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“EU-UK: Navigating a new relationship”

EU-UK Roundtable with UK and Head of the UK Mission to the EU, Lindsay Croisdale-Appleby

Center for European Policy Studies

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Your Excellency, Ambassador Lindsay Croisdale Appleby,

Dear Karel,

Honorable Colleagues,

Since the beginning of the year, with the effective withdrawal of the UK from the EU, we have been navigating a new relationship, trying to rebuild the trust while monitoring the implementation of two agreements: the Trade and Cooperation Agreement and the Withdrawal Agreement, including, in particular, the Protocol on Ireland/North Ireland.

Paradoxically, while the Agreements had been negotiated to the word and comma, the focus of the year had still to be mostly on unanticipated issues.

The main concern lies with the Protocol: its implementation definitely has dominated the conversation, requiring on the EU side efforts to get from the partner what was agreed in the Withdrawal Agreement. While the first grace period related to implementation of the Protocol was decided jointly in December 2020 in the framework of the Joint Committee, the British side unilaterally imposed others.

The UK government has insisted – from the entry of the Protocol into force, and confirmed it in its July Command Paper and its legal version – that intended solutions were not suited to a smooth application on the ground and that the Protocol did not work.

The reality is that the Protocol has not been given a chance to work because parts of it were not even applied. For example, the important commitment of giving the EU access to the UK's IT system to monitor controls has not been met until now.

Some analysts who followed closely the entire process of negotiations of the last version of the Protocol, in line with the British concept of the border on the Irish Sea, came early on with the suspicion of lack of political will to ever implement the Protocol. Breaches of the Protocol led to the launch of the infringement procedure in Spring 2021, which was later on suspended on the ground of the hope that further conversation can help find solutions.

The Withdrawal Agreement and the Protocol are based on EU law. In this context, there is no justification for questioning the ECJ role and ignoring the fact that Protocol must respect the regulations on free movement of goods. This is a consequence of the fact that to avoid the full version of physical border, Northern Ireland is also part of the EU Single Market and Customs Union. This implies the relevance of the ECJ engagement.

In this context, the approach offered by the EU to facilitate the enforcement of the Protocol has been based on the full exploitation of flexibilities allowed by the Agreement, without agreeing to renegotiate the Protocol. This is based on a unified position of both Member States and European Institutions.

It is worth underlining that during this difficult period the EU was maintaining intense and numerous contacts with stakeholders in Northern Ireland, including with Northern Irish institutions. This effort continues and is very important for the EU.

In mid-October, the Commission proposed a set of practical solutions to concerns in the form of four non papers. They address the uninterrupted flow of medicines to Northern Ireland, a bespoke solution for Northern Ireland regarding the sanitary and phytosanitary measures (SPS), new flexible customs formalities to cut the administrative burden for Northern Irish businesses, and better engagement with Northern Irish stakeholders and authorities.

These measures come in addition to the package presented in June 2021, which facilitates the movement of live animals from Great Britain to Northern Ireland.

On medicines, it also is worth mentioning that the Commission is proposing that pharmaceutical companies in Great Britain keep all their regulatory functions where they are currently located, when supplying the Northern Irish market with medicines that have been authorized by the UK regulatory authority in accordance with the Protocol. This transition expires at the end of this year and the proposed solution would require the EU to change its law.

An uninterrupted long-term supply of medicines from Great Britain to Northern Ireland is of highest importance for us, in the European Parliament. I was truly pleased to see the Commission make this proposal to address the issue and see the renewed intensification of talks with the UK Government.

On customs, the Commission proposes to simplify food, plant and animal health certification, which would reduce physical checks for a significant range of retail goods moving from Great Britain to Northern Ireland. Apparently, this would equate to a reduction of approximately 80% of the checks required today, scaling down the administrative burden felt especially by Northern Irish retailers and help keep affordability of products.

I was pleased to hear that the UK and EU were conducting intense talks last week and this week on this topic. Customs formalities are indispensable to ensure the integrity of the EU Single Market. Whatever can be simplified should be simplified so that formalities do not work at the detriment of Northern Irish businesses.

