



Zombies in Your Head, the Fight over Milk and Eggs, and What’s at Stake with the Northern Ireland Protocol

After almost twenty years of peace, the conflict between Ireland and Northern Ireland is looming over a dispute between the United Kingdom (“UK”) and the European Union (“EU”) over something as innocuous as milk and eggs. This report will analyze the current situation; with Part I providing the background behind the separation of Ireland and Northern Ireland, leading to Part II which describes the conflict threatening the existing peace. Part III will explore the potential outcomes and ramifications under the international treaty between the EU and UK, known as the Northern Ireland Protocol. Finally, Part IV provides a conclusion reiterating the importance of the Good Friday Agreement and acknowledgement of the unconsidered perspectives of certain stakeholders in this dispute.

I. Zombies in Your Head

The conflict and violence of a single nation has been immortalized in song,¹ television,² and film,³ and while the time of contempt has passed, current tensions arising from something as simple as milk and eggs threaten the current peace. Sectarian conflict between Catholic Ireland and Protestant Northern Ireland lasted for thirty years, an era filled of terrorism and violence amongst the parties.⁴ The conflict ended in 1998 with the Good Friday Agreement (“the Agreement”), allowing Northern Ireland to remain as a nation within the UK while Ireland continued as its own self-governing nation; the Agreement created governmental “bodies to ease cooperation between Northern Ireland and Ireland.”⁵ Despite the separate nations coexisting on the same island, there is no physical border separating the two.⁶

By nature of both nations being part of the EU, the absence of a hard border did not present any particular challenges until now. Ireland, who declared independence from the UK in 1919,⁷ joined the EU in 1972 and remains a member to this day.⁸ The United Kingdom also joined the European Union in 1973 but voiced the desire to leave the EU as early as 1976.⁹ In 2016, after “a

¹ The Cranberries “*Zombie*” was written in response to the death of two children during “an IRA bombing in the Cheshire town of Warrington.” Mark Savage, *The Tragedy that inspired Zombie – The Cranberries’ biggest hit*, BBC News (Jan. 16, 2018) <https://www.bbc.com/news/entertainment-arts-42702781> [permalink: <https://perma.cc/38TF-23F3>].

² British sitcom *Derry Girls*’ pilot starts with a joke centered on a bomb threat upon Craigavon Bridge, and later references actual events during the Northern Ireland peace process. *Derry Girls: Episode One* (Channel 4 television broadcast Jan. 4, 2018).

³ Kenneth Branagh’s *Belfast* depicts a coming-of-age story of a Protestant boy and Catholic girl in Belfast, Northern Ireland in 1969. BELFAST (Northern Ireland Screen 2021).

⁴ See Rick Gladstone and Peter Robins, *The Ghosts of Northern Ireland’s Troubles are Back. What’s Going On?*, THE NEW YORK TIMES (Apr. 12, 2021), <https://www.nytimes.com/2021/04/12/world/europe/Northern-Ireland-Brexit-Covid-Troubles.html> [permalink: <https://perma.cc/YFF9-5F8P>].

⁵ *Id.*

⁶ Dermot Hudson, *Northern Ireland’s borders are stirring up trouble again*, THE WASHINGTON POST (Nov. 19, 2021, 7:00), <https://www.washingtonpost.com/politics/2021/11/19/northern-irelands-borders-are-stirring-up-trouble-again/> [permalink: <https://perma.cc/L8RR-WED5>].

⁷ *Ireland Independence: Why Jan 1919 is an important date*, BBC (Jan. 21, 2019), <https://www.bbc.co.uk/newsround/46480953> [permalink: <https://perma.cc/WQ3B-24ZT>].

⁸ *Representation in Ireland*, European Commission (last visited Jan. 29, 2022), https://ireland.representation.ec.europa.eu/about-us/irelands-eu-membership-ireland-european-commission_en [permalink: <https://perma.cc/9QKM-ZYFY>].

⁹ Benjamin Mueller & Peter Robins, *What is Brexit? And How Is It Going?* THE NEW YORK TIMES (Nov. 8, 2021), <https://www.nytimes.com/article/brexit-uk-eu-explained.html> [permalink: <https://perma.cc/F858-8T69>].

refugee crisis . . . made migration a subject of political rage across Europe,” the UK voted to leave the EU.¹⁰ After four years of negotiations, the UK finally resolved to leave the EU in 2020 in an event known as Brexit.¹¹ Naturally Northern Ireland, being a country within the UK, also left the EU.

