



TONY BLAIR  
INSTITUTE  
FOR GLOBAL  
CHANGE

# Fixing the Northern Ireland Protocol: A Way Forward

ANTON SPISAK

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## Foreword

There is no escaping the following: the Northern Ireland Protocol, described at the time by Boris Johnson as an “excellent deal” that resolved all the issues around Northern Ireland, was a bad deal and didn’t resolve those issues; that this was apparent at the time to anyone studying the detail; that the UK government is now effectively in disorderly retreat from the agreement it made; and that, if left unresolved, the issues at the heart of the protocol have the capability of causing an enlarged trade conflict between the UK and the EU, or undermining the Good Friday Agreement – and quite possibly both.

That said, in the interests of broader European harmony and trade – especially at a time when Europe, including the UK, has come together impressively over Ukraine – both the EU and the UK should show maximum flexibility in order to reach an agreement.

In this paper, we set out a practical way through, one that would obviate the vast majority of checks on goods moving between Britain and Northern Ireland, provide a compromise on the involvement of the Court of Justice of the EU, and give greater opportunities for consultation on draft EU laws affecting Northern Ireland to representatives from all sides of the community. It is, at least, a possible landing zone for resolution of the dispute. It could be done within the framework of the protocol, but would require significant movement from the EU on its stated position around the protocol’s interpretation.

My judgement – with long experience of EU negotiations – is that things have reached such a state of distrust that the two bureaucratic systems will not settle this; it has to be done at the highest political level because, ultimately, it is not a matter of technical work but political will and leadership.

**Tony Blair**

**Executive Chairman**

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## Introduction

When the Prime Minister Boris Johnson agreed the EU-UK Withdrawal Agreement in the autumn of 2019, he described it as an “excellent deal”. The Northern Ireland Protocol, an integral part of this treaty, was presented as a ready-made solution to the dilemma that Brexit had created for Northern Ireland, one that had brought down the government of his predecessor Theresa May. Less than three years later, the same prime minister claims the circumstances have changed, that the Good Friday Agreement (GFA) is under threat from the agreement he negotiated and signed, and that, accordingly, the protocol has to change.

Tensions over the protocol have become a microcosm of the UK’s acrimonious departure from the European Union and its lasting consequences. The UK insists it is offering an alternative to the protocol that Brussels is unwilling to consider; the EU says it is ready to be flexible but London’s refusal to accept its existing obligations has damaged trust. None of this is new. Ever since the protocol was agreed, it has been a source of tension in the political relations with the EU and within Northern Irish politics. Disagreements initially revolved around how to implement the protocol but, over the past 12 months, they have morphed into a bigger question of whether the protocol is fit for purpose and whether it should be renegotiated.

The stakes have changed following the Northern Ireland Assembly election in May. The Democratic Unionist Party (DUP), the largest unionist party in the assembly, has refused to enter power-sharing arrangements, blocking the formation of the Northern Irish Assembly and the Executive. The UK government has taken this as evidence that the protocol is disrupting the GFA and its institutions and announced its intention to introduce legislation to rewrite a significant part of the protocol in domestic law. According to the UK’s Foreign Secretary Liz Truss, who is overseeing the protocol negotiations, the government now has “a necessity to act” to protect the peace process. The foreign secretary said that the government’s preference was to reach a negotiated deal with the EU to “fix” the protocol, but also that the government would pass a law to override it should the EU not move further.

This paper explains the origins of the current tensions, and what to expect in the weeks and months ahead, and outlines a possible way through the difficulties surrounding the protocol.

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## Where We Are Now

Disagreements over the Northern Ireland Protocol are nothing new. Ever since the Withdrawal Agreement was confirmed in October 2019, there has been much controversy about how to implement the protocol, a part of the treaty that governs post-Brexit trade between Northern Ireland and the EU, in a sensible way. The protocol was intended to avoid a hard border on the island of Ireland and to protect the delicate peace process created by the GFA. As part of the agreed arrangements, Northern Ireland would continue to comply with EU rules governing trade in goods, eliminating the need for border controls between Ireland and Northern Ireland, but creating new checks and restrictions on some goods coming into Northern Ireland from Great Britain.

