



Protocol on Ireland and Northern Ireland

Brussels, 14 November 2018

Questions & Answers

What has been agreed on Ireland and Northern Ireland?

The EU and UK negotiators have agreed in full on the terms of the Protocol on Ireland and Northern Ireland.

The Protocol includes all the provisions on how the so-called "backstop" solution for avoiding a hard border between Ireland and Northern Ireland would work. This forms part of the overall Withdrawal Agreement and will apply unless and until it is superseded, in whole or in part, by any subsequent agreement. Both the EU and the UK will use their best endeavours to conclude and ratify a subsequent agreement by 1 July 2020.

As part of the Protocol, a single EU-UK customs territory is established from the end of the transition period until the future relationship becomes applicable. Northern Ireland will therefore remain part of the same customs territory as the rest of the UK with no tariffs, quotas, or checks on rules of origin between Northern Ireland and the rest of the UK^[1].

The Protocol also sets out the UK's commitment to no diminution of rights as set out in the Good Friday (Belfast) Agreement 1998, and provides for the continuation of the Common Travel Area arrangements between Ireland and the United Kingdom. It ensures that the necessary conditions for continued North-South cooperation are maintained, and preserves the Single Electricity Market on the island of Ireland.

This agreement addresses in full the unique circumstances on the island of Ireland. It is the insurance policy that guarantees that, whatever the circumstances, there will be no hard border between Ireland and Northern Ireland and it will protect the Good Friday (Belfast) Agreement 1998 in all its dimensions, North-South cooperation, and the all-island economy.

How will the backstop work?

If an agreement on the future EU-UK relationship is not applicable by 31 December 2020, the EU and the UK have agreed that a backstop solution will apply until such a time as a subsequent agreement is in place.

Alternatively, the UK may, before 1 July 2020, request an extension of the transition period. Such a request would be dealt with under article 132 of the Withdrawal Agreement and must therefore be agreed by the Joint Committee.

In the scenario where the "backstop solution" would apply, this would mean the following in practice:

- There will be a **single EU-UK customs territory**. This will avoid the need for tariffs, quotas or checks on rules of origin between the EU and the UK.
- The EU and the UK have agreed on a set of measures to ensure that there is a level playing field between the EU and the UK.
- The Union's **Customs Code** (UCC), which sets out, inter alia, the provisions for releasing products into free circulation within the EU, will continue to apply to Northern Ireland. This will ensure that Northern Irish businesses will not face restrictions when placing products on the EU's Single Market.
- The UK in respect of Northern Ireland will **remain aligned** to a limited set of rules that are related to the EU's Single Market and indispensable for avoiding a hard border: legislation on goods, sanitary rules for veterinary controls ("SPS rules"), rules on agricultural production/marketing, VAT and excise in respect of goods, and state aid rules.

Why do you need a backstop?

The United Kingdom has decided to leave the Single Market and the Customs Union. Both the EU and

the UK have committed to avoiding a hard border between Ireland and Northern Ireland and both Parties intend to solve this first and foremost through a future agreement.

The UK has also committed to respecting the integrity of the EU's Single Market and Customs Union – and Ireland's place in it.

Given that negotiations on the future EU-UK relationship will only be conducted during the transition period, the EU and the UK have agreed to include a legally operational backstop in the Withdrawal Agreement, which guarantees that no hard border returns – whatever the circumstances. This was agreed in the Joint Report in December 2017 and reiterated by Prime Minister Theresa May in her letter to President Tusk in March 2018, through which the UK government committed to have a legally operative backstop in the Withdrawal Agreement.

How long will the backstop apply for?

The aim of the Protocol is not to create a permanent relationship between the EU and the UK. The EU and the UK have committed that they will use their best endeavours to conclude and ratify an agreement by 1 July 2020 which would replace the backstop as contained in the Protocol, in whole or in part.

Is there any review mechanism foreseen? Can the EU or the UK ask to stop applying the backstop in whole or in part?

If at any time after the transition period, the EU or the UK considers that this Protocol, in whole or in part, is no longer necessary, it may notify the other party, setting out its reasons. The Joint Committee [as established in Article 164 of the Withdrawal Agreement] will consider the notification and may seek an opinion from institutions created by the Good Friday (Belfast) Agreement 1998. Following discussions in the Joint Committee, the EU and the UK may decide jointly that the Protocol, in whole or in part, is no longer necessary to achieve its objectives.

