HOUSE OF LORDS

EUROPEAN UNION COMMITTEE

ROUNDTABLE MEETING WITH NORTHERN IRELAND BUSINESS NETWORK, PARLIAMENT BUILDINGS, STORMONT, 25 FEBRUARY 2020

BACKGROUND

During its visit to Belfast on 25 February, the House of Lords European Union Select Committee held a roundtable seminar with ten representatives of the Northern Ireland business network. This group reflects a cross-section of industry and commerce in Northern Ireland that are essential to the regional economy, which enjoy close ties with counterparts in Great Britain and Ireland, and which will also be sectors most directly impacted by the operation of the Protocol.

The meeting took place in private, although it was agreed that a note of the discussion would be taken for subsequent circulation. This is a summary of key points raised in the meeting.

SUMMARY OF DISCUSSION POINTS

Where things stand

The Committee was thanked for coming to Belfast. The business group had engaged with the EU's Taskforce UK the previous week, on their visit to Belfast. It had also met officials from the Irish Department for Foreign Affairs and Trade. As yet, there has been no invitation for engagement with the UK negotiating team led by David Frost.

There has been a real team effort in the business community, working hand in glove to draw its concerns to wider attention, including making the point that the Protocol doesn't mean changes only to Northern Ireland (NI) but to the UK internal market more broadly.

The key message remains the importance of protecting the Belfast/Good Friday Agreement above all else. Northern Ireland is closely integrated with Great Britain and with Ireland in practical and symbolic terms. There is a need for understanding of the correlation between peace and prosperity. The implementation of the Protocol should be handled with care.

There is a sense that, with the approach taken by both sides at the start of the future relationship negotiations, Northern Ireland feels as though it is a pawn in the game. This is making it harder to communicate its concerns and to prepare businesses for the seismic change that is to happen on January 2021.

Key point: *The Belfast/Good Friday Agreement remains the primary concern for Northern Ireland; this means recognising and upholding its close connection to Great Britain and to Ireland and the stability of its economy, which is essential to the sustainability of the peace process.*

Concerns grow and uncertainty persists

Huge pre-existing concerns have been multiplied since October 2019 (when the revised Withdrawal Agreement and Protocol were revealed). This is in part because of sheer confusion caused by the mixed messages between the EU and the UK Government.

The EU is saying that 'the rules are the rules' in the Union Customs Code, which need to be applied by the UK in respect of Northern Ireland. The EU is waiting for HMRC and the Department for Agriculture to make clear how they will operationalise it. Meanwhile, the Secretary of State for Northern Ireland is saying that there will be no border down the Irish Sea and a leak to the *Sunday Times* the previous weekend implied that the UK Government is trying to circumvent the Protocol.

The mixed messages and uncertainty makes it difficult to prepare. There have already been four years of uncertainty and subsequent damage to the NI economy. A further period of adjustment would deliver another period of uncertainty. Businesses need certainty around implementation. If clarity comes late in 2020, it will be too late for businesses to prepare.

Moreover, businesses are making investment decisions. If it is easier to do business in Scotland or Ireland because of potential new burdens in Northern Ireland, they will do that. It is a matter of simple equations. If there are new costs in terms of tariffs, paperwork or staff hours, and if costs exceed the product margin, then the product or business model becomes unviable. The supply chain will always take the path of least resistance and businesses seek to reduce unnecessary uncertainties and risks.

Key point: *the longer conflicting messages come out from UK and EU, the more damaging the consequences of the uncertainty for NI's economy and, with it, the UK internal market.*

The functioning of the UK internal market is in peril

There is much to be done around the functioning of the UK internal market. There are two issues at play. First, servicing the Great Britain (GB) market from Northern Ireland in an unfettered manner. Relationships with suppliers need to be maintained. Northern Ireland businesses need to be able to engage in the UK market, process goods in Northern Ireland and send them back. This requires the ability to source raw material from the GB market, for example meat brought from Britain for processing in Northern Ireland, and then returned to Britain. This is a UK level concern because NI thus complements GB volumes to deliver on service level agreements for UK meat, to cater for UK customers demanding a UK product.

