

HE Adrian O’Neill, Ambassador of Ireland to the United Kingdom – Written evidence (FUI0021)

Submission by Adrian O’Neill, Ambassador of Ireland to the United Kingdom

Overall Approach of Government of Ireland to the Protocol on Ireland and Northern Ireland

It has always been clear that Brexit would have a profound impact on communities, businesses and politics in Northern Ireland. Both the EU and UK recognised that a unique solution would be required. Following extensive, detailed and difficult negotiations, and as part of the Withdrawal Treaty, a jointly agreed Protocol on Ireland and Northern Ireland was ratified and incorporated in law by both parties.

The Protocol was drafted and designed specifically to protect the Good Friday Agreement in all its dimensions, taking account of the form of Brexit pursued by the British Government. It fully recognises the constitutional position of Northern Ireland and protects the principle of consent enshrined in that Agreement. The Protocol preserves the hard-won gains of the peace process by establishing the framework that prevents a hard border on the island, maintaining the necessary conditions for North-South cooperation, and protecting the all-island economy. At the same time, it ensures that there will be no “diminution of rights, safeguards, or equality of opportunity” as promised by the terms of the Good Friday Agreement.

Within the framework of the Protocol, we have always believed that satisfactory solutions can be found for any implementation challenges that arise, and we have urged the UK Government to work together with the EU to this end.

The UK Government’s stated intention to table legislation to unilaterally dis-apply elements of the Protocol is deeply disappointing and clearly contrary to international law. The Government of Ireland believes that such unilateral action is unhelpful and unnecessary and, if the UK engages constructively in the period ahead, that a sustainable outcome can be agreed to address legitimate concerns with the practical operation of the Protocol.

Benefits of the Protocol

The Protocol places Northern Ireland in a uniquely advantageous economic position, with access to both the EU Single Market and the rest of the UK Internal Market of some half a billion people. Operating within the EU Single Market for goods, the Northern Ireland economy has benefitted from added

resilience in the face of global economic challenges since Brexit. According to the Office of National Statistics, Northern Ireland is now growing faster than any other UK region. Supply chains have also been secured and strengthened as a result of EU Single Market access - helping to protect Northern Ireland from the negative effects of shortages and delays visible across Great Britain.

Investors are finding dual market access to be a distinct advantage. Foreign direct investment interest in Northern Ireland is now at historically high levels with a number of job announcements and investment decisions attributed to this dual market access. Northern Ireland-based businesses consistently underline the importance of dual market access. For example, global biopharma company Almac has significantly expanded its presence in Northern Ireland. They refer to the unique market access arrangements under the Protocol as "the Almac Advantage". Belfast Port had its busiest ever year in 2021 and surveys from Manufacturing NI show that manufacturing businesses do not regard the Protocol as a major concern.

In numerous surveys, businesses in Northern Ireland have reported that what they require more than anything is certainty and predictability in their operating environment. This will enable them to maximise the benefits associated with the Protocol. The current lack of certainty and predictability is a major concern for Northern Ireland business. The UK Government's intent, in taking unilateral action, only prolongs the atmosphere of uncertainty in which these businesses must operate.

The Northern Ireland Life and Times Survey by Access Research Knowledge has demonstrated that the number of people in Northern Ireland who believe that the Protocol is on balance a good thing doubled between 2020 and 2021. Queen's University Belfast's Testing the Temperature surveys taken between April 2021 and February 2022 also saw a 7% increase in the proportion of respondents agreeing the Protocol was on balance "a good thing" for Northern Ireland. 50% of respondents to the latest Testing the Temperature survey now regard the Protocol as a good thing for Northern Ireland, compared to 40% of the opposite view.

The growing support for the Protocol has been borne out by the recent Assembly elections in Northern Ireland, which saw a majority of MLAs (53 out of 90) in favour of the Protocol elected. Indeed, this mandate, along with the Protocol being endorsed so strongly in the UK's 2019 general election following strong campaigning by the current UK government, surely addresses much of the ill-founded comment on the Protocol's democratic legitimacy.

Practical Concerns & EU Approach

The Government of Ireland acknowledges that there are genuine concerns regarding the Protocol in Northern Ireland, particularly among Unionists. In October 2021, following extensive and consistent consultation with stakeholders in Northern Ireland, the EU delivered a comprehensive and creative package of

far-reaching proposals to address issues of concern, including on the movement of goods between Great Britain and Northern Ireland. These proposals, including an express lane for goods staying in Northern Ireland, would significantly reduce checks on goods moving between Great Britain and Northern Ireland.

It is not the case that the October package would result in a less favourable environment than the status quo – on the contrary, with reduced paperwork and a greater number of traders encompassed by the proposals, as well as certainty and stability, more traders would benefit than is currently the case. The proposals would also give Northern Ireland a greater say in the implementation of the Protocol. These Commission proposals were not presented as a fait accompli, but as a basis for discussion.

The Irish Government, along with our EU partners, have been working with the European Commission to ensure we respond to legitimate concerns in Northern Ireland, particularly on the issue of making a significant differentiation between goods that are staying in Northern Ireland to be purchased and consumed there and those at risk of moving further into the EU Single Market. Minister for Foreign Affairs, Simon Coveney T.D., has stated that there is scope for “a significant step forward in meeting the demands of many in the unionist community who want to see unnecessary checks gone on goods staying within the United Kingdom but, without a partner, it is hard to find a way forward”.

The EU has already shown itself willing to act decisively in the interests of the people of Northern Ireland. The passage of legislation by the EU in April 2022, designed to ensure the continuation of medicines supplies from Great Britain into Northern Ireland, is an example of the EU’s responsiveness to real concerns with the Protocol.