What is the “Single Customs Territory”?

The EU and the UK have today agreed that a single EU-UK customs territory will apply from the end of the transition period until such a time as a subsequent agreement becomes applicable. This single customs territory will comprise of the customs territory of the Union (as defined in Article 4 of Regulation (EU) No 952/2013) and the customs territory of the United Kingdom.

This means that:

- the UK will align the tariffs and rules applicable to its customs territory to the Union's external tariffs and rules of origin;
- there will therefore be no tariffs, quotas and checks on rules of origin between the EU and the UK, with the exception of fishery and aquaculture products;
- both the EU and the UK have agreed on a series of measures ensuring a level playing field;
- the UK will harmonise its commercial policy with the EU's common commercial policy to the extent necessary for the functioning of the single customs territory. Under no circumstances can the UK apply a lower customs tariff to its customs territory than the EU Common Customs Tariff for any good imported from any third country or apply different rules of origin.
- The Union shall apply its trade defence policy and Generalised System of Preferences to both parts of the single customs territory; it shall consult the UK on any measures or actions which it considers taking.

What “level playing field” measures have been agreed?

The UK has committed to a level playing field based on open and fair competition between the EU and the UK given the establishment of the single customs territory with no tariffs, quotas and checks on rules of origin between the EU and the UK. The economic interconnectedness of the UK and the EU as well as the UK's geographic proximity to the EU are key elements to take into account when regulating the proper functioning of open and fair competition in the single customs territory.

The Protocol binds the UK to substantive rules, based on international and EU standards. Apart from competition rules, it is based on the principle of non-regression from the current levels of protection under international and EU standards.

State aid

The United Kingdom has committed to apply EU state aid rules, in a way that is dynamically aligned to the development of those rules in the EU.

For aid granted by the UK that affects trade between Northern Ireland and the EU, the Commission will continue to enforce State aid rules directly as part of the backstop solution. The Court of Justice of the EU also remains competent in this respect.

For State aid granted by the UK affecting trade flows only between the rest of the UK and the EU, the UK will set up an independent enforcement authority, which will work in close cooperation with the Commission. UK courts will supervise the independent enforcement authority. The Commission will have legal standing before UK courts and the right to intervene in cases.

The Withdrawal Agreement ensures close cooperation between the Union and the UK. The UK state aid authority will regularly consult with the Commission. A Joint Committee will allow both Parties to discuss matters of interest and seek commonly acceptable solutions to disagreements. In case no mutually agreed solution can be found, interim measures and an arbitration system are foreseen in case of unresolved conflicts.

Competition

The EU and the UK acknowledge that anti-competitive business practices and concentrations of undertakings have the potential to distort the functioning of markets and undermine the benefits of trade.

In this light, the EU and the UK agree that certain agreements between undertakings, the abuse of dominance by undertakings, and certain concentrations of undertakings must be prohibited in so far as they affect trade between the EU and the UK.

The EU and the UK commit to ensuring that their respective competition laws effectively enforce these agreed rules. More concretely, the UK commits to ensure that administrative and judicial proceedings are available in order to permit the effective and timely action against violations of competition rules, and provide for effective remedies. In case of disputes about whether the UK complies with these commitments, dispute settlement through arbitration is available.

Taxation

The UK has committed to implementing the principles of good governance in the area of tax, as recently agreed by the Council. These include global standards on transparency and exchange of information, fair taxation and OECD-BEPS standards. It will continue to apply its domestic law which transposes the EU Directives on the exchange of information on taxation, anti-tax avoidance rules and Country-by-Country-Reporting by credit institutions and investment firms. Moreover, the UK reaffirms its commitment to curb harmful tax measures as defined in the EU Code of Conduct.

The implementation of this commitment will be addressed by the Joint-Committee.

Environment

The EU and the UK have committed to maintain the current level of environmental protection. Both Parties have committed not to lower the EU's existing environmental standards in key areas such as industrial emissions, air quality targets, nature and biodiversity protection and environmental impact assessments. The UK will abide by key environmental principles, such as the "polluter pays" and the precautionary principle. Furthermore, the Joint Committee will - based on existing EU standards - lay down specific minimum commitments on issues such as pollution, sulphur in marine fuel and use of best available techniques governing industrial emissions.

