



Windsor Framework, Brexit and Northern Ireland

written by former Ambassador Colin A. Munro

The framework for implementation of the Northern Ireland (NI) Protocol, an integral part of the Brexit Withdrawal Agreement (WA), was agreed by the UK and the EU, during the visit by the President of the European Commission to the UK on 27 February 2023. Described by the UK as an “arrangement”, it confirms the Court of Justice of the European Union (CJEU) as the ultimate authority regarding operation of the EU Single Market in Northern Ireland. Implementation is expected by both sides to be achieved this autumn, allowing the UK to (re)build relations with the EU. Many Brexiteers in the Conservative Party have acquiesced in this deal. Lord Frost, Boris Johnson’s chief negotiator considers it “a bitter pill to swallow.” Johnson, for his part, conceded on 2 March that the framework had “momentum.” But he still hankered after his protocol abolition bill which he would have deployed “no matter how much plaster board came off the ceiling in Brussels.” The UK has agreed to drop the bill.

The Windsor Framework (WF) provides for implementation with regard to:

- Agri food, plants, sanitary and Phyto sanitary regulations
- Public health and medicines
- Labelling, as not for EU, products destined for NI only
- Customs including data sharing
- VAT, Excise Duties, state aid, and quotas (e.g., Steel)
- Governance (CJEU and the Stormont brake, explained below)
- Stakeholder engagement.

It should pave the way for the UK to become an associate member of Horizon, crucial for the scientific community at UK universities. There may be early agreement on financial services and on freedom of movement for actors and musicians.

The Democratic Unionist Party (DUP) will not be rushed into expressing its view. The DUP cannot block the WF in Westminster, but it can prevent reconvening of the NI Assembly and resumption of devolved government. The DUP is now the second largest party in the Assembly. Thus, the First Minister in the power sharing Executive would be the leader of Sinn Fein, not the best backdrop from a unionist perspective ahead of local elections in May, and a possible visit by President Biden (who takes pride in his Irish origins) to mark the 25th anniversary of the Good Friday/Belfast agreement which closed down the “troubles” on 10 April 1998. The DUP opposed the agreement in 1998.

Sunak has spun the Stormont brake as allowing members of the Assembly to block imposition of future Single Market regulations to which they object fundamentally. But the rules are very restrictive. The brake could only be applied by Westminster and the EU could retaliate. Sunak argues that NI has “the best of both worlds”, inside both the EU and UK single markets. That was the UK’s position before Brexit with the added advantage that it had a full say in the development and operation of these markets. The Scottish National Party asks: why can Scotland, which, like NI voted against Brexit, not enjoy the benefits of both worlds?

How has Sunak succeeded where Cameron, May, Johnson and Truss failed?

Cameron failed because he gambled that he could use a referendum to heal a split in the Conservative Party over EU membership that had been festering since the UK’s ejection – Black Wednesday - from the Exchange Rate Mechanism, forerunner of the Euro in September 1992.

May failed because she could not secure a majority in parliament for the backstop which would have kept the whole of the UK in the EU customs Union, and NI in the Single Market, unless and until alternative arrangements could be found – Brexit in name only.

Johnson failed because he lied, double crossed the DUP, and claimed that his “oven ready” deal meant that there would be no border on the island of Ireland, and no border – “over my dead body” - in the Irish sea. On that basis he won an 80-seat majority at the general election in December 2019.

Truss failed, because she, like Johnson, took a zero-sum approach to the EU – good for the EU meant bad for the UK. But Truss failed because Trussonomics were sending the economy into free fall.

Sunak succeeded by gaining the trust of EU member states and the President of the Commission, Ursula von der Leyen. His approach to negotiation was standard operating procedure during my time in the Diplomatic Service. Identify common ground, and common interests and find mutually acceptable compromises, beneficial to both sides.

In these circumstances the Commission made concessions to Sunak that it would not make to Johnson, still less Truss. Von der Leyen backed her own judgement that member states would accept the Stormont brake; which they have done. Johnson does not possess good judgement.

The zero-sum approach to the EU, now abandoned by Sunak, is epitomised by the Home Secretary, Suella Braverman. Contrary to government policy, she has advocated UK withdrawal from the European Convention on Human Rights. Withdrawal would torpedo the Good Friday Agreement, the BREXIT Withdrawal Agreement, and place the UK outside the Council of Europe along with Russia, Belarus, and the Vatican (which does not accept equality of men and women). Braverman is a former ERASMUS and “Entente Cordiale” scholar with degrees in French and European law from the Sorbonne.

Conclusion

When the UK left the EU, EU law was “retained”. Parliament is now considering the Retained EU law bill (REUL to abolish over 3,000 items of law by the end of this year, covering areas such as food safety, rights at work, the environment, business, and trade, all in the name of getting Brexit done, accelerating divergence from the EU. Ministers would have wide abolition powers. The Scottish and Welsh governments are withholding legislative consent. If the bill became law, some of the likely benefits of the Windsor Framework would be lost, in particular much needed foreign direct investment in the UK economy. The UK economy benefits from alignment with its most important trading partner. There is no groundswell of opposition in the UK to EU law as it affects health, safety, the environment, and workers’ rights. The success of Sunak’s premiership may depend on how he handles this issue.

Written by

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