Since this arrangement came into force, it has led to some practical difficulties for businesses moving goods into Northern Ireland, but the bigger problem has been political. It has unsettled one political community in the region - the unionists - who view the protocol as a threat to their own identity and to the union between Great Britain and Northern Ireland. In a fragile post-conflict political settlement, this is now putting the institutions created by the GFA under strain.

### UK Position: Renegotiate the Protocol or Remove It

The UK's position is that the current protocol is no longer fit for purpose and should be renegotiated. This view can be traced back to summer 2021 when the UK government said that it had “underestimated the effects of the protocol” and put forward proposals for its comprehensive overhaul. Repeated threats to invoke Article 16 – a now-infamous safeguard clause in the treaty – were made by the UK government throughout the autumn, even though they never came to fruition. The political atmosphere in the talks with the EU briefly improved after Liz Truss took over from her predecessor Lord Frost, but the government became frustrated by what it sees as an excessively process-driven “take it or leave it” approach from Brussels. The view in London is that what stands in the way of progress is the fact that the European Commission lacks the mandate from the European Council, which represents the EU27 member states, to alter the text of the protocol. Its latest plan to introduce primary legislation can be seen as an attempt to put the protocol back on the EU's political radar and to urge European leaders to adopt a new mandate.

The UK government is seeking the following changes to the protocol:

- **Customs:** Create a “green lane” with no checks for registered trusted traders sending goods for sale only in Northern Ireland and a “red line” for products moving onwards to the single market, subject to full EU checks.

- **Movement of goods:** Introduce a “dual regulatory regime” to allow Northern Irish firms to produce goods either to UK or EU standards in Northern Ireland, replacing the current obligation for them to comply with EU regulatory requirements.
- **VAT:** Disapply the obligations for Northern Ireland to align to EU VAT rules.
- **State aid:** Disapply EU state-aid rules when trade between Northern Ireland and the EU is in question.
- **Enforcement:** Introduce a new enforcement regime, imposing penalties on firms and individuals that break the rules and smuggle goods to Ireland.
- **Governance:** Remove any role for EU institutions from the protocol and replace the direct jurisdiction of the Court of Justice of the EU (CJEU) in enforcing parts of the treaty with an arbitration-based dispute-resolution mechanism.

Although the UK has gone to great lengths to emphasise that its plan is not to “scrap” the protocol, the proposed changes are so substantial they would amount to a new agreement. Implementing these changes would require a new EU mandate, a new negotiation and a new treaty agreed under Article 13(8) to replace the current protocol. The UK’s proposed changes are so wide-ranging they would involve removing nearly all elements of EU law from the agreement and eliminate any need for future involvement of EU institutions, particularly the CJEU, in overseeing the future protocol. This would alter the fundamentals of not only the text of the existing protocol but also the political compromise between Boris Johnson and former Irish Prime Minister Leo Varadkar in October 2019, which led to the protocol being agreed with the EU, the withdrawal agreement subsequently being passed in UK Parliament and Boris Johnson winning the 2019 general election with the promise of implementing this “oven-ready deal” and getting Brexit done.

### EU Position: “Flexibilities” But No Renegotiation

The EU’s position is that it is open to exploring “flexibilities” in the operation of the protocol but it has rejected renegotiating the treaty. The European Commission presented its position with the “October package” in which it offered concessions to the UK across several areas, including:

- **Customs:** Creation of an “express lane” for some goods moving into Northern Ireland with less stringent customs-documentation requirements, conditional on full access to relevant UK customs’ IT systems, monitoring by UK market surveillance, and the addition of a review and termination clause.
- **Movement of food products:** Introduction of simplified certification and a reduction in checks for retail food products destined for Northern Ireland, conditional on the completion of permanent Border Control Posts, labelling requirements and new safeguards.
- **Medicines:** Change of EU rules to ensure that medicines from Great Britain can move into

Northern Ireland without constraints that might affect supplies in the region.

- **Involvement of Northern Irish stakeholders:** New mechanisms for information exchange with Northern Irish stakeholders and for structured dialogue with EU institutions on EU laws that apply to Northern Ireland.