The EU and the UK have also agreed to take the necessary measures to meet their respective commitments to international agreements to address climate change, including the Paris Agreement. Finally, the UK will implement a system of carbon pricing that is at least as effective as the EU Emission Trading Scheme for greenhouse emission allowances.

The UK has committed to ensuring the effective enforcement of such common standards in its law, regulations and practices and to set up a new independent body with the task of monitoring, reporting, overseeing and enforcing these commitments. The new independent authority will be able to receive complaints and conduct own-initiative inquiries and bring legal action before a domestic court for remedial action. In this context, the UK has committed to effective administrative and judicial

proceedings which will give the right to authorities and members of the public to seek effective remedies and obtain sanctions that are effective, proportionate, dissuasive and deterrent.

Labour and social protection

A non-regression provision also applies to labour and social protection standards. The EU and the UK have committed not to reduce their common level of protection provided by their laws, regulations and practices as a result of the implementation of Union law and ratified international conventions, such as the International Labour Organisation conventions and the Council of Europe's Social Charter.

This includes provisions in relation to fundamental rights at work, such as non-discrimination and equal pay, occupational health and safety, fair working conditions and employment standards, and social rights related to restructuring of companies.

The UK will ensure effective enforcement through existing domestic authorities and an effective system of labour inspections. The UK has also committed to effective administrative and judicial proceedings.

How will these "level playing field" measures be enforced?

The enforcement of State aid and competition rules is outlined above.

The maintenance of the same level of social and environmental protection will be subject to dispute resolution in the Joint Committee. Disputes on the effectiveness of the UK's monitoring and enforcement of the common standards can, in addition, be brought to arbitration.

In taxation, an infringement by the UK of applying the domestic legal rules which transpose EU tax directives covered by the Agreement will be subject to judicial dispute settlement with the possibility of sanctions.

The Union will be able to adopt unilateral measures either under the Agreement or on the basis of Union law, and in line with international commitments. These measures may include the possibility to temporarily suspend obligations in the case of non-compliance with an arbitration ruling, safeguards or rebalancing measures (in the case of serious economic difficulties that are liable to persist), the listing of uncooperative jurisdiction for tax purposes, or action for health and environmental protection in line with international commitments (GATT).

How can you include a UK-wide customs union in the Withdrawal Agreement? Is it not part of the future relationship?

The Withdrawal Agreement under Article 50 can wind down or phase out existing situations or it can provide a bridge to the future relationship.

This means that the Withdrawal Agreement may include elements that form the basis on which arrangements in the future relationship are built. The Protocol is therefore only intended to apply temporarily, unless and until a subsequent EU-UK agreement is put in place.

Will Northern Ireland be in a different customs territory to the rest of the United Kingdom?

No. Northern Ireland will form part of the same customs territory as the rest of the UK, which forms a single customs territory with the EU.

However, under the backstop and in order to avoid a hard border, Northern Ireland businesses can place products on the EU's internal market without restriction. Placing goods on the internal market that come from outside of Northern Ireland requires that the processes provided for in the Union Customs Code will have to be applied.

Will fisheries be included in the "Single Customs Territory"?

Arrangements on fisheries will be negotiated as part of the overall future partnership. The EU and the UK will use their best endeavours to agree on a fisheries and aquaculture agreement by 1 July 2020. An essential condition for this single customs territory to cover fisheries and aquaculture products will be to agree between the Union and the UK on access to waters and fishing opportunities. We have shared objectives to ensure fishing at sustainable levels and promote resource conservation'

Will Northern Ireland remain aligned to the rules and regulations of the EU? Will Northern Ireland have to apply the EU's Customs Code?

In order to avoid a hard border on the island of Ireland, and to ensure that Northern Irish businesses can place products on the EU's Single Market without restriction, it will be necessary for the UK in respect of Northern Ireland to maintain specific regulatory alignment with the EU, as has been agreed between the EU and the UK in the December 2017 Joint Report.

This means that Northern Ireland will remain aligned to a limited set of EU rules that are indispensable for avoiding a hard border, namely:

- legislation on VAT and excise in respect of goods
- legislation on goods standards
- sanitary rules for veterinary controls ("SPS rules")
- rules on agricultural production/marketing
- state aid rules.

