

PROTOCOLS

Protocol on Ireland/Northern Ireland

The Union and the United Kingdom,

HAVING REGARD to the historic ties and enduring nature of the bilateral relationship between Ireland and the United Kingdom;

RECALLING that the United Kingdom's withdrawal from the Union presents a significant and unique challenge to the island of Ireland, and reaffirming that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there;

RECOGNISING that it is necessary to address the unique circumstances on the island of Ireland through a unique solution in order to ensure the orderly withdrawal of the United Kingdom from the Union;

AFFIRMING that the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the "1998 Agreement"), which is annexed to the British-Irish Agreement of the same date (the "British-Irish Agreement"), including its subsequent implementation agreements and arrangements, should be protected in all its parts;

RECOGNISING that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the island of Ireland, and recalling the roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council (including cross-community provisions), as set out in the 1998 Agreement;

RECALLING the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls, and bearing in mind that any future arrangements must be compatible with these overarching requirements;

RECALLING that the Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union of 8 December 2017 outlines three different scenarios for protecting North-South cooperation and avoiding a hard border;

HIGHLIGHTING that discussions on the other scenarios may continue to be pursued in parallel, but that this Protocol is based on the third scenario of maintaining full alignment with those rules of the Union's internal market and the customs union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement, and that it applies unless and until an alternative arrangement implementing another scenario is agreed;

ACKNOWLEDGING that this cooperation across the full range of political, economic, societal and agricultural contexts relies to a significant extent on common Union legal and policy frameworks, as confirmed in the joint mapping exercise conducted by the Union and the United Kingdom, and that accordingly the United Kingdom's withdrawal from the Union gives rise to substantial challenges to the maintenance and development of North-South cooperation;

MINDFUL that the rights and obligations of Ireland under the rules of the Union's internal market and customs union must be fully respected;

RECALLING the commitment of the United Kingdom to protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South Implementation Bodies;

AIMING to support current and future common policies and approaches between Ireland and Northern Ireland in accordance with the 1998 Agreement;

RECOGNISING the need to respect the provisions of the 1998 Agreement regarding the constitutional status of Northern Ireland and the principle of consent;

DESIRING to create a common regulatory area on the island of Ireland in order to safeguard North-South cooperation, the all-island economy, and protect the 1998 Agreement;

HAVING REGARD to the devolution arrangements between the United Kingdom and Northern Ireland;

RECOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship as defined in Annex 2 of the British-Irish Agreement "Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship";

NOTING that Union law has provided a supporting framework to the provisions on Rights, Safeguards and Equality of Opportunity of the 1998 Agreement;

UNDERLINING that part or all of this Protocol may cease to apply should a future agreement between the Union and the United Kingdom be agreed which addresses the unique circumstances on the island of Ireland, including by avoiding a hard border and protecting the 1998 Agreement in all its dimensions;

HAVE AGREED UPON the following provisions, which shall be annexed to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement"):

Chapter I Rights of individuals

Article 1 *Rights of individuals*

1. The United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

Chapter II Movement of persons

Article 2 *Common Travel Area*

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law.
2. The United Kingdom shall ensure that the Common Travel Area and associated rights and privileges can continue to operate without affecting the obligations of Ireland under Union law, in particular with respect to free movement for Union citizens and their family members, irrespective of their nationality, to, from and within Ireland.

Chapter III Common regulatory area

Article 3 *Establishment of a common regulatory area*

A common regulatory area comprising the Union and the United Kingdom in respect of Northern Ireland is hereby established. The common regulatory area shall constitute an area without internal borders in which the free movement of goods is ensured and North-South cooperation protected in accordance with this Chapter.

Article 4 *Free movement of goods*

1. The provisions of Union law on goods listed in Annex 2.1 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.
2. Customs legislation as defined in point (2) of Article 5 of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹⁴⁵ as well as other provisions of Union law providing for customs controls of specific goods or for specific purposes listed in Annex 2.2 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland. The territory of Northern Ireland, excluding the territorial waters of the United Kingdom (the "territory of Northern Ireland"), shall be considered to be part of the customs territory of the Union.
3. Customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Union and the United Kingdom in respect of Northern Ireland. This prohibition shall also apply to customs duties of a fiscal nature.
4. Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between the Union and the United Kingdom in respect of Northern Ireland.

