

# EU-UK relations: Difficulties in implementing the Northern Ireland Protocol

## SUMMARY

On 3 March 2021, the United Kingdom (UK) Secretary of State for Northern Ireland, Brandon Lewis, announced in a written statement to the UK Parliament, and without consulting the European Union (EU) in advance, that the grace period on border controls on a series of food and live products shipped from Great Britain to Northern Ireland would be extended. This meant that products of animal origin, composite products, food and feed of non-animal origin and plants and plant products could continue being shipped from Great Britain to Northern Ireland without the official certification, such as health and phytosanitary certificates, required by the Protocol on Ireland / Northern Ireland (the Protocol) of the Withdrawal Agreement (WA).

In response to the UK's decision, the EU launched legal action against the UK for breaching the provisions of the Protocol, as well as the good faith obligation under the WA. According to the Protocol, the UK must establish border controls on goods moving between Great Britain and Northern Ireland according to EU law. The application of EU law to Northern Ireland, together with the conduct of border controls within the UK, was designed to prevent the establishment of physical border controls (a 'hard border') on the island of Ireland, so as to safeguard the Good Friday/Belfast Agreement which brought peace in Northern Ireland, while preserving the integrity of the EU's single market.

The grace period on border controls was agreed by the EU and the UK in December 2020 as a temporary solution to problems raised by the UK. The UK government has reiterated that it intends to implement the Protocol, but that the border controls are causing trade disruption between Great Britain and Northern Ireland and require time to be resolved. It has also mentioned other issues involving areas as diverse as medicinal supplies and parcel shipments, as well as the complexity of customs systems and implementation of exchange of information between the EU and the UK. On 30 June 2021, the EU and the UK reached an agreement on some solutions, including the extension of the grace period on meat products, conditional on tight controls.



### IN THIS BRIEFING

- > Background
- > UK government decision and request
- > EU response to UK government decision
- > Solutions found
- > Comparison with the difficulties of 2020
- > Northern Ireland's economic ties
- > Positions
- > Some expert opinions
- > Next steps and the Protocol's legal framework

## Background

According to the [Protocol on Ireland / Northern Ireland](#) (henceforth, the Protocol) of the [Withdrawal Agreement](#) (WA),<sup>1</sup> EU law relating to trade and competition remains applicable to Northern Ireland. In particular, [Protocol Article 5\(4\)](#) and its [Annex 2](#) declares that the [Union Customs Code](#) is applicable to Northern Ireland. As a result, all goods entering Northern Ireland from outside the EU, including those from Great Britain, must be accompanied by an [entry summary declaration](#), in accordance with EU law. The current complexity of the declaration for food and live products is viewed as a trade barrier within the UK's internal market, as it potentially deters suppliers from shipping goods from Great Britain to Northern Ireland. The obligation to establish border controls on goods moving between Great Britain and Northern Ireland is motivated by the lack of alignment in food and animal standards – sanitary and phytosanitary (SPS) rules – between the EU and the UK. Already during the transition period, [experts and practitioners](#) warned that the lack of alignment of EU and UK SPS rules would inevitably lead to food supply disruption, although the extent of such disruption would depend on SPS rules in a EU-UK trade deal. Eventually, the [EU-UK Trade and Cooperation Agreement](#) (TCA), which governs the new EU-UK relationship, confirmed in its [SPS provisions](#) that parties may maintain separate SPS regimes and that the exporting party has to ensure that the exported products met the importing party's SPS requirements; the importing party may carry out audits and verifications.

### Northern Ireland: Origin of the border and the Good Friday / Belfast Agreement

The [Northern Ireland border](#) came into being on 3 May 1921, as part of the [Government of Ireland Act 1920](#), which also created the Parliament of Northern Ireland (1921-1972). Originally an administrative frontier between two territories of the UK, in 1922, it became the border between the UK and the new 'Irish Free State'. A customs border was established on 1 April 1923.

Acts of violence committed by elements on both nationalist and unionist sides, referred to as the 'Troubles', started in the late 1960s and continued for close to 30 years. The Troubles were ended by the [Good Friday/Belfast Agreement](#) (GFBA) reached on 10 April 1998, and signed by the Irish and UK governments, as well as by both unionist and nationalist political parties in Northern Ireland (albeit not by the Democratic Unionist Party (DUP), currently the largest party in the Northern Ireland Assembly and thus able to nominate the First Minister). The Agreement was drawn up in a context in which both Ireland and the UK were EU Member States and, in particular in its cross-border dimensions, it was based on that situation.

