

# Ireland/Northern Ireland Protocol: the EU must play the long-game

*Northern Ireland is now officially still in the customs territory of the UK and still an integral part of the UK internal market. Consequently, the Ireland/Northern Ireland Protocol that regulates this state of affairs is no ordinary international arrangement. Recent moves from the UK side have not been welcome by the EU. It is frustrated at the lack of readiness, compliance and, now, the trustworthiness of the UK. It, must, however, play the long-game, claims **Katy Hayward (Queen's University Belfast)**.*

The thing about an agreement is that it involves more than one actor. The same is true about a border: it has more than one side. An agreement about a border would usually mean setting in place arrangements to coordinate what happens as things move from one side of it to the other. What the Protocol on Ireland/Northern Ireland does – as an international agreement on, amongst other things, the movement of goods across the Irish Sea – is very unusual for several reasons.

First, it is an international agreement that affects the *internal* boundary of one party. The Irish Sea border has always had some significance (e.g. live animals entering Northern Ireland from Great Britain having to meet strict rules on certification and checks) but this has been greatly increased as a result of the Protocol.

Secondly, the Protocol has different rules applying for goods moving in one direction compared to the other. The procedures for goods entering Great Britain from Northern Ireland are different from those going in the other direction. This does provide potential opportunities for NI-based businesses selling goods into GB, but it also brings complexities to the overall picture.

Thirdly, the rules that apply for goods moving from Great Britain to Northern Ireland (within the UK) are not the UK's rules but those of the EU. The Union Customs Code and regulatory compliance with EU law are the rules that apply to goods entering NI from GB. Implementing these rules has been eased through various measures on the UK side (e.g. the Movement Assistance Scheme to cover costs of the official certification now needed to move goods into NI). The most strict of these rules have also been accompanied by grace periods, i.e. a UK commitment to align to certain EU rules across the UK for a period of time to allow the businesses to adjust to the new arrangements.

Fourthly, most unusually for an international agreement, it is just the UK who is charged with putting those rules into practice on either side of that Irish Sea border. Although there are EU observers, it is the UK authorities (in many instances, the staff of the NI Department for Agriculture, the Environment and Rural Affairs) who enforce the EU's rules. This entails a great deal of trust on the EU side and a great deal of responsibility on the UK side.

When you add into this mix the fact that the same Protocol confirms that, despite what it *actually* means in practice, Northern Ireland is *officially* still in the customs territory of the UK and still an integral part of the UK internal market, we see that this is no ordinary international arrangement. No wonder the UK and EU are uneasy with it.



Portrush Harbour, County Antrim, Northern Ireland. Image by David McKelvey (CC BY-NC-ND 2.0).

There are further complications in practice too. These are, for the most part, wholly predictable. Speak to any border agent and customs expert about putting in place a new regime for border management and they will tell you what is needed to make it work. Do people know what the rules are? Do they know how to comply with them and how easy is that? Is there enough time to roll-out the system (including to fix teething problems) and to familiarise everyone (inc. border agents, hauliers, traders, retailers) with it? Are the costs and risks of breaching the rules more than the costs of complying with them? In the case of the Irish Sea border, none of these conditions were in place at the end of the transition period.

The lack of preparedness is partly because of the complexity of the Protocol (see above), which has been downplayed by both parties to the Agreement. It is partly because the 'transition period' was really a transition into the unknown until the very last week of it, given that the potential for a No Deal was a live concern until Christmas Eve. It is partly because of the extraordinary conditions of the present time, with the coronavirus pandemic (lest we forget). And it is partly because the UK and the EU have not yet moved from 'negotiating-bargaining' mode to being co-guarantors and partners in this agreement.

The return of Lord David Frost to the scene has all too predictably brought a chill to the UK-EU relationship. The UK government's [announcement](#) on 3 March, through the Secretary of State for Northern Ireland, that it was 'taking several temporary operational steps to avoid disruptive cliff edges' was [framed by Lord Frost](#) as being 'entirely consistent with our intention to discharge our obligations'. It is true that – with the best will in the world (which is evident among most businesses in NI) – the new border regime is still far from ready for full implementation. Introduce the full force of the EU's rules on 1<sup>st</sup> April and you really would see many more problems in NI business and retail than hithertofore.

However, the UK's move has been [interpreted by the EU](#) as 'unilateral action' amounting to 'a violation of the relevant substantive provisions of the Protocol ... and the good faith obligation under the Withdrawal Agreement'. We are likely to see infringement proceedings commence once more over the Protocol. This will signal how seriously the EU views this breach but it will do nothing for good UK-EU relations, nor will it, I suspect, dissuade the UK. Indeed, the EU taking legal action will only confirm to Leavers and Unionists that the EU has unrealistic expectations about what it can demand to happen across an internal UK boundary.

The huge adjustment required by the Protocol should not be underestimated. The UK (and Northern Ireland) needs time to implement the new border management regime if the Protocol is to operate effectively and to cause minimal disruption to NI. It is not unreasonable for NI to expect this. The UK has exploited its hand in the Protocol (as the enforcer of the rules) to act in this way. But the rules it will be applying are the EU's; it is still heading in the direction of implementation.

The EU is frustrated at the lack of readiness, compliance and, now, the trustworthiness of the UK. It may also be angry that the UK chose to take such action unilaterally rather than to negotiate it through the Joint Committee. Indeed, the first conversation the co-chairs had since Frost replaced Gove was only after the UK announced these steps. But, ultimately, this is a political move by Frost, and he won't mind the fact that it infuriates the EU. However, in the wider scheme of things, every time the UK pulls off a move like this, the more it loses credibility as a serious international partner. Frost may play to the gallery, and the UK may play all the cards it has, but the EU needs to play the long-game.

*This post represents the views of the author(s) and not those of the Brexit blog, nor of the LSE.*