

# The Withdrawal Agreement & the Protocol on NI/IRL & the Political Declaration

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# The Withdrawal Agreement

- **Why is it necessary?**
  - Separation issues
  - Citizens' rights
  - Financial settlement: £35-39bn
  - Transition (Implementation) period
    - + single decision for extension to max. Dec 2022
  - Governance
    - Joint Committee; Specialised Committees + others
  - Protocols:
    - NI/IRL; Gibraltar; Sovereign base areas of Cyprus
- To Bookmark:
  - <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8438>

**Preamble** Commitments from Joint Report + **new additions**, e.g. DETERMINED that the application of this Protocol should impact as little as possible on the everyday life of communities both in Ireland and N. Ireland,

**1. Objectives and Relationship to Subsequent Agreement**  
Constitutional status of Northern Ireland and consent principle; territorial integrity of UK; unique circumstances on island of Ireland; temporary nature of protocol

**2. Subsequent Agreement**  
Best endeavours to conclude before 31 December 2020; agreement to supersede Protocol in whole or in part

**3. Extension of Transition Period**  
UK may request by 1.7.2020 extension for up to two years

**4. Rights of Individuals**  
No diminution of rights, safeguards and equality of opportunity as set out 1998 Agreement; UK to facilitate work of human rights and equality bodies

**5. Common Travel Area**  
Movement of people between UK and Ireland

**6. Single Customs Territory, Movement of Goods**  
Single customs territory comprising EU customs union and customs territory of the United Kingdom, plus 'level playing field' provisions

**7. Protection of the UK Internal Market**  
Unfettered market access for NI goods to rest of UK

**8. Technical Regulations, Assessments, Registrations, Certificates, Approvals and Authorizations**  
"UK(NI)" or "United Kingdom (Northern Ireland)"

# Protocol on Ireland/ Northern Ireland

**9. VAT and Excise**  
EU VAT and excise regime to apply to Northern Ireland

**10. Agriculture Environment**  
Relevant EU law on sanitary and phytosanitary rules, production and marketing of agricultural and fisheries products, and the environment relating to movement of goods to apply to Northern Ireland

**11. Single Electricity Market**  
EU law governing wholesale electricity markets to apply to Northern Ireland

**12. State Aid**  
EU law governing state aid to apply to Northern Ireland; EU institutions competent in respect of EU-NI trade

**13. Other Areas of North-South Cooperation**  
Maintain conditions for continued cooperation, *including* in environment, health, agriculture, transport, education and tourism, as well as energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport

**14. Implementation, Application, Supervision and Enforcement**  
Role of UK and EU institutions and bodies in implementing and applying Protocol's provisions

**15. Common Provisions**  
Application and implementation of Protocol; application of new EU law; risk assessments; action in case of essential security needs and disturbances

**16. Specialised Committee**  
Facilitate implementation and application of Protocol including discussion of proposals from North-South Ministerial Council; consider matters raised regarding rights( Article 4); recommendations to Joint Committee

**17. Joint Consultative Working Group**  
Forum for the exchange of information and mutual consultation, e.g. on planned Union EU acts amending or replacing the acts covered by Protocol

**18. Safeguards**  
Safeguards in cases of serious economic, societal or environmental difficulties

**19. Protection of Financial Interests**  
counter fraud and any other illegal activities relating to EU and UK interests in Northern Ireland

**20. Review**  
Replacement in part or in full of Protocol by Joint Committee following optional consultation of institutions established un 1998 Agreement

**21. Annexes**  
Lists of relevant EU law in three annexes to be integral part of the Protocol

# Temporary v. indefinite

## The backstop will be temporary

We have secured a number of important changes that mean, if the backstop is ever needed, it will be a **temporary arrangement**.

A **legal duty** to use best endeavours to avoid the backstop coming into force (Article 2(1))

**Temporariness is explicit** in the legal text (Article 1(4))

An **alternative to the backstop** – a choice between the backstop and an extension to the IP

The **Article 50 legal base cannot establish a permanent relationship** – which is clear in a recital in the WA itself

**Incentives for the EU to move to future arrangements** – limited level playing field provisions and no guaranteed access to waters

Flexibility in what can replace the backstop – a recital recognises that it could be “**alternative arrangements**” not just the future relationship

A provision to review and ultimately **terminate the backstop** by mutual consent – with both sides bound to act in good faith

The legal text says that **once the backstop has been superseded**, it will “cease to apply”

