots was ratified by 72 votes to 28 by a show of hands, after a demand for a secret ballot was narrowly defeated. First Minister Foster together with a number of senior figures, including Jeffrey Donaldson MP, who was defeated in the leadership election, left the Executive meeting before Edwin Poots made his inaugural speech as leader.

Edwin Poots told his party members that his relationship with the Irish Government is "really, really bad" and, while expressing respect for the Taoiseach Micheál Martin, he launched a strong attack on the Tánaiste Leo Varadkar and Foreign Affairs Minister Simon

Coveney who he asserted had set out to impose upon Northern Ireland people the harshest form of customs and an internal market that he claimed does not "exist anywhere else in the world".

Mr Poots later said that while the European Commission over the years "put their heart and soul into winning peace in Northern Ireland", they currently "don't seem to care for the peace process... that really needs to change, that attitude needs to change". "This is the European Union seeking to punish the United Kingdom", he asserted. Accusing the EU of viewing Northern Ireland as "a plaything" he went on to stress that the people of Northern Ireland deserve to be treated with the same respect as everyone else.

Edwin Poots, who will not take the position of First Minister in the Northern Ireland Executive, will indicate his choice for that position and for the DUP members of the Executive in coming days. He insisted that the Northern Ireland Assembly is critically important for unionists as a way of ridding Northern Ireland of the Protocol, where a vote on consent to the Protocol will be held every four to eight years, starting in 2024. He has also indicated that he will seek early meetings with the Dublin Government and the European Commission to discuss his objections to the Protocol.

Mr Poots had meetings with both Lord David Frost and Northern Ireland Secretary Brandon Lewis immediately following his election as party leader. He told Lord Frost that the Protocol is "intolerable". No statement was issued following his meeting with Brandon Lewis.

European Commission Vice-President Maroš Šefčovič rejected Edwin Poots' accusation that

the EU is using Northern Ireland to punish the United Kingdom for Brexit. Vice-President Šefčovič said they searched for four years for the “best solution to the very sensitive situation in Northern Ireland”. For the EU and the UK it was “very clear” that solution is the Protocol, he redoubled. He urged a focus on policies and politics that unite than divide and asked unionists to look at the Protocol as an “opportunity” for Northern Ireland.

Vice-President Šefčovič said he wants to meet the Northern Ireland Executive parties before the next Joint Committee, which is expected to take place in the middle of June. “I would like to hear from Mr Poots himself but also from other leaders of the political parties who form the Northern Ireland Executive and discuss with them what we can do better”, he stated.

European Council 24 May 2021

The European Council, special meeting of Monday 24 May 2021 saw all concerned broadly welcoming the entry into force of the EU-UK Trade and Cooperation Agreement (TCA) from Saturday, 1 May 2021. The European Council Conclusions stated that:

The European Council welcomes the entry into force of the EU-UK Trade and Cooperation Agreement on 1 May 2021. This Agreement, together with the Withdrawal Agreement and its Protocols, provides the framework for our relations with the UK. Both Agreements should be fully and effectively implemented and their governance structures made operational.

The two Agreements allow for the EU to have as close as possible a partnership with the UK, while recognising that a non-member of the EU cannot enjoy the same benefits as a member and that the relationship must be

based on a balance of rights and obligations at all times. Relations with the UK should remain mutually beneficial and can under no circumstances undermine the integrity of the Single Market, the Customs Union or the EU’s decision-making autonomy. The European Council calls on the UK to respect the principle of non-discrimination among Member States. The European Council will remain seized of the matter and the EU will continue to be united in its engagement with the UK.

Comments by President Ursula von der Leyen

President von der Leyen addressed the Joint Council-Commission Press Conference following the special meeting of the European Council on Monday 24 May 2021. She delivered the following statement:

We held our first discussion on the EU-UK relations since the entry into force of the TCA. The beginnings are not easy. Tensions are being felt around the access for example of EU fishing boats or tensions are – without any doubt – there around the implementation of the Protocol on Ireland and Northern Ireland.

Vice-President Šefčovič is working hard with our UK counterparts how to resolve the underlying issues. It was very good to see that Leaders reiterated their unity and their support to the fact that issues must be solved based on the provisions we have now – that is the Trade and Cooperation Agreement; that is the Withdrawal Agreement, and this includes the Protocol.

Just one focus on the Protocol: There should be no doubt that there is no alternative to the full and correct implementation of the Protocol. And I think it is important to reiterate that the

Protocol is the only possible solution to ensure peace and stability in Northern Ireland, while protecting the integrity of the European Union Single Market. If we see problems today, we should not forget that they do not come from the Protocol, but they result from Brexit – that is the reason why the problems are there.