The [main provisions](#) of the GFBA were to establish:

- the [Northern Ireland Executive](#), elected by the [Northern Ireland Assembly](#), in which both communities – unionists and nationalists – must be represented. Key decisions of the Northern Ireland Assembly, including election of the Northern Ireland Executive's First and Deputy First Ministers, require a majority of members representing both communities;
- the [North South Ministerial Council](#) (NSMC), composed of delegates of the Northern Ireland Executive and the Irish Government, who meet regularly to cooperate on policy areas across the island;
- the [British–Irish Council](#), which comprises representatives from the Irish Government, the UK Government, the Scottish Government, the Northern Ireland Executive and the Welsh Government as well as the governments of the Isle of Man, Jersey and Guernsey. It was established to promote positive, practical relationships among the people of the islands, and to provide a forum for consultation and cooperation.

The complexity of the situation on the island of Ireland was one of the most difficult issues to arise during the withdrawal negotiations, and the Protocol was eventually agreed as the solution. The Protocol is motivated by a commitment to protect North-South cooperation on the island, to avoid the establishment of physical infrastructure or related checks and controls (i.e. a 'hard border'), and to protect the 1998 [Good Friday/Belfast Agreement \(GFBA\)](#), which brought an end to 30 years of armed conflict in Northern Ireland (see box above). The Protocol [states](#) that 'Northern Ireland (NI) is part of the customs territory of the United Kingdom' ([Protocol, Article 4](#)) and it protects the UK internal market ([Protocol, Article 6](#)). It also includes [provisions](#) on trade and competition so that

Northern Irish businesses retain access to the EU customs union.<sup>2</sup> Importantly, the Protocol provides for a '**consent mechanism**' whereby the Northern Ireland Assembly can withdraw consent to the Protocol, as per the [Protocol's Article 18](#) (see box below).

#### The consent mechanism

The Protocol's [Article 18](#) provides for a [consent mechanism](#) whereby Northern Ireland must give its democratic consent to the application in Northern Ireland of EU law set out in Articles 5 to 10 of the Protocol. The UK government's [Declaration](#) of 19 October 2019 set out the democratic consent process, subsequently enacted in [regulations](#) of 9 December 2020: a vote will be held in the [Northern Ireland Assembly](#) on a motion that EU law shall continue to apply in Northern Ireland (Protocol Articles 5 to 10), and shall be approved if the majority of the Members of the Northern Ireland Assembly, present and voting, vote in favour of the motion. The Northern Ireland Assembly must notify the UK government of the outcome of the consent process no fewer than five days before the date on which the UK itself is due to provide notification of the consent process to the EU. Protocol Article 18 specifies that the initial period is the period ending four years after the end of the transition period. As the transition period ended on 31 December 2020, this first notification should be made by 31 December 2024. Such a consent vote is to be repeated periodically: after four years when the Assembly has voted by simple majority in favour of maintaining the Protocol's provisions, and after eight years when the vote has cross-community support. Should the Assembly vote against continued application of the Protocol's Articles 5 to 10, they would cease to apply two years later.

## UK government decision and request

In a [written statement](#) published on 3 March 2021, the UK's Secretary of State for Northern Ireland, Brandon Lewis, announced that, as part of the 'pragmatic and proportionate implementation' of the Protocol, the UK government was taking several 'temporary operational steps to avoid disruptive cliff edges as engagement with the EU continues through the Joint Committee' (see box below). For supermarkets and their suppliers, as part of the operational plan to which the UK committed at the EU-UK Joint Committee meeting on 24 February 2021, the current scheme for temporary agri-food movements to Northern Ireland ([STAMNI](#)) would continue until 1 October 2021. Certification requirements would then be introduced in phases alongside the roll-out of the [digital assistance scheme](#). In addition, the government confirmed that flexibilities within the [Official Controls Regulation 2017/625](#) are such that no charging regime is required for agri-food goods.

#### Withdrawal Agreement institutional bodies

WA [Article 164](#) establishes the *Joint Committee* that governs implementation of the agreement, including its protocols, and is co-chaired by the EU and the UK. [Maroš Šefčovič](#), Commission Vice-President for Interinstitutional Relations and Foresight, is co-chair for the EU, and until 28 February 2021, the UK co-chair was [Michael Gove](#), Minister for the Cabinet Office. He was then replaced as UK co-chair by Lord David Frost, who had previously been the UK's chief negotiator for the new EU-UK relationship.

WA [Article 165\(1\)\(c\)](#) establishes the *Specialised Committee on the Protocol on Ireland / Northern Ireland* whose [first meeting](#) took place on 20 April 2020. Its role is to facilitate the implementation and application of the Protocol and make recommendations to the Joint Committee as regards the functioning of the Protocol. The Specialised Committee is co-chaired by the EU and the UK and supports the Joint Committee through focusing on details of the Protocol.