# What the Attorney General advised

- Protocol intended to apply ‘unless or until’ subsequent agreement:
  - maintains conditions for North-South cooperation,
  - avoids a hard border and
  - protects the 1998 Agreement in all its dimensions
- Parties assume negotiations will result in agreement.
- In international law, the Protocol will endure until replaced by a superseding agreement in part or in full, even if negotiations don’t continue.
- The legal and administrative arrangements required to underpin the Protocol will be enormously complex and will require considerable resources, particularly in light of GB/NI flexibilities.
  - [NB UK government to bring forward proposals on the role for the NI Assembly before commencing any backstop powers.]
- The question of whether the Protocol is no longer necessary is a political decision (an arbitration panel of lawyers will steer clear of pronouncing on it, especially if the Parties disagree)

# The Political Declaration

- Contents:

- Initial provisions: values, standards, programmes
- Economic partnership:
  - “an ambitious, broad, deep and flexible partnership”
  - provision for the UK to align with relevant EU rules if it chooses to do so
- Security partnership:
  - “broad, comprehensive and balanced security partnership”
- Institutional and horizontal arrangements



- Re: Protocol on NI/IRL

- Determination to reach an agreement to establish “alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing”
- Anticipates use of facilitations and technologies - including to develop alternative arrangements to avoid a hard border in NI.

# The Withdrawal Agreement & the Protocol on NI/IRL & the Political Declaration



Environment &  
agriculture

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How green  
is the deal?



'divorce'  
&  
transition

Political  
declaration

UK-wide  
backstop

NI-specific  
backstop



# Political declaration

2. The Union and United Kingdom are determined to work together to safeguard the rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and workers' rights, consumer and environmental protection, and cooperation against internal and external threats to their values and interests.

## **XIV. LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION**

79. The future relationship must ensure open and fair competition. Provisions to ensure this should cover state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters, building on the level playing field arrangements provided for in the Withdrawal Agreement and commensurate with the overall economic relationship. The Parties should consider the precise nature of commitments in relevant areas, having regard to the scope and depth of the future relationship. These commitments should combine appropriate and relevant Union and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement as part of the future relationship.

# UK-wide Backstop (Annex 4, Part Two, Art 2-3)

## ARTICLE 2

### Non-regression in the level of environmental protection

1. With the aim of ensuring the proper functioning of the single customs territory, the Union and the United Kingdom shall ensure that the level of environmental protection provided by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to: access to environmental information, public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; industrial emissions; air emissions and air quality targets and ceilings; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic environment; the protection and preservation of the marine environment; the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemical substances; and climate change.

## ARTICLE 3

### Monitoring and enforcement related to environmental protection

1. Noting that within the Union the effective application of Union law reflecting the common standards referred to in Article 2(1) is ensured by the Commission and the Court of Justice of the European Union acting under the Treaties, the United Kingdom shall ensure effective enforcement of Article 2 and of its laws, regulations and practices reflecting those common standards, without prejudice to Article 2(7).

The United Kingdom shall ensure that administrative and judicial proceedings are available in order to permit effective and timely action by public authorities and members of the public against violations of its laws, regulations and practices, and provide for effective remedies, including interim measures, ensuring that any sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.

2. The United Kingdom shall implement a transparent system for the effective domestic monitoring, reporting, oversight and enforcement of its obligations pursuant to this Article and to Article 2 by an independent and adequately resourced body or bodies ("the independent body").



Scope?



Remedies?

# NI-specific Backstop (Annex 5)

## ARTICLE 10

### Agriculture and environment

The provisions of Union law listed in Annex 5 to this Protocol shall apply, under the conditions set out therein, to and in the United Kingdom in respect of Northern Ireland.

- Waste (shipment, packaging, ship recycling, shipment of radioactive waste)
- Invasive species, trade of wild fauna & flora....
- Ecolabel, energy-efficiency labels
- Quality of petrol/diesel fuels
- Timber production & imports
- Ozone, F-Gases, Mercury
- Chemicals & related matters

Scope?

Remedies?

# Agriculture – State Aid Annex 4 + Annex 9

## ARTICLE 8

### Procedures referred to in Article 7(2)

The Joint Committee shall determine the initial maximum exempted overall annual level of support and the initial minimum percentage referred to in Article 7(2), taking into account the most recent information available. The initial maximum exempted overall annual level of support shall be informed by the design of the United Kingdom's future agricultural support scheme as well as by the annual average of the total amount of expenditure incurred in the United Kingdom customs territory under the Common Agricultural Policy under the current MFF 2014-2020. The initial minimum percentage shall be informed by the design of the United Kingdom's agricultural support scheme as well as by the percentage to which the overall expenditure under the Common Agricultural Policy in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

The Joint Committee shall adjust the level of support and percentage referred to in the first subparagraph informed by the design of the United Kingdom's agricultural support scheme to any variation in the overall amount of support available under the Common Agricultural Policy in the Union in each future Multiannual Financial Framework.