There are also data available demonstrating that trade between Northern Ireland and the Republic of Ireland has increased significantly since the initial hiccup in January 2021. Imports from Northern Ireland increased by 60% and exports to Northern Ireland increased by 45%.

Having said that, we spare no effort to use available flexibilities to give, in this Brexit-triggered reality, stability and predictability to Northern Ireland while fully protecting the European Single Market and Customs Union. The European Parliament will continue to scrutinize the implementation of the Protocol.

What seems important is that bilateral talks continue. At the technical level, they have always been relatively constructive. Every Friday they are wrapped up politically and this is where we do not see any movement forward. One could say that these political summaries are oriented toward a domestic audience and partisan interests. However, they have a chance to become more constructive as there are no looming UK elections in the short term.

The threat of the UK triggering Article 16 has been alive throughout the year. Politically, it was very unlikely to become a reality before the end of COP26. But, it is now imaginable. This week, as we speak, seems to be important as already last week's change of tone, though not yet of content, has been noticed on the British side. My hope is that this Friday's political wrap up will open a new window of opportunity.

In the meantime, however, there are many speculations about what can be the Union's reaction regarding the Protocol, if the UK triggers Article 16.

There seem to be several options. One of them could be a resumption of the suspended infringement procedure. As I said, when it comes to the Protocol, EU law applies. But legal steps can also be taken through the use of arbitration panel within the Withdrawal Agreement framework. Both are lengthy procedures. Then, of course Article 16 gives both sides the right to use safeguards, that can cover small, less important matters or the essence of the Protocol, which would be in the case of

Articles 5, 7 or 10. The other party can then use rebalancing measures that must be proportional.

There is also a link with the Trade and Cooperation Agreement, which can be even entirely terminated with 12 months' notice period.

To sum it up, I firmly believe that activating Article 16 should be avoided. There are no serious analytical studies pointing to the rationale of the activation.

Talks should continue. There seems to be some international pressure against the Article 16 being used as a weapon. So let us continue having a conversation on the basis of the EU's four non papers.

Of course, simple continuation of the current path is also imaginable. The Protocol might continue not being respected and applied. Options that I just mentioned can be used in response to this situation. Though this will not be a win-win situation.

The EU expects the UK to understand that the EU must spare no effort to protect its Single Market for our 450 million European citizens and that our Treaties are very clear about that. And, it is good to remember that the EU already offered generous flexibilities and change of law regarding medicines.

Of course, there are issues in addition to what is related to Protocol.

There is an open conflict regarding fisheries where we are, in my view, close to a final solution. Triggering Article 16 might not be politically needed anymore once we find an agreement.

There is the issue of citizens' rights where we see the UK denying boarding of EU citizens presenting an ID and UK status as beneficiaries of the Withdrawal Agreement. There is also still a huge backlog in the Home Office regarding the application for settled status.

There is the issue of UK participation in the Union programs, especially in Horizon or Copernicus. But, here in a conducive political atmosphere, it would be feasible to find a solution.

There is a big issue of financial services, which particularly strongly reflected in the area of clearing. There are movements toward solutions. But, certainly, having a bilateral platform for exchanges on the basis of the Memorandum of Understanding would facilitate dialogue.

Negotiations have started on the separate agreement on Gibraltar. There is a space for a common good solution as well.

What requires better understanding is that we need a border.

Annex 4 of the Withdrawal Agreement is a very long and detailed list of all EU legal acts applying to Northern Ireland as part of EU Single Market and Customs Union. If there are no SPS or customs control, then there is no border. Therefore goods from UK could enter the single market through the Republic of Ireland. This implies a risk to food safety and security and end of the single market. The EU will never put at risk the Republic of Ireland as the member state.

The only way out is to continue intensive rounds of negotiations. And use all the Fridays between now and Christmas for news on progress.

The UK is here to stay and the EU is here to stay.

There is nothing better than a truly cooperative approach to our bilateral bond, that has the history justifying its future importance. We also have jointly global responsibilities and we continue sharing values on which we should build.