In a [letter](#) published on 15 May 2021, [Lord Frost](#), Minister of State at the Cabinet Office, reiterated that the current situation is a problem for grocery stores in Northern Ireland because small suppliers based in Great Britain find it too difficult and time-consuming to deal with the paperwork, and as a result, many of them have stopped selling their products into Northern Ireland. For Lord Frost, the amount of paperwork is disproportionate to the risk that goods may enter the EU, and there is no evidence that goods that do not meet EU standards are entering the EU's single market via Northern Ireland.

In a [statement](#) after the meeting of the WA Joint Committee on 9 June 2021, the UK provided its own assessment of the areas of concern in which progress in discussions was lacking (at that time):

- SPS / veterinary arrangements;
- the reduction and removal of burdens for trusted agri-food traders moving food to Northern Ireland, in particular, for retailers with fully traceable and auditable supply chains;
- prohibition on imports to Northern Ireland of chilled meat;<sup>3</sup>
- [pet travel](#) from Great Britain to Northern Ireland;
- disadvantageous position of Northern Ireland traders in relation to the application of tariff rate quotas (TRQs) for goods entering Northern Ireland, as a result of changes to [EU law](#) last year;
- [UK trader scheme](#) (UKTS) and the application of 'goods at risk' (of being moved to the EU);
- goods sent from Great Britain to Northern Ireland in parcels.

In other areas – supply of medicines to Northern Ireland, approval processes for high-risk plants intended for export to the EU to be moved into Northern Ireland, livestock movements between Great Britain and Northern Ireland – little progress was being made according to the UK statement, but the EU was understood to be planning to send it proposals.

Meanwhile, the UK statement signals that progress was being made in the following areas at the time:

- guide dogs entering Northern Ireland from Great Britain;
- EU access to UK customs information technology (IT) systems and databases, on which the UK has provided plans for interim and long-term arrangements;
- clarification and refining of the [process](#) for allocating the economic operator registration system ([EORI](#)) for those trading in Northern Ireland;<sup>4</sup>
- the VAT margin scheme on second-hand vehicles imported to Northern Ireland from Great Britain;
- the interface between the [UK EHCO](#) and [EU TRACES](#) platforms for SPS certification;
- implementation of [EU systems for export and transit](#) in Northern Ireland.

On 11 June 2021, the UK [reiterated](#) that the grace period for chilled meat products entering Northern Ireland would be [extended](#). It finally sent a [formal request](#) to the European Commission to that end on 17 June 2021.

## EU response to UK government decision

From the EU's point of view, the UK's unilateral decision of 3 March 2021 to extend the grace period violates [Articles 5\(3\) and \(4\)](#) of the Protocol, which states that [Article 5\(2\)](#) of [EU Regulation 952/2013](#) laying down the Union Customs Code is applicable to and in the UK with respect to Northern Ireland, in addition to the EU legislation listed in [Annex 2](#) of the Protocol. On 15 March 2021, Commission Vice-President Maroš Šefčovič, co-chair of the Joint Committee under the Withdrawal Agreement, as well as co-chair of the Partnership Council established under the Trade and Cooperation Agreement, sent a [letter](#) announcing legal action against the UK over its actions in respect of the Protocol, for 'breaching the substantive provisions of the Protocol' and 'the good faith obligation under the WA', and launched the first phase of an infringement proceeding which may lead to a case before the Court of Justice of the EU (CJEU), which has jurisdiction as regards Protocol Article 5 ([Protocol Article 12\(4\)](#)), including the implementation and application of EU law, and all activities relating to the implementation and application of Article 5 ([Protocol Article 12\(2\)](#)).

In a [statement](#) following the seventh meeting of the Specialised Committee on the Implementation of the Protocol on Ireland and Northern Ireland on 26 March 2021, the Commission said that the meeting had taken place in a 'constructive atmosphere'. Both parties underlined the importance of joint action through the joint institutions established by the WA. In the [statement](#) after the eighth meeting of the WA Joint Committee on 9 June 2021, the European Commission reiterated that full implementation of the WA is an 'international legal obligation' and a 'pre-condition' for making the

new EU-UK partnership work, adding that there was no alternative to the Protocol and that its full implementation was a priority for the EU. The Commission acknowledged the UK's commitment to providing concrete plans regarding IT access.

In a [document annexed](#) to the statement on 9 June, the Commission details the issues and the proposed solutions. In the area of SPS rules:

- the EU suggests that the UK follows EU SPS rules, even if only temporarily, through a '[Swiss-style veterinary agreement](#)';
- as regards connecting EU and UK SPS databases, EU and UK teams are working to have the interface ready by September 2021, to allow quicker processing of information;
- the EU is working with Northern Ireland Executive experts on operational details to facilitate the entry of [guide dogs](#) to Northern Ireland from Great Britain;
- the [European Food Safety Agency](#) will assist in the preparation by the UK of complete dossiers concerning [high-risk plants](#) intended for export to the EU;
- ways should be explored to facilitate the [tagging](#) of animals moving multiple times between Great Britain and Northern Ireland;
- solutions should be suggested to lower the control burden for [breeding animals](#).