## ANNEX 9

### PROCEDURES REFERRED TO IN ARTICLE 12(2)

The Joint Committee shall determine the initial maximum exempted overall annual level of support and the initial minimum percentage referred to in Article 12(2), taking into account the most recent information available. The initial maximum exempted overall annual level of support shall be informed by the design of the United Kingdom's future agricultural support scheme as well as the annual average of the total amount of expenditure incurred in Northern Ireland under the Common Agricultural Policy under the current MFF 2014-2020. The initial minimum percentage shall be informed by the design of the United Kingdom's agricultural support scheme as well as by the percentage to which the overall expenditure under the Common Agricultural Policy in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

The Joint Committee shall adjust the level of support and percentage referred to in the first subparagraph informed by the design of the United Kingdom's agricultural support scheme to any variation in the overall amount of support available under the Common Agricultural Policy in the Union in each future Multiannual Financial Framework.

# Agriculture & Food – Annex 5

- Pesticides, biocides
- Food law principles & European Food Safety Authority
- Food hygiene
- Food marketing standards, additives, traces...
- GMOs...

3.8.2000

EN

Official Journal of the European Communities

L 197/19

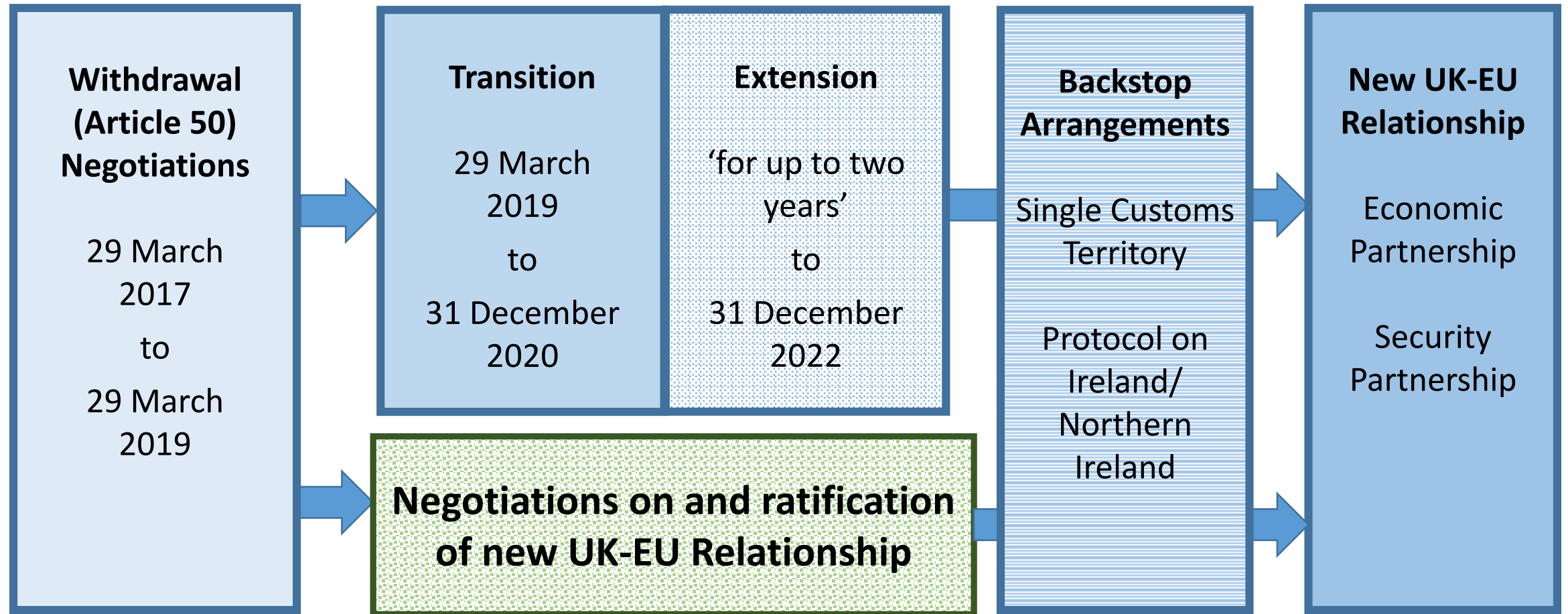
**DIRECTIVE 2000/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 23 June 2000**  
**relating to cocoa and chocolate products intended for human consumption**

# A Deal, but a 'no deal' Brexit ... or no Brexit?

Prof David Phinnemore (@DPhinnemore)