However, the EU has rejected removing the role of the CJEU and any changes that would require reopening the text of the protocol. The EU has said that it was willing to legislate to give Northern Ireland necessary derogations from EU law that would implement the proposed flexibilities. The European Commission has already passed new legislation on medicines and said that it would be ready to introduce further laws as necessary.

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## Where We Are Heading

### **There Is a Fundamental Difference of View Between the UK and the EU**

The present dispute is, in many ways, a continuation of the disagreement that started from the moment the protocol was signed. The UK and the EU have had different interpretations about how to implement the protocol: how to avoid levying tariffs for goods “not at risk” of moving through Northern Ireland to the EU single market, how to reduce certification for food products, how to remove the export procedures for goods moving from Northern Ireland and how to interpret state-aid provisions applying to trade between Northern Ireland and the EU. Some of these technical issues have been resolved through technical work but others have not. At the core of the current standoff is a more fundamental difference of view on whether the political agreement underpinning the protocol should change or not.

The UK insists the protocol as a whole must be renegotiated or else it will be unilaterally suspended, while the EU claims it is not open to such renegotiation and any changes must be accommodated within the framework of the agreement already on the table. The only way to find agreement is for one party to move on the principles: either the UK agrees that it can achieve its objectives within the current framework of the protocol and concedes on redrafting of the text, or the EU shifts away from its position that the text of the protocol cannot be reopened. The former would entail the UK government retreating from its hardline stance and inevitably disappointing the DUP, which refuses to rejoin the power-sharing agreement until the protocol is replaced, while the latter would require the EU agreeing to reopen the Withdrawal Agreement.

### **The UK Government Has a Legitimacy Problem**

The UK has said it will introduce the new legislation before the summer recess. It is unclear how long it would take the government to pass the bill into law but the legislative journey could take up to 12 months. The challenge for the UK is that however credible its proposals may be, the government has undermined its legitimacy to request changes in good faith with its own actions. The UK’s position is a mix of the sensible and the ideological. On customs, for example, there are no obvious reasons why it should not be possible to agree more simplified procedures by distinguishing products based on their final destination, as the UK has asked, provided adequate safeguards are given to the EU. But in other ways, it is very hard to see how the UK’s position is motivated by practical concerns about the protocol. The idea of a “dual-regulatory system” – which would remove any obligation for Northern Irish businesses to observe EU single-market rules and require them to choose between UK and EU standards – does not

align with the concerns of firms in Northern Ireland and appears to be motivated by a desire to remove EU law from the protocol so as to eliminate any involvement of EU institutions in the UK post-Brexit.

The UK's legitimacy has been undermined by its inability to accept responsibility for the protocol. The consequences of the protocol were foreseen when the government agreed to the treaty, as its own impact assessment from October 2019 makes clear. New east-west border checks were envisaged; the jurisdiction of the CJEU over parts of the protocol was expressly agreed by the prime minister; and the consent mechanism that rests on a simple majority vote, not cross-community support, to maintain the protocol was added. The government knew about the political nature of the problem too: that the unionist community, and particularly the DUP, had felt that the protocol would undermine their sense of identity. To claim these practical and political consequences were unforeseen at the time when the UK signed the agreement would be rewriting history.

Nor has the government accepted that many of the challenges facing Northern Ireland are the consequence of the Trade and Cooperation Agreement (TCA), which governs post-Brexit trade between the entire UK and the EU as much as the protocol itself. The absence of meaningful provisions governing the movement of agri-food has led to a particularly high threshold for checks required under EU law for the movement of such goods from Great Britain to Northern Ireland. This is at least as much the consequence of the UK's negotiating strategy – which sacrificed the UK's offensive interests, including more ambitious provisions for the movement of food products, for a purist version of sovereignty – as the protocol itself.

Finally, there is a view in Brussels and EU capitals that the UK's way of negotiating, with unilateralism posing as serious diplomacy, has squandered any existing goodwill to request changes in good faith. Attempts to override the protocol, to implement changes to the treaty without express consent from the EU and now to rewrite the treaty in domestic law are justifiably raising concerns about the intentions of this government. If the EU has been inflexible in negotiations, the UK government has given little reason to show more goodwill.