The annexed document adds that, in the specific area of medicines, the EU is exploring long-term solutions to secure continuity of supply to Northern Ireland and to fully understand supply-chain challenges in the new situation.

In the area of VAT, since the UK is no longer part of the EU's VAT area, the Commission maintains that the VAT margin scheme on second-hand vehicles cannot apply in Northern Ireland on cars sourced in Great Britain, and it is exploring solutions, with significant progress expected in coming weeks.

As regards tariff rate quotas (TRQs), Northern Ireland cannot, at the moment, benefit from either EU or UK TRQs. Progress is expected, but the issue will require legislative changes.

Regarding the SPS area, however, the Commission considers that the UK has not adopted a constructive attitude, for the following reasons:

- construction work on permanent border control posts (BCPs) has been [interrupted](#);<sup>5</sup>
- the temporary facilities in place in Northern Ireland are not working to full capacity and are experiencing acute human resource problems;
- the traceability requirements agreed as part of the grace periods in December 2020 to ensure that the food products concerned are only sold to consumers in supermarkets in Northern Ireland are not being complied with.

## Solutions found

On 30 June 2021, the EU and the UK reached an agreement on a number of these issues. The [press release](#) and the [unilateral declaration](#) of the European Commission provide details.

- Grace period for chilled meats

The grace period on chilled meat is extended until 30 September 2021 (three months). The purpose of the extension is to allow businesses, in particular supermarkets, to complete the adjustment of their supply chains. The conditions set for the extension are that: a) meat products must remain under the control of Northern Ireland authorities at all stages; b) meat products must be accompanied by health certificates issued by UK authorities; and c) these meat products may only be sold to end users in Northern Ireland – and must be packaged accordingly.

### ➤ Medicines

The EU will table a legislative proposal so that regulatory compliance functions for medicines authorised by the UK for Northern Ireland may be located in Great Britain, provided that the medicines are not further distributed in the EU's single market.

### ➤ Guide dogs

The EU has suggested a solution to the UK, and the Northern Ireland authorities must now work out how to implement it.

### ➤ Green card

The Commission has decided to waive the obligation for drivers from the UK to be able to show a Green Card to prove they have motor insurance.

### ➤ Movement of certain animals

The Commission adopted Implementing Act [2021/1064](#) on 29 June 2021, doing away with the 're-tagging' obligation when animals from Great Britain move multiple times between Great Britain and Northern Ireland. A regulatory solution will also be found to facilitate the return of livestock to Northern Ireland from exhibitions or trade fairs in Great Britain.

In the aforementioned unilateral declaration on the application of EU law on meat products, the Commission underlines the importance of ensuring that border control posts in Northern Ireland have the necessary infrastructure and resources to perform all the controls required by the EU's Official Controls Regulation.

The [UK declaration on meat products](#) published on 30 June 2021, provides the same details regarding the conditions for the extension of the grace period, namely:

- meat products are subject to a channelling procedure from the designated place to the destination supermarket in Northern Ireland;
- they are sold exclusively to end consumers in Northern Ireland;
- they are accompanied by health certificates issued by UK authorities;
- they are packed for end consumers and labelled for sale in the UK only in a clear fashion.

The declaration adds that the UK will not amend the rules applicable to meat products already in force in the rest of the UK.

## Comparison with the difficulties of 2020

[Difficulties](#) regarding the implementation of border controls between Northern Ireland and Great Britain in accordance with the Protocol are not new. On 9 September 2020, the UK government tabled the [Internal Market Bill](#) (IMB) setting out the principles for the UK's internal market for goods and services. Some of the clauses of the IMB, said to ensure the unfettered flow of goods between Northern Ireland and Great Britain, contravened the Protocol either explicitly or potentially. For instance, [IMB clause 42](#) gave the UK government the power to 'dis-apply or modify' rules on export declarations for goods moving from Northern Ireland to Great Britain, including for any 'exit procedure applicable by virtue of the Protocol' (c42(2)).

On 8 December 2020, the EU and the UK found an [agreement](#) in principle on 'all issues', and on 17 December 2020, the parties [agreed](#) on a set of solutions. More specifically, [Decision No 4/2020](#) of the Joint Committee sets out rules for implementing Article 5(2) of the Protocol as regards the conditions for considering that a good brought into Northern Ireland from outside the EU will not be subject to commercial processing in Northern Ireland, and the criteria for considering that a good brought into Northern Ireland from outside the EU does not risk subsequently being moved into the EU. In the [joint statement](#) following the sixth meeting of the Joint Committee on 24 February 2021, the parties took stock of the implementation of the Protocol and of work to find pragmatic solutions. They reiterated their full commitment to the GFBA and to the Protocol, underlining their shared

commitment to give effect to those solutions agreed in the Joint Committee on 17 December 2020 without delay. To this end, the UK would provide a new operational plan with respect to supermarkets and their suppliers, alongside additional investment in digital solutions for traders in accordance with the Protocol.

