
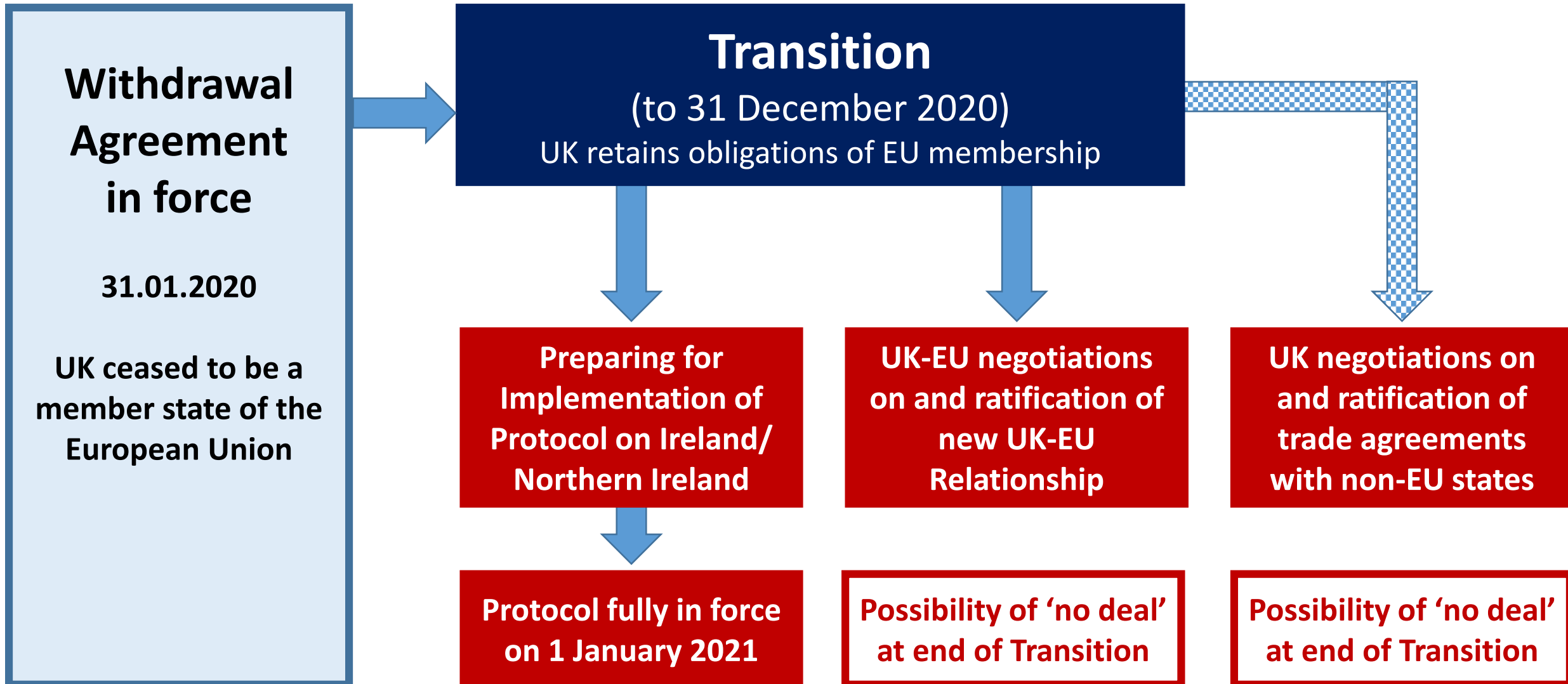


**Brexit: where are
we... with ten weeks
of transition to go?**



Prof David Phinnemore (@DPhinnemore)

Brexit... now the UK has left the EU



Implementing the Protocol

Engagement

- Joint Committee: **four meetings and one extraordinary meeting; next meeting in November**
- Specialized Committee: **three meetings**
- Joint Consultative Working Group: **TBC**

Decisions Pending

- Criteria for goods not 'at risk' of onward movement into EU market, so exempt from tariffs
- Levels of permissible agricultural support
- Fish products exempt from tariffs
- Monitoring arrangements

UK Delivering on Obligations and Commitments?

