



Queen's Policy Engagement: Post-Brexit Clinic

30 June 2021

Organized in cooperation with the ESRC-funded project on *Governance for 'a place between': the multilevel dynamics of implementing the Protocol on Ireland/Northern Ireland*.



Brexit, Northern Ireland and the Protocol: where are we?



Prof David Phinnemore (@DPhinnemore)

Brexit, Northern Ireland and the Protocol: where are we?

2021	
26-29 April	EP consent vote on UK-EU Trade and Cooperation Agreement
13-18 May	Judicial review hearing
09 June	UK-EU Joint Committee meets – outstanding issues: SPS, trusted trade scheme, meat products, pets, tariff rate quotas, parcels, medicines, plants, livestock movements, guide dogs, EU access to databases, VAT, systems compatibilities... European Commission publishes examples of flexibilities : SPS, medicines, VAT, tariff rate quotas
11-13 June	G7 meeting – Johnson : “I think we can sort it out, but it is up to our EU friends and partners to understand that we will do whatever it takes... If the protocol continues to be applied in this way, then we will obviously not hesitate to invoke article 16”
17 June	UK government requests extension for ‘ Grace period ’ for introduction of prohibitions and restrictions on GB-NI movement of meat products ending 30 June 2021
28 June	Šefčovič evidence to NI Assembly’s Committee for the Executive Office – EU willing to consider ‘ bold steps ’ provided the UK government ‘demonstrates a clear and concrete commitment to implementing the protocol in full’
30 June	EU expected to agree extension to ‘ Grace period ’ for meat products to 30 September 2021 Judicial review outcome

Brexit, Northern Ireland and the Protocol: what's ahead?

2021	
1 October	'Grace period' for customs declaration requirements for parcels – unilaterally extended by UK – ends 'Grace period' for export health and other certificates being required for GB-NI movement of goods – unilaterally extended by UK – ends 'Grace period' for meat products – extension agreed – ends
31 December	'Grace period' for application of EU medicines <i>acquis</i> in Northern Ireland ends
2022	
May	NI Assembly elections
2024	
December	MLA's 'democratic consent' vote on Articles 5-10

Regularization of meetings of Joint and Specialised Committees and JCWG

Formalization and regularization of UK-EU engagement with NI stakeholders

Next steps in EU legal action against the UK

Replacements/amendments and additions to EU law applicable under the Protocol

Regulatory divergence between the UK and the EU

Brexit, Northern Ireland and the Protocol: legal actions

Dr. Billy Melo Araujo ([@BillyMeloAraujo](https://twitter.com/BillyMeloAraujo))

Protocol and Judicial Review

Judicial review under WA/Protocol

‘Domestic’ Judicial review

State-to-State
Dispute
Settlement

- Unilateral extension grace periods

CJEU Jurisdiction

- Unilateral extension grace periods

EU Judicial
review

- McCord v Commission (Case T-161/21)

UK Judicial Review

- Habib
- Blair International
- BCP

Habib and Others... v Secretary of State for Northern Ireland

- Acts of the Union 1800
 - NI no longer part of UK customs union?
 - Use of royal prerogative contrary to statutes?
 - Implied repeal
- Belfast Agreement and section 42 of NI Act 1998
- Breach of EU law?

Court hears NI protocol likened to how Vichy regime operated

Unionist challenge to legality under 1800 Act of Union gets under way in Belfast high court

© Fri, May 14, 2021, 20:07

Jonathan McCambridge



A judicial review of the protocol, part of the Brexit deal that creates a trade border between Northern Ireland and Great Britain, has begun in Belfast's high court.