# Brexit ... *according to the Withdrawal Agreement*





# Can May get a deal through Westminster?

**Theresa May's parliamentary majority is 13**

*Current state of the House of Commons, by party*

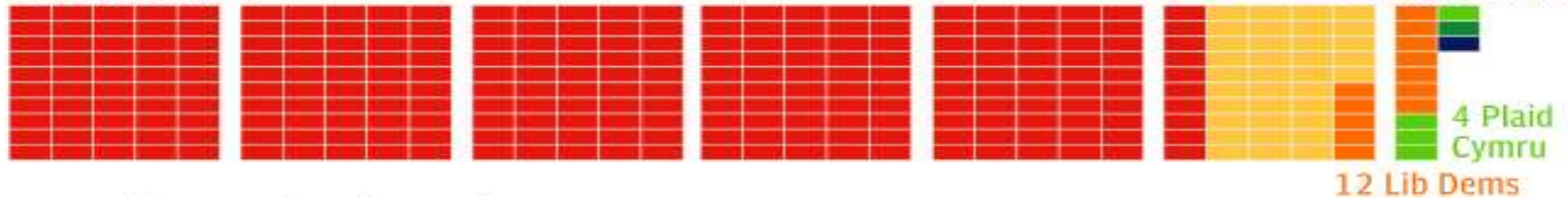
**The Government has 326 voting MPs**

316 Conservatives have a confidence and supply deal with 10 DUP MPs



**Opposition parties have 313 voting MPs**

260 Labour MPs



**Non-voting members (11 MPs)**

7 Sinn Fein MPs

4 Speakers



# ... No, not yet at least

We have now had three days of debate on the Withdrawal Agreement setting out the terms of our departure from the EU and the Political Declaration setting out our future relationship after we have left.

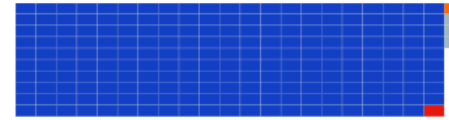
I have listened very carefully to what has been said, in this chamber and out of it, by members from all sides.

From listening to those views it is clear that while there is broad support for many of the key aspects of the deal, on one issue – the Northern Ireland backstop – there remains widespread and deep concern.

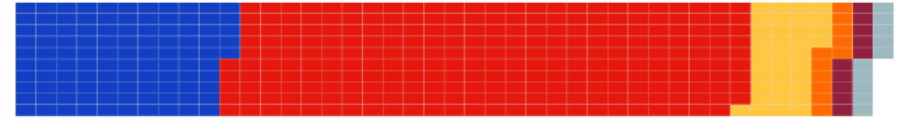
As a result, if we went ahead and held the vote tomorrow the deal would be rejected by a significant margin.

We will therefore defer the vote scheduled for tomorrow and not proceed to divide the House at this time.

For: 214



Against: 425



*Daily Telegraph*, 9 December 2018

“There will definitely be no renegotiation of the withdrawal agreement... The deal we have at the moment is a good and balanced deal, and I think that it is in the interests of all of us to avoid a no-deal scenario.” – Sebastian Kurz

“I have no difficulty with statements that clarify what's in the Withdrawal Agreement but no statement of clarification can contradict what's in the Withdrawal Agreement” – Leo Varadkar

# May's 'revised' Deal ...

*RECALLING the Union's and the United Kingdom's intention to replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing;*

The objective of the Withdrawal Agreement is not to establish a permanent relationship between the Union and the United Kingdom. The provisions of this Protocol are therefore intended to apply only temporarily

The Union and the United Kingdom shall use their best endeavours to conclude, by 31 December 2020, an agreement which supersedes this Protocol in whole or in part.

'reassurance' declaration..  
emphasising the role of  
and independence of  
arbitrators and of the  
scope of their mandate in  
any review of the backstop

declaration clarifying how  
Joint Committee would  
respond under the review  
process to a 'notification'  
with respect to UK-wide  
customs union provisions.

statement that Article 50 is  
the legal basis for the  
withdrawal agreement and  
can therefore only work as  
a "bridge" to the future,  
not a permanent solution

legally-binding  
commitment to use 'best  
endeavours' to agree to a  
future relationship or  
"alternative arrangements"  
within one year

# ... or no Brexit?



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 191/18**

Luxembourg, 10 December 2018

Judgment in Case C-621/18  
Wightman and Others v Secretary of State for Exiting the European Union

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**The United Kingdom is free to revoke unilaterally the notification of its intention to withdraw from the EU**

*Such a revocation, decided in accordance with its own national constitutional requirements, would have the effect that the United Kingdom remains in the EU under terms that are unchanged as regards its status as a Member State*

# Article 50 Process – Where are We?

24 November 2018	Withdrawal agreement ‘agreed’
	Withdrawal agreement ‘revised’
	House of Commons – motion (‘meaningful vote’)
	House of Lords – motion
	UK Parliament – implementing legislation
	UK Parliament – ratification
	European Parliament – consent
	Council of Ministers – decision
29 March 2019	UK leaves the EU