GB-NI: Moving goods under the NI Protocol
NI-GB: UK Internal Market Bill

Joint Committee – 19 October 2020

“The UK outlined the steps we are taking to implement new agri-food arrangements. We acknowledged the EU’s concerns about appropriate monitoring of implementation, and have a better understanding of their requests and the reasoning behind them.”

Commission decision to give UK access to the necessary IT systems, databases etc. to fulfil obligations

Need for UK to “substantially accelerate work on all necessary measures ensuring full practical implementation”, in particular with regard to border control posts and VAT (registration for NI traders)

“Strong concerns regarding the lack of progress on the [Joint Committee] decisions that need to be taken”

“Despite some progress, much work remains to be done by the UK, in particular with regard to the implementation of the... Protocol... in its entirety”

Negotiations on Future UK-EU Relationship

State of Play

European Council: 'invites the Union's chief negotiator to continue negotiations in the coming weeks, and calls on the UK to make the necessary moves to make an agreement possible' (15-16.10)

Johnson: 'I have concluded that we should get ready for January 1 with arrangements that are more like Australia's based on simple principles of global free trade' (16.10)

Barnier: 'As stated by President [@vonderleyen](#) on Friday, I confirmed that the EU remains available to intensify talks in London this week, on all subjects, and based on legal texts. We now wait for the UK's reaction" (19.10)

No. 10: 'The UK continues to believe there is no basis to resume talks unless there is a fundamental change of approach from the EU... [one] consistent with trying to find an agreement between sovereign equals and with acceptance that movement needs to come from the EU side...

@Mij_Europe: 'Today was too early for [@BorisJohnson](#) to approve resumption of talks. He needs to show voters he's being tough with EU'