### **The EU's Position Will Likely Become More, Not Less, Entrenched**

It is plausible the UK is using this legislation as a tactic to ratchet up pressure on the EU so that it will adopt a new negotiating mandate. For the EU to bow to pressure to rewrite international law in the face of a threat would be seen as sending the wrong signal to the international community at a time when the rules-based system is under its greatest strain since the end of the Cold War. It is most likely that the government's tactics will make the EU even more entrenched in its current position.

The EU's response will depend on the specifics of whether, and how quickly, this new legislation is enacted and how it would eventually be used. The EU will no doubt view the act of introducing such

legislation as unlawful under the commitments made in the Withdrawal Agreement, namely Article 4, which states that the UK will ensure compliance of its commitments made under the treaty through its domestic law. The European Commission is thus expected to raise a legal dispute before the arbitration panel provided for under the treaty. Resolving the dispute could take up to 12 months. However, if the UK goes further and exercises its right under the legislation to suspend parts of the protocol, it is likely that the EU will act more decisively, retaliating by introducing tariffs on sensitive British exports and even threatening to suspend the TCA. Needless to say, this would have enormous costs for the UK at a time when its economy is already under enormous strain from spiralling inflation and the cost-of-living crisis.

### **The Tensions Risk Paralysing Northern Irish Politics**

As the dispute between the UK and the EU continues, this will fuel more uncertainty in Northern Irish politics. The DUP has said it would not re-enter power-sharing until new legislation is enacted. Political parties in Northern Ireland now have 24 weeks from the May election – until mid-October – to agree upon an executive. If there is no agreement by that point, then the UK government is obliged to call another election. This raises the prospect of a second Northern Ireland Assembly election before any substantive progress is made on the protocol.

The most likely scenario is that we are now entering a deadlock. The UK feels more emboldened to suspend the protocol through primary domestic legislation if the EU refuses renegotiation; the EU feels more, not less, entrenched in its position; and Northern Irish institutions will be in disarray until there is a decisive breakthrough. In the meantime, the people and businesses in Northern Ireland will face greater uncertainty and instability.

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## A Landing Zone for an Agreement

The present situation is far from desirable. It is creating political tension between the UK and the EU at a time when the two sides should be working together on other vital matters, such as the Ukraine crisis. It is creating political instability in Northern Ireland just as the cost-of-living crisis demands a functioning executive. And it fuels uncertainty for the people and businesses of Northern Ireland, the majority of whom voted against Brexit.

There is a sensible way forward, but it involves both sides – the UK and the EU – developing a structured process to build a shared understanding of the problems and then finding solutions that would put the protocol on a more stable and durable footing. This involves the UK accepting responsibility for the agreement that it negotiated and signed while seeking changes to the protocol by acting in good faith – not by acting unilaterally and overriding its obligations. The EU, for its part, should accept the principle that the unique circumstances in Northern Ireland require flexibility in the application of EU rules and it should be ready to discuss proposals that go further than its current ones.

A reasonable landing zone can be found if the UK and the EU were to agree four core principles:

- **Goods moving from Great Britain to Northern Ireland should be treated according to their final destination.** To the extent that products from Great Britain are intended for final consumption and sale in Northern Ireland, and the EU single market can be adequately safeguarded, there can be fewer checks and less intrusive regulatory requirements that would preserve Northern Ireland's place in the UK internal market.
- **Making the protocol more durable requires a governance arrangement to manage future barriers to trade and minimise political disputes.** As Great Britain gradually diverges from EU rules and Northern Ireland stays aligned, new disagreements are bound to arise in the future. The question is how these differences can be managed through a contained process rather than constant political crises.
- **Addressing concerns over the democratic deficit in Northern Ireland requires a more formal role for Northern Irish representatives from all parts of the community.** There are gaps in the current arrangements with respect to the involvement of Northern Irish-elected representatives in engaging on the legislation that applies in their territory.
- **The priority should be given to finding an agreement on substantive issues, without prejudice to the exact legal form that these solutions would take.**

We previously published [proposals](#) for the landing zone in line with these principles. The proposals were designed to address practical problems with the operation of the protocol, while also accommodating necessary changes within the framework of the current treaty and, therefore, without the need to

reopen the text of the protocol. We suggest five steps that could help the UK and the EU identify a landing zone for agreement.

