

## **Ibec – Written evidence (FUI0011)**

### **Overview**

Ibec is pleased to express the views of Irish business on the Protocol on Ireland and Northern Ireland (Protocol) at the invitation of the House of Lords European Affairs Sub-Committee on the Protocol on Ireland / Northern Ireland.

The agreement and entry into force of the EU-UK Withdrawal Agreement, including the Protocol, on 1 February 2020 and the EU-UK Trade and Cooperation Agreement (TCA) on 1 January 2021 were welcomed by Irish business compared to the consequences of a 'no deal' scenario. At the same time, we must recognise that unlike traditional free trade agreements (FTAs) these set of agreements are about managing divergence rather than moving closer together as well as an agreed response to the shared goal of protecting the gains of the Belfast / Good Friday Agreement (BGFA) and the unique circumstances on the island of Ireland in both a UK and EU context. Given our close economic ties with our nearest neighbour Great Britain, the impact on Irish business, our supply chains, and east-west trade is unique among our EU partners in its magnitude regardless of the scale of the agreements. In these circumstances the agreements, however imperfect, are necessary protective measures and must be viewed as a platform for positive relations and a fresh opportunity to address shared economic challenges.

The eighteen months of its operation have demonstrated that the Protocol is, in several important respects, successfully serving its purpose on our shared island of Ireland. It is facilitating the seamless flow of people and goods north and south and, crucially, is enabling all island businesses such as the dairy, alcohol, retail, construction, and medical technology sectors to continue to operate complex supply chains and trade across the two jurisdictions. These arrangements were mutually agreed and signed by the EU and the UK based on a stated shared determination to sustain the Belfast / Good Friday Agreement (BGFA) and to support the on-going peace and stability of Northern Ireland.

This is a very positive outcome for businesses in both Ireland and Northern Ireland and critical for these important cross-border trade flows. By protecting the Common Travel Area (CTA), the Protocol is enabling Irish and British citizens to continue to

move freely between the two jurisdictions and to benefit from the rights it guarantees including access to employment, healthcare, education, social benefits, and the right to vote in certain elections.

Nevertheless, the UK Government's decision to cease the free movement of people with the EU has resulted in the anticipated restrictive, fragmented, and complex relationship, for trade in services. In this regard, the impacts for the island of Ireland must be underlined as Northern Ireland is a third country for the EU when it comes to provision of services. The Protocol only addresses the physical aspects of trade. It is welcome that the EU and the UK agreed to market access, national treatment, and a most-favoured nation clause, among other aspects. However, a closer relationship on services will be much more difficult to attain without the foundation of the free movement of people. The consequences will become evident over time given the burden involved in trading services between the EU, including Ireland, and the UK, including Northern Ireland. The EU and the UK should work together in areas of mutual interest such as financial services and to facilitate the mutual recognition of professional qualifications.

In addition, the free flow of data between the EU and the UK is critical for modern business, both in the manufacturing and service sectors. The EU has adopted two adequacy decisions (28 June 2021) for the United Kingdom - one under its General Data Protection Regulation (GDPR) and the other for the Law Enforcement Directive. The UK has also recognised the EU data protection regulations as 'adequate'. These decisions, which are based on essentially equivalent levels of protection, enable personal data to flow freely between the EU and the UK. The adequacy decisions also facilitate the correct implementation of the EU-UK TCA, which foresees the exchange of personal information in a range of areas. These decisions mean that businesses and organisations in both the EU and UK can continue to receive personal data without having to put additional arrangements in place with their counterparts in each jurisdiction. This free flow of personal data supports trade, innovation and investment. It also assists with law enforcement agencies tackling crime and cooperation on judicial matters. Finally, it supports the delivery of critical public services sharing personal data as well as facilitating health and scientific research. The two EU adequacy decisions include strong safeguards in case of future divergence such as a 'sunset clause', which limits the duration of adequacy to four

years. Hence, it is extremely important the EU and UK continue to view each other's data protection regimes as 'adequate' and that close cooperation continues to underpin EU-UK data transfer. Future significant divergence and the absence of cooperation would make it complex and challenging to transfer data between London and Dublin as well as Belfast and Cork.

For business, the Protocol has underpinned a period of sustained economic progress in Northern Ireland. There are several indicators that show this to be the case such as Ireland's Central Statistics Office's (CSO) data on the substantial and continuing growth in North-South trade and business since 2020. Along with Britain's National Institute for Economic and Social Research (NIESR) regional modelling showing Northern Ireland as a top performer across the UK.

Since its inception, Ibec has consistently advocated to political stakeholders in Dublin, London, Brussels and beyond, that the Protocol must be supported and advanced on a continuous basis through close collaboration between business and government in Ireland, the EU, the UK, and Northern Ireland. Ibec is calling on the EU and UK to reach an agreed solution on the Protocol; one which will respect the Belfast / Good Friday Agreement (BGFA) in all its dimensions and not jeopardise the integrity of the EU single market.