Issues

Fisheries

State Aid

Level Playing Field

Governance

TIME IS
RUNNING
OUT

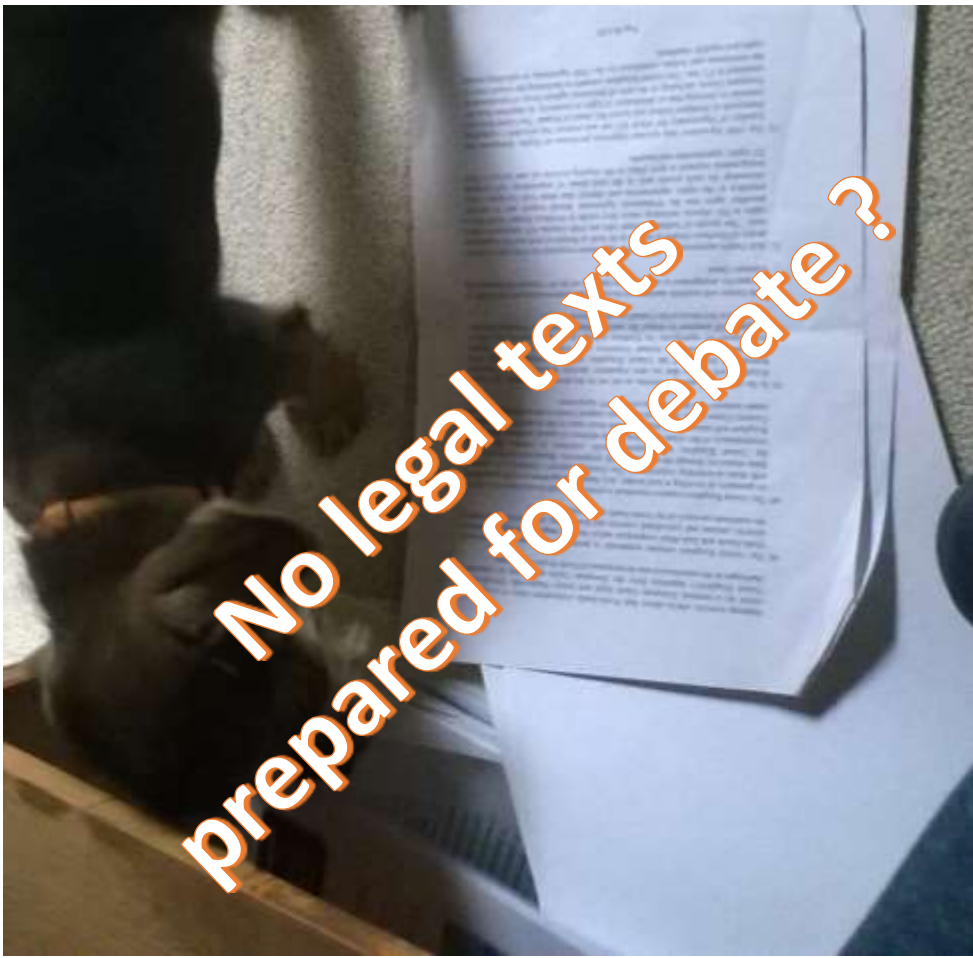
 GOV.UK



**Some EU
perspectives – why
do they insist on a
level playing field and
uniform governance
arrangements?**



**Prof Dagmar Schiek(@dschick – though I am low on twitter since I
need to find a medium where more nuance can be conveyed)**



https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership_en

<https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>

EU and UK legal texts (published)