¹⁴⁵ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

5. The Union and the United Kingdom in respect of Northern Ireland shall not impose, directly or indirectly, on the products of the other party any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, the Union and the United Kingdom in respect of Northern Ireland shall not impose on the products of the other party any internal taxation of such a nature as to afford indirect protection to other products.
6. Paragraph 4 shall be without prejudice to the possibility for the United Kingdom, a Member State or the Union to take measures to prohibit or restrict the making available on its market of a good, or a category of goods, where and to the extent permitted by Union law. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Union and Northern Ireland.
7. For the purposes of the customs legislation and the provisions of Union law listed in Annex 2.2 to this Protocol, the United Kingdom customs authorities competent for the territory of Northern Ireland shall be considered as customs authorities within the meaning of point (1) of Article 5 of Regulation (EU) No 952/2013. By way of derogation from Section 7 of Chapter 2 of Title I of Regulation (EU) No 952/2013, customs controls as defined in point (3) of Article 5 of that Regulation shall be carried out jointly by the Union and the United Kingdom customs authorities competent for the territory of Northern Ireland. The Union and the United Kingdom shall determine the practical arrangements for carrying out such controls in accordance with paragraph 10.
8. The provisions of Union law on value added tax listed in Annex 2.3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland.
9. The provisions of Union law on excise duties listed in Annex 2.4 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.
10. Specific arrangements for the proper implementation of this Article shall be determined by the Joint Committee, upon proposal from the Specialised Committee. Those specific arrangements may, as appropriate, include a mechanism for revenue collection and distribution.

Article 5
Agriculture and fisheries

1. The provisions of Union law on sanitary and phytosanitary rules listed in Annex 2.5 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.
2. The provisions of Union law on the production and marketing of agricultural and fisheries products listed in Annex 2.6 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.

Article 6
Single electricity market

The provisions of Union law governing wholesale electricity markets listed in Annex 2.7 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.

Article 7
Environment

The provisions of Union law for environmental protection concerning the control of the import into, export out of, release into, or transport within the Union of substances or material, or plant or animal species, listed in Annex 2.8 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.

Article 8

Other areas of North-South cooperation

1. Consistent with the arrangements set out in Articles 4 to 7 of this Protocol, and in full respect of Union law, this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. In full respect of Union law, the United Kingdom and Ireland may continue to make new arrangements building on the provisions of the 1998 Agreement in other areas of North-South cooperation on the island of Ireland.
2. The Joint Committee shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation. The Joint Committee may, including on recommendation from the Specialised Committee, make appropriate recommendations to the Union and the United Kingdom in this respect.

Article 9

State aid

The provisions of Union law on aids granted by States listed in Annex 2.9 to this Protocol shall apply to the United Kingdom in respect of Northern Ireland. For the purposes of those provisions, "in respect of Northern Ireland" means that only measures that affect trade between the territory of Northern Ireland and the Union shall be considered as aid within the meaning of Article 107(1) TFEU.

Chapter IV
Institutional provisions

Article 10

Specialised Committee

1. The Specialised Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland established by Article 158 of the Withdrawal Agreement ("Specialised Committee") shall be composed of representatives from the Union and the United Kingdom.
2. The Specialised Committee shall:
 - (a) facilitate the implementation and application of this Protocol;

- (b) examine proposals from the North-South Ministerial Council, and North-South Implementation bodies set up under the 1998 Agreement concerning the implementation and application of this Protocol;
- (c) discuss any point of relevance to this Protocol giving rise to a difficulty and raised by the Union or the United Kingdom;
- (d) make recommendations to the Joint Committee as regards the functioning of this Protocol.

Article 11
Supervision and enforcement

1. As regards Chapter III, the institutions, bodies, offices, and agencies of the Union shall in relation to the United Kingdom, and natural and legal persons residing or established in the territory of the United Kingdom, have the powers conferred upon them by Union law. In particular, the Court of Justice of the European Union shall have jurisdiction as provided for in the Treaties in this respect.
2. Acts of the institutions, bodies, offices, and agencies adopted in accordance with paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.