Brexit: NI Protocol 'incompatible with EU law'

By John Campbell
BBC News NI Economics & Business Editor

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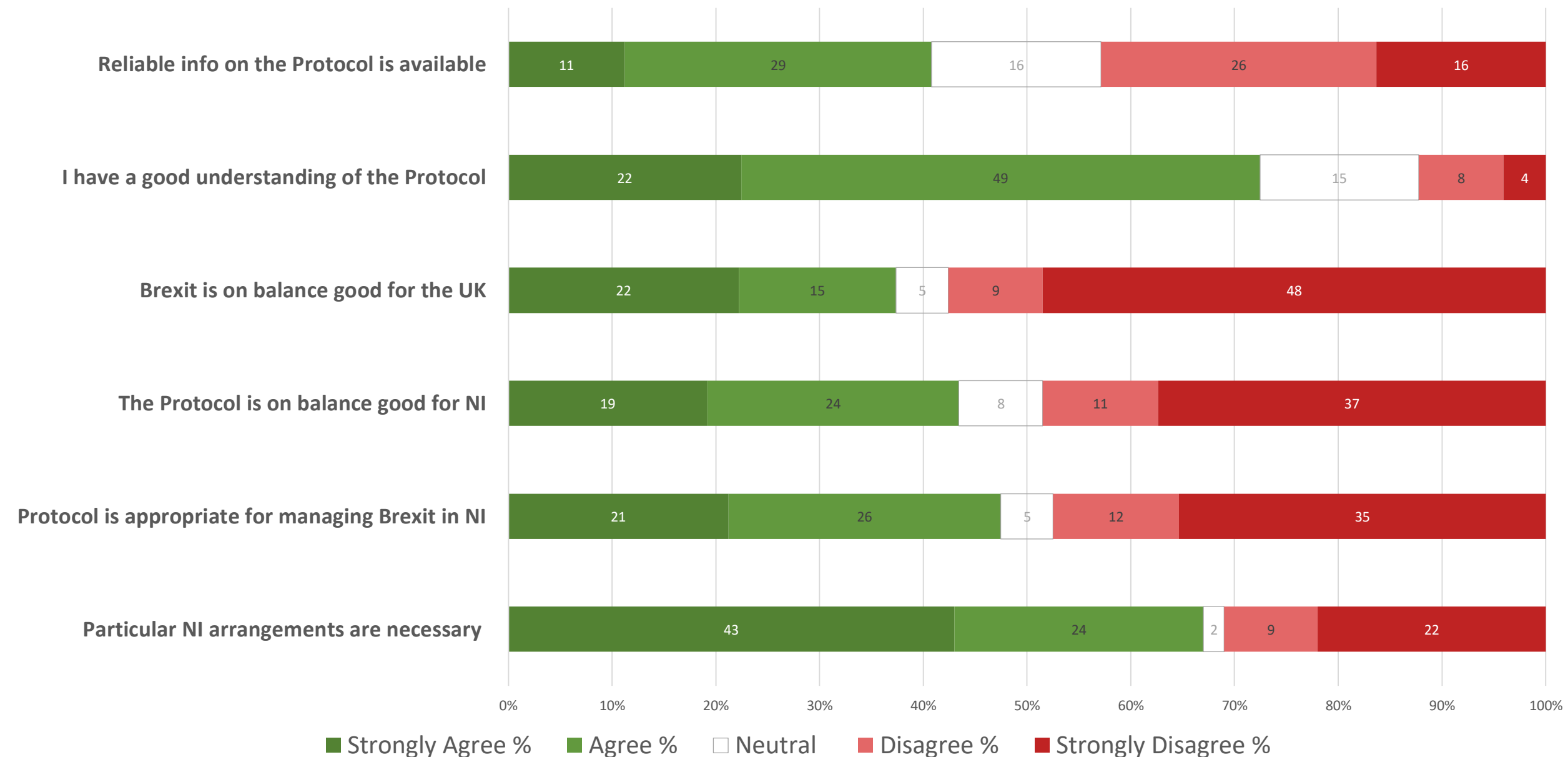
A barrister for unionist leaders argued the protocol was not compatible with EU law

What do voters in Northern Ireland think about the Protocol?