18 March 2020: EU COM draft (with some blanks) for future relationship treaty (beyond trade)

19 May 2020: UK GOV set of 11 draft treaties (trade, annexes thereto, fisheries, air transport, aviation, social security, energy, nuclear energy, asylum [children], readmission of migrants, law enforcement et al)

15 July 2020: EU adds draft (road transport)

14 August: EU adds draft (law enforcement/judicial cooperation)

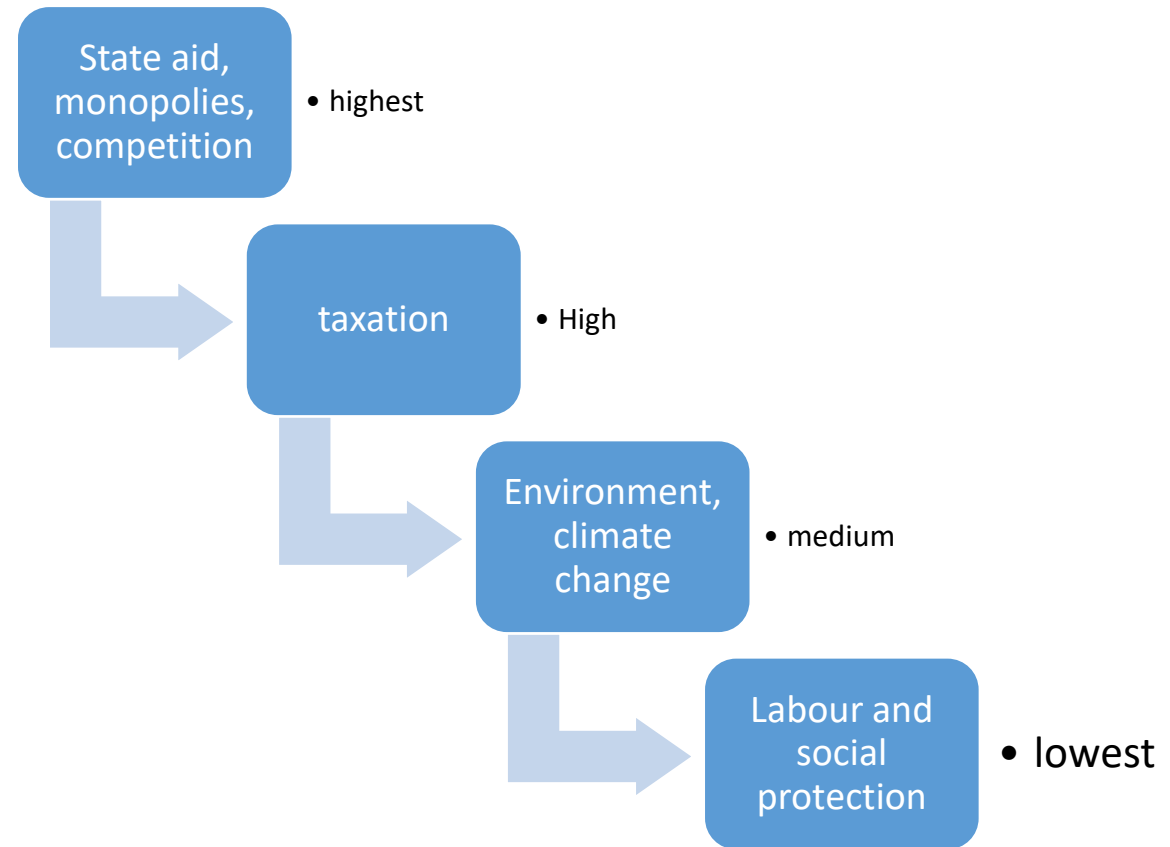
18 August: EU draft on minimum requirements to keep road transport safe (includes tachometers, working time and general safety)

