

Seanad Special Select Committee on the Withdrawal of the UK

Dispute Resolution Mechanisms under the EU-UK Agreements

Opening Remarks – Maeve Collins, EU Division Director General

Thank you Cathaoirleach and Senators for the opportunity to speak with you today.

I have just returned from Brussels where I was Deputy Permanent Representative and am delighted to have a chance to join the Committee so early in my tenure as the new Director General for the EU Division of the Department of Foreign Affairs.

While new to this role, my time in Brussels has provided an awareness of the challenges Brexit brings across so many sectors. I am also aware of the valuable contribution Members of the Oireachtas have made to Ireland's Brexit response.

Between them, the EU-UK Withdrawal Agreement which includes the Protocol on Ireland and Northern Ireland and the Trade and Cooperation Agreement (or TCA) underpin the UK's withdrawal from the EU and establish the framework for our new relationship.

While both Agreements contain provisions and structures for governing the relationship, they prudently, like most international agreements, also outline how the parties should engage when difficulties or issues of concern arise.

The avenues available for resolving disputes differ between the Agreements and, indeed, between the specific parts of the agreements depending on the issue in question. However, the most important recourse is to try to resolve differences through dialogue. This takes place in the first instance in a series of governing structures.

In the case of the Withdrawal Agreement, the Joint Committee is the overarching committee. For the TCA, this is the Partnership Committee. Both are led by Commission Vice President Šefčovič for the Union, and Lord Frost for the UK. This ensures the appropriate political engagement and direction can be provided.

Each Agreement provides for additional co-chaired specialised committees and working groups where EU and UK officials can engage on specific issues and discuss any points that could give rise to difficulties.

Ireland closely monitors the implementation of the Withdrawal Agreement and the TCA. We are fully engaged with the Commission and other member states to raise any concerns we might have about the implementation of the agreements and to make sure our voice is heard. In the case of the Specialised Committee on the Protocol on Ireland and Northern Ireland, the Irish delegate is the only Member State observer invited to speak for the EU side.

In cases, hopefully infrequent, where difficulties cannot be addressed in the Committee structures, both Agreements provide a framework for dispute resolution through arbitration.

The main features of the two arbitration systems are set out in your briefing note. The note also highlights differences in approaches on issues such as timelines, panel sizes and remedies for non-compliance with an arbitration ruling. A significant difference is that the Withdrawal Agreement allows for possible recourse to the European Court of Justice. However, in both agreements, non-compliance can lead to suspension of treaty obligations.

Both Agreements mandate the establishment of separate independent arbitration bodies. For the Withdrawal Agreement, a panel of 25 members is now in place and includes one member who is Irish. The 25 person panel for the TCA is in the process of being established. While the arbitration process has not been invoked, should it be required, members will be selected from the appropriate panel.

Before finishing, I might touch on two other areas that may be of interest.

The TCA provides for the creation of an EU-UK Parliamentary Assembly to include 35 members each from the European Parliament and the UK Parliament. Once established it will be informed of the Partnership Council's decisions and can make recommendations to it. The European Parliament has agreed its approach, and is in the process of determining which of its members will attend. The UK Parliament is yet to determine its approach in this regard.

The Protocol also includes elements relevant to dispute resolution. To date, the EU has twice initiated infringement proceedings against the UK for breach of obligations under the Protocol. The first of these was dropped after the offending clauses from the UK's Internal Market Bill were removed. The second is currently on hold pending wider developments in EU-UK engagement on the implementation of the Protocol.

Article 16 which we hear so much about is a safeguard option which either party can invoke, if the application of the Protocol leads to and I quote, "serious economic, societal or environmental difficulties that are liable to persist", or to "diversion of trade". It is important to note that invoking Article 16 does not suspend the Protocol or allow either party to dispense with it. Rather it starts a process of with a view to finding a commonly acceptable solution engagement.

Cathaoirleach

While we have focussed today on how we would address any difficulties that may arise, we very much hope that recourse to formal dispute resolution procedures under both of these agreements is not something that needs to be regularly relied upon by either party.

The Agreements are about building a positive and mutually beneficial set of arrangements – supported by sustained, regular and detailed dialogue at official and political levels.

We remain committed to doing our part to making the relationship work.

I am happy to take any questions.