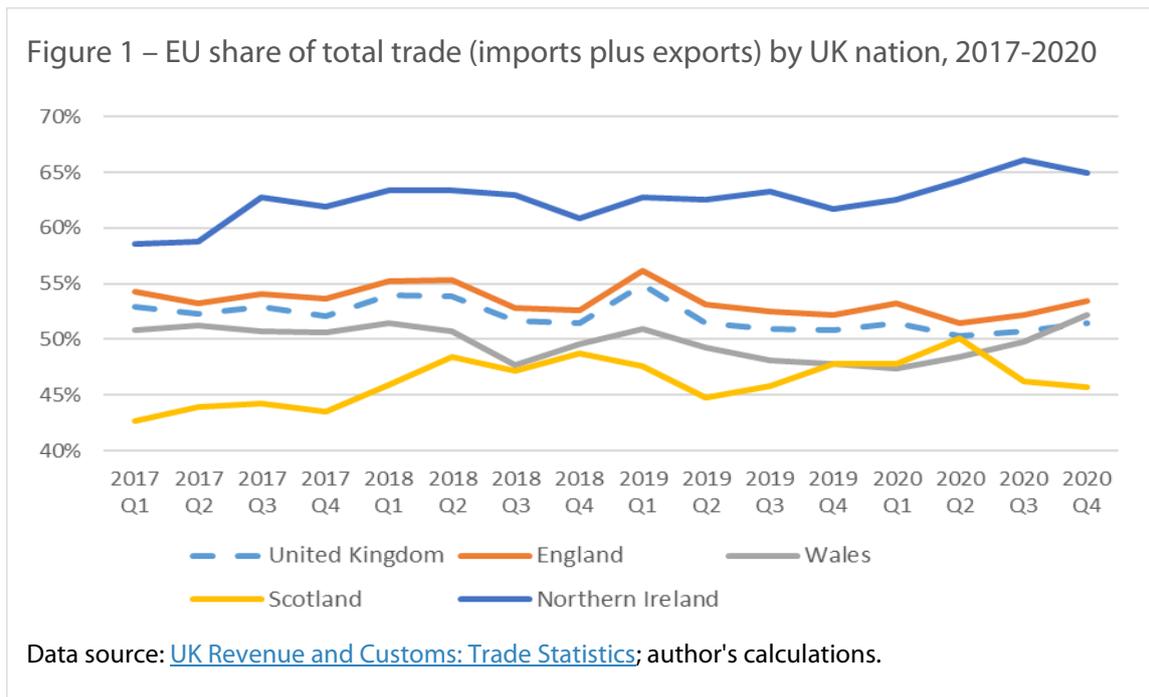
## Northern Ireland's economic ties

Before the pandemic, Northern Ireland had closer economic ties with the EU than did the UK overall: in 2019, 62 % of Northern Ireland's total trade (imports plus exports) was with the EU, while the EU share of total UK trade as a whole was 52.1 % (see Table 1). Furthermore, the quarterly total trade figures between 2017 and 2020 (Figure 1) show that the EU share of Northern Ireland total trade varied between 58.6 % in the first quarter of 2017 and 65 % in the fourth quarter of 2020 (+11 % change); in the same period the EU share of total UK trade decreased, varying between 52.9 % and 51.5 % (-2.6 % change).

Table 1 – Shares in total trade (imports plus exports) with EU by UK nations, 2019 (%)