European Commission Vice-President Šefčovič has demonstrated a strong willingness to engage with the issues of concern in Northern Ireland. He has been clear that there remains potential to be explored with regard to the proposals brought forward by the EU in October 2021, which were presented as a basis for further discussions. It is regrettable that the UK has not engaged as a willing partner to fully explore those flexibilities with a view to achieving joint and sustainable solutions. Instead, they have announced their intentions to walk away from an international treaty, moving away from partnership and dialogue towards what Taoiseach Micheál Martin T.D. has described, in his statement of 10 May 2022, as “destabilising” unilateral action.

The EU continues to seek to engage in good faith, to find solutions to the legitimate issues raised by communities in Northern Ireland regarding the implementation of the Protocol and is ready to work with the UK to do so. What is needed now is a UK partner who is willing to engage constructively to achieve this goal. Jointly agreed solutions will bring the legal certainty and predictability that people and business in Northern Ireland need.

Vice-President Šefčovič's statement of 17 May 2022 notes:

"The European Commission stands ready to continue discussions with the UK government to identify joint solutions within the framework of the Protocol that would benefit people and businesses in Northern Ireland. The potential of the flexibilities put forward by the European Commission is yet to be fully explored, and the Commission remains keen to do that with the UK government."

The EU remains united in its approach and is fully committed to making the Protocol work for Northern Ireland and to continuing to give Northern Ireland access to the EU Single Market as well as the UK internal market.

UK Approach

Foreign Secretary Truss's statement on 17 May 2022, signalling the UK Government's intention to introduce legislation that would amount to unilateral action to amend the Protocol is deeply disappointing. It is a move in the wrong direction. It is contrary to the wishes of people and businesses in Northern Ireland, who want stability and predictability. Business leaders in Northern Ireland stated on 17 May 2022 that "anything other than a negotiated outcome is suboptimal".

The British government has signed up to an international treaty, agreed in good faith. To unilaterally amend an international agreement in such a manner as is proposed is clearly contrary to international law. It undermines the rules-based international order. Further, the unilateral action proposed flies in the face of the good faith provisions of the Withdrawal Agreement, Article 5 of which states that the parties shall:

"take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this Agreement and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement".

Unilateral abrogation of that treaty would serve to undermine international trust in the United Kingdom. It also undermines trust between the UK and the EU, and makes it significantly more challenging to find agreed and sustainable solutions. The EU has made clear that it wishes to have a positive and stable relationship with the UK - but by seeking to renege on commitments it made in an international treaty only two years ago, the UK is signalling that such a stable and positive relationship is not what it seeks. This is of grave concern to the Irish Government, because a strong, positive working relationship between the EU and UK is of direct relevance to the wellbeing of people across the island of Ireland.

It is Brexit, and specifically the type of Brexit chosen by the British Government, which creates many of the challenges being faced in Northern Ireland today. The Protocol sought to accommodate those choices and respond to the challenges arising. It is still the only agreed EU-UK solution that protects the Good Friday

Agreement and mitigates the consequences of a hard Brexit for Northern Ireland and the whole island of Ireland. Instead of its current unrealistic demands, the UK government should focus on the issues of significant concern to people and business in Northern Ireland. The EU has proposed practical solutions to address these issues and has always been ready and willing to work with the UK to help improve the way the Protocol is operating.

Good Friday Agreement

Threats by the UK Government to take unilateral action have placed the Good Friday Agreement under strain by damaging the foundations of trust and partnership between both Governments, upon which the Agreement is based and through which many challenges in the past have been overcome. It is under strain too from the refusal of certain parties to operate its institutions such as the North-South Ministerial Council, which has not been able to meet since the autumn of last year.

Many of those who denounce the Protocol, often with no political mandate, move with ease between criticising the Protocol and undermining the Good Friday Agreement itself. Disingenuous claims that the operation of the Protocol is undermining the principles of the Good Friday Agreement serve only to further destabilise matters in Northern Ireland. For instance, it has been erroneously asserted that the Protocol breaches the principle of consent in the Good Friday Agreement. On the contrary, Article 1 of the Protocol itself specifically acknowledges that the constitutional status of Northern Ireland can only be changed with the consent of the majority of its people.

A variation of this false assertion is that the Protocol can only be sustained if it enjoys cross-community support in Northern Ireland. While the Good Friday Agreement provides for cross-community support on certain key decisions within the devolved competence of the Assembly or Executive, the Protocol – as an excepted matter – is outside that scope and therefore no such requirement arises.

Protecting the Good Friday Agreement and the hard won gains of the peace process remains the primary concern of the Government of Ireland. The partnership between the UK and Irish Governments has in past decades been at the heart of the peace process in Northern Ireland. This partnership will be required again to ensure the power-sharing institutions in Northern Ireland are restored and the Good Friday Agreement is implemented in full. Work on the formation of the Northern Ireland Executive and the restoration of the institutions of the Good Friday Agreement must proceed in parallel with meaningful engagement on the Protocol.

Nothing in the Protocol contradicts the Good Friday Agreement. Indeed, taken together, the two agreements are a powerful expression of what negotiation and partnership can achieve. If implemented with diligence and sensitivity, they will

consolidate peace and prosperity and bring about more opportunities for people in Northern Ireland.

As we approach the 25th anniversary of the Good Friday Agreement, we would urge the UK Government to set aside the unilateralism which only damages relationships and to return to a spirit of partnership that has served the peace process so well; to engage in good faith to achieve jointly agreed solutions to the practical concerns raised by stakeholders in Northern Ireland; and to work together to restore the institutions of the Good Friday Agreement and secure a stable and prosperous Northern Ireland.

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