

EU-UK relations as well as the implementation of the Trade and Cooperation Agreement and the Northern Ireland Protocol

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1. Post-Brexit relations between the European Union (EU) and the United Kingdom (UK) have been characterised by considerable political tension, much of it being the result of the UK government under Boris Johnson failing to come to terms with the consequences of the policy choices it made in implementing the result of the 2016 referendum. In leaving the EU customs union and the single market and hastily settling for an 'zero tariff, zero quota' free trade arrangement as part of a hastily concluded and comparatively minimalist Trade and Cooperation Agreement, the disruptive effects of Brexit – an inherently disruptive process – have been far greater than many anticipated.
2. The effect of UK government policy choices has been to ensure significant disruption to UK trade with the EU and the end of UK-EU cooperation in almost all areas of policy. While the TCA did provide for a dense institutional framework for managing relations, its various committees have only slowly been established and there have generally been few meetings. The institutional framework also lacks a high-level political forum for the strategic development of relations, a reflection of the Johnson government's preference for minimal post-Brexit engagement with the EU.
3. Only with and since the conflict in Ukraine has there really been evidence of any notable moves towards meaningful cooperation with the EU being established, e.g. on security and energy. In other areas, notably UK access to EU programmes such as Horizon Europe, relations remain strained. Casting a shadow over the future of relations is the prospect of increased regulatory divergence between the EU and the UK and its implications for the trade relations and policy cooperation.
4. The aspect of relations that has caused most tension in EU-UK relations has been the Protocol on Ireland/Northern Ireland. The tension results from the political reaction among Brexiteers and unionists in the UK to its actual and perceived effects and the tendency to blame these on the terms of the Protocol that the Johnson government agreed and the EU's approach to implementation, often omitting the wider context of the post-Brexit relationship with the EU that the UK has chosen.
5. At the centre of tensions over the Protocol are the trading arrangements for Northern Ireland which post-Brexit remains in the EU customs territory and the EU internal market for goods. With the TCA avoiding any UK regulatory alignment with the EU, EU formalities, checks and controls are required on the movement of goods from the rest of the UK into Northern Ireland. The resulting 'Irish Sea border' – far from fully in force owing to 'grace periods' for implementing the Protocol

¹ Research expertise is in European integration and notably: EU treaty reform, EU enlargement, EU external relations, particularly association, and 'Brexit' and its implications for Northern Ireland; currently coordinating a three-year academic research project on *Governance for 'a place between': the Multilevel Dynamics of Implementing the Protocol on Ireland/Northern Ireland* funded by the Economic and Social Research Council (further details at: www.qub.ac.uk/sites/post-brexit-governance-ni).

