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The Northern Ireland Protocol and the Windsor Framework as Parts of the Withdrawal Agreement of Brexit

A.M. Yesdauletova 

L.N. Gumilyov Eurasian National University, Astana, Kazakhstan

(E-mail: yesdauletova_am@enu.kz)

Abstract. The article discusses trade issues between Northern Ireland and the Republic of Ireland, since the UK is now a member-state of the European Union. The main documents and main aspects have been analyzed, and the key items have been fully investigated. In order to address the particular circumstances on the island of Ireland, to maintain the prerequisites for continued North-South cooperation, to avoid a hard border, and to protect the 1998 Agreement in all its dimensions, the Protocol on Ireland/Northern Ireland was created. Additionally, it seeks to defend the EU single market. While applying the EU Customs Code, Northern Ireland is nonetheless included in the UK's customs territory. Northern Ireland continues to participate in the EU single market and follows all applicable laws and regulations. Additionally, the area is still a part of the Single Electricity Market. There is still a Common Travel Area between the UK and Ireland.

Keywords: Brexit, the United Kingdom (UK), the European Union (EU), the Northern Ireland Protocol, the Withdrawal Agreement, Windsor Framework, single market, goods, checks.

Introduction

Brexit has engendered plethora of procedures and additional backing documents and Agreements between the UK and the EU, which will also be discussed in the future; one of such documents is the Protocol on Ireland/Northern Ireland. This document has been notably referred as the Northern Ireland Protocol. This document acts within the EU-UK withdrawal agreement that guarantees the peace and security on a border of the island of Ireland after the UK's withdrawal on January 31, 2020 [1]. The above mentioned Withdrawal Agreement and the

Northern Ireland Protocol were signed on 24 January, 2020 [1]. On January 24, 2020, the related Protocol on Ireland and Northern Ireland and the departure agreement were also signed.

On 1 January 2021 the Northern Ireland Protocol came into force and started acted as a part of international law, which was signed between the United Kingdom and the European Union [1]. The document covers particular circumstances which happen or might happen on the island of Ireland, as well as maintains protection of traditional all-island economy, and, especially, the implementations of the Good Friday (Belfast) Agreement, and the EU single market integrity. Hence, the UK, Northern Ireland itself and the EU are actors of this protocol [1].

The Northern Ireland Protocol introduced new checks. The weak point of the implementation of the Protocol was the issue that document checks and inspection were not placed at the Irish border, but at the ports of Northern Ireland; the Protocol implies its rules on goods from all part of Great Britain, i.e. Wales, Scotland and England to its another part, Northern Ireland. As a matter of fact, the checks were carried out even in case of the goods which were supposed to remain in Northern Ireland.

Nevertheless, the Unionists, the party which supports the idea of Northern Ireland being part of the Kingdom, insist on the incongruity of a border between Northern Ireland and the rest of the UK, such checks effectively constitute. In addition, there are complaints from businesses, facing extra delays and costs caused by the checks [1]. A phase of transition followed a Withdrawal Agreement, which came into force on 1 February 2020. The phase ensured an orderly UK withdrawal while also giving time to discuss new EU-UK partnership. [3].

The phase took almost a year and ended on 31 December 2020, backed by four treaties, saliently the Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement, which regulated relations between both sides [3]. It is worth noting that there are also specialized joint committees involved in specific areas of the agreement, for instance, the Protocol and citizen rights.

Hence, the UK is not an EU member state and does not possess certain benefits of it, such as the Customs Union and Single Market; it also is to negotiate on different agreements, since the UK does not have any attachment to international agreements of the EU [3].

Research methods

The methods of official documents analysis and content-analysis were applied in the article. The main documents on Brexit, documents and agreements for the consequences of Brexit, such as the Withdrawal Agreement, The Northern Ireland Protocol, Windsor Framework, were studied. In addition, the publications on the official websites of the European Union and the Government of the United Kingdom were analyzed, thus the issue of Northern Ireland was considered from different perspectives. The Brexit issue needs further investigation; many points of the document will come into force in the future.

