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The EU's bad Friday announcement

The EU-UK vaccine row has repoliticised the Northern Ireland Protocol and damaged the prospects for its smooth implementation

The Northern Ireland dimension to Brexit was always going to be challenging. The hope of the United Kingdom (UK) and the European Union (EU) was that, with a dedicated Protocol and jointly agreed arrangements designed to avoid a hard border on the island of Ireland and protect the 1998 Belfast (Good Friday) Agreement in all its parts, Brexit's inevitable disruption could be kept to a minimum and the Northern Ireland peace process, possibly a little unsettled, would remain broadly unaffected.

Reactions to the reality of Brexit and the Protocol and the changes and the disruption to trade they have caused meant that the initial weeks of 2021 were particularly difficult for Northern Ireland. Brexit became very real on 1 January with the arrival of new formalities, restrictions, checks and controls on the movement of goods into Northern Ireland from the rest of the United Kingdom.

These seemed to surprise many people, but they are the logical consequence of United Kingdom abandoning the EU's customs union and its internal market while agreeing under the Protocol for Northern Ireland to remain in the EU customs territory and, at least for goods, the EU internal market.

The Irish Sea Border

The effect of these new arrangements is the creation of what many see as an 'Irish Sea border', something totally unacceptable to many 'unionists' supporters of Northern Ireland remaining part of the United Kingdom. For them, such a border divides the United Kingdom, makes a mockery of the idea of a UK internal market, and threatens the constitutional integrity of the United Kingdom.

Others are more sanguine. The Protocol is a pragmatic response to the

realities of a 'hard' Brexit and the shared UK and EU commitment to avoid a hard border on the island of Ireland. Northern Ireland's constitutional status as part of the UK is unaffected; under the 1998 Agreement, only a vote of the people in Northern Ireland can change that; and there is currently no majority for united Ireland even if support is increasing.

Unionists are nevertheless extremely anxious about what the future holds. Their opposition to the Protocol has become louder and more resolute, and has recently seen the launch of legal challenges to the Protocol. Among the claims being made are that the Protocol breaches the 1800 Act of Union and the consent arrangements in the 1998 Agreement.

The UK government's take

For many of its unionist opponents the Protocol is also regarded as something that has been imposed on them by an EU far too willing to listen to Irish and nationalist voices on the implications of Brexit for the 1998 Agreement and deaf to the concerns of unionists. Many are even angrier at what they see as a betrayal of Northern Ireland by Boris Johnson and his government. He, after all, agreed to the terms of the Protocol.

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The Protocol's opponents were quick to jump on the inevitable disruption of 'real' Brexit to demand that the UK government trigger Article 16 and take unilateral safeguard measures to ensure the unfettered movement of goods from Great Britain into Northern Ireland. For many of its most vehement critics, the Protocol should simply be abandoned.

The UK government has resisted such calls, and for good reason. Brexit was always going to bring change, and the UK government as the champion of Brexit – albeit a government forever dismissive of the extent of the changes – has to accept this. It cannot rush into adopting unilateral safeguard measures in the face of what was arguably foreseen and which it was quick to present as 'teething problems'. Safeguard measures are for exceptional circumstances and so an option of last resort.

The European Commission's faux-pas

This at least was the position as the end of January approached. The focus was on making the Protocol work. And many pragmatic unionists seemed resigned to doing so. This included the leader of the Eurosceptic pro-leave Democratic Unionist Party (DUP) and First Minister of Northern Ireland's devolved government, Arlene Foster.

Then came the announcement by the European Commission on Friday, 29 January 2021, that, without having consulted the UK, it was unilaterally triggering Article 16 and adopting a safeguard measure as part of a regulation requiring export authorisations for supplies of Covid-19 vaccines leaving the EU.

Contrary to the Protocol's provision for the free movement of goods on the island of Ireland, and to prevent unauthorised vaccine supplies entering Great Britain, export authorisations would be required for Covid-19 vaccines moving from Ireland into Northern Ireland. The effect of the news and the assumption that the European Commission was willing to impose a hard border on the island of Ireland were electric. Condemnation of the move was instantaneous and universal.

The lasting damage

Across the island of Ireland, the Commission's contemplation of invoking Article 16 was met with disbelief and outrage, including in the Irish Government. For the DUP's Foster, this was: 'An incredible act of hostility… By triggering Article 16 in this manner, the European Union has once again shown it is prepared to use Northern Ireland when it suits their interests but in the most despicable manner – over the provision of a vaccine which is designed to save lives'.

The regulation was swiftly revised and in a matter of hours all references to Article 16 and safeguard measures were removed. What, by all accounts, was a naïve blunder was rectified. And Commission President, Ursula von der Leyen has since acknowledged to the European Parliament that 'mistakes were made in the process leading up to the decision. And I deeply regret that'.

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However, despite reassurances that the Commission 'will do its utmost to protect the peace in Northern Ireland', the Article 16 debacle has seriously damaged the prospects for the Protocol's smooth implementation. The Protocol's unionist

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opponents are particularly incensed. A DUP petition to trigger Article 16 to secure 'unfettered GB-NI trade' attracted 100,000 signatures within 24 hours, and had risen to 142,000 when it was debated in the House of Commons on 22 February. Across unionism, there are now repeated calls for the Protocol to be abandoned, as well as legal challenges that could end up in the Supreme Court.

Can the Protocol work?

Other voices in Northern Ireland are focused more on finding ways to make the Protocol work, but in a way that allows the inevitable disruption of Brexit to be manged and see the removal of at least some of the new frictions on the movement of goods across the Irish Sea. Hence, there are calls from business for stability and certainty as well as a simplification of procedures and processes. To this end, there are requests for further and additional 'grace periods' and for UK alignment with the EU acquis in areas covered by the Protocol, notably on food products and plant and animal health.

There is a keen interest in seeing how the Northern Ireland voice can be effectively represented to the EU through the bilateral and other institutional arrangements provided for in the Protocol. There is also interest in how future legislative proposals from the European Commission can be checked via an 'early warning system' for their impact on the Protocol and Northern Ireland and for impact assessments to be undertaken. The call from Irish MEPs for 'connective tissue' to be developed between members of the Northern Ireland Assembly and the EU institutions has supporters too.

The focus is on making the Protocol work, and in a manner that delivers on joint UK-EU commitments including on ensuring that implementation of the Protocol impacts 'as little as possible on the everyday life of communities in both Ireland and Northern Ireland'. To achieve this, both the UK and the EU need to adopt a flexible and accommodating approach to implementation, and one that is sensitive to the economic and political realities of real Brexit in Northern Ireland and the concerns of all affected.

Without such an approach, we are unlikely to see the tensions in Northern Ireland around the Protocol ease. If anything, the Protocol is likely to remain highly divisive. And its politics are not going to go away

anytime soon. In 2024, members of the Northern Ireland Assembly will be asked to give their consent to the continued application of the Protocol's provisions that avoid a hard border on the island or Ireland and effectively place that border in the Irish Sea. Unionist political parties are already campaigning against consent. How much support they have should be known in May 2022 when Assembly elections are held. The UK and the EU have until then to take as much of the political heat as possible out of the Protocol.

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