As explained above, the EU's Customs Code will also continue to apply in Northern Ireland within the overall context of the single customs territory between the EU and the UK.

Will Northern Ireland remain part of the UK's VAT area?

Yes, Northern Ireland will remain part of the UK's VAT area, with HMRC remaining responsible for the operation and collection of VAT, and the setting of VAT rates across the UK, in line with the VAT directive. Specifically, the UK will ensure that no business is required to pay VAT upfront when moving goods between Great Britain and Northern Ireland, and that accounting for VAT can continue to be done through postponed accounting and VAT returns.

However, to ensure that Northern Ireland continues to be able to operate the EU's VIES system (VAT Information Exchange System) and to share data with Ireland, Northern Ireland will be required to remain aligned to EU VAT rules, but only with respect to goods.

Will there need to be checks between Northern Ireland and Ireland?

There will be no need for checks or controls on goods or persons crossing the border between Northern Ireland and Ireland. There will be no hard border on the island of Ireland. The Common Travel Area can also continue to function. The UK has committed that this will not affect the obligations of Ireland under Union law, in particular with respect to free movement of EU citizens and their family members to, from and within Ireland.

What checks will need to take place on goods entering Northern Ireland from the rest of the UK?

In order to ensure that Northern Irish businesses can place products on the EU's Single Market without restriction – and given the island of Ireland's status as a single epidemiological area – there would be a need for checks on goods travelling from the rest of the UK to Northern Ireland. There would be a need for some compliance checks with EU standards, consistent with risk, to protect consumers, economic traders and businesses in the Single Market.

The EU and the UK have agreed to carry out these checks in the least intrusive way possible. The scale and frequency of the checks could be further reduced through future agreements between the EU and the UK.

- For industrial goods, checks are based on risk assessment, and can mostly take place in the market or at traders' premises by the relevant authorities. Such checks will always be carried out by UK authorities.
- As for agricultural products, already existing checks at ports and airports will need to continue, but will be increased in scale in order to protect the EU's Single Market, its consumers and animal health.

Will Northern Irish businesses still have unfettered access to the rest of the UK?

Nothing in this Protocol prevents unfettered market access for Northern Ireland products in the rest of the UK. Nothing in this text prevents a product originating from Northern Ireland as being considered as a UK good when placed on the market in the rest of the UK.

Who will be responsible for implementing and applying the backstop in Northern Ireland?

The authorities of the United Kingdom will be responsible for implementing and applying the backstop in Northern Ireland. The EU will have the right to obtain information and request control measures. The UK will facilitate any requests made by EU representatives. The practical arrangements for this will be determined by the Joint Committee, following a proposal from the Specialised Committee.

How will certification and product approval work in Northern Ireland?

Where existing EU law provides for the possibility for an authority/body in another Member State to issue product approvals/certificates, this option should be used by Northern Irish businesses if they want to export to the EU27 Member States.

On the other hand, Northern Irish businesses can rely on authorisation via UK authorities (for example, in specific areas that require on-site inspections under EU law (veterinary certificates, production sites of pharmaceuticals, slaughterhouses). UK authorities would apply Union law in respect of Northern Ireland, and could decide to make such certificates valid UK-wide.

Products from Northern Ireland can continue to be labelled or marketed as UK products throughout the rest of the United Kingdom. Where EU law on goods is concerned, Northern Irish products shall be indicated as "UK(NI)". A relevant example would be regarding ear tags for live animals.

What guarantees does the backstop provide to protect the integrity of the EU's Single Market and Customs Union?

The UK in respect of Northern Ireland will apply the Union customs code and remain aligned to EU rules and standards on goods. Authorisations by UK authorities for products to be placed on the market, as well as technical regulations, assessments, registrations, certificates and approvals issued by UK authorities or bodies in the UK will be valid for Northern Ireland only. If a Northern Irish business wants to place a product on both the Northern Irish market and the EU Single Market, an authorisation from an EU27 Member State authority or body will be necessary.

Will the jurisdiction of the European Court of Justice extend to Northern Ireland?