Discussion

Windsor Framework and its impact on Northern Ireland and the Republic of Ireland's trade issues.

The EU and the UK decided on new measures in accordance with the Windsor Framework to deal with practical difficulties affecting citizens and enterprises in Northern Ireland [1].

The Windsor Framework considers two “lanes”, green and red, for goods transferred from Great Britain to Northern Ireland. The first mentioned lane is devoted to goods remaining in Northern Ireland; a red lane is for goods dispatched to the EU. Checks or additional documents are not required for products passing through the green lane. Red lane products would continue to be subject to inspection. Northern Ireland would also be exempt from certain EU regulations, such as alcohol levies and VAT.

Thus, the Brexit deal implies the checking particular products when being transported from Great Britain and entering to Northern Ireland. The current process is as follows: the good are inspected at ports in Northern Ireland when arriving; and, once inspected, the products might be transferred to the Republic of Ireland afterwards. The new deal has brought certain change, as mentioned above the Green Lane and the Red Lane. Goods being moved to Northern Ireland pass through the Green Lane, which means they are not subject to inspection and demand minimal paperwork.

Goods destined for Ireland and the EU go through the Red Lane and are subjected to inspection [1].

The Northern Ireland Protocol. As a result, the UK government and the European Commission have collaborated closely in recent months to develop common solutions to such difficulties. Only collaborative solutions can provide long-term assurance and predictability to all social groups in Northern Ireland [4]. The Protocol, as well as the shared measures established by the Windsor Framework, incorporates new regulations that protect the integrity of the UK and EU single markets [1].

The Northern Ireland Protocol consists of 19 Articles, concerning main issues between the UK and the EU. Among these arrangements are:

1. Agri-food

The UK and the EU have reached an agreement on simplified regulations and processes for the entrance of certain agri-food retail items into Northern Ireland from the United Kingdom, where the products are transported for final consumer use in Northern Ireland. The article on the agri-food products cover the following items, such as implementations of one general certificate for diverse loads of agricultural and food products; dramatic reduction of identity checks down to 5% when all precautions are taken; implementing physical inspections, taking into account an intelligence-based and risks approach; implementing the UK public health standards to goods transported to Northern Ireland for final consumer use; permission of chilled meats, such as sausages, that were prohibited before; cancellation of certificates for wine and organic products; the possibility of importing goods originating in other countries of the world to Northern Ireland through the Great Britain, when the conditions of the UK are identical to those of the EU (a specific list of commodities, including lamb and vegetables from New Zealand) [3].

1.1 Sanitary and phyto-sanitary (SPS)

The cooperative solutions in the SPS domain guarantee that the same product will be sold in Northern Ireland's supermarkets as it is in the other parts of the UK. Practically, Northern Ireland will be allowed to import agri-food retail goods from Great Britain with minimal certifying procedures and regulations. While EU animal and plant health regulations continue to be relevant for the continued functioning of the EU Single Market, UK public health standards

will apply to those agri-food retail products for final consumer use in Northern Ireland. This approach is in line with a number of innovative and current safeguards, such as labelling and SPS inspection facilities that will be gradually implemented. Identity checks will be down to 5% when the aforementioned safeguards are fully introduced. Physical inspections will be conducted using an intelligence-based and risk-based approach. A microchip, a pet travel document, and a statement from the pet's owner stating that the pet will not be going to the EU will make it easier for people to travel with pets [1].

In December, the UK made the announcement that it would build permanent SPS Inspection Facilities. A progressive deploy of SPS Inspection Facilities has been agreed upon by the UK government and the European Commission. The upgraded facilities will be delivered on 1 October 2023, and the final facilities will be delivered on 1 July 2025 [4]. These protections will be systematically implemented by 1 July 2025, including sanitary and phytosanitary inspection facilities as well as "Not for EU" labeling [5].