Secondly, there is a conflict between the integrity of the UK internal market and businesses choosing to open a back door for goods from the rest of the world (or EU) into Great Britain via Northern Ireland. NI business does not want checks, but nor do they want a reputation as a means of back door entry. At the same time, they need to protect all-island supply chains. For example, businesses based in Northern Ireland source products from Ireland in order to supply to the Great Britain market. These arrangements predated the EU. Whether or not an FTA is agreed will have a significant impact on them. It needs to be possible for goods that are legitimately produced in NI to have unfettered access to GB, whilst preventing a loophole that will undermine the integrity of the UK market.

Key point: *'unfettered access' from Northern Ireland to Great Britain is going to be difficult to plot. It means enough openness to allow the essential movement from NI to GB to maintain supply chains but also enough controls to prevent NI business from being undermined by unscrupulous exploitation of the Protocol by non-NI-based traders. It is imperative that NI stakeholders are listened to when the UK legislates for 'unfettered access'.*

West to East: What will be required for movements from NI to GB

Exit summary declarations will need to be made on goods travelling from Northern Ireland to Great Britain as a stock-take of what is leaving the Single Market. By way of comparison, there are 31 data elements (i.e. answers to questions) required for goods moving from Poland to Ukraine. If the typical EU regime applies to NI to GB movement, there will be one form per consignment, including details of the consigner and consignee. This could require 70 forms for a single lorry. These would mostly be delegated to the logistics providers who would be relying on the exporter for information. There is a £300 fine if the current form is completed incorrectly.

It should be noted that Northern Ireland has comparatively low levels of export, ranking 11th among regions of the UK. From 1 January 2021, a raft of businesses will suddenly have to comply with new rules and procedures for moving goods to GB. A lot of training around customs and export document certificates is needed in NI because many businesses have no experience of this area and are nervous. While large companies are generally prepared, SMEs don't have the staff and they don't know how to brief them properly.

Key point: *It will be essential for the UK Government to negotiate something bespoke for NI when it comes to the requirements for exit summary declarations between NI and GB. At the same time, they also need to offer customs training for NI businesses, realising that it will affect even those who only trade within the UK internal market.*

East to West: New barriers to movement of goods from GB to NI

The EU's assumption is that the Irish Sea border will be the same as other EU external borders: they would expect the same rules to be applied in Belfast as in Calais. But what moves across the Irish Sea is very different to the EU's other external borders. If one took the Turkish/Greek border as an example, a truck would typically move one item across the border, and a single customs and export declaration is then absorbed into the business model. Retail covers 70% of crossings of the Irish Sea. Currently, there can be hundreds of different items in any one retail lorry coming to Northern Ireland from GB. These are dropped at a regional distribution centre, rebuilt and put out to the shops.

For goods coming to Northern Ireland, this would mean customs paperwork and export health certificates (which can cost £200 each). An entry summary declaration with 45 questions will have to be completed (the burden is on the retailer to complete this). Goods will require certificates of origin to ensure they can enter the EU market tariff-free. These and export control certificates and sanitary controls will have to be pre-lodged before shipments leave GB. This could get particularly complicated if separate forms were required for each destination, given that there can be several 'drops' per truck arriving from GB. In addition to paperwork, veterinary and professional standards checks will be required.

A recent case study saw a lorry carrying 1392 different items crossing the Irish Sea. Each item, post-transition, will require a different tariff code, without which the lorry wouldn't get on the boat. This includes 576 products of animal origin, each of which would require an export health certificate.

The challenge is that businesses have to operate legitimately, yet these requirements for GB-NI movement seem far beyond what seems plausible as a business model. If you imagine that kind of friction, if costs are higher than profit margin, without derogations or exemptions, products will become unviable to sell in Northern Ireland. On 1 January 2021 there will be a sharp shift in Northern Ireland to a jigsaw of requirements and a sliding scale of friction. This will mean more paperwork, staff hours, new systems and new hurdles for compliance. Ultimately it will mean less choice for consumers and higher prices.

Preparation in Northern Ireland is one thing; there are particular concerns about how prepared businesses in other parts of the UK are for dealing with Northern Ireland in the future and for these changes to the UK internal market.