II. Milk and Eggs in Dispute

One key difference between the UK and EU nations are the standards in food and drugs, with the EU requiring more extensive inspections to be conducted on these products prior to entering member countries.¹² By leaving the EU, UK foods are now subject to the inspections required for non-EU sources, and this particular requirement in customs is more stringent and burdensome on trade between mainland UK and Northern Ireland.¹³ Northern Ireland purchases 13.4 billion pounds in goods and services from the UK,¹⁴ receiving approximately 18.9 million tonnes¹⁵ via the shipping channel between the two bodies of land known as the Irish Sea.¹⁶ By nature of not having a border between Northern Ireland and the Republic of Ireland, any goods

¹⁰ Mueller & Robins, *supra* note 9. The migration crisis bolstered support for the “Leave” party, as EU migrant law “requires members to admit an unlimited number of migrants from other EU countries.” Timothy B. Lee, *Why did Britain vote to leave the EU?* VOX (Jun. 25, 2016, 12:10PM), <https://www.vox.com/2016/6/25/12029962/why-did-britain-leave-the-eu> [permalink: <https://perma.cc/A4PW-W3AE>].

¹¹ Alasdair Sandford, *Brexit Timeline 2016-2020: Key Events in the UK’s path from Referendum to EU exit*, EURONEWS (Jan. 30, 2020), <https://www.euronews.com/2020/01/30/brexit-timeline-2016-2020-key-events-in-the-uk-s-path-from-referendum-to-eu-exit> [permalink: <https://perma.cc/W966-V9L2>].

¹² See *infra* Part C.

¹³ See Tom Edgington & Chris Morris, *Brexit: What’s the Northern Ireland Protocol?*, BBC NEWS (Jan. 10, 2022), <https://www.bbc.com/news/explainers-53724381> [permalink: <https://perma.cc/XHX8-EZ2R>]. Trade between EU member countries do not require checks across borders, whereas the “EU has strict food rules and requires border checks when certain goods, such as milk and eggs, arrive from non-EU countries.” See *id.*; see also *Infra* Section III.

¹⁴ *Overview of Northern Ireland Trade Fact Sheet*, Northern Ireland Statistics and Research Agency (last visited Jan. 30, 2022), <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-NI-Trade-Factsheet-August-2021.pdf>.

¹⁵ An estimation, based on Northern Ireland reporting a total of 27.1 million tonnes annually, with 70% originating from Great Britain. *Northern Ireland Ports Traffic 2020 Infographic*, Northern Ireland Statistics and Research Agency (last visited Jan. 30, 2022), <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/NI-Ports-Statistics-2020-Infographic.pdf>.

¹⁶ See Edgington & Morris, *supra* note 13.

coming from the mainland to North Ireland are to be subject to EU food and drug customs inspections in an agreement is known as the Northern Ireland Protocol.¹⁷

Whether it is due to implementing the new Brexit trade procedures or the effect of COVID-19, the UK has been experiencing massive delays in trade and shipping.¹⁸ This resulted in a substantial trade decrease for the UK.¹⁹ As a result, frustrations have accelerated to a point where the UK is calling for changes to the Protocol.²⁰ While the EU and UK continue to clash over Protocol requirements, their dispute determines not only food and drug regulation, but also hanging in the balance is the delicate peace established by the Good Friday Agreement.²¹

III. What's at Stake with the Northern Ireland Protocol

The significance of the Northern Ireland Protocol (“the Protocol”) extends far beyond Food and Drug health standards. Besides setting the boundaries of customs formalities, the Protocol requires inspections to be conducted within the shipping and airports upon arrival into Northern Ireland,²² with specific customs procedures dependent on the good category.²³ For example, while coffee and chicory extracts are subject to the standards of only one resolution,²⁴ products originating from animals, such as milk, are at risk of diseases and therefore are subject to numerous inspection standards.²⁵

¹⁷ *See id.*

¹⁸ Peter S. Goodman, Stephen Castle & Eshe Nelson, *53 Tons of Rotting Pork and Other Brexit Nightmares*, THE NEW YORK TIMES (Apr. 28, 2021), <https://www.nytimes.com/2021/02/12/world/europe/brexit-britain-trade.html> [permalink: <https://perma.cc/9U3Z-8693>] (“Before Brexit a truck . . . from a dairy plant in northern Wales could travel overnight and reach France by morning. Now, that same journey can take five days . . .”). *Id.*

¹⁹ *UK total trade and trade by UK country*, UK Trade Info (last visited: Feb. 1, 2022), <https://www.uktradeinfo.com/trade-data/regional/2021/uk-regional-trade-in-goods-statistics-second-quarter-2021/>.

²⁰ *See* Edgington & Morris, *supra* note 13.

²¹ *See id.*

²² *See* 2019 O.J. (CI 384), Annex 2, Article 29 [hereinafter Northern Ireland Protocol].

²³ *See e.g.*, Northern Ireland Protocol, Article 31.

²⁴ *Id.* at Article 31; 1999 O.J. (L 66) 13.3, p. 26.