2. Customs

The Commission and UK government have reached an agreement that will drastically simplify procedures relating to the transportation of goods based on the scheme for an expanded trusted trader. These new agreements can facilitate the goods transportation by reliable traders from Great Britain to Northern Ireland which are not entering the EU Single Market. But all customs checks and procedures will apply to products traveling from Great Britain to Northern Ireland which are intended for the EU or at risk of entering the Union [4]. A larger variety of operators will be able to apply the new scheme, such as businesses in Great Britain with a customs representative in Northern Ireland. Radical simplification of procedures and processes are beneficial for trusted traders; therefore, the scheme should also be more reliable. Consequently, a good financial position, accurate understanding of obligations under the scheme has to be proved by applicants in order to show that they can correctly indicate the goods they are transporting to Northern Ireland, saliently with respect to goods that are to be declared in a detailed way [4].

2.1 Goods

The relevant UK competent authorities will oversee the trusted trader program to make sure that trusted traders adhere to the necessary standards. According to the operational plans reached with the EU, the UK authorities will implement their surveillance activities. Only a slightly simplified customs declaration including a significantly smaller quantity of data (21 data elements as opposed to the more than 80 data elements usually needed for a standard customs declaration) will be required for goods handled by reputable traders in Northern Ireland. Exporter and importer, mode of transportation, description of the items, and item value and weight which is transportation and commercial data constituting the majority of the information. Through a special IT system created by the UK, EU representatives can gain access to such declarations and will be able to use them to conduct risk assessments, analyze risks, and, if necessary, request that inspections be performed on the products [4].

2.2 Parcels

Business-to-consumer ("B2C") parcels will benefit from simplified customs procedures compared to regular freight, for example, if a person in Northern Ireland orders a product online via an e-commerce platform, it will be delivered directly from Great Britain to Northern Ireland. This will be accomplished with the help of quick parcel operators (like DHL or UPS) and other

commercial entities that send packages and are authorized carriers. The designated postal service for the UK is Royal Mail. Before the products are delivered, the transporters will give business data to the UK customs officials. The relevant UK competent authorities will control the authorized carrier program to make sure that carriers adhere to the necessary requirements. According to the operational agreements reached with the EU, the UK officials will undertake their surveillance efforts [4].

The extended trusted trader scheme, which will be available to companies in Great Britain as well, is the foundation for the new customs procedures. Procedures and declarations will be greatly simplified, and there will be less data required, for goods transferred by traders that are not entering the EU Single Market. The movement of all parcel types, including business-to-business, business-to-consumer, and consumer-to-consumer parcels, was made significantly easier. Consumer-to-consumer parcels were completely exempt from the primary customs regulations. These new solutions are especially made practical by new data-sharing agreements that provide risk assessments, which would serve as the fundamental basis for safeguards. Strong trusted trader program permission and oversight, as well as intensified market monitoring and implementation by UK authorities, all serve as safeguards. All items that could potentially enter the EU Single Market will be subject to full customs regulations [6].

3. VAT and Excise

To prevent any unexpected implications of EU VAT and excise regulations applicable in Northern Ireland, the UK government and the European Commission have reached an agreement on a number of steps [4]. This is conceivable because the Protocol acknowledges the unique circumstances of Northern Ireland, that on the one hand complies with EU regulations regarding goods' excise and value-added taxes (VAT) while on the other, the Protocol takes consideration of Northern Ireland's significant role in the UK's Internal Market [4].

First, even if the applicable UK VAT is lower than the EU minimum rates, the Commission and the UK government have come to an agreement that the UK may use reduced VAT rates on goods supplied and installed in immovable property, such as a wind turbine for a residential property or a heat pump for a house etc. situated in Northern Ireland. There is no possibility that these goods could enter the EU Single Market because this regulation relates to items installed in immovable property. As there are no concerns regarding such commodities in respect to the EU's own resources, the UK is also permitted to use reduced VAT rates to a greater number of types of goods than permitted by EU law [4].