For the business community a key priority is to sustain the stability that has delivered two decades of investment and growth in Northern Ireland and across the island of Ireland. A positive EU-UK relationship is needed to do so. Stability and legal certainty are key for businesses in Ireland, Northern Ireland, Great Britain and the EU particularly in the current situation where we are facing the impacts of the Russian invasion of Ukraine. It is important that the EU and the UK find a mutually acceptable solution that will allow both sides to deepen their cooperation on issues that will be key for the future competitiveness of EU and UK businesses.

Ibec urges the UK Government and the European Commission to reengage in discussions towards the sustainable implementation of the Protocol on the basis of the Commission's proposals (13 October 2021) for solutions to ease the flow of goods from Great Britain to Northern Ireland, which respect the integrity of the EU single market, and the UK Government Command Paper (21 July 2021). Ibec wishes to see the Protocol implemented in a stable and sustainable manner that

makes use of all its parts, in particular Article 11 on North-South cooperation and the effective functioning of all elements of Article 14's Specialised Committee(s).

This could provide a strong platform to address shared economic challenges and to re-establish positive and stable relations, building on the EU-UK TCA. The strong cooperation between the EU and the UK, among other international partners, in response to the Russian invasion of Ukraine has been welcome and has demonstrated that the two parties can work together, based on mutual values and for mutual benefit.

### **The practical impact of the Protocol**

Overall, the practical impact of the Protocol has been positive. A very different global environment to that which prevailed in 2019, when the Protocol was agreed, has put a wide range of unanticipated pressures on business, their costs of operation and supply chains. The Protocol has provided welcome stability and growth for cross-border business and trade between Northern Ireland and Ireland and the EU.

Irish business recognises that the introduction of some customs checks and requirements between Great Britain and Northern Ireland, as agreed under the Protocol, has resulted in challenges for some business. Primarily these issues have related to the provision of British-licensed medicines to Northern Ireland<sup>1</sup>, the burden of customs requirements in trading goods from Great Britain to Northern Ireland and Sanitary and Phytosanitary (SPS) requirements in trading certain products from Great Britain to Northern Ireland.

In the case of Ireland, the Economic and Social Research Institute's (ESRI) working paper entitled the '*Initial impact of Brexit on Ireland-UK trade flows*' (21 December 2021) clearly demonstrates the impact of Brexit on Irish trade with Great Britain and Northern Ireland in the first half of 2021. Crucially, it aims to separate the impact of Brexit from other factors including the impact of the COVID-19 pandemic.

In the Irish context, the departure of the UK from the EU has had an uneven impact on imports and exports. Imports from Great Britain have declined significantly from

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<sup>1</sup> The EU has subsequently adapted the relevant EU legislation to address this issue.  
[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2385](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2385)

23 per cent in 2015 to 7.2 per cent in 2021. At the same time, exports to Great Britain declined to a lesser extent from 10.9 per cent to 6.3 per cent. This difference between imports and exports is in part due to the UK Government's decision to not yet implement full customs controls on imports from the EU as well as the further decision to not introduce any customs controls on imports from Ireland at the time of writing. However, the overall picture demonstrates that Brexit has resulted in a general decline in trade between Great Britain and Ireland. Trade between Ireland and Northern Ireland has increased since Brexit. The share of Northern Ireland products in total imports to Ireland has increased from 1.5 per cent in 2015 to 5 per cent in 2021.<sup>2</sup>

It is difficult to assess the impact of regulatory divergence upon the operation of the Protocol at this stage given the relatively limited changes in both relevant EU and UK regulation since the entry into force of the Protocol. In principle, the Protocol provides for the continued application of some EU laws in Northern Ireland in line with its continued access to the EU single market for goods. Likewise, Northern Ireland retains unfettered access to the UK internal market.

### **Benefits and potential opportunities**

The Protocol provides benefits and opportunities to Northern Ireland through ensuring the unique position of having free access for goods to both the EU single market of 445 million consumers as well as the UK internal market. These conditions are unprecedented.

Since the Protocol's entry into force, there has been no changes to the trading conditions for Northern Ireland businesses with the EU, including Ireland. In the initial months of the application of the TCA, Great Britain exporters to the EU and EU importers from Great Britain experienced challenges as a result of the introduction of customs procedures between the UK and the EU. In comparison, Northern Ireland businesses experienced no changes in the conditions for trading with the EU, including Ireland.

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<sup>2</sup> M. Lawless (2021). Initial impact of Brexit on Ireland-UK trade flows, ESRI Working Paper 714, Dublin: ESRI, <https://www.esri.ie/publications/initial-impact-of-brexit-on-ireland-uk-trade-flows>

Furthermore, Northern Ireland benefits from unfettered market access for goods moving from Northern Ireland to Great Britain. The opening eighteen months of the functioning of the Protocol has demonstrated that this is functioning well.