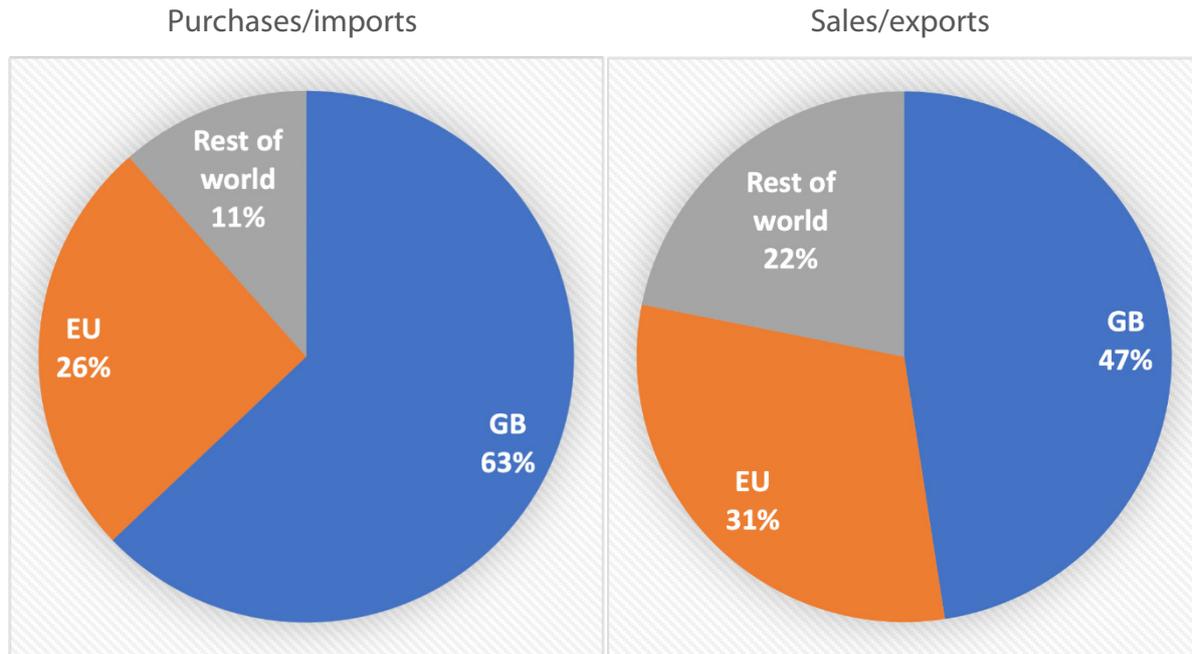
	Northern Ireland	England	Wales	Scotland	United Kingdom
EU	62.6	53.5	49.1	46.5	52.1
Non-EU	37.4	46.5	50.9	53.5	47.9

Data source: [UK Revenue and Customs: Trade Statistics](#); author's calculations.



Pre-pandemic statistics from 2018 (Figure 2) reveal that 63 % of Northern Ireland's total purchases and imports originated from Great Britain, and 26 % from the EU; the EU share of total sales and exports is higher, at 31 %. In post-transition [statistics](#) published by the Irish Central Statistics Office, North-South trade across the island has increased substantially since January 2021, which suggests that businesses on the island of Ireland source more products from across the island than from Great Britain.

Figure 2 – Northern Ireland purchases/imports and sales/exports, 2018



Source: Northern Ireland Statistics and Research Agency ([NISRA](#)); author's calculations.

## Positions

### European Parliament

The European Parliament is particularly concerned by the UK's lack of commitment to implementing the Protocol and has reiterated the need to build trust. The Parliament's [resolution](#) of 28 April 2021 on the outcome of the EU-UK negotiations, which accompanied its consent to the EU-UK TCA, includes a relatively long, detailed and assertive [Section 6](#) with respect to implementation of the Protocol. In the resolution, Parliament takes a firm position against the UK's 'unilateral actions' to extend grace periods, which it considers to be in breach of the WA and presenting a 'serious threat to the integrity of the single market'. Parliament calls 'strongly' on the UK government to act in good faith and fully implement the terms of the agreements it has signed, without delay, and on the basis of a credible and comprehensive timetable set jointly with the European Commission in accordance with the good faith obligation under the WA. In addition, Parliament encourages the Commission to pursue infringement proceeding against the UK 'with vigour', and notes that persistent non-compliance with the outcome of dispute settlement proceedings under the WA may also result in the suspension of obligations, and restrict the unprecedented levels of market access under the TCA. It considers the threat to suspend the TCA to be a potential WA enforcement instrument.

Parliament's serious concerns regarding implementation of the Protocol were reiterated at the [press conference](#) prior to the vote on the EU-UK Trade and Cooperation Agreement on 27 April 2021 by [David McAllister](#), (EPP) Chair of the Committee on Foreign Affairs (AFET), and [Bernd Lange](#) (S&D), Chair of the Committee on International Trade (INTA) – the two lead committees – and [Andreas Schieder](#) (EPP) and [Christophe Hansen](#) (S&D), the rapporteurs. They declared that the WA must be respected and faithfully implemented, the unilateral violations by the UK are unacceptable, customs duties must be set and there is the need for a clear timetable.

In his speech on the same day, [Manfred Weber](#), Chair of the European People's Party (EPP) Group, sent a 'message' to Boris Johnson: 'the challenges you face are immense and you have a responsibility to respect your commitments. Don't play with fire!' He added that, 'when we see the Northern Ireland Protocol implementation and how Boris Johnson behaves, the message is: I don't care, I don't care even about my signature'. In a statement published on the same day by

Parliament's Socialists and Democrats ([S&D](#)) Group, Iratxe García Pérez (S&D Group chair), Andreas Schieder (co-rapporteur on the EU-UK TCA) and Pedro Silva Pereira (S&D representative on the [UK Coordination Group](#)), warned that they would not 'let their guard down' as the EU-UK TCA was to be ratified. They also stated that they would remain 'extremely vigilant' and use 'all tools possible' to ensure that the TCA was properly implemented and respected, not least given the UK government's 'recent breaches of the WA', and they expected 'nothing less than full compliance' from the UK 'with the commitments under international law, including the Northern Ireland Protocol'.