Second, the UK is not required to implement the special EU VAT plan for Northern Ireland's small businesses. The initiative would enable EU Member States to exclude small enterprises from VAT beginning on 1 January 2025, provided that the yearly turnover of such companies does not reach a predetermined EU-wide limit. The EU initiative would have been challenging to implement in Northern Ireland because the Protocol exclusively is applicable to goods whereas the exemption scheme also covers services, therefore this exclusion is justified. Small businesses in the UK will still be required to abide by EU regulations on the annual turnover level while using their own VAT exemption scheme. Respecting the yearly turnover criteria set by the EU will prevent larger businesses in Northern Ireland from being classified as small businesses and receiving VAT exemptions. This will ensure a level playing field with the Union [4]. Third, the Commission and the UK government have come to an agreement to consider developing a list of

items that are not likely to enter the EU and are not subject to EU VAT regulations. A thorough list of these products might be created and given a five-year validity period with an ongoing review. Additionally, it has been decided to assess current VAT policies for cross-border refunds [4].

3.1 Vat rates

New flexibility was also discovered for some VAT and excise rules, along with protections guarding the EU against fraud risks or possible competitor distortion.

With these arrangements, it is possible to lower UK VAT rates for immovable products (such as heat pumps for houses) below EU VAT minimum rates without running the risk of those commodities entering the EU Single Market. If the UK complies with the EU criterion for the size of SMEs, a UK SME VAT exemption programme is now relevant for both products and services. If the applied rates do not fall below EU minimum duty rates, it is now also possible to tax every kind of alcoholic beverage accordingly to their alcohol content and to assign decreased duty rates to alcoholic products if they are offered for immediate use in Northern Ireland's hospitality venues [6]

4. State aid

The Commission and the UK government have come to an agreement on a Joint Declaration outlining an agreement of the conditions in which subsidies provided by UK authorities may impact commerce between Northern Ireland and the EU and therefore become subject to the Protocol in order to further explain the State Aid regulations in the Protocol [4]. The Commission and the UK government concur that only subsidies with a real and direct connection to Northern Ireland are subject to the EU State Aid provisions mentioned in Article 10(1). The subsidy in question must have tangible, foreseeable impacts on commerce between Northern Ireland and the EU in order for there to be a true and clear connection to exist. These impacts should be real, as opposed to being speculative or assumed. Therefore, merely placing products on the Northern Ireland marketplace is insufficient to establish a true and direct link [4].

5. Tariff rate quotas (Steel products)

The combined solutions also clarify the applicability of State aid regulations and address implementation issues with regard to tariff rate quotas (TRQs) for the most sensitive categories of steel [6].

A solution for the transit of the most delicate types of steel from Great Britain to Northern Ireland that are governed by tariff rate quotas (TRQs) has been agreed upon by the Commission and the UK government. Companies in Northern Ireland will now have access to UK-origin steel in these groups thanks to the EU's TRQs for steel. They will be able to avoid paying the 25% tariff associated with the current EU safeguard measures for steel that comes into the EU by doing this [4].

The third new law will allow certain kinds of steel to be transferred from Great Britain to Northern Ireland in accordance with the EU's tariff rate quotas [5].

Due to the removal of the 25% tariff associated with the EU safeguard measures now in place for steel imports into the EU, Northern Ireland enterprises will once again find the transfer to be economically viable. Once more, adequate precautions replicate these new transfers. [5].

6. Governance

Through consistent participation at every level of the Withdrawal Agreement frameworks, the opinions of stakeholders and the people of Northern Ireland will be heard more clearly

when it comes to governance. On Protocol-related issues, there will be more engagement with Northern Ireland stakeholders.

The Joint Consultative Working Group will create new topic subgroups. The UK government will be able to halt the application of amended or replacement Protocol-related EU law provisions in Northern Ireland at the request of 30 Members of the Legislative Assembly there thanks to a new emergency mechanism called the Stormont Brake. This could have a significant and long-lasting effect on the day-to-day lives of communities there. This mechanism would only be activated in the most extreme situations and as a last resort, according to a very clear procedure outlined in a unilateral declaration by the UK [6].