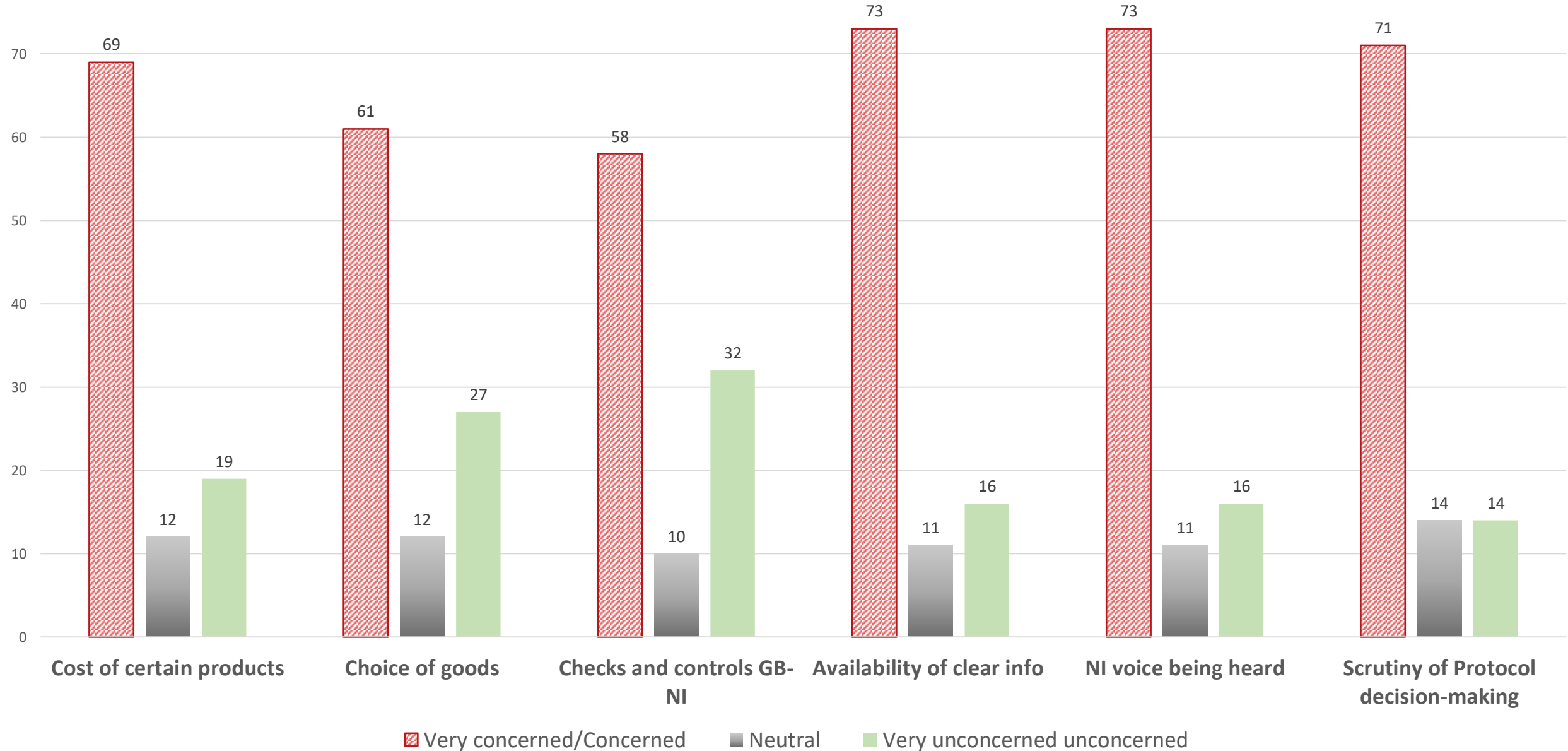
Prof. Katy Hayward ([@hayward_katy](#))

