

THE MODERN BREXIT AGENDA: SOME CONSEQUENCES OF “TAKE BACK CONTROL”

Summary

Brexit, the historically unique process of the UK's withdrawal from the European Union, has continued to dominate the global conversation for several years and its significance has not waned. The withdrawal of a state from the EU happened for the first time in more than half a century of its history. Despite the formal completion of Brexit, many related issues regarding the implementation of the EU-UK Withdrawal Agreement, the status of Northern Ireland, the implementation of the Trade and Cooperation Agreement between the two parties, the place of EU law in the British national legal order, are still not finally resolved. The adopted legal decisions influence the current development of both the EU and especially the UK's legal order. All this allows us to talk about the actual continuation of Brexit and the formation of its modern agenda.

Keywords: European Union, United Kingdom, Brexit, Northern Ireland, Withdrawal Agreement, Protocol on Ireland/Northern Ireland.

* PhD, Associate Professor, Department of Legal Regulation of Economic Activities, Financial University under the Government of the Russian Federation, Moscow, Russia.

E-mail: galushkodv@gmail.com

ORCID: <https://orcid.org/0000-0002-9301-9565>

MODERNA AGENDA BREGZITA: NEKE POSLEDICE “VRAĆANJA KONTROLE”

Sažetak

Pitanje Bregzita, istorijski jedinstvenog postupka povlačenja Velike Britanije iz Evropske unije, i danas, nekoliko godina nakon njegovog formalnog okončanja, predstavlja predmet diskusija na globalnom nivou, a značaj ovog pitanja i dalje je veliki. Povlačenje države iz članstva EU dogodilo se prvi put posle više od pola veka njene istorije. Uprkos formalnom okončanju Bregzita, brojna pitanja, kao što su pitanje implementacije Sporazuma o povlačenju i Sporazuma o trgovini i saradnji, pitanje statusa Severne Irske, kao i pitanje mesta prava EU u britanskom nacionalnom pravu, još uvek nisu konačno rešena. Usvojene pravne odluke utiču kako na trenutni razvoj prava Evropske unije, tako i na razvoj britanskog nacionalnog prava. Sve su to razlozi koji govore o važnosti teme, te opravdavaju bavljenje pitanjem faktičkog nastavka Bregzita, te formiranja njegove moderne agende.

Ključne reči: Evropska unija, Velika Britanija, Bregzit, Severna Irska, Sporazum o povlačenju, Protokol o Irskoj/Severnoj Irskoj.

1. Introduction

Whether the UK's withdrawal from the European Union is a tragic event for the EU or, conversely, an opportunity for further integration remains open. In our opinion, Brexit has revealed a new aspect of regional integration - its possible reversibility. It has shed light on the practical aspects of both integration and disintegration processes. At the same time, the modern doctrine has not developed proper theoretical foundations that solve the problem of successful development of integration, comprehensive involvement of Member States, prevention of reverse integration and prevention of disintegration.

Sovereignty issues played a key role in Brexit. The slogan “Take back control”, used by supporters of the UK's withdrawal from the EU, associated with the concept of “sovereignty” (Gammage & Syrpis, 2020), caused an emotional response from many, becoming a call for the restoration of what was lost. Nevertheless, “taking back control” encountered the practicalities of life in the UK following its departure from the European Union, an integration body consisting

of neighbouring European nations. Brexit seemed as an opportunity to get out of the power of the rules and mechanisms of the European Union.

For forty-seven years of Britain’s membership in the Union, EU institutions have often been the object of suspicion, criticism and hostility from the British political establishment and the media (Wind, 2017). The headlines of British newspapers have repeatedly claimed that in the international arena, the UK has been “pushed aside” by the EU’s supranational institutions.¹ In campaigns promoting the state’s withdrawal from the EU, it was stated that “EU judges have already repealed UK laws on issues such as counter-terrorism, migration, taxation and whether prisoners should be allowed to vote”, which, as it was said, amounted to “loss of control”.² Thus, Brexit has been of great legal importance, since it was necessary to sever existing legal, trade and political ties with the EU and to establish new relations.