Key point: *the requirements for legitimate operation within the UK internal market will be costly; this will not only affect NI businesses but also GB businesses. Overall, this increases the risk of a contraction in the NI economy, of businesses being costed out of the market, and of illegal activity.*

Logistical challenges to cross sea- and land-border supply chains

Supply chains need to be as smooth as possible. Northern Ireland has extensive cross sea- and land-border supply chains. About 13,500 lorries cross the land border each day. Around 2,500 lorries cross the Irish Sea between Great Britain and Northern Ireland each day.

In order to qualify for tariff relief, goods need to be delivered to and consumed in NI, with a process involved to ensure this is the case. Goods on supermarket shelves should be covered (for instance through an Authorised Economic Operator scheme), but there is a question mark over intermediate processes. This could be dealt with through an FTA, through Protocol waivers or rebates, or through flexibilities within the Union Customs Code. 'Inward processing' relief could be useful but there is a question as to whether it can be applied in a way that is viable for sectors with a 1–1.5% margin, on top of other sanitary and phytosanitary (SPS) costs. Such costs may be prohibitive.

Ferry companies won't allow goods onto a ferry without paperwork being completed. If the ports need to take a look inside a retail lorry travelling from, for example, the north of England to Cairnryan, this could cause problems for just-in-time models on which supermarkets rely. Lorries typically arrive 20 minutes before the boat sails. Everything in supermarkets' 24 hour cycle to shelves relies on catching that boat because they depart only every three or four hours. If there were delays this would create huge problems with availability and the supply chain would just fall over. This is partly why delays should preferably occur on the NI side.

For movement south across the Irish land border, the Protocol enables free movement of goods but does not provide assurances about the capacity to move them because services are not included. There is still a question as to whether transport providers could drive products down across the border, and there may need for a bilateral UK-Ireland deal on haulier services to enable busses, trucks and lorries to move goods around the island.

Key point: *the Protocol does not protect all supply chains that are essential to the NI economy. Checks should ideally apply on entry into NI rather than on exit from GB. And if there is no UK-EU agreement on transport services, the UK should seek to negotiate a bilateral deal with Ireland to protect all-island movement of goods, otherwise the benefits of the Protocol will be undermined.*

Changes to VAT rules

Taskforce UK has made clear that movements between Northern Ireland and Great Britain will be eligible for VAT purposes but there is still a need for HMRC to clarify how the VAT provisions will be interpreted.

Northern Ireland-Great Britain trade is to be zero-rated for export. Businesses receiving goods in Great Britain from NI will need to declare it as an import. This is another change from what currently happens. Duty is normally paid at the point of arrival unless VAT and duty are different, but this involves a big working capital requirement. There is a risk that the cashflow impact could create negative trade flows unless the UK runs a system of deferred accounting. This had been talked about in a no deal in the Article 50 process but whether this is possible post-transition is unknown.

Key point: *there will be changes in the way that VAT is handled in GB/NI trade. A system of deferred accounting is required long after the end of the transition period..*

Disadvantages vis-à-vis other FTAs

Even if there is a deep and comprehensive UK-EU deal. Northern Ireland won't have access to EU trade or association agreements, so it will lose access to import tariff rate quotas. For example, if the UK decides to set tariffs at zero, which seems likely, Northern Ireland will still have to pay tariffs for goods coming into Northern Ireland from outside the UK and EU. Unfettered access to the EU market is very valuable, but in an FTA, Northern Ireland would be at a competitive disadvantage because it would have to bear tariff costs on goods coming into Northern Ireland. They will need to set up complicated customs procedures for trade into GB to claim back EU tariffs paid on inputs for goods manufactured for the UK market.

Key point: *flexibility for NI vis-à-vis Tariff Rate Quotas will be required in order for it not to fall between the cracks when it comes to trade with third countries.*

Potential benefits for Northern Ireland are in the hands of the UK Government

The Protocol means Northern Ireland is at the interface between the UK and the EU. Any potential advantage will be based on the provision of a unique definition for Northern Ireland goods—for example, being defined as a domestic good—for tariff, customs and goods of origin provisions in order for UK customs not to be applied. To make NI an attractive place for Europeans/global business to invest in, goods qualifying will need to be treated as a domestic good in both markets. This is wholly in the hands of the UK Government to deliver and could enable the NI economy and thus ultimately the Treasury to benefit from this unique proposition.