## Movement of Goods

### **1. Agree a “Northern Ireland (NI) approved” goods designation, exempting goods moving from Great Britain to Northern Ireland from regulatory checks and customs requirements necessary under EU law, provided these goods meet specific mutually agreed conditions.**

Under the current protocol, most goods moving from Great Britain to Northern Ireland are subject to the requirements of EU law as they apply to any goods imported from third countries. The EU has already shifted from this rules-based approach to a more risk-based one for sanitary and phytosanitary (SPS) goods and medicines, agreeing that they would qualify for reduced controls at and behind the border when entering Northern Ireland if they meet certain requirements. This has been the biggest concession by the EU to date.

We suggest that the UK and the EU develop this approach into a wider and more inclusive principle that would exempt a special category of “Northern Ireland approved” goods from requirements under EU law and controls upon entry to Northern Ireland, provided that these goods categories meet the requirements set out below:

- they are bound to Northern Ireland for final sale and consumption and will not move through Northern Ireland onwards to the EU single market;
- their disrupted supply risks having detrimental effects on the Northern Irish economy and society;
- and they meet minimum requirements agreed between the UK and the EU.

In practice, this could be done either by a derogation from EU law that falls within the scope of the protocol specifically for “NI approved” listed goods, or by the EU recognising specific UK laws for the purposes of “NI approved” listed goods as equivalent to their own. This would not be a blanket exemption on all goods entering Northern Ireland from Great Britain.

Goods that do not fall within the scope of this waiver would also have to meet appropriate customs and regulatory requirements and undergo necessary border controls. Checks, as required by EU rules, would continue to be applied on all other goods from Great Britain moving onwards to Ireland and the rest of the EU single market. This arrangement could deliver a significant reduction in the volume and frequency of checks and controls, with a substantive proportion of goods having their checks waived under this exemption.

### **2. Develop a robust surveillance and enforcement system to prevent non-compliance.**

An important aspect of this arrangement is giving reassurance to the EU that “NI approved” designated goods do not move onwards to the EU single market, and that UK authorities can tackle non-compliance arising from any traders not declaring these movements.

The UK and the EU should agree to a robust surveillance and enforcement regime. Exporters of goods that qualify for the “NI approved” designation would be required to label goods appropriately. A failure to declare goods in this way could be made into a violation of UK domestic law and a criminal offence for those who knowingly violate it. At the ports, there could also be spot checks on a proportion of all consignments that have not been declared, based on the risk profiles of different goods.

## Governance

### **3. Create a governance arrangement to manage future barriers to trade.**

As Great Britain gradually diverges from EU rules and Northern Ireland stays aligned, new disagreements are bound to arise in the future. The question is how these differences can be managed through a contained process rather than a series of heated political crises, and how the goods that would be subject to new requirements could be exempted if they are shown to meet the criteria for “NI approved” goods.

We suggest the concept of “NI approved” goods is a dynamic approach to managing risk that can be expanded, depending on the level of risk that arises. In practice, this will require agreeing a list of goods that fall into its scope; a process for determining what goods fall into the category of “NI approved” goods; how that list is updated; how any exemption could be withdrawn; and a set of safeguards that could be used by either side if there were exceptional circumstances. Part of this could be “rebalancing” measures to be taken by the EU in the event of unforeseen risks or a material change in the conditions of either party. These measures could be used to remedy any potential imbalance of trade that arises from the unforeseen risks. Any such safeguards could build upon the principles suggested by the EU in their non-papers and similar provisions contained in the TCA.

### **4. Give Northern Irish and UK representatives greater consultative opportunities on draft EU laws that apply to Northern Ireland.**

To address concerns about Northern Ireland accepting EU laws on which it has no say, we propose that Northern Irish and UK representatives be given greater opportunities for consultation on new EU laws that fall under the protocol. This would ensure the views of representatives of the Northern Ireland Executive and UK government can feed into draft EU laws that will apply to Northern Ireland. There should also be formal channels through which representatives of all communities in the Northern Irish Assembly can be consulted, as well as feed into draft EU laws that apply to Northern Ireland under the protocol.