Dr Lisa Claire Whitten ([@LisaClaireWhit1](#))

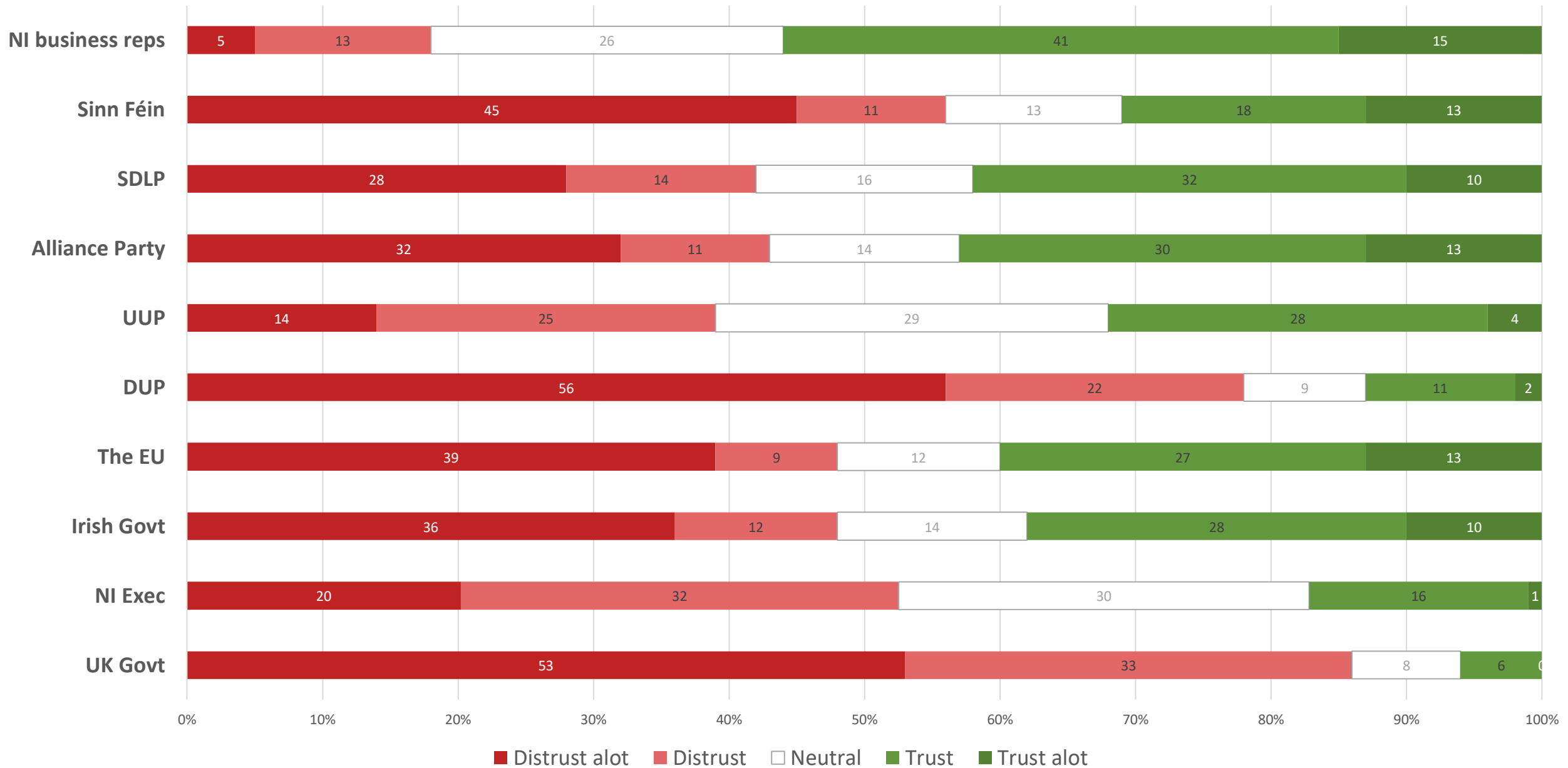
Opinions on Brexit & the Protocol