Key point: *if Northern Ireland is to experience any long term benefits from the Protocol ('the best of both worlds') then its businesses have to be in a better position than those from the EU or elsewhere in accessing the UK market. In particular, the definition of a 'Northern Ireland good' will be key to ensuring that Northern Ireland will be well-placed to be a place of investment and growth post-transition. This is largely in the gift of the UK Government.*

North/South cooperation still at risk

Article 11 deals with North/South cooperation, reflecting Strand 2 of the Belfast/Good Friday Agreement. The mapping exercise published by the UK Government and the EU in June 2019 identified the cross-cutting issues required to enable North/South cooperation to function, including the electricity market. The flow of data, movement of people and mutual recognition of qualifications are three cross-cutting issues that affect cross-border cooperation. A data adequacy agreement is needed for the Protocol to function, for example. The opening UK/EU positions indicate that these conditions cannot be assumed.

Key point: *it should not be assumed that North/South cooperation and movement is preserved by the Protocol. The more 'skinny' the final UK-EU agreements, the greater the risks posed to North-South cooperation in essential areas, including security and healthcare provision.*

Risk of a no deal

In order for the Protocol to be operational by the end of 2020, it would involve running a tariff system with a rebate system, plus SPS, VAT, rules of origin and standards checks. It would be a Herculean task to complete this work in eight months. The biggest retailers will need completely new computer systems. There are not enough customs officials. Applications for UK trusted trader accreditation typically take a year for approval. Such accreditation would be three months late for the start of the Protocol even with a magic wand for the creation of IT systems. Besides, a new type of Authorised Economic Operator status may be required for NI unique position.

As regards sanitary and phytosanitary (SPS) checks, the Government's economic impact assessment for no deal had a table showing a 50% physical inspection rate for dairy products and 20% for beef. Physical checks require a product to be taken off the lorry, opened, inspected, tested and quarantined until deemed legitimate. Fresh products would not be so fresh after such a process and these checks will be disruptive. The more the UK diverges, the more problematic this would be. If third country goods are circulating in the UK, there will be a greater frequency of inspection on GB to NI movement.

Key point: *although NI is guaranteed continued access to the EU's Single Market even in the event of a no deal between the UK and EU, the subsequent blow to NI's place in the UK internal market will be extremely damaging to essential supply chains to the NI economy.*

Movement of people

There is a risk of differential immigration systems on the island of Ireland being exploited by criminal gangs. The majority of referrals regarding labour exploitation concern eastern European workers. The responsibility for ensuring the operation of the points-based system will be pushed onto the employer. This would place a burden on NI businesses to ensure the integrity of their employment practices. It is estimated that only 50% of those in Northern Ireland who were entitled to benefit from the EU Settlement Scheme had done so

In some companies, 50-60% or more of those employed are EU migrants, who arrived without skills or English, but are now trained up. Without them, the businesses would fail and thus the local employees would be out of a job. Such businesses would look enviously across the Irish border to a more flexible system, where unskilled EU citizens could work on a legitimate basis. This is a serious commercial disadvantage for those in NI.

Key point: *the UK's plans regarding migrant workers will increase the risk of exploitation, the collapse of legitimate businesses in areas key to NI economy, and the increase of competitive disadvantage for NI business vis-à-vis those in Ireland.*

Continued UK and EU responsibility to listen to NI concerns

Significant work is going on at this time in information-sharing and trust-building between businesses, civic actors, politicians and civil servants to identify and represent NI's unique needs. Such collaborative efforts should be recognised and rewarded.

Ministers and MLAs in Northern Ireland face many challenges, including a lack of recent experience and practice in governance. It must be remembered that, in four years' time, MLAs will make a decision on whether or not there should be a hard Irish land border.

The Assembly and the Executive are responsible for representing Northern Ireland's interests, but London and Brussels are the co-guarantors of the Protocol. London's responsibility lies in not diverging to the extent that it makes the Protocol unworkable, while Brussels' responsibility means showing flexibility in the interpretation of the Protocol.

Key point: *it is untenable for the current situation to persist. Both the UK and the EU have to continue to show consideration and flexibility for NI's unique needs. Responsiveness to the concerns of Northern Ireland expressed jointly and collaboratively is key to showing that democratic systems of representation work—something that is fundamental to sustaining the peace process in NI.*