

## After Frost resignation, EU-UK talks on Protocol issues resume



EU Commission Vice-President Maroš Šefčovič and British Foreign Secretary Liz Truss, London, February 11

In December, Lord David Frost, the British Cabinet Office Minister and co-chair of the Joint Committee that oversees implementation of the EU-UK Withdrawal Agreement and, in that capacity, the UK's lead negotiator in regard to the difficulties that arose, under the terms of the Protocol on Ireland/Northern Ireland, in the movement of goods from Great Britain to Northern Ireland, tendered his resignation to Prime Minister Boris Johnson. Johnson's office subsequently announced that Foreign Secretary Liz Truss would take over ministerial responsibility for the UK's relationship with the EU and would serve as the UK's lead negotiator on the Protocol, its co-chair of the Joint Committee that oversees implementation of the Withdrawal Agreement, and its co-chair of the Partnership Council that oversees implementation of the EU-UK Trade and Cooperation Agreement.

On Jan. 13-14, Truss met for the first time with EU Commission Vice-President Maroš Šefčovič, the EU's co-chair of the Joint Committee, at Chevening House in Kent. According to their joint statement released after the meeting, it took place in a "cordial atmosphere" and they agreed their officials would meet the following week in intensified talks and would meet again in Brussels on Jan. 24. Truss indicated she was aiming to reach an agreement with the EU in regard to the issues involving the checks on goods moving from Great Britain to Northern Ireland by the end of February – in part, no doubt, because Sir Jeffrey Donaldson, the leader of the Democratic Unionist Party (DUP) which held the position of First Minister in the Northern Ireland Executive, had threatened to withdraw the DUP's ministers from the Executive if the EU didn't agree to new arrangements in regard to the movement of goods from Great Britain to Northern Ireland that were intended for use in Northern Ireland.

After the Jan. 24 meeting, Truss and Šefčovič issued a statement saying the meeting had taken place in a "constructive atmosphere with the aim to advance the talks." They agreed the officials would meet that week and the Principals would take stock at the political level the next week,

and they “reaffirmed their shared desire for a positive EU-UK relationship.” In a separate statement, Šefčovič said the EU “remained steadfast in our efforts to facilitate the implementation of the Protocol on the ground, while safeguarding the integrity of the EU’s Single Market...bearing in mind that the Protocol represents the one and only solution found jointly, in light of Brexit, to protect the gains of the peace process and avoid a hard border on the island of Ireland.” He said they needed to stay “laser-focused” on the “practical challenges raised by Northern Irish stakeholders – mirrored in EU-proposed solutions” and noted that, in areas like customs and the movement of sanitary and phytosanitary goods, the EU “has proposed an extensive reduction of formalities unmatched for any other third country. So if political goodwill is maintained, our discussions could lead to a timely agreement on durable solutions that would immediately and significantly help operators on the ground.” Saying he is “not in the business of setting artificial deadlines,” he said he would nevertheless “act with a sense of urgency” and that he and Truss would “take stock at our level by the end of next week.”

While Truss and Šefčovič and their officials continued to work toward some solution of the issues involving the movement of goods from Great Britain to Northern Ireland, DUP ministers in the Northern Ireland Executive, evidently frustrated with what they regarded as a lack of progress in resolving those issues, took matters into their own hands. On Feb. 2, Edwin Poots, Northern Ireland’s Minister of Agriculture and a former leader of the DUP, ordered the checks on agri-food goods coming from Great Britain halted. However, his order was not immediately implemented as officials within the department “considered the wider implications of fulfilling the minister’s requests.” Donaldson, the current DUP leader, said, “Now is the moment when we say “Enough. We are clear that the Protocol represents an existential threat to the future of Northern Ireland’s place within the Union [of the UK’s four nations]. The longer the Protocol remains, the more it will harm the Union itself.” The next day, Paul Givan, the DUP First Minister, resigned in protest against the requirement that, under the terms of the Protocol, goods arriving in Northern Ireland from Great Britain and destined for consumption in Northern Ireland must nevertheless be checked. Under the terms of the Northern Ireland (St Andrews Agreement) Act 2006 that amended the Northern Ireland Act 1998, if either the First Minister or deputy First Minister ceases to hold office at any time, the other immediately ceases to hold office. As a result, Givan’s resignation meant Michelle O’Neill, the Sinn Féin deputy First Minister, also ceased to hold that office.