²⁵ *See e.g.*, Northern Ireland Protocol *supra* note 22, Articles 30 (Food-Hygiene), 31 (Food- ingredients, traces, residues, marketing standards), 36 (Live animals, germinal products and products of animal origin), and 37 (Animal disease control).

Like most agreements, the Protocol includes clauses to address conflicts in implementation.²⁶ Article 16 of the Protocol grants either party the ability to enact “safeguard measures” in the event the Protocol causes “serious economic, societal or environmental difficulties.”²⁷ While “safeguard measures” remains otherwise undefined, it has been suggested that the UK may seek to “suspend almost all of its obligations related to trade under the dispute.”²⁸ The effect of which may result in several potential outcomes; these outcomes range in severity from mutually binding arbitration, to a suit against the UK before the Court of Justice of the European Union, and finally the drastic possibility of the EU levying sanctions against the UK.

A. The UK and EU undergo binding Arbitration under the Withdrawal Agreement.

The Northern Ireland Protocol “form[s] an integral part” of the UK-EU Withdrawal Agreement,²⁹ therefore any dispute arising from the Northern Ireland Protocol must be addressed according to the Agreement terms. Parties must first attempt to resolve the dispute through a joint committee.³⁰ Should the Committee fail to resolve the dispute, the parties may petition the Court of Arbitration for resolution,³¹ whose decision will bind both parties.³² The Arbitration Panel, composed of five members, will make a decision either through consensus or majority vote.³³ Failure to comply with the decision by the Arbitration panel results in an imposed penalty payment at request of the complainant, and further noncompliance entitles the non-complying party to

²⁶ See e.g., *id.* at Articles 15 (Joint Consultive Working Group) & 16 (Safeguards).

²⁷ *Id.* at Article 16.

²⁸ Lauren Chadwick & Alice Tidley, *What is Article 16 of the Northern Ireland Protocol?*, EURO NEWS (May 11, 2021), <https://www.euronews.com/2021/11/05/what-is-article-16-of-the-northern-ireland-protocol> [permalink: <https://perma.cc/8QHP-7MVZ>].

²⁹ 2019 C (384), Article 182. [hereinafter “Withdrawal Agreement”].

³⁰ *Id.* at Articles 168-169.

³¹ *Id.* at Article 170.

³² *Id.* at Article 180.

³³ *Id.* at Articles 171 & 180.

suspend almost any obligation within the Withdrawal Agreement.³⁴ The obligations will remain suspended until the Withdrawal Agreement is amended, withdrawn, or otherwise settled between the parties.³⁵

Binding Arbitration by the parties is the likeliest form of resolution to the current dispute, particularly in light of recent violence stirring in Northern Ireland.³⁶ The riots have been accredited to UK unionists, and yet it has also pressured leaders to come to a resolution in negotiating the Protocol so that both sides come to agreement.³⁷ Furthermore, as the EU proposes significantly reduced inspections with little compromise on behalf of the UK,³⁸ it is more likely the EU will seek resolution through the Joint Committee and then the Court of Arbitration under the Withdrawal Agreement.³⁹ However, previous rhetoric suggests the UK may continue to refuse the Protocol,⁴⁰ and in so doing will likely face charges of breaking international law.

B. The UK rejects negotiations in breach of Good Faith in the Court of Justice of the European Union.

Both the UK and EU are bound to negotiate “agreements governing their future relationship” in Good Faith.⁴¹ Therefore, the UK may be held for a breach of Good Faith in

³⁴ Withdrawal Agreement, *supra* note 29 at Article 178. Part Two of the Withdrawal Agreement (Citizen’s Rights) cannot be suspended. *Id.*

³⁵ *Id.*

³⁶ Elliot Smith, *Violent riots broken out in Northern Ireland—here’s why*, CNBC (Apr. 13, 2021 4:43 AM), <https://www.cnn.com/2021/04/13/from-brexit-to-covid-rules-why-violent-riots-have-broken-out-in-northern-ireland.html> [permalink: <https://perma.cc/V4XQ-LNVC>]. In April 2021, violence erupted in the streets of Belfast in the form of “petrol bombs, vehicles and rocks” and had been largely attributed to “resentment among the British loyalty community at the Northern Ireland Protocol.” *Id.*

³⁷ *See id.*

³⁸ Jayne McCormack, *NI Protocol: “Renewed degree of urgency” in talks*, BBC (Jan. 11, 2022), <https://www.bbc.com/news/uk-northern-ireland-59952817> [permalink: <https://perma.cc/ER93-2YQR>].

³⁹ In 2021, the EU has previously declared intent to petition the Joint Committee but did not proceed with the action. *See* Letter from Vice-President Maroš Šefcovic to David Frost, (Mar. 15, 2021).

⁴⁰ “Brexit envoy, David Frost, threatened to scrap the protocol without saying what would come next.” *See* Dermot Hudson *supra* note 6.