We propose expanding the remit of the UK-EU Joint Consultative Working Group (JCWG) to offer greater formal opportunities for consultation and to enable formal participation of representatives of the Northern Ireland Executive. When the European Commission prepares new EU legislation that applies to Northern Ireland, it should inform UK and Northern Irish representation in the JCWG while informally consulting relevant UK and Northern Irish experts in the same way it asks for expert views from EU member states. To the extent that new EU legal acts apply to Northern Ireland under the protocol, the European Commission should also allow, and formally invite, UK and Northern Irish representatives to take part in the preparation of drafts later adopted by the EU. Finally, UK and Northern Irish representatives should be able to request a formal preliminary exchange with the European Commission before any final adoption of EU laws that directly apply to Northern Ireland.

**5. Extend the arbitration-based dispute-settlement mechanism from the Withdrawal Agreement to the trade-related parts of the protocol.**

Under the current protocol, the European Commission enforces any EU laws that apply to Northern Ireland, and the CJEU is the arbiter of disputes relating to any provisions of the protocol based on those EU rules.

We suggest that the UK and the EU extend the application of the arbitration mechanism of the Withdrawal Agreement to the trade-related parts of the protocol. Under this mechanism, independent arbitration is the forum for the settling of disputes arising from the agreement, but the CJEU has interpretive powers for all questions involving EU law. This arbitration panel then resolves such matters based on the CJEU's interpretation, with the parties bound by the panel's ruling. This would remove the European Commission's direct supervision of EU law under the protocol, and the direct jurisdiction of the CJEU over the application and interpretation of trade-related parts of the protocol. However, by keeping the CJEU reference procedure for any disputes that directly involve questions of EU law, the court would remain the ultimate arbiter of any EU law in the protocol.

## **Legal Form**

Finding an acceptable compromise should take priority before deciding how the protocol might need to be amended. Replacing the protocol is, in theory, possible under Article 13(8) of the protocol, but that requires mutual consent from both parties.

The alternative is to accommodate changes within the current treaty and without reopening the text. This can be done through a combination of co-decisions of the Joint Committee amending specific parts of the agreement where the committee has the powers to do so; unilateral declarations and legislative changes by the EU to exempt Northern Ireland from the application of specific EU laws; and a joint

interpretive instrument agreed between the parties that would clarify how the provisions are to be interpreted.

Co-decisions of the Joint Committee are a standard way of implementing the agreement and can also be used to adopt amendments “to address situations unforeseen when the Agreement was signed”, under Article 164(5)(d) of the Withdrawal Agreement. One such case, under Article 6(2) of the protocol, states that the EU and the UK should “use their best endeavours to facilitate trade between Northern Ireland and other parts of the UK” and, to this end, the Joint Committee shall keep this provision “under constant review” and “adopt appropriate recommendations with a view to avoiding controls at the ports and airports in Northern Ireland to the greatest extent possible.” The proposed “NI approved” goods designation could be adopted as a decision of the Joint Committee with a view to facilitating trade between Northern Ireland and other parts of the UK. It would also be necessary to give Northern Ireland a derogation from EU law specifically for “NI approved” listed goods that are imported from Great Britain, in much the same way as the European Commission has done for medicines and has recently announced for its wider proposals.

The two sides could also agree to formalise any final agreement through a “joint instrument”. This could help clarify the meaning of some provisions, for example Article 12 and its interaction with the arbitration process under the Withdrawal Agreement. The joint instrument could serve a broader purpose in clarifying how both parties intend for the protocol to be interpreted and to formalise any unilateral commitments made by them.

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## Conclusion: A Way Forward

We are now on the brink of a serious standoff over the Northern Ireland Protocol, with lasting consequences for Northern Ireland, relations between the UK and the EU, and the integrity and unity of the Western alliance. The UK, rightly or wrongly, believes that it is justified in introducing legislation to override parts of the protocol in domestic law. The EU thinks it cannot bow to pressure from the UK and, ultimately, has the law on its side. Northern Irish politics and institutions are under serious strain because one of the main political communities has little confidence in the post-Brexit arrangements agreed for Northern Ireland.

