

**Presentation at Discussion on the Protocol on  
Ireland/Northern Ireland with Maroš Šefčovič, European  
Commission Vice-President and Co-Chair of the EU-UK Joint  
Committee and Partnership Council**

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Prof. David Phinnemore

Vice-President Šefčovič, can I add my welcome to that of the Vice-Chancellor and of Katy, of Prof. Hayward? I am delighted to see you visiting Northern Ireland and coming to the university.

And can I also thank you and colleagues at Queen's for the opportunity to say a few words about some of the research on Brexit, Northern Ireland and the European Union that is being undertaken at the University, specifically the three-year multi-disciplinary *Post-Brexit Governance NI* project on which Katy and I are working with others present here today into the governance implications for Northern Ireland of Brexit and the Protocol.

As evident not least from comments you have made in the last few days, the UK's withdrawal from the EU continues to pose

many challenges for Northern Ireland and for the UK-EU relationship.

And, as you have indicated, the EU and the UK have sought to address those challenges through the *Protocol on Ireland/Northern Ireland*, and with it some differentiated treatment of Northern Ireland in the post-Brexit arrangements governing UK-EU relations.

The Protocol, as we are all aware, is the focus of much contestation particularly within Northern Ireland. Moreover, despite what appear to be improvements in UK-EU relations on managing at least some of the issues arising out of approaches to the Protocol's implementation, there appears to be little prospect of that contestation disappearing. Politics in Northern Ireland at least will ensure as much.

The concerns fuelling the contestation arise from both the realities of Brexit and of the Protocol, on the one hand, and concerns among some sections of society about what the Protocol means for the future of Northern Ireland, on the other.

We cannot ignore the fact, for example, that the Protocol keeps Northern Ireland, as part of a United Kingdom outside the EU, *de facto* in the EU customs territory and its internal

market for goods, makes it subject to dynamic alignment with EU rules applicable under the Protocol, and places it under the jurisdiction of the Court of Justice where these rules are concerned.

Given the UK government's choices, as reflected in the Trade and Cooperation Agreement, we have therefore with the Protocol a significant increase in formalities, checks and controls on the movement of goods from Great Britain into Northern Ireland, and so 'within' the United Kingdom. This not only disrupts supplies of goods but the resulting 'Irish Sea border' has profound political resonance within unionism, as I am sure you are well aware.

This novel set of arrangements established by the Protocol are designed to address the 'unique circumstances' on the island of Ireland and notably to avoid a hard land border. Some argue that they do just that. Others are firmly of the belief, however, that the arrangements undermine both Northern Ireland's position in the United Kingdom and the 1998 Belfast (Good Friday) Agreement; hence contestation.

Academic colleagues at Queen's have been actively engaged throughout the Brexit debate and process in identifying the

challenges that a UK withdrawal from the EU would entail and how they might be addressed.

Many remain actively engaged in research considering the implications of the Protocol and how issues and challenges it raises can be resolved.

One example of the on-going research is the three-year project I alluded to earlier. The *Post-Brexit Governance NI* project – its full title is *Governance for 'a place between': the Multilevel Dynamics of Implementing the Protocol on Ireland/Northern Ireland* – is funded by the Economic and Social Research Council as part of its *Governance after Brexit* programme.

An essential purpose of the project is to develop understanding of the implications of the Protocol for the governance of Northern Ireland.

This is an important issue given the contestation around the Protocol and the fact that the arrangements are not ones for which either voters in Northern Ireland or their representatives in Westminster voted. There is a palpable sense of the arrangements being imposed as well as questions as to how suited they are for ensuring Northern Ireland's voice

is heard in the implementation of the Protocol. This raises significant questions about their perceived legitimacy.

A key feature of the project is to understand how the legitimacy of the Protocol's arrangements for Northern Ireland can be enhanced. To do this, there needs to be understanding of the Protocol and of its implementation, of how implementation is being managed and by whom, and whether and how the interests of those most directly affected by the Protocol – the people in Northern Ireland – can be and are being represented.

There are clearly important issues here, particularly if one believes in democracy and effectiveness and legitimacy in the ways in which the lives of people are governed.

We are also very much aware that in Article 18 of the Protocol we have the democratic consent mechanism and the prospect of the continued application of much of the Protocol resting on a vote – potentially every four years – of members of the Northern Ireland Assembly.