⁴¹ Withdrawal Agreement *supra* note 29 at Article 184; *see also id.* at Article 5. Good Faith is a common principle in contract and international law, which effectively limits a party’s rights “in order to achieve acceptable results when competing interests exist.” Steven Reinhold, *Good Faith in International Law*, 2 Univ. Coll. of London J. of L. & Jurisprudence 40, 40 (2015).

negotiating with the EU and vice versa.⁴² Moreover, despite the UK no longer being a part of the EU, the Court of Justice of the European Union (“CJEU”) has jurisdiction over interpreting and enforcing the Protocol.⁴³ In finding a breach of a Good Faith, the CJEU has several remedies, the most likely would be the imposition of a lump sum or pecuniary penalty.⁴⁴

If the UK continues to disregard the Protocol, or does not give serious effort in coming to a compromise, they may be charged with breaching a duty of Good Faith. The EU has previously threatened legal action under both Arbitration and the CJEU,⁴⁵ and in the event that the UK continues to disregard the Protocol, the CJEU will likely impose a penalty. Whether the UK agrees to pay the penalty is another issue, as the UK previously sought to remove the CJEU’s role of oversight over the treaty.⁴⁶

C. The Protocol is abandoned, and the EU imposes sanctions against the UK

“Restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country . . . in line with the objectives set out in the Common Foreign and Security Policy (“CFSP”) Council Decision.”⁴⁷ The EU has a variety of sanctions available against the UK, particularly economic sanctions which may include “import or export bans on certain goods, investment bans, [and] prohibitions on supplying certain services.”⁴⁸

In the “Doomsday” scenario where the UK disregards the Protocol and rejects the EU’s authority over its enforcement, the EU may decide to impose sanctions. Without the Protocol in place, a hard border will likely be installed between Ireland and Northern Ireland, and fears of

⁴² *Id.*

⁴³ See Northern Ireland Protocol, *supra* note 22 at Article 12.

⁴⁴ See 2012 O.J. (C 326) at Article 260. (TFEU).

⁴⁵ Letter from Vice-President Maroš Šefcovic to David Frost, *supra* note 39.

⁴⁶ John Campbell & Colm Kelpie, *Brexit: EU proposed fewer check on GB-NI goods*, BBC (Oct. 13, 2021), <https://www.bbc.com/news/uk-northern-ireland-58871221> [permalink: <https://perma.cc/EL7Z-7R5K>].

⁴⁷ DGC (5664), Principles (4).

⁴⁸ *Different types of Sanctions*, European Council (last visited Feb. 1, 2022), <https://www.consilium.europa.eu/en/policies/sanctions/different-types/> [permalink: <https://perma.cc/9KAY-UEK6>].

violence and terrorism are more likely to be realized.⁴⁹ Similar to Ukraine, where entities are being sanctioned for undermining the Ukrainian sovereignty and stability,⁵⁰ the EU could determine the UK is undermining Irish sovereignty and stability and apply similar economic sanctions, regardless of UK objections.

IV. Conclusion

Fortunately, negotiations between the EU and UK continue and many believe a timely a timely resolution is on the horizon.⁵¹ While this report explored some of the legal consequences of the Protocol failing, there are aspects of the conflict which have not been considered including British Unionist Party demands,⁵² the UK's obligations as an adopter of the Vienna Convention on International Treaties,⁵³ and Ireland's outlook during these times of strained negotiations.⁵⁴ However, so long as parties continue to prioritize the need for the Good Friday Agreement to continue, both Ireland and Northern Ireland can feel assured that the time of contempt will not return.

⁴⁹ See Gladstone & Robins, *supra* note 4.

⁵⁰ Council Decision 2014/145/CFSP of 17 March 2014, Article 2, 2014 O.J. (L 78), 1, 16.

⁵¹ *Northern Ireland Protocol deal in 'weeks,' Minister Coveney says*, RIADÍO TEILIFÍ ÉIREANN (Jan. 14, 2022), <https://www.rte.ie/news/brexit/2022/0114/1273679-brexit/> [hereinafter RTE] [permalink: <https://perma.cc/SE95-CSZQ>].

⁵² See Freya McClements, *Unionist leaders jointly declare opposition to Northern Ireland Protocol*, THE IRISH TIMES (Sep. 28, 2021, 10:40), <https://www.irishtimes.com/news/politics/unionist-leaders-jointly-declare-opposition-to-northern-ireland-protocol-1.4685656> [permalink: <https://perma.cc/L6K3-LZW6>].

⁵³ *Status of Treaties*, United Nations Treaty Collection (last visited Feb. 2, 2022), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en#EndDec [permalink: <https://perma.cc/Q3YC-5W4L>].

⁵⁴ See RTE, *supra* note 51.