### **Alternatives to the Protocol**

We must remind ourselves that the Protocol is the creative solution to a series of mutually exclusive problems to facilitate the UK's departure from the EU while at the same time protecting the Belfast / Good Friday Agreement (BGFA) that is underpinning peace and prosperity on our shared island and ensuring the integrity of the EU single market. It is the agreed mechanism through which to address these issues and guarantee shared priorities as a result of extensive negotiations between the UK Government and European Commission, with the close involvement of the Irish Government and the Northern Ireland Executive, over an extended period of time.

It must be supported and advanced on a continuous basis through close collaboration between business and government in Ireland, the EU, the UK, and Northern Ireland. The structures under the Withdrawal Agreement, including the Specialised Committees on issues related to the implementation of the Protocol provide a platform through which to address challenges and issues that arise.

### **Social and political attitudes to the Protocol**

In line with the continued application of some areas of EU law to Northern Ireland and in the absence of UK participation in the EU institutions, Ibec welcomes the proposals by the European Commission of 13 October 2021. The participation of Northern Irish authorities and stakeholders in its implementation, while fully respecting the UK's constitutional order, will be an important factor in ensuring the long-term sustainability of the Protocol. In agreement between the UK Government and the EU, efforts should be made to establish structured dialogues between Northern Ireland authorities and stakeholders and the European Commission, including appropriate involvement in the Specialised Committees under the Withdrawal Agreement and links between the Northern Ireland Assembly and the EU-UK Parliamentary Partnership Assembly.

In particular Ibec wishes to highlight the role provided for in Article 14 of the Protocol whereby the North/South Ministerial Council that operates under Strand Two of the Belfast / Good Friday Agreement (BGFA) and its cross-border Bodies may submit “proposals” on the operation of the Protocol. The preparation of such proposals would be a concrete opportunity for Northern Ireland’s interests to provide input and be represented as the Specialised Committee considers issues related the implementation of the Protocol.

### **The UK and EU approach**

Since its inception, Ibec has consistently advocated to political stakeholders in Dublin, London, Brussels and beyond, that the Protocol must be supported and advanced on a continuous basis through close collaboration between business and government in Ireland, the EU, the UK, and Northern Ireland. Ibec is calling on the EU and UK to reach an agreed solution on the Protocol; one which will respect the Belfast / Good Friday Agreement (BGFA) in all its dimensions and not jeopardise the integrity of the EU single market and support the stability that is evident in its operation.

The UK Government and European Commission should avoid any unilateral actions. It is critical that the Joint Committee under the Withdrawal Agreement and its supporting Specialised Committee structures are utilised to the maximum to ensure continuous dialogue towards the substantial implementation of the Protocol. These structures are critical to addressing current challenges and will be important for addressing arising issues with respect for the ongoing application of some EU law in Northern Ireland. They are also a necessary forum for on-going administrative and political engagement.

For the Irish business community, the priority is for a stable and positive EU-UK relationship and to ensure the continued seamless cross-border movement and flow of goods north and south and the minimum disruption to east-west trade. Ibec welcomed the European Commission’s proposals of 13 October 2021 which respect the integrity of the EU single market. These four ‘non-papers’ included proposals for pragmatic solutions to address issues identified as affecting Northern Ireland stakeholders by the European Commission, including to ensure British-licensed medicines could continue to be provided to Northern Ireland, as well as Ireland, and

the burden of trading goods from Great Britain to Northern Ireland could be eased through very substantial reductions in customs checks and Sanitary and Phytosanitary (SPS) requirements. These proposals serve as a strong basis for the UK Government and European Commission to negotiate a mutually acceptable solution to improve the conditions for the movement of goods between Great Britain and Northern Ireland.

As key trading partners, the EU and the UK must work jointly to ease the burden for those increasingly smaller number of businesses in Northern Ireland still encountering difficulties by ensuring a pragmatic and flexible approach. In particular an EU-UK SPS agreement would significantly reduce the need for checks on products moving from Great Britain to Northern Ireland as well as between the EU and the UK.

## **About Ibec**

Ibec is Ireland's largest lobby and business representative group. Our purpose is to help build a better, sustainable future by influencing, supporting and delivering for business success. With over 250 employees, Ibec engages with key stakeholders in Ireland and internationally through our six regional offices and our Brussels office, along with an extensive international network in the UK and US.

Ibec positions are shaped by our diverse membership, which range from small to large, domestic to multinational and our 40 trade associations cover a wide range of industry sectors. Ibec members employ over 70% of the private sector workforce in Ireland.

As well as lobbying, Ibec provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.