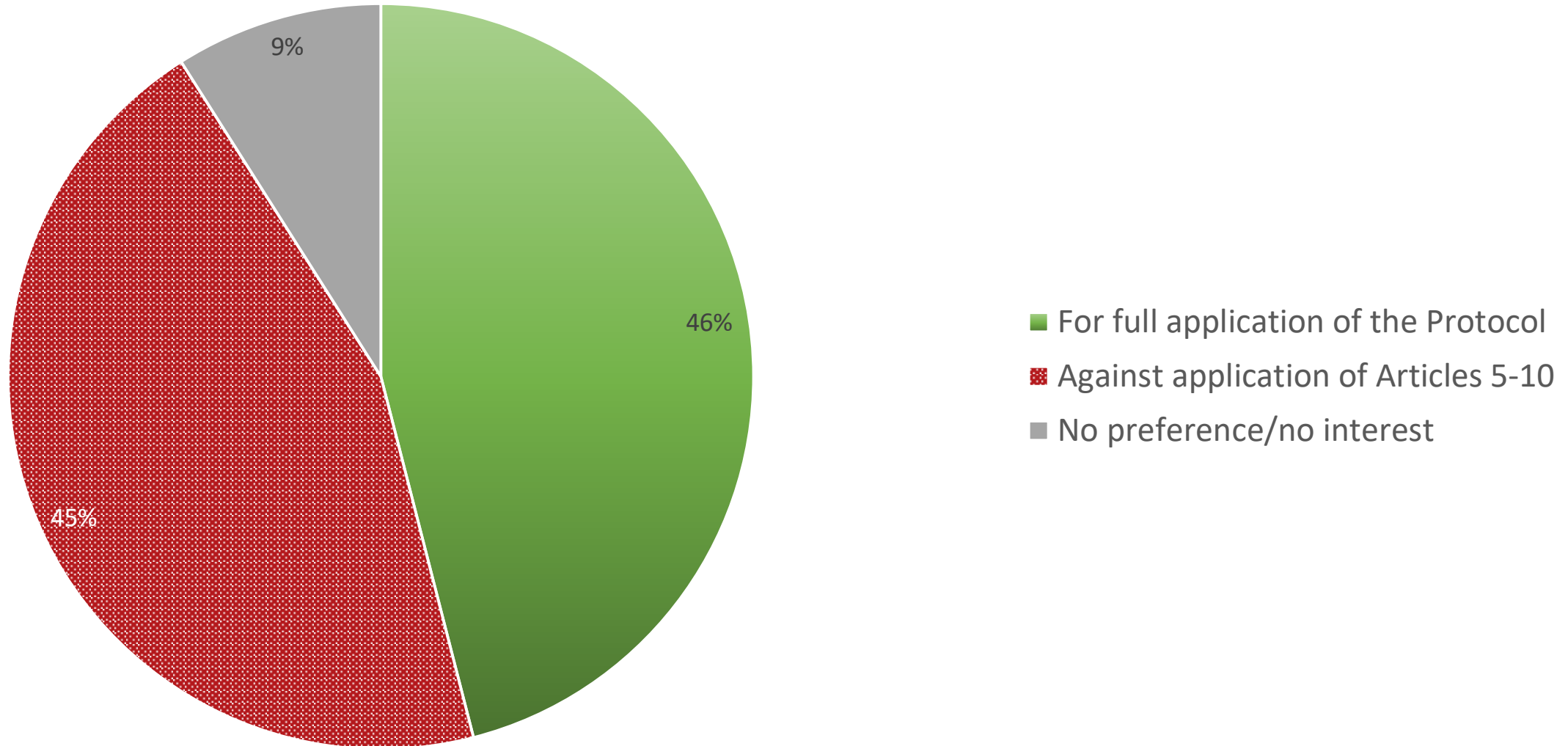
Levels of concern about Brexit/Protocol



Who is trusted to manage the Protocol for NI?