- threatens to disrupt GB-NI goods movements and, politically, raises concerns, particularly among unionists, for Northern Ireland’s constitutional position within the UK and its position in the UK internal market.
6. Whereas during 2020 and in early 2021, the UK eventually worked with the European Commission towards implementation of the Protocol, it has since then generally taken the position that the Protocol is unworkable and needs fundamental changes made to it. With its Command Paper in July 2021 and more recently the Northern Ireland Protocol Bill, the UK government has raised the prospect of taking unilateral action to disapply core elements of the Protocol, even though it is widely held that to do so would be in breach of its legal obligations towards the EU. The Northern Ireland Protocol Bill has been approved by MPs and is now being considered by the House of Lords where it is encountering considerable criticism and opposition.
 7. The Command Paper and the Northern Ireland Protocol Bill have deepened the tensions within the UK-EU relationship over the Protocol with the latter leading to the EU (re-)launching infringement proceedings against the UK government for non-implementation of the Protocol. These proceedings are ongoing.
 8. In Northern Ireland party political positions on the Protocol have moved from broadening acceptance of the Protocol in 2020 and into early 2021, to a situation today where amongst strong unionists in particular there is strong opposition to the Protocol and a preference among many unionists for its ‘scrapping’. Recent polling has found that in a forthcoming election to the NI Assembly almost a quarter of voters (24%) would vote for candidates in favour of scrapping the Protocol.² ‘Decisive action’ on the Protocol is a pre-requisite for the DUP entering a new NI Executive following the 2021 NI Assembly elections.
 9. Non-unionist political parties are generally supportive of the Protocol, and successive polls indicate a narrow majority of voters in favour of the Protocol.³ A clear majority (71%) agreed in a recent poll (October 2022) that a negotiated EU-UK settlement of outstanding issues regarding the implementation of the Protocol is preferable to the UK taking unilateral action.⁴
 10. Recent changes of UK government have improved the atmosphere between the UK and the EU and talks on endeavouring to resolve outstanding issues recommenced in October 2022. This is significant as no talks of note had taken place since the end of February 2022. Whether a breakthrough in resolving outstanding issues will be achieved and those issues settled remains to be seen. The European Commission has indicated possible further flexibilities beyond those identified in its October 2021 non-papers on customs and sanitary and phytosanitary issues. The EU’s adoption of amendments to EU legislation to facilitate the continued supply of medicines into Northern Ireland has been broadly accepted as evidence of flexibility and a willingness to address issues of particular concern to people in Northern Ireland.
 11. The recent and current focus on resolving issues around GB-NI movements of goods has tended to ignore the fact that the Protocol concerns more than trade. There are important UK commitments regarding the non-diminution of rights in the 1998 Agreement as a consequence of the UK’s withdrawal from the EU, and these commitments require constant monitoring with issues of partial or non-implementation being addressed.

² Phinnemore, D. et al, [Testing The Temperature 6: What Do Voters In Northern Ireland Think About The Protocol On Ireland/Northern Ireland?](#), Queen’s University Belfast, October 2022

³ See the *Testing the Temperature* polls carried out by the *Governance for ‘a place between’* project at Queen’s University Belfast: www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/

⁴ Phinnemore, D. et al, [Testing The Temperature 6: What Do Voters In Northern Ireland Think About The Protocol On Ireland/Northern Ireland?](#), Queen’s University Belfast, October 2022

12. The Protocol also includes obligations regarding the functioning of the Single Electricity Market, as well as on maintaining the conditions for North-South cooperation on the island of Ireland. As yet, limited attention has been paid to assessing whether such conditions are being maintained.
13. Also of note is that despite the objective of avoiding a hard border, the Protocol's actual, yet unstated focus is avoiding a *physical* hardening of the Protocol. Since the end of the transition period to the end of 2020 – during which the UK remained in the EU internal market and part of the free movement of goods, services, capital and people – concerns have increased that a hardening of the border as far as the movement of services, capital and people has taken place. As yet, limited attention has been paid to determining how and whether such concerns can and should be addressed through the Protocol.
14. So that it can provide a framework for the addressing the challenges that UK withdrawal from the EU poses for the 'unique circumstances on the island of Ireland', the Protocol needs current tensions to be resolved and for its unique institutional framework to be operating. Currently its core institutional arrangements – Joint Committee, Specialised Committee, Joint Consultative Working Group (JCWG) – are, with the exception of the JCWG, not meeting. The formalization and regularization of the ad hoc, yet effective, stakeholder engagement that has been established with business representatives and representatives of civil society since 2020-21, has yet to occur.
15. Even if issues being addressed in the renewed EU-UK talks on the Protocol are resolved, any abating of the political tension around the Protocol may be short-lived. In 2024, members of the Northern Ireland Assembly – whether the Assembly is sitting or not – will be offered the opportunity to vote as part of the Protocol's 'Democratic Consent' process on whether core elements of the Protocol relating to the free movement of goods between Northern Ireland and the EU should continue to apply. While at present it appears likely that a simple majority vote of MLAs will vote in favour of consent, the vote is just as likely to serve as a reminder of the political divisions that exist in Northern Ireland on the Protocol. If consent is granted by only a simple majority, MLAs will be invited to return to the issue again in 2028.