## Reactions of UK Parliament and government

In a [debate](#) in the House of Commons on the Northern Ireland Protocol on 10 March 2021, UK MPs [reacted](#) against the UK government's 'unilateral decisions'. For instance, Labour MP Louise Haigh, shadow secretary of state for Northern Ireland, stated that Michael Gove, co-chair of the WA Joint Committee at the time, had stated that the UK was committed to finding joint solutions 'to make the Protocol work' only seven days before the UK's unilateral decision. According to Louise Haigh, this sent the message that the government could not be trusted, and also raised questions about its strategy. Simon Hoare, the Conservative chair of the Northern Ireland Select Committee found that the UK decision could have a 'very destabilising effect on trust' in relations with the EU and Ireland, asking the government to end the narrative of unilateral action and to make sure that the Protocol worked.

Secretary of State for Northern Ireland Brandon Lewis replied that the Protocol had been agreed as a unique solution to complex and unique challenges, adding that the UK wanted to work these things through in agreement with the EU and that the latter had not come to an agreement on these matters. Mr Lewis added that he hoped these decisions would be seen as 'pragmatic, operational and temporary' over time, and insisted that the UK government wanted to continue to work with the EU and was strongly committed to the GFBA, which was 'not just north-south but east-west as well'.

## Northern Ireland

Following the [resignation](#) of the Sinn Féin Deputy First Minister in January 2017, DUP First Minister Arlene Foster also had to resign under the rules, and no new Northern Ireland executive could be formed. The special elections to the [Northern Ireland Assembly](#) held on 2 March 2017 delivered a close result between the biggest unionist and nationalist parties – the [largest parties](#) were the Democratic Unionist Party (unionist) and Sinn Féin (nationalist), holding respectively 28 and 27 out of 90 seats. No Executive could be [formed](#) until the [New Decade, New Approach](#) deal was reached in January 2020, and Arlene Foster returned to office as First Minister. On 28 April 2020, she [announced](#) her resignation as head of the DUP and as Northern Ireland's First Minister. Her decision followed an (unpublished) [letter](#) of no confidence in her leadership, partially with respect to the Protocol, said to have been signed by a majority of DUP Northern Ireland Assembly Members.<sup>6</sup>

Following the DUP's choosing Edwin Poots as new leader, [Paul Givan](#) took office as First Minister on 17 June, but following renewed tensions in the DUP – only partly related to the Protocol<sup>7</sup> – which led to Poots' rapid resignation as leader, Givan is likely to step down as First Minister. On 30 June 2021, the DUP [chose](#) Sir Jeffrey Donaldson, currently a Member of the House of Commons rather than of the Northern Ireland Assembly, as the new party leader. Sir Jeffrey has [stated](#) that his goal is to 'remove the Irish Sea border'. The next elections to the Assembly are due in May 2022.

As to public opinion in Northern Ireland on the Protocol, according to a [poll](#) conducted in April 2021, Northern Ireland voters seem not to perceive the connection between border controls on goods crossing the Irish Sea as provided by the Protocol, on the one hand, and Northern Irish access to the EU's single market, on the other hand. Indeed, 48 % of respondents would reject the Protocol (46 % would retain it), while 56 % want the Assembly to vote in favour of staying in the EU single market in three years' time (38 % want them to vote to leave).

## United States

The United States (US), which played a major role in the peace process, is committed to defending the GFBA. In a visit to London on 3 May 2021, US Secretary of State Antony Blinken [reiterated](#) that the UK should prioritise stability in Northern Ireland, amid tensions there over the impact of Brexit. On 17 May 2021, the US Senate passed a bipartisan [resolution](#) expressing support for the full implementation of the GFBA and subsequent agreements and arrangements for implementation to support peace on the island of Ireland. The resolution expressed explicit support for the Northern Ireland Protocol and its full implementation, to ensure that no border controls are reintroduced on the island. Moreover, on 13 May 2021, 25 members of Congress published a [letter](#) to President Biden, initiated by Massachusetts Representative Bill Keating, urging him to appoint a US Special Envoy in Northern Ireland. The Irish Foreign Minister, Simon Coveney, [supports](#) this initiative.