Chapter V
General and final provisions

Article 12
Common provisions

1. The following provisions of the Withdrawal Agreement shall apply to this Protocol:
 - (a) Article 2, the first subparagraph of Article 4(1) and Article 4(2) and (3), Article 5(2) and (3) and Article 6;
 - (b) Articles 100 and 104, Article 105(1), Articles 111, 115, 116 and 117 in respect of activities of the Union pursuant to this Protocol;
 - (c) Part Six, without prejudice to Article 11 of this Protocol.

For the purposes of this Protocol, any reference to the United Kingdom in those provisions of the Withdrawal Agreement shall be read as referring to the United Kingdom or the United Kingdom in respect of Northern Ireland, as the case may be.

2. The provisions of this Protocol referring to Union law or concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.
3. Where this Protocol makes reference to a Union act, and where that act is amended or replaced after the entry into force of the Withdrawal Agreement, the reference to that act shall be read as referring to it as amended or replaced.

The Joint Committee shall periodically revise the relevant references in this Protocol upon proposal from the Specialised Committee set up under this Protocol.

4. By way of derogation from point (a) of paragraph 1 of this Article and from Article 6 of the Withdrawal Agreement, representatives or experts of the United Kingdom or experts designated by the United Kingdom may, upon invitation and on an case-by-case basis, exceptionally attend meetings or parts of meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁴⁶, of Commission expert groups, of other similar entities, or of bodies, offices or agencies where and when representatives or experts of the Member States or experts designated by Member States take part, provided that one the following conditions is fulfilled:
 - (a) the discussion concerns individual acts to be addressed during the period of application of this Protocol to the United Kingdom or to natural or legal persons residing or established in the United Kingdom;
 - (b) the presence of the United Kingdom is necessary and in the interest of the Union, in particular for the effective implementation of Union law made applicable by this Protocol.

During such meetings or parts of meetings, the representatives or experts of the United Kingdom or experts designated by it shall have no voting rights and their presence shall be limited to the specific agenda items that fulfil the conditions set out in point (a) or (b).

5. Authorities of the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law made applicable by this Protocol.
6. The provisions of Union law on the protection of personal data referred to in Article 66 of the Withdrawal Agreement shall apply in respect of personal data processed in the United Kingdom on the basis of this Protocol.
7. Articles 346 and 347 TFEU shall apply to this Protocol as regards measures taken by a Member State or by the United Kingdom in respect of Northern Ireland.

Article 13 **Safeguards**

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties liable to persist, the Union or the United Kingdom may unilaterally take appropriate measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.
2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate

¹⁴⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L55, 28.2.2011, p. 13).

rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

3. Safeguard and rebalancing measures taken in accordance with paragraphs 1 and 2 shall be governed by the procedures and dispute settlement arrangements set out in Annex 3 to this Protocol.

Article 14

Protection of financial interests

The Union and the United Kingdom shall counter fraud and any other illegal activities affecting the financial interests of the Union or of the United Kingdom in respect of Northern Ireland.

Article 15

Subsequent agreement

Should a subsequent agreement between the Union and the United Kingdom which addresses the unique circumstances on the island of Ireland, avoids a hard border and protects the 1998 Agreement in all its dimensions, become applicable after the entry into force of the Withdrawal Agreement, this Protocol shall not apply or shall cease to apply, as the case may be, in whole or in part, from the date of application of such subsequent agreement and in accordance with that agreement.

Article 16

Annexes

Annexes 1 to 3 shall form an integral part of this Protocol.

Annexes

Annex 1 in relation to protection against discrimination

Annex 2 in relation to the common regulatory area for ensuring the free movement of goods and protecting North-South cooperation

Annex 2.1 in relation to free movement of goods

Annex 2.2 in relation to customs controls of specific goods or for specific purposes

Annex 2.3 in relation to value added tax

Annex 2.4 in relation to excise duties

Annex 2.5 in relation to sanitary and phytosanitary rules

Annex 2.6 in relation to production and marketing of agricultural and fisheries products

Annex 2.7 in relation to wholesale electricity markets

Annex 2.8 in relation to environmental protection concerning the control of the import into, release into, or transport within the Union of substances or material, or plant or animal species

Annex 2.9 in relation to State aid

Annex 3 in relation to procedures and dispute settlement arrangements applicable to safeguard and rebalancing measures