The Withdrawal Agreement will have direct effect. This means that UK courts will, in practice, apply this agreement, in the same way as they apply EU law today. The European Court of Justice is the ultimate arbiter of EU law. For issues related to EU law concepts outlined in the Withdrawal Agreement, including aspects of the Protocol, the ECJ will remain the ultimate arbiter. For all other areas of the Protocol, the enforcement and dispute resolution arrangements provided in the Withdrawal Agreement will apply'.

What else does the Protocol contain beyond the "backstop"?

The Protocol on Ireland and Northern Ireland also contains provisions that address a number of other unique circumstances on the island of Ireland, beyond issues related to customs and regulatory matters, most notably:

- The **Common Travel Area between Ireland and the United Kingdom** and its associated rights and privileges will continue to apply in conformity with EU law, in particular on free movement of EU citizens.
- The UK will ensure that there will be **no diminution of rights, safeguards and equality of opportunity** as set out in the Good Friday (Belfast) Agreement 1998, including with regard to EU law on non-discrimination. This commitment will be implemented and monitored through dedicated mechanisms.
- The **Single Electricity Market** will be maintained on the island of Ireland.
- **North-South cooperation will continue**, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. The report will be published shortly.

How will the commitment to no diminution of "Rights, Safeguards and Equality of Opportunity" as outlined in the Good Friday (Belfast) Agreement 1998 work?

The UK will remain bound by the obligations it entered into as a co-guarantor to the Good Friday (Belfast) Agreement 1998.

The UK has confirmed its commitment to ensure no diminution of the rights, safeguards and equality of opportunity set out in the Good Friday (Belfast) Agreement. This includes a commitment to no diminution in rights in the area of non-discrimination at the time of or following its withdrawal from the European Union and Annex 1 lists the existing EU Directives that have been adopted by the European Union in this area. The commitment to no diminution applies further to all rights, safeguards and equality of opportunity concepts set out in the Good Friday/Belfast Agreement.

Article 1(1) of the Protocol provides that the UK will implement this paragraph through dedicated mechanisms. Article 1(2) provides that the United Kingdom will continue to facilitate the work of the institutions and bodies established under the Good Friday/Belfast Agreement.

The United Kingdom will set out further information on its commitments in this respect.

Will Irish citizens in Northern Ireland continue to enjoy their rights as EU citizens?

Northern Ireland will no longer be part of the EU, but a great number of people born and raised there will continue to be EU citizens. They will continue to enjoy their rights as Union citizens under the Treaties. Under the Treaty (on the functioning of the European Union) they will in particular continue to enjoy the following rights:

- non-discrimination on the basis of nationality
- move and reside freely within the EU
- consular protection (help from the embassy or consulate of any other EU country to EU citizens in distress in a country outside the EU where they have no embassy or consulate of their own country)
- petition the European Parliament and complain to the European ombudsman
- contact and receive a response from any EU institution in one of the EU's official languages
- access European Parliament, European Commission and Council documents under certain conditions
- access to the EU Civil Service

What will happen to the PEACE and INTERREG programmes?

The EU and the UK are committed to the PEACE and INTERREG funding programmes under the current multi-annual financial framework and to maintaining the current funding proportions for the future programme. The Commission has already proposed the continuation of PEACE and INTERREG for Northern Ireland and the border regions of Ireland beyond 2020 under a single programme PEACE PLUS. It will now be for Member States, with the consent of the European Parliament, to decide on this.

What is North South Cooperation and how will it be protected in the context of the UK's withdrawal?

Cooperation between Ireland and Northern Ireland is a central part of the Good Friday (Belfast) Agreement and is essential for achieving reconciliation on the island of Ireland.

In implementing the Protocol, the conditions necessary for continued North-South Cooperation will be maintained in a range of areas including the environment, health, agriculture, transport, education, tourism, energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. The protocol recognises that, in full respect of Union law, new arrangements building on the provisions of the Good Friday/Belfast Agreement in these and in other areas of North-South cooperation, can continue to be made on the island of Ireland.

Both parties have recognised that the UK's departure from the EU gives rise to substantial challenges to the maintenance and development of North South Cooperation. In this context, the avoidance of a hard border on the island of Ireland, as provided for in other Articles of this Protocol, is an essential precondition to protecting North South Cooperation.

[1] Fisheries and aquaculture products are not within the scope of the single customs territory, see below.

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