19 August: EU draft on cultural objects

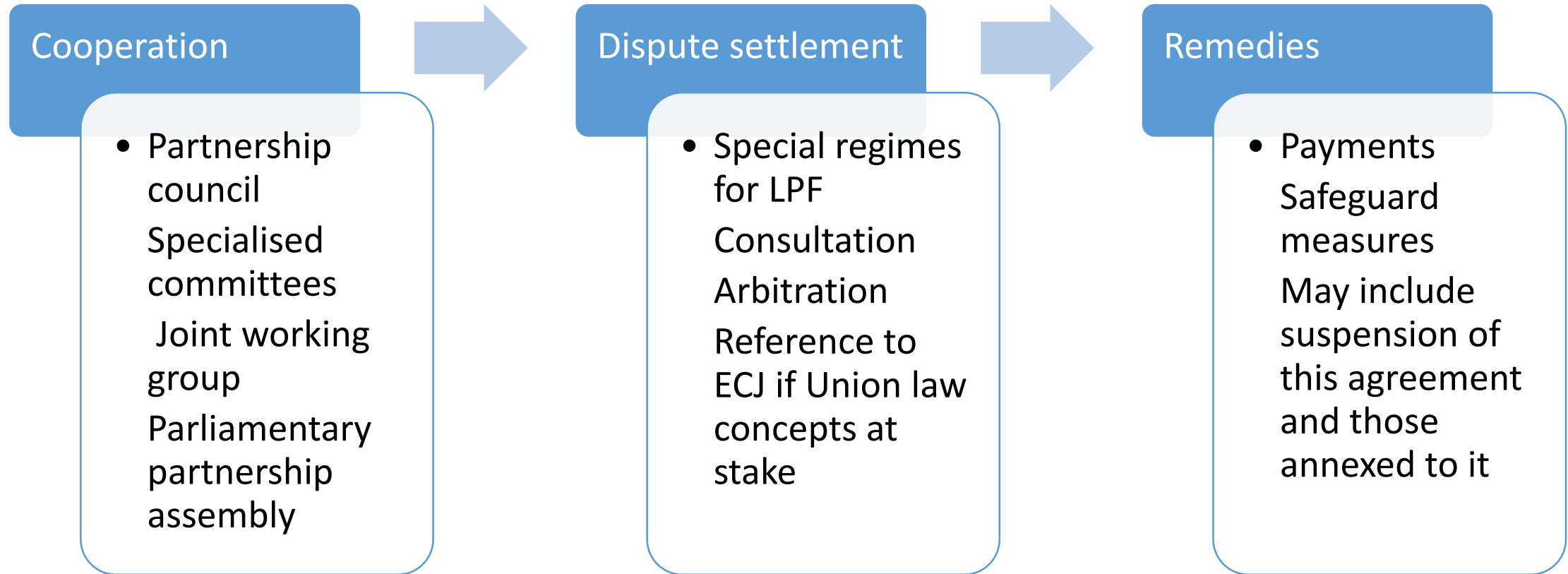
8 September: EU draft on recognition of professional qualifications

“level playing field” (pp 18-45 / of 440 p draft)

- Only relates to trade and investment, covers
- state aid, competition, state owned enterprises,
- Taxation
- labour and social protection,
- environment and health, climate change
- other



Governance – (part V, 299-331)