How would you like your MLAs to vote in the 2024 consent vote?



What do voters think?

Theme/Issue	Frequency
Protocol as necessary / inevitable / potentially beneficial / make it work	149
Protocol viewed negatively	116
Critical of DUP / Unionist politicians / PUL activists	115
Critical of the UK government or Great Britain	91
Lack of information / misinformation	87
Brexit as a mess / folly / viewed negatively	80
Scrap the Protocol / Irish Sea Border / have a hard land border	77
Brexit, not the Protocol, as the cause of disruption	58
Lack of full NI representation / NI consent	53
Critical of EU and/or EU approach to implementing the Protocol	45

Approximately
20% respondents
provided
comments
(500+)

What do voters think?

Protocol = Necessary / Beneficial “I believe the protocol is an unfortunate but necessary outworking of Brexit. In principle it could be OK but there needs to be lots of mitigations to make it nearly invisible otherwise it could create political instability”	Protocol = Negative “The Protocol was not voted on. It was imposed on Northern Ireland and would leave us without representation to a place which makes laws for us. And makes me a second-class UK citizen in the UK. Scrap the Protocol”
Critical of UK government “UK government were well aware of the problems which would arise and thought that they could sign the agreement and renege on it after while blaming the EU. Behaviour of Johnson, Gove and Frost et al makes me ashamed to be British”	Lack of Information “Truthfully, there isn’t enough reliable, unbiased information without politicizing the Protocol into an orange or green issue.”



Managing the Protocol: agri-food



Dr. Viviane Gravey (@Vgravey)

Why SPS matters

- 5 'Ps' –
underpinned by
SPS issues
 - Pets
 - Plants
 - (seed) Potatoes
 - Plant products
 - Parcels

Box 1: Sanitary and phytosanitary measures

Sanitary and phytosanitary (SPS) measures are all regulatory measures adopted:

- a. to protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms
- b. to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs
- c. to protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests
- d. to prevent or limit other damage from the entry, establishment or spread of pests.

SPS measures therefore relate principally to food and agricultural products – for example, limits on the amount of pesticide residue that can be left on a fruit or vegetable. But a requirement for wooden crates used to transport other types of goods to be heat-treated or fumigated to prevent insects hitching a ride on them is also an SPS measure.

What are the options?

Equivalence

- Example of countries EU has equivalence with: USA, Canada, New Zealand...
- Rule by rule agreement – equivalence agreements will differ in scope and ambition.
- In practice: narrow understanding of equivalence
- Reciprocal – cover trade in both directions (with exceptions).
- **This does not mean absence of checks, but lighter touch**
 - Each party can do spot checks
 - Agreement between parties on frequency of checks
 - Checks are against domestic rules, not export market rules

Alignment

- Example: Swiss/EU Veterinary Agreement
- Switzerland keeps pace with EU regulatory developments on SPS – not reciprocal.
- Common EU-Swiss veterinary area, no veterinary controls for trade in animals and animals products between Switzerland and EU since 2009
- EU Border Control Posts check shipments from non-EU countries going to Switzerland and vice-versa
- Swiss presence in Brussels to influence EU regulatory process
- Some divergence remains possible: eg Swiss import of hormone treated US beef

Where are we heading?

Short-term:

New (jointly agreed) three-month delay on ban of GB chilled meat imports in NI (tbc) ; similar accommodation on medicines etc.

Mid-term:

An SPS agreement (Swiss/NZ) even temporary? Agreement until decision to diverge – currently UK is paying cost of divergence without any benefits.

Long-term:

If UK aligns with US in UK-US trade deal, then back to checks – but more time to prepare infrastructure and clearer purpose for all