Now, it is our common duty with the United Kingdom to do whatever we can to reduce tensions in Northern Ireland. And that is why we are exploring practical solutions to help to minimise the disruptions to the everyday life in Northern Ireland. And beyond these current difficulties, we will continue to work on a productive and balanced relationship with the United Kingdom.

Secretary Brandon Lewis in The Telegraph, 22 May

The Northern Ireland Secretary, Brandon Lewis MP, contributed an article to The Telegraph on 22 May 2021. In that article, he stated:

The core principles of the Northern Ireland Protocol are noble, but Northern Ireland's progress – social, economic and political – is being hamstrung by its current operation. We have seen reduced availability and choice on supermarket shelves, cancelled deliveries, retailers temporarily pulling products, and interference with the movements of pets and parcels. Such sustained disruption is undermining the Protocol as a whole.

While we are focussed on the urgent need to deal with these difficulties, it is also important that politics, and politicians, in Northern Ireland do not become blinkered by it. The community groups and individuals I have spoken to most recently have reinforced this. While they want problems with the Protocol

to be solved, they are particularly focussed on social issues – securing the best education for their children, being able to access good healthcare services, progressing women's rights and advancing LGBT causes.

That does not deny that the current operation of the Protocol is an issue for many – it is, particularly for some in unionist communities who feel a loss of their sense of identity and belonging. But we must not forget that the issues businesses and consumers are facing are affecting the whole community in Northern Ireland.

That is why we are committed to working with the EU to resolve these issues urgently, acutely aware of the time constraints we face. Our approach has been guided by the need to de-dramatise the issues arising from the Protocol and instead seek practical solutions to its challenges. But the damage done by the EU's unilateral move to put a hard border on the island of Ireland for vaccine exports in January cannot be overstated.

It is our hope that the EU will embrace a more constructive approach to the Protocol so that it can support the peace process, be implemented in the proportionate way that we always intended and ensure the people of Northern Ireland can continue to see the benefits of continued prosperity and stability. That is the only way it can be sustained.

I would urge the EU to take the proportionate, risk-based approach that is needed so that we can all look forward to a more positive and optimistic future for the whole of Northern Ireland – one that fully embraces all that it has to offer the rest of the UK and the world.

UUP elects new Leader

The Ulster Unionist Party (UUP) elected Doug Beattie MLA as its new leader following the resignation of Steve Aiken MLA. Mr Beattie was the only candidate to run for the post. The UUP Council met virtually on Thursday, 27 May to ratify Doug Beattie's election.

Afterwards Mr Beattie said: "My management and leadership styles are very different". He commented that the UUP was "about bringing people together, making this the best part of the United Kingdom [...] and trying to forge and create a union of people, where people are happy to say 'I live in Northern Ireland, part of the United Kingdom'". He recognised the mammoth tasks ahead of the party, not least the Protocol which "is here to stay" and said he wanted a solution that did not place a hard border either in the Irish Sea or on the island of Ireland.

Lord Frost Interview in The Spectator

Lord David Frost gave an interview to James Forsyth in The Spectator on 22 May 2021:

But the thing Frost blames most for the current difficulties, including the ousting of Foster, is the EU's threat to invoke Article 16, which allows one side to unilaterally override the protocol, as part of the dispute over vaccine supplies in January. He complains that the EU's action "changed the politics and changed the way one community looks at the situation. And we've been dealing with the consequences ever since.

There is a growing fear that Lord Frost is now contemplating the UK's own use of Article 16. "The problem we've got is that the boundary for trade purposes is proving more of a deterrent to trade and more of a generation of trade diversion than many people expected",

he stressed. Lord Frost's deliberate use of the phrase "diversion" is significant: trade diversion is one of the things that allows for the use of Article 16.

He worries, though, that too many on the EU side have a zero-sum attitude to the relationship. "For at least some Europeans, they have a very strong view that Brexit simply cannot succeed", he said. "It's a sort of historical error that goes against everything they know about the progress of history and the way things work... that is at the root of some of the problems", he added. He stressed that they "don't have any [problem] at all about the EU and the member states succeeding". "We think that's a good thing and we think they should think it's a good thing if we succeed", he continued.

Given all this, is it not time for a reset in UK-EU relations? Frost does not think so. "I'm kind of doubtful about "reset" as such... I don't think moments like that have a particularly good history in diplomacy", he reasoned. But he does say that he hopes relations can improve and that he doesn't regard the current scratchiness "as a decade-long problem".

Loyalist Council at Westminster Committee

Members of the Loyalist Communities Council (LCC) which represents three loyalist paramilitary groups in Northern Ireland appeared before the Westminster Northern Ireland Affairs Committee on Wednesday, 19 May 2021 to explain and discuss loyalist issues with the Protocol.