Special Regimes for LPF

State aid

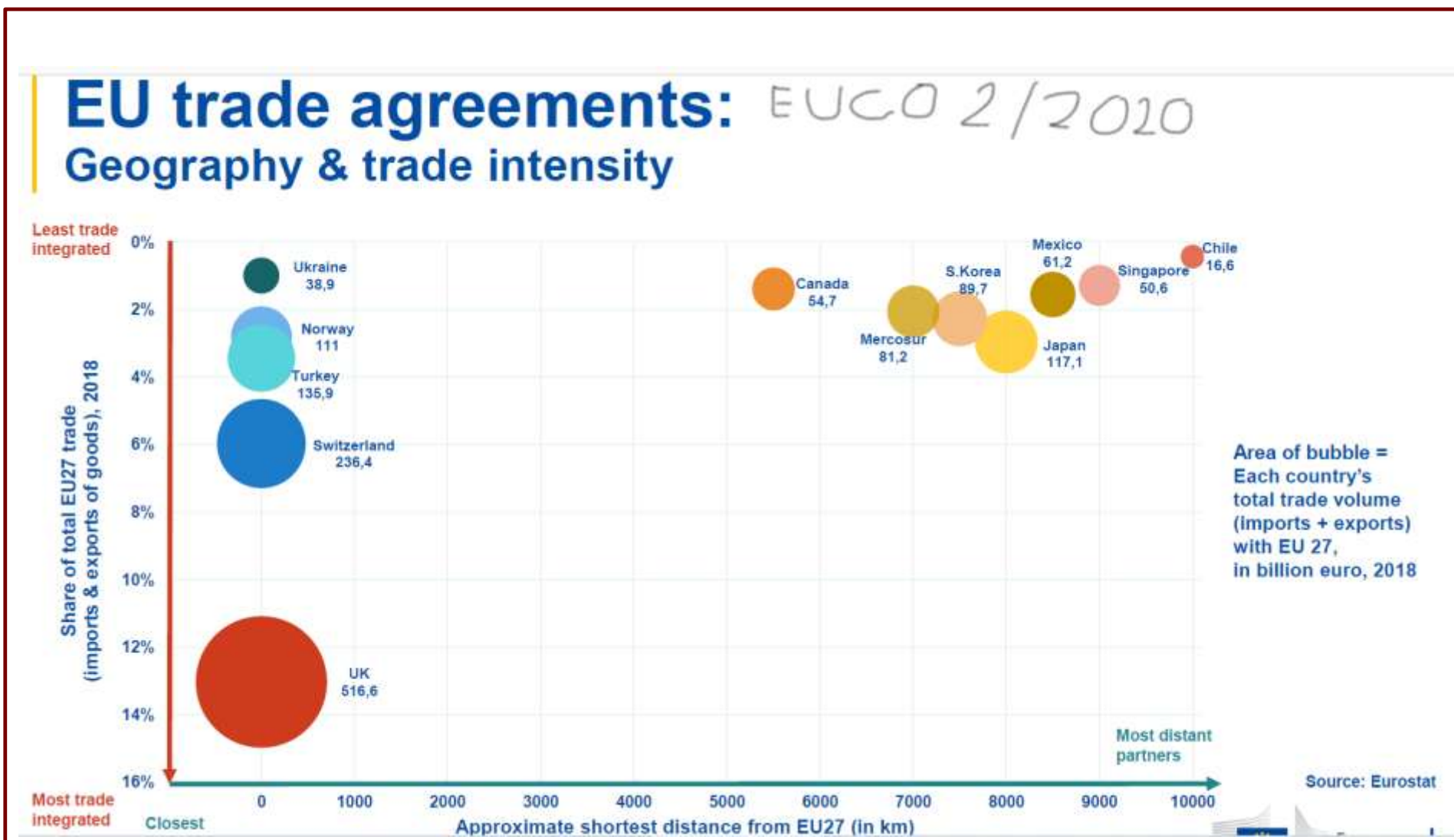
- UK to establish institution taking COM competences (surveillance internal)
- UK to ensure that its courts maintain equivalence with EU law
- EU allowed to take any temporary measures in case of non-compliance


Labour & Social

- Both parties to set up/ maintain labour inspectorates
- Ensure effective sanctions in cases of domestic non-compliance
- While generally there is only a non-regression clause, the Partnership Council is empowered to set higher standards
 - If both sides agree

Why LPF? • On the one hand, the UK is different from all other neighbourhood states (left) or international partners (right)

- On the other hand, in spite of huge diversity, the EU has LPF commitments in any external trade agreement





The Internal Market Bill: A sledgehammer to crack a nut?