6.1 The Stormont brake

A new emergency break system, the Stormont Brake, will be introduced to make sure that the voices of the people in Northern Ireland are heard more clearly. It will enable the UK government to halt the application of modified or replaced legal provisions that could have a significant and long-lasting effect on the day-to-day lives of communities in Northern Ireland in exceptional circumstances, upon the request of 30 Members of the Legislative Assembly in Northern Ireland [1].

Some EU rules continued to be in effect in Northern Ireland under the prior agreement. The Northern Ireland Assembly's headquarters at Stormont, however, was unable to have any influence over them. With the new agreement, a "Stormont brake" is introduced. The Northern Ireland Assembly, which makes laws in Northern Ireland, would therefore be able to protest any new EU regulations. If 30 Northern Ireland lawmakers from two or more parties sign a petition, the procedure will start. The brake was prohibited from being applied for "trivial reasons" and would only be permitted under "significantly different" regulations [7].

Professor of EU law Catherine Barnard believes the standard would be "really high." It is a security measure, but one that is not intended to be utilized frequently, according to her [7]. The rule cannot be put into effect after the UK notifies the EU that the brake has been activated. The documents states that the European Union single market rules should be followed by Northern Ireland, however the procedure would not be monitored by the European Court of Justice (ECJ) [7].

The Stormont Brake was established by the Framework, which allowed 30 MLAs from at least two parties to petition the UK government to prevent the Protocol's application of new or modified EU regulations. The Framework also established additional governance mechanisms, including a Special Body on Goods to evaluate the potential effects of future UK legislation on goods for NI, an Enhanced Coordination Mechanism to debate VAT and excise concerns, and organized sub-groups in the Joint Consultative Working Group. The European Commission promised to communicate with NI stakeholders on EU rules that relate to NI on a frequent basis [7].

7. Medicines

Additionally, a long-term solution has been discovered to guarantee that Northern Irish citizens have the same, unhindered access to all medications as the rest of the UK. This includes innovative medications. This adds to the approach the EU took in April 2022 to provide generic medications to Northern Ireland. New measures, most notably labeling, intended to ensure that the medications do not reach the EU Single Market, have made these new arrangements possible [6].

All medications, even experimental ones, will be made available in Northern Ireland at the same time they are in the rest of the UK thanks to yet another set of new regulations. They will be distributed in line with UK regulations and authorization processes. This adds to the approach the EU took in April 2022 to provide generic medications to Northern Ireland [5].

Along with these new agreements, new precautions have been put in place, such as labeling the products as "UK only" to prevent them from entering the EU single market [5].

Results

Around September 2023, when a number of prerequisites (such as the EU having access to the UK customs databases and IT systems) will be met and the UK will have succeeded in authorizing the current traders in accordance with the new requirements, the new trusted trader scheme for customs is anticipated to be in place. All the EU-granted facilitations should be in place by the time the program for B2C parcels, namely the authorization and monitoring of authorized carriers, is implemented [4].

In the interim, the UK has agreed to collaborate with the EU to intensify enforcement action over the transfer of packages from Great Britain to Northern Ireland in order to further preserve the EU Single Market. This entails strengthening the already-existing cooperation between UK customs authorities and the European Commission, as well as working with fast parcels and postal operators to collect commercial data on the movement of packages in support of intelligence-based enforcement and compliance actions. Additionally, the UK has agreed to frequently update the Specialized Committee on the Implementation of the Protocol on the status of such activities [4].

Conclusion

The UK government and the Commission have agreed to collaborate more closely on market surveillance, particularly in light of the recently reached solutions. Both parties acknowledge the significance of businesses being aware of the laws that apply to goods in Northern Ireland.

The UK has also stated its commitment to keeping up the development of its market surveillance and other competent agencies in charge of ensuring adherence to relevant regulations. Notably, the UK will make sure that the appropriate authorities are given the authority they need to carry out effective monitoring of the international border between the UK and the EU. The UK will also make sure that strict enforcement is put in place to prevent corporations from abusing these solutions. However, it is crucial to emphasize that these enforcement measures won't entail any new inspections or restrictions at the border between Northern Ireland and Ireland. They will only signify increased activity by pertinent UK authorities in compliance with generally accepted international best practices and in coordination with relevant EU and Member State agencies, where necessary.