David Campbell, LCC Chairman, warned of the prospect of more violence in Northern Ireland, speaking of the current tensions over Brexit

as “probably the most dangerous for many years”. Referring to President Ursula von der Leyen’s comments on Brexit and the Protocol he said they showed “how little she cares about peace and stability in Northern Ireland” and he said that “I do get the sense that the Irish Government misrepresented the potential impact of an Irish Sea border on the unionist community in Northern Ireland.”

The delegation told the Committee that the Protocol is “a fundamental breach of democracy”, that there was “seething anger” at Boris Johnson’s broken promises and that violence might be used as a “last resort”. Joel Keys - a young, 19-year-old, member of the LCC delegation – told the Committee that he is “not sure if and when violence will be the answer. I’m just saying I wouldn’t rule it off the table.”

The SDLP MP, Claire Hanna, was critical of the Committee’s invitation to the LCC, arguing that “the un-detonated tactic of violence is a problem for our political structures, people who believe it’s fine to use, but not right now.”

LCC meeting with Lord Frost and Secretary Lewis

In a statement the LCC confirmed that a “small delegation” of its members met Lord Frost and Brandon Lewis during their recent visit to Belfast

“The delegation emphasised the need for significant change to the Protocol to bring it back into consistency with the Belfast Agreement and to remove the clear change in the status of Northern Ireland that has occurred due to the imposition of the Protocol. Members advised Lord Frost of the efforts they had to make to try and calm the wider unionist community and appealed to him to ensure that the Prime

Minister honoured his commitments to seek, and if necessary, unilaterally legislate, to reach an agreement on a workable alternative.”

Lord Frost at Commons Scrutiny Committee

The House of Commons European Scrutiny Committee discussed “the UK’s new relationship with the EU” on Monday, 17 May 2021. Lord David Frost addressed the Committee about his wide-reaching responsibilities and his approach to them:

There are four things I have to do in this job. First, I am responsible for managing the overall relationship—the implementation of the TCA and the Withdrawal Agreement, and chairing the Joint Committee and Partnership Council and so on. Secondly, I am responsible for conducting the effective conduct of business with the EU and its member states. Beyond the responsibility of this Committee, I also have responsibility for third country trade issues. I am trying to find solutions there with the Trade Secretary. Finally, the opportunities of Brexit. That is my portfolio.

The main three things that I feel should be at the top of my agenda—and are—are first, Northern Ireland and the protocol. That is clearly a very live issue. Secondly, getting the overall relationship with the EU, subject to that, off on a decent footing. I think it will be a bit bumpy for a time. There is a lot in there—a lot of business to be done. We have got new institutions through the TCA and making those work. Then, as I said, the third thing is the opportunities and trying to identify things we can do differently.

The relationship with Maroš Šefčovič is good. I think Maroš understands some of the difficulties very well. We get on very well. We have the

ability to move things forward. Obviously, Maroš has to operate within a mandate set by the wider Commission and other member states, not all of which understand Northern Ireland as well as he now does. That is one reason why we are finding difficulty in moving this forward. It is a characteristic of the EU's approach to things. They very often tend to take quite a legalistic, purist way of doing things. I think it is common for third countries dealing with the EU to experience that, when the EU legislator, as they say, has decided things, there is no further discussion to be had. That is obviously frustrating.

Asked if comments on the Protocol's sustainability implied that he proposed to set a time limit on discussions in the Joint Committee about the way that the Protocol operates, Lord Frost replied:

No, not a formal time limit or deadline; I don't think that would make sense. What I was saying is that there is also a real-life timetable in Northern Ireland. Coronavirus restrictions are coming to an end. We all know that the late spring and summer in Northern Ireland can sometimes be turbulent. There is significance in that. We have to take that reality into account.

Questioned about the significance of the date of 12 July ('The Twelfth', starting date of annual Loyalist Marching Season) Lord Frost responded: "I would like to feel that we will be making progress with the EU in good time before that date, if we were to find solutions. I think it is helpful if people can see that solutions are available, sooner rather than later. I think that is true, yes."

Dublin Concerns at London/Belfast Attitudes

The Dublin Government is increasingly concerned at both the content and tone of UK Government comments on the Protocol. The Taoiseach's meeting with Prime Minister Johnson and Lord Frost's Spectator article have given rise to fears of unilateral moves by London, for instance by triggering Article 16 or by claiming force majeure to absolve it of its obligation to apply the Protocol. Lord Frost has indicated that a task force is being assembled to focus on eradicating "EU ways of thinking" from the UK civil service and on ways to diverge from EU rules to give Britain a global competitive edge in key areas. Further, Dublin sources have described as "irresponsible", the suggestion being that critical solutions to Protocol related issues must be found and agreed in advance of 12 July, the peak of the loyalist marching season.