Dr Viviane Gravey (@VGravey)

Major criticisms in recent Lords reports

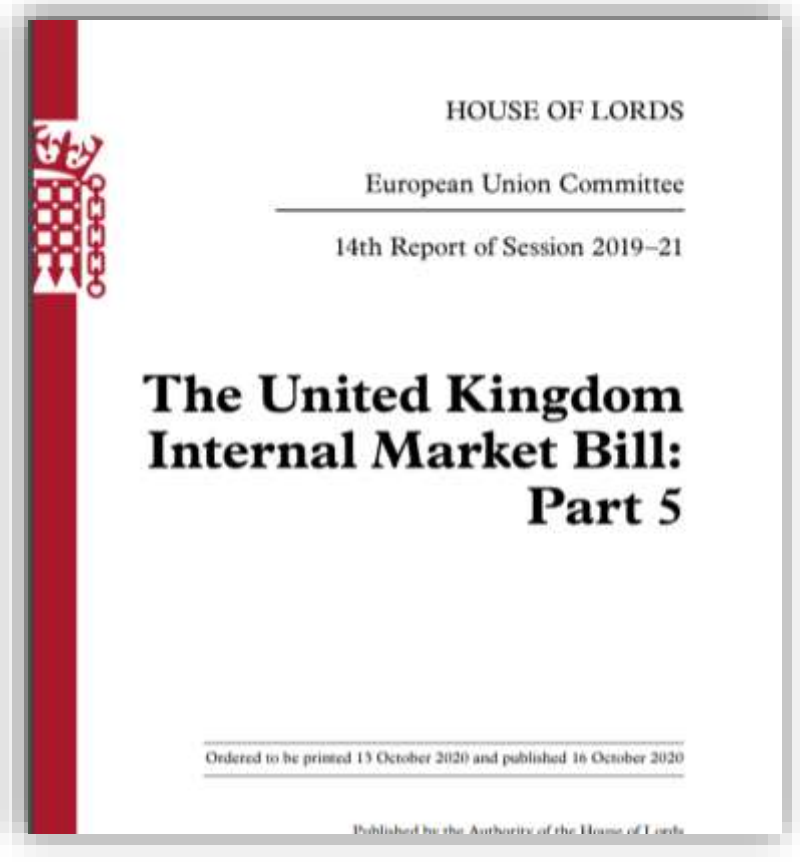
Executive v Legislative



Central government v. devolved



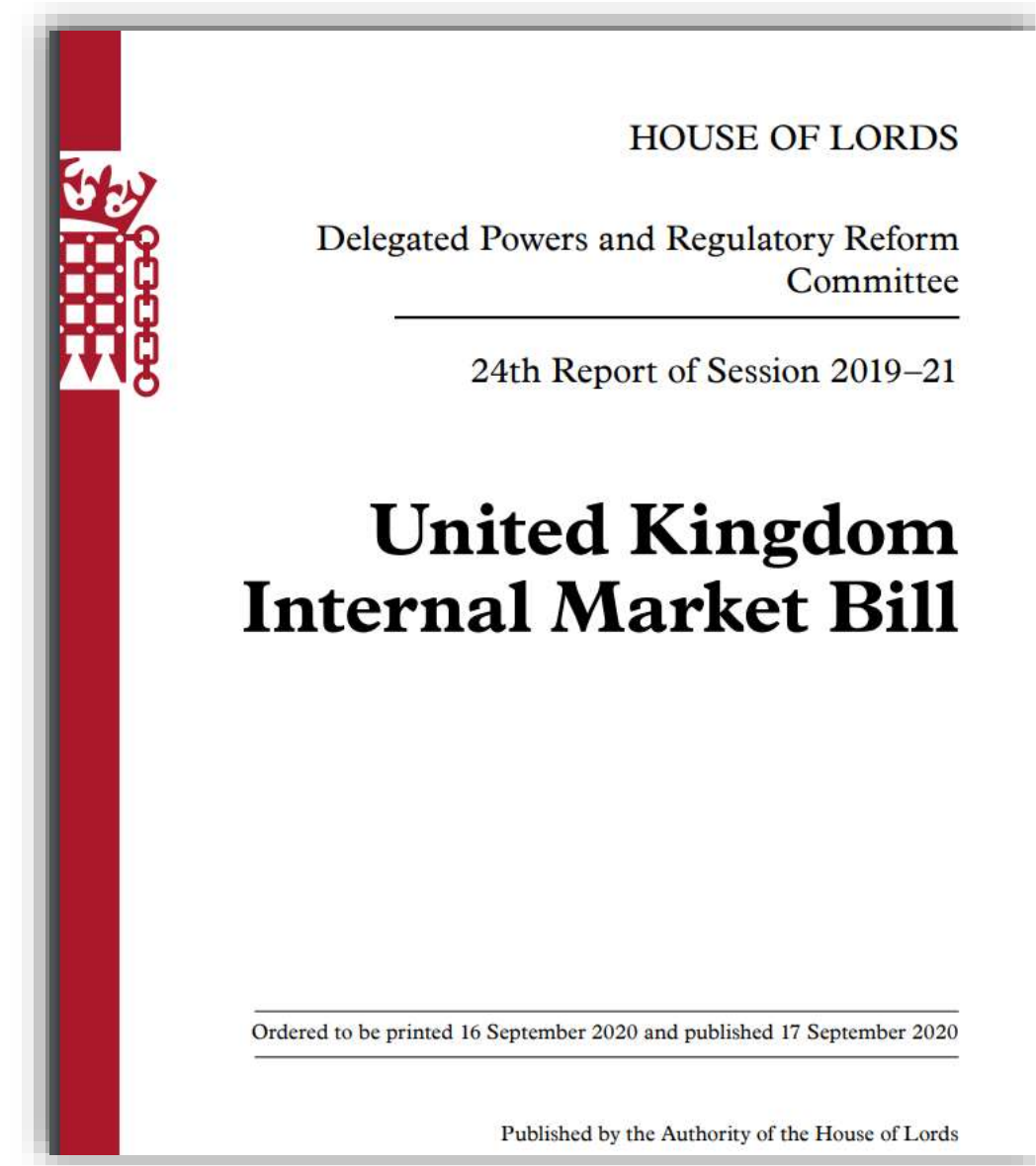
UK v EU, with NI caught in between



Insufficient justification of extraordinary powers within Bill

6/11 delegated powers clause ‘In the absence of a **convincing justification** for the Henry VIII power in clause 16(2), the power is inappropriate and should be removed from the Bill’

“The rule of law requires everyone, including Ministers, to be subject to the law. Parliament is sovereign. **Ministers are not.** Where Parliament authorises a Minister to make regulations in disregard of international or domestic law, it places the Minister in a difficult position. The Minister’s instinct and duty is to respect and obey the law. This Bill, in allowing Ministers to make regulations that disregard international or domestic law, potentially represents an unprecedented challenge to the United Kingdom’s commitment to the rule of law.”