By coincidence, Truss and Šefčovič met via video conference the same day Givan resigned, Feb. 3, to take stock of the technical discussions in regard to the solutions the EU had proposed to facilitate implementation of the Protocol. Reiterating that they had to stay “laser-focused” on the practical challenges faced by Northern Irish stakeholders in the area of customs and the movement of sanitary and phytosanitary goods, in his statement after the meeting Šefčovič said he had emphasized which processes should be in place and what data should be collected to address those challenges. But he also noted that the recent instruction by the Northern Irish Minister for Agriculture to cease sanitary and phytosanitary checks between Great Britain and Northern Ireland was “very unhelpful. It creates uncertainty and unpredictability for the people and businesses in Northern Ireland. These checks are necessary for Northern Ireland to benefit from access to the EU’s Single Market for goods.” He said he understood officials in Northern Ireland were nevertheless continuing to carry out the checks on goods coming into Northern Ireland and said it was essential that they continue to do so and the Commission “will closely monitor the developments on the ground.” And, noting that the Protocol is an international

agreement, he stated, “It is therefore the UK government’s responsibility to uphold its legal obligations stemming from the Protocol – the only solution we have found with the UK government to protect the Good Friday (Belfast) Agreement, taking into account the type of Brexit the UK government chose.”

On Feb. 11, Truss and Šefčovič met at Carlton Gardens in London. In a brief joint statement, they said they “agreed on the need for progress in their talks in the interest of people in Northern Ireland, to stay in close touch, and that officials will continue intensive discussions in the coming days.” On Feb. 21, they met as the co-chairs of the Joint Committee of the Withdrawal Agreement. In a joint statement after the meeting, they said they had taken stock of the “intensified and constructive talks that have taken place between them over the last months” and had “underlined the ongoing determination of both parties to ensure that the outstanding issues in the context of the Protocol are addressed, and durable solutions found for the benefit of citizens, businesses and stability in Northern Ireland.” In addition, they “reiterated the importance of further engagement, including with the Northern Ireland Assembly and Executive, and wider Northern Ireland civic society and businesses.” In press remarks after the meeting, Šefčovič said, “We have intensified our talks, particularly on ways to facilitate the implementation of the Protocol on Ireland/Northern Ireland. To show we are serious, the Commission presented a robust package of far-reaching, impactful and durable solutions with the core purpose of benefitting the people and businesses of Northern Ireland. The Commission also delivered on medicines, by tabling legislative proposals to ensure that everyone in Northern Ireland has access to the same medicines at the same time as in the rest of the United Kingdom.”

Last autumn, during a visit to Northern Ireland, Šefčovič observed that one of the most urgent priorities in regard to the movement of goods from Great Britain to Northern Ireland involved ensuring the timely supply of medicines produced in Great Britain. Under Article 5(4) of the Protocol, the provisions of EU law – i.e., its regulations and directives – in regard to a wide range of goods continue to apply to and in the UK in respect to Northern Ireland. Among those rules and regulations are more than a dozen that apply to the authorization and supervision of production of medicinal products for human and veterinary use. That meant that, among other things, the batch testing of medicinal products to be sold in Northern Ireland would have to take place in Northern Ireland rather than Great Britain. And it meant that wholesale distributors in Northern Ireland would have to obtain marketing authorization from the EU in order to distribute the products in Northern Ireland. Taken together, the requirements resulted in delays in the delivery of some medicinal products from Great Britain to Northern Ireland and, in some instances, decisions by some producers not to distribute their products in Northern Ireland.

After Šefčovič’s visit last autumn, the Commission brought forward legislation that would allow the regulatory functions pertaining to medicinal products intended for distribution in Northern Ireland to be performed in Great Britain rather than in Northern Ireland. In early April, the European Parliament approved the legislation, and on April 12 the General Affairs Council formally approved the legislation, which means that henceforth all pharmaceutical companies producing medicinal products for distribution in Northern Ireland could carry out in Great Britain all of the regulatory functions required for distribution in Northern Ireland. In a press conference after the Council meeting, Šefčovič noted that, during his visit last autumn, he had “promised to do whatever it takes to ensure the continued supply of medicines to Northern Ireland. We now have a lasting solution, which was delivered in record time.” Coming as it did in the midst of the crisis unleashed by the DUP’s unilateral exit from the Northern Ireland

executive, the decision received little attention. But it was an important decision – indeed, for the many patients in Northern Ireland who rely on those medicines, it was an exceptionally important decision.

David R. Cameron  
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