## Some expert opinions

In a [report](#) published in May 2020, shortly after the WA entered into force, the Institute for Government, a leading UK think-tank, foresaw the political issues raised by the Protocol. The authors maintained that the UK must continue to show progress on implementing the Protocol since it would be responsible for applying EU law, and any additional flexibilities agreed would only be available if the EU trusted the UK to manage the border. The authors added that the UK needed to scale up existing systems for customs administration, including the expansion of border control capacities. Nevertheless, they assessed that the work was partly the responsibility of the Northern Ireland authorities and referred to the DUP agriculture minister who said he would [oppose](#) new border control infrastructure, although the UK remains legally responsible under international law. Observing that the UK had just started to provide clarity on how they would work, and that hardly any preparation had taken place, the authors predicted that it was unlikely that border arrangements would be operational by the end of 2020. Finally, the authors saw the Northern Ireland Assembly consent vote on the protocol as being a potentially destabilising issue in Northern Ireland politics.

In a [note](#) published in March 2021, [Anton Spisak](#) (lead analyst at the [Institute for Global Change](#)) [examined](#) the issues at the core of these tensions and considered that despite all its flaws the Protocol was a 'unique solution to a unique problem'. To the author, the Protocol was unusual for the EU since it shifted the external border inside the territory of a third country. Moreover, he argued that unless the parties addressed the structural problems of the new arrangements, the Protocol would likely remain a significant source of political tension in Northern Ireland and the UK, especially as the UK diverged from EU standards over time. To the author, mistrust was the biggest barrier to making the Protocol work, and there was a risk that the dispute over unilateral UK measures might spread beyond Northern Ireland.

## Next steps and the Protocol's legal framework

At the [annual conference of the EU/UK Forum](#) on 6 July 2021, Commission Vice-President Maroš Šefčovič [warned](#) that the EU would 'step up' legal action against the UK if the latter did not take steps to implement the Protocol. The WA provides for an infringement procedure as follows. Under [Article 169 WA](#), either party may provide written notice to the Joint Committee in order to commence consultations and communication within the Joint Committee. According to [Article 170 WA](#), if no mutually agreed solution has been reached within three months after a written notice has been submitted to the Joint Committee, either party may request the establishment of an arbitration panel. The infringement proceeding is established under [Article 12\(4\) NIP](#), which provides the EU institutions with powers in relation to [Article 12\(2\) NIP](#), as well as Articles 5, and 7 to 10, which permit the continuous application of EU law. It specifies that the CJEU has jurisdiction in this regard, adding that the second and third paragraphs of [Article 267](#) of the Treaty on the

Functioning of the European Union (TFEU), which gives powers to the CJEU for preliminary rulings, apply to the UK.

Protocol [Article 12\(2\)](#) provides that EU representatives have the right to be present during any activities of the authorities of the UK relating to the application and implementation of EU law made applicable by the Protocol, as well as activities relating to Article 5 (customs, movement of goods). Not only should the UK provide all information relating to these activities upon request, but it should also facilitate the presence of EU representatives. Finally, where the EU asks the UK to carry out control measures (in individual cases for duly stated reasons), the UK authorities shall carry out these activities.

## MAIN REFERENCES

Círlig C.-C., [Agreement on the United Kingdom's withdrawal from the EU](#), EPRS, European Parliament, January 2020.

Hallak I., [UK Internal Market Bill and the Withdrawal Agreement](#), EPRS, European Parliament, November 2020.

Russell M., [Northern Ireland after Brexit](#), EPRS, European Parliament, May 2020.

Torrance D., [Devolution in Northern Ireland, 1998-2020](#), House of Commons Library, February 2020.

## ENDNOTES

- <sup>1</sup> It should be noted that the Withdrawal Agreement (WA) is distinct from the [EU-UK Trade and Cooperation Agreement](#) (TCA). The TCA governs the new EU-UK relationship; it was signed on 30 December 2020 and came fully into force on 1 May 2021, after the [consent decision](#) was adopted by the European Parliament on 27 April 2021. The WA governs the withdrawal of the UK from the EU and came into force on 1 February 2020.
- <sup>2</sup> The prohibition of customs duties (Article 30 of the Treaty on the Functioning of the European Union) and of quantitative quotas ([Protocol, Article 5\(5\)](#)) in particular.
- <sup>3</sup> [Special arrangements](#) were put in place until 30 June 2021.
- <sup>4</sup> Any economic operator established in the customs territory of the EU needs, for customs purposes, an EORI number. Economic operators not established in the customs territory of the EU also need an EORI, for instance to lodge a customs declaration in the customs territory of the EU or submit an entry/exit summary declaration.
- <sup>5</sup> The works were halted by a Northern Ireland minister, but the UK government has called for the work to resume [without delay](#).
- <sup>6</sup> Arlene Foster later [questioned](#) the existence of the letter.
- <sup>7</sup> As reported in [The Guardian](#), tensions in the DUP also relate to Irish language legislation, provided for under the [New Decade, New Approach](#) deal.

## DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2021.

Photo credits: © niroworld / Adobe Stock.

[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu) (contact)

[www.eprs.ep.parl.union.eu](http://www.eprs.ep.parl.union.eu) (intranet)

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