Contribution of the author.

A.M. Yesdauletova – definition of goals and objectives of a scientific article, work using research materials and methods, generalization and analysis of theoretical material.

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А.М. Есдәулетова

Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана, Қазақстан

Солтүстік Ирландия хаттамасы және Виндзор келісім шеңбері: Біріккен Корольдіктің Еуро Одақтан шығу туралы келісімнің бөлігі ретінде

Аңдатпа. Мақалада Солтүстік Ирландия мен Ирландия Республикасы арасындағы сауда мәселелері талқыланады, өйткені Ұлыбритания қазіргі уақытта Еуропалық Одаққа мүше мемлекет емес. Мақалада негізгі құжаттар мен негізгі аспектілер талданды, негізгі тармақтар толығымен зерттелді. Ирландия аралындағы ерекше жағдайларды ескеру, Солтүстік-Оңтүстік ынтымақтастықты жалғастыру үшін алғышарттарды сақтау, қатаң шекараны болдырмау және 1998 Жылғы келісімді барлық жағынан қорғау үшін Ирландия/Солтүстік Ирландия хаттамасы бекітілді. Сонымен қатар хаттама ЕО-тың бірыңғай нарығын қорғауға бағытталған. ЕО Кеден кодексінің қолданылуына қарамастан, Солтүстік Ирландия Ұлыбританияның кеден аумағына енгізілген. Солтүстік Ирландия ЕО-тың бірыңғай нарығына қатысуды жалғастыруда және барлық қолданыстағы заңдар мен ережелерді сақтайды. Сонымен қатар, бұл аймақ әлі де Бірыңғай электр нарығының бөлігі болып табылады. Ұлыбритания мен Ирландия арасында әлі де Ортақ саяхат аймағы бар.

Түйін сөздер: Брексит, Біріккен Корольдік (Ұлыбритания), Еуропалық Одақ (ЕО), Солтүстік Ирландия хаттамасы, ЕО шығу келісімі, Виндзор шеңберлік бағдарламасы, бірыңғай нарық, тауарлар, шекара бақылауы.

А.М. Есдаулетова

Евразийский национальный университет имени Л.Н. Гумилева, Астана, Казахстан

Североирландский протокол и Виндзорские рамочные соглашения как составные части Соглашения о выходе Соединенного Королевства из Европейского Союза

Аннотация. В статье обсуждаются торговые вопросы между Северной Ирландией и Ирландской Республикой, поскольку Великобритания в настоящее время не является государством – членом Европейского союза. Были проанализированы основные документы и основные аспекты, были полностью исследованы ключевые пункты. Чтобы учесть особые обстоятельства на острове Ирландия, сохранить предпосылки для продолжения сотрудничества Север-Юг, избежать жесткой границы и защитить Соглашение 1998 года во всех его аспектах, был разработан Протокол по Ирландии/Северной Ирландии. Кроме того, протокол стремится защитить единый рынок ЕС. Несмотря на применение Таможенного кодекса ЕС, Северная Ирландия, тем не менее, включена в таможенную территорию Великобритании. Северная Ирландия продолжает участвовать в едином рынке ЕС и соблюдает все применимые законы и нормативные акты. Кроме того, этот район по-прежнему является частью Единого рынка электроэнергии. Между Великобританией и Ирландией по-прежнему существует общая зона для путешествий.

Ключевые слова: Брексит, Соединенное Королевство (Великобритания), Европейский союз (ЕС), Североирландский протокол, Соглашение о выходе из ЕС, Виндзорские рамочные соглашения, единый рынок, товары, таможенный контроль.

Сведения об авторе:

Есдаулетова А.М. – тарих ғылымдарының докторы, халықаралық қатынастар кафедрасының профессоры, Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана, Қазақстан.

Yesdauletova A.M. – Doctor of Historical Sciences, Professor of the Department of International Relations, L.N. Gumilyov Eurasian National University, Astana, Kazakhstan.



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