If there is a sensible way forward, it involves two critical tasks. The UK and the EU must first seek to build a shared understanding of the problems facing Northern Ireland and then they must develop a structured negotiating process to explore concrete technical solutions that would allow both sides to manage these problems over time in a consensual way. The second task requires intensive technical negotiations that should take place without prejudice to any final set of solutions.

### A New Political Agreement

It will only be possible to find a way forward – whether it builds on the ideas set out in this paper or not – if the UK and the EU can attempt to restore trust in their political relationship through constructive engagement at the leaders' level. Ever since the protocol came into force, there has been little high-level political dialogue between the two sides that would allow them to build a shared understanding of the problems and to restore the trust so essential to making the protocol work in practice.

This first task must start with the UK accepting responsibility for the agreement that it negotiated and signed while seeking changes to the protocol – not by giving ultimatums and acting unilaterally to override its obligations, but by seeking to find constructive outcomes within the framework of the current treaty. The EU, for its part, should accept the principle that the unique circumstances in Northern Ireland require flexibility in the application of EU rules and it should be ready to discuss proposals that go further than its current ones.

Moving the negotiations forward will require a change in political attitudes from both the UK and the EU. The onus here lies with the British Prime Minister Boris Johnson. He must be the one to put forward a credible political case to EU leaders that the UK accepts responsibility for the protocol and stands by its international obligations, but that it is ultimately in the interest of both sides to make the protocol more stable and durable. If Johnson can demonstrate seriousness and counter EU concerns that he might renege on his word, European leaders should show a willingness to engage with the UK prime

minister and to recognise that Northern Ireland presents a unique set of challenging circumstances that can be granted special status within the bounds of EU law. Ultimately, it is in the interests of both sides to find an amicable resolution to this problem, protect the peace process and not let current tensions poison mutual cooperation on crucial matters, such as the Ukraine crisis.

## **A Structured Negotiation**

The second task involves developing a structured process dedicated to finding agreement on substantive issues that the protocol is creating for Northern Ireland.

In this paper, we have outlined one possible set of solutions that could address the genuine challenges arising from the protocol and move the two sides closer to agreement. These ideas take in elements of proposals from both sides: they build upon the UK's suggestion that goods moving into Northern Ireland should be treated differently based on their final destination, but they use the EU's approach of providing safeguards and using derogations from EU law, rather than a redrafting of the entire treaty. In effect, these proposals would achieve similar outcomes to those the UK seeks with its own proposals, but they would do so in a way that does not require divisive renegotiation of the post-Brexit status of Northern Ireland. Unlike the UK's proposals, however, this arrangement would not remove all aspects of EU law from the protocol or establish a dual regulatory regime in Northern Ireland – an idea which, if ever accepted by the EU, would alter the essential elements of the treaty and require a whole new agreement.

Taken together, we think that this package would minimise the practical difficulties facing Northern Ireland and make the protocol function more effectively and become more stable. With “NI approved” goods exempted from controls, this arrangement would significantly obviate the need for customs checks and necessary regulatory requirements on goods moving from Great Britain to Northern Ireland. It would reduce the need for, as well as the volume and frequency of, checks at Northern Irish ports and airports, while also ensuring that goods moving further on to Ireland and the rest of the single market are subject to the more standard import requirements for third countries.

The advantage of this solution is that it would be a living arrangement. It would evolve as the level of risk changes over time, offering a more enduring solution for managing future disagreements through a contained process rather than perpetual political crises. It would also address some concerns about the protocol's lack of democratic legitimacy by allowing elected Northern Irish representatives from all political communities to be granted a greater consultative role on EU laws that apply to Northern Ireland, and by removing the direct jurisdiction of the CJEU from the protocol, while ensuring the CJEU remains the ultimate arbiter of EU law within the treaty.

A compromise is there to be found. It remains unclear whether there is sufficient leadership to get us to this point. Considering the safeguarding of Northern Ireland's peace is at stake, all sides have an obligation to do their utmost to try and find it.



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