Detrimental impacts on devolution

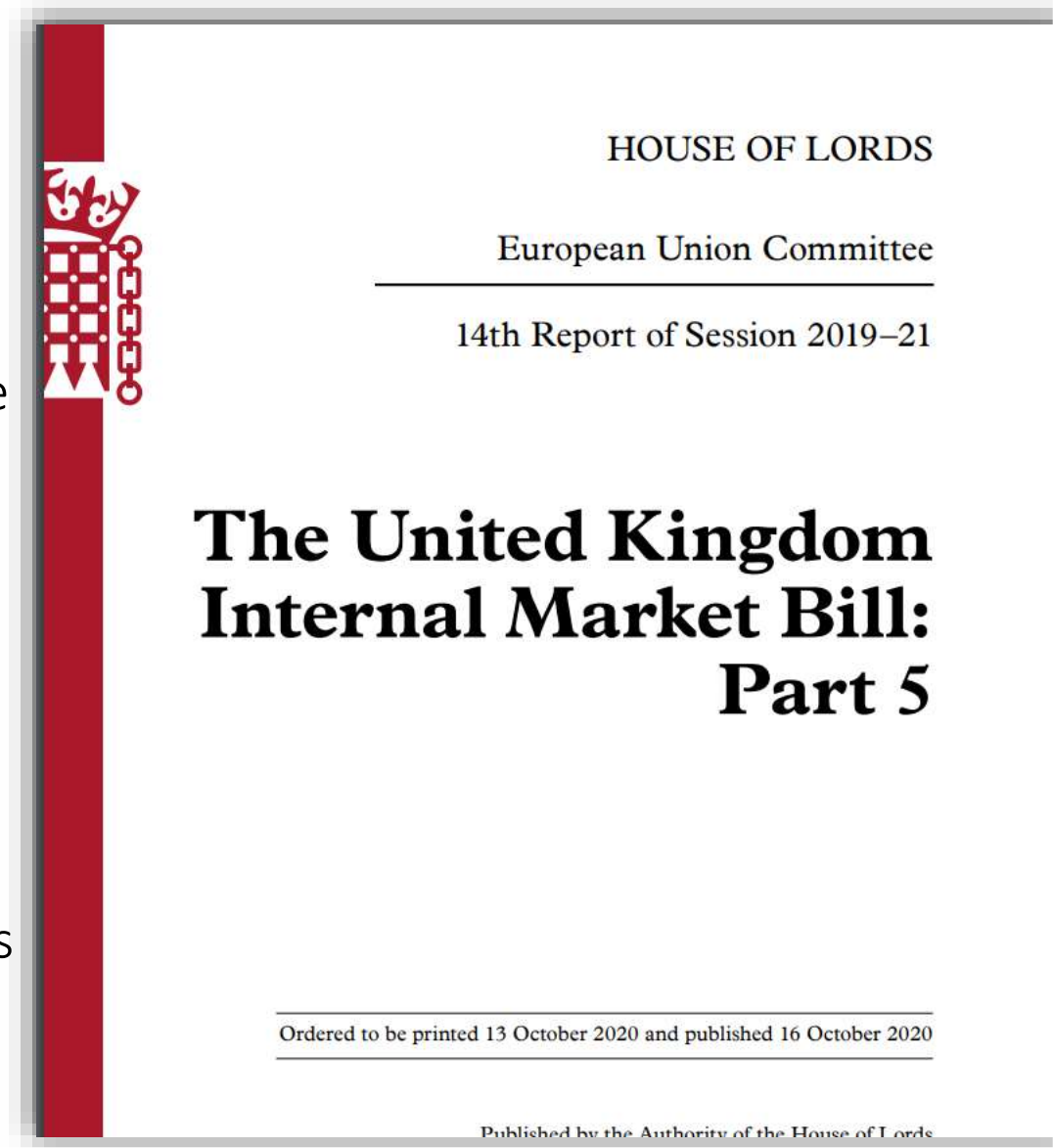
- Limited **consultations** with interested parties, included devolved administrations
- Continuing worrying trend of **governing on devolved matters without legislative consent** ('Until the European Union (Withdrawal) Act 2018, legislative consent had never been withheld')
- 'The Government has failed to explain why a combination of retained EU law, its existing powers to amend that law, and **common frameworks** could not provide the certainty required at the end of the transition period to secure an effective UK internal market. Such an approach would **obviate the need for the Bill.**'
- 'A **stronger system of intergovernmental relations**, with greater trust and collaboration, may have averted some of the difficulties that the Bill has produced'



Poking the EU bear for no apparent reasons

‘the Government has not disclosed any evidence that the EU has acted in bad faith; it has not explained why, if the EU has acted in bad faith, the Government chose not to use the safeguard, arbitration and dispute resolution procedures contained in the Withdrawal Agreement and the Protocol; and it has not explained why it chose instead, by publishing Part 5 of the Bill when it did, to take pre-emptive and unilateral action (...)

The Government’s pre-emptive action has, in effect, placed the United Kingdom in the wrong. In the process it has damaged the United Kingdom’s international reputation as a defender of the rule of law.’



What to make of the Bill?

- Fostering distrust : a bug or a feature of the Bill?
- How can the Bill be improved:
 - **Reduce use of Henry VIII powers** – major changes such as what exceptions to mutual recognition and non discriminations – should not be solely up to ministers.
 - **Rebalance internal market governance**: (a) publish Dunlop review, reform intergovernmental relations across UK (b) put common frameworks at heart of internal market solution (c) recognize that other valid policy objectives exist
 - **Respect the Rule of Law** – use tools already available in the Withdrawal Agreement