So what are we doing in the project to help understand the Protocol and attitudes towards it and to identify ways in which the legitimacy of the Protocol might be enhanced?

We are pursuing a range of activities:

- We're mapping the scope of the Protocol and identifying changes in EU law applicable under it
- We're monitoring developments in the implementation of the Protocol and identifying practical as well as more political issues that arise
- We're monitoring the activities of the institutions and bodies established by the Protocol as well as of those providing inputs into their deliberations
- And we're bringing all this together through an online 'Protocol Monitor' where we also publish and link to analyses of the Protocol and the challenges around its implementation.
- We're also undertaking 'temperature testing' opinion polls every four months to gauge the views of voters in Northern Ireland on Brexit and the Protocol
- And we're holding regular stakeholder workshops with representatives from business, government and wider civil society to identify (a) issues and challenges being faced related to Brexit and the Protocol and (b) potential solutions

- Finally, we're presenting findings from our work publicly – via events here at Queen's and elsewhere - and to civil servants and officials in London, Belfast, Brussels and Dublin who are engaged in the operation of the Protocol

So what are some of our findings so far... and what might some of the solutions be to the governance challenges and problems that are being identified?

Based on the results of two polls conducted in March and June it is clear that:

- Society is divided in its attitudes to the Protocol – voters are essentially evenly split on the merits of the Protocol and how they wish their representatives in the Northern Ireland Assembly to vote in 2024
- Clear majorities have concerns about what Brexit and the Protocol mean for the availability and cost of goods
- Clear majorities believe the Protocol is having a negative impact on political stability in Northern Ireland and on UK-EU and British-Irish relations
- Yet two-thirds of voters see Brexit as requiring particular arrangements for Northern Ireland
- Levels of trust in those responsible for managing the interests of Northern Ireland in the implementation of

the Protocol are far from encouraging: more than four-fifths distrust the UK government, approaching half of voters distrust the EU; the only group that enjoys trust among the majority of voters are business representatives

- Almost three-quarters of voters are concerned that Northern Ireland's voice is not being heard in the implementation of the Protocol
- A similar proportion is concerned about the amount of clear information available on the Protocol and the extent to which there is effective scrutiny of decision-making under the Protocol

Several of these findings have also been reflected in discussions with Stakeholders. They were also concerned about the need for early sight of changes in EU rules applicable under the Protocol and for greater clarity regarding the implications of Article 2 on citizens' rights.

With all this in mind, what steps can be taken to respond to at least some of the concerns, particularly with a view to enhancing the legitimacy of the governance arrangements established by the Protocol?

As a start, we recently proposed six actions:



- First, there needs to be more information about what the protocol actually entails and means for Northern Ireland, particularly in the context of the overall EU-UK relationship. And the information needs to be easily accessible, reliable and regularly updated.
- Second, there needs to be greater transparency around the activities of the bodies charged with implementing the protocol: the Joint Committee, the Specialised Committee and the Joint Consultative Working Group (JCWG). Their meetings should be regularised and publicised, and agenda and minutes should be published. This would show how decision-making concerning the Protocol works and who is involved, and bring some perspective to the type of issues the Protocol covers.
- Third, the informal joint UK-EU mechanisms that have been developed to consult with business and with civil society need to be placed on a formal footing and held regularly. The same should be done regarding the appearances of the co-chairs of the Joint Committee before the Northern Ireland Assembly's Committee for the Executive Office.

- Fourth, consideration should be given to officials or experts from Northern Ireland attending meetings of relevant EU committees, Commission expert groups and EU agencies where the discussion concerns EU law covered by the Protocol. Such engagement – envisaged in the early drafts of the Protocol – would grant officials and experts from Northern Ireland an important “decision-shaping” role in EU acts applicable under the Protocol.
- Fifth, expert panels should be established to inform the deliberations of the Joint Consultative Working Group. The panels should reflect the range of issues covered by implementation of the Protocol.
- Finally, the role of the institutions established by the 1998 Belfast (Good Friday) Agreement in monitoring and contributing to the operation of the Protocol should be expanded. And this applies to all three strands of the 1998 agreement.

These are an initial set of recommendations based on the first eight months of the project. More will follow, I am sure.

Thank you for the opportunity to present here today.

And Vice-President Šefčovič, I wish you – and Lord Frost – well.