Foreign Affairs Minister Simon Coveney has said that the number of checks on goods arriving into Northern Ireland could be reduced by as much as 80% if the UK agreed to a common approach to standards in the area of veterinary practice and to sanitary and phytosanitary standards for food. Discussions on these matters are deadlocked.

Section Two: The Evolving Debate

TUV Legal Challenge to Protocol

In the Belfast High Court, Mr Justice Colton has heard a legal challenge to the Protocol. The case has been brought by Traditional Unionist Voice leader Jim Allister and are being backed by senior DUP and UUP representatives. The full list of applicants in the case includes Baroness Kate Hoey as well as Lord David Trimble, Arlene Foster MLA, Steve Aiken MLA and Jim Allister QC, MLA. John Larkin QC, the

former attorney general for Northern Ireland, has led the presentation of the challenge.

The Government has argued that the challenge is asking the court to ignore the will of Parliament expressed in primary legislation and that parliamentary sovereignty means it is the UK's supreme legal authority.

The Court has reserved judgement and its conclusions are expected to be delivered in the next few months. That judgement is likely to be appealed and the case could ultimately be heard by the Supreme Court before the end of this year.

US Senate Supports Belfast Agreement

The US Senate has passed a resolution reaffirming support for the Belfast/Good Friday Agreement. The bipartisan resolution – sponsored by Democrat Senator Bob Menendez and Republican Senator Susan Collins – calls for the full implementation of the Belfast Agreement as well as subsequent agreements including the Protocol and Stormont House Agreement. Senator Menendez commented that he was “very proud to have the Congress speak with one voice in support of accountability, reconciliation and prosperity in Ireland”. Ireland’s Ambassador to the US, H.E. Daniel Mulhall, thanked the senators for piloting the resolution through the Senate. “Congressional support for peace in Ireland continues to be vitally important and deeply appreciated”, he said.

Tony Connelly: The Charge Sheet

Writing for RTÉ, Tony Connelly addressed the hardening British rhetoric on the Protocol:

In the space of a week, what was slow progress on the Northern Ireland Protocol has turned into a dangerous stand-off. London has

synthesised its critique of the EU’s approach to the Protocol: it is guilty of a rigid approach to its implementation that is blind to unionist sensitivities. Europe’s insistence on checks and controls on food entering Northern Ireland from GB are disproportionate to the overall risk to the EU’s single market and consumer health. Unionist alienation is unsustainable, and therefore the Protocol, as is, poses a direct threat to the North’s institutions, and to the Good Friday Agreement itself.

This is the charge sheet.

All that aside, the UK’s ambiguous attitude to the Protocol, and the wide gap in expectation as to how flexible the European Union can be, remain worrying features. The rhetoric from Frost and others could, of course, be a negotiating strategy. Even if it is, it could raise expectations among unionists that the UK is capable of walking away from the Protocol, either because the EU refuses to gamble on its body of law, or if the UK invokes force majeure, blaming the pandemic. Or even by claiming that, as a sovereign government, the UK has a straightforward responsibility not to upset the balance of the Good Friday Agreement.

Why that sense of responsibility was nowhere to be found in the run up to the Brexit referendum in 2016 does not appear part of London’s current thinking.

Fintan O’Toole on ‘Them’

In his chapter – ‘Ireland and the English Question’ – in the 2019 essay collection ‘Embers of Empire in Brexit Britain’, Fintan O’Toole wrote of a profound ambivalence haunting the Brexit debate – Northern Ireland is part of the sacred Union yet at the same time a foreign affair:

The Irish, whether Green or Orange, whether

traitorous rebel or loyal subject, are Them. There is no serious doubt that, for the vast majority of those who voted for Brexit in England, Northern Ireland is Them. In the 2016 referendum campaign, the Leave side consistently refused to address the problems of Northern Ireland, the Belfast Agreement of 1998 or the border.

The best that could be got out of any of them was a double fantasy. The border would not be a problem because the Republic of Ireland (never really recognized as an independent country) would just have to follow the UK out of the European Union and return to the fold of what could again be called (political correctness be damned) the British Isles. And/or the European Union would have to give post-Brexit Britain a fabulous trade deal – the easiest ever negotiated – which would ensure ‘frictionless’ trade anyway, so again the border did not have to be considered.

Asked specifically about the Irish problem in the last big, televised debate before the Brexit vote, Boris Johnson replied: “I remember vividly when the EU was given the task of trying to sort out the tragedy in the Balkans...” For those who had suspected that, for most of the Brexiteers, Ireland might as well be Montenegro, here was the literal confirmation. Johnson spoke for two minutes. The words ‘Ireland’ and ‘border’ did not pass his lips.”

Section Three: Background Material and Further Reading

Background Material

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