2. Negotiating Brexit: Dynamics of “Take Back Control”

After the 2016 referendum, the scepticism about supranational institutions, in particular the role of the EU Court of Justice, has, unsurprisingly, become noticeable in the UK’s approach to withdrawal negotiations. The British government in 2017 indicated that one of the main goals of the exit negotiations was “to regain control over our laws and put an end to the jurisdiction of the European Court of Justice in the UK”³. British laws should “be interpreted by judges not in Luxembourg, but in courts across the country”⁴. The 2018 government White Paper confirmed that “withdrawal from EU institutions” corresponds to “restoring the sovereignty of the UK, ensuring that the laws by which people live are adopted by those they elect and enforced by the UK courts, with clear accountability to the people of the UK”⁵. Boris Johnson subsequently published a

¹ Boris Johnson dramatically rules himself out of Conservative election race. *The Telegraph*, 30 June 2016. Available at: www.telegraph.co.uk/news/2016/06/30/boris-johnson-dramtically-rules-himself-out-of-conservative-elec/ (July 1, 2023).

² *Vote Leave, Briefing: Taking back control from Brussels*. Available at: http://www.voteleave-takecontrol.org/briefing_control.html (1. 7. 2023).

³ *Prime Minister’s Office, The government’s negotiating objectives for exiting the EU: PM speech*, 17 January 2017. Available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pmspeech> (1. 7. 2023).

⁴ *Ibid.*

⁵ *HM Government White Paper: The Future Relationship between the United Kingdom and the European Union*, 12 July 2018. Available at: <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union> (1. 7. 2023).

manifesto stressing that his government “will not allow the UK to join the single market, to any form of customs union and will put an end to the role of the EU Court of Justice”⁶.

On the part of the EU, the negotiating directives of May 2017 stated the need “to include in the Withdrawal Agreement effective mechanisms for ensuring compliance and dispute settlement that fully respect the autonomy of the Union and its rule of law, including the role of the Court of Justice, in order to guarantee the effective fulfilment of obligations under the Agreement” (Council of the European Union, 2017).

Regarding, in particular, the issues of further application of EU legislation, citizens’ rights and provisions relating to financial settlements with the UK, the negotiation directives emphasized that “the jurisdiction of the Court of Justice (and the supervisory role of the Commission) should be preserved” (Council of the European Union, 2017). The UK government responded by accusing the EU of “judicial imperialism” for demanding an overly prominent role of the EU Court in the Withdrawal Agreement (Herszenhorn, 2017).

It may be worth reminding here that the first British political documents concerning withdrawal from the Union were based on the initial idea that negotiations on the UK’s withdrawal and future partnership could be agreed simultaneously and, quite possibly, together in a single agreement. This parallel approach explains why the British government initially believed that Withdrawal Agreement could be compared to other international agreements concluded between the EU and third countries. Those agreements while providing for a “close” relationship, did not necessarily include the jurisdiction of the EU Court of Justice, for example, the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) or EU Free Trade Agreement with South Korea (UK Government, 2017a).

European institutions, however, imposed a step-by-step approach to Brexit negotiations and believed that the Withdrawal Agreement could only address a few essential issues to ensure an orderly exit, while future relations should be agreed and established in accordance with EU rules on concluding international treaties after the UK became a third country (European Council, 2017). Moreover, the purpose of the Union regarding the content of the Withdrawal Agreement was to preserve to the maximum extent possible the existing principles defined by EU law. Therefore, a few months into the negotiations, it became evident to the withdrawing state that if the EU and the UK were to reach an agreement on

⁶ *Get Brexit Done Unleash Britain’s Potential: The Conservative and Unionist Party Manifesto 2019*. Available at: https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf (1. 7. 2023).

withdrawal, a significant portion of EU law would continue to apply to the UK as a third country. This would essentially treat the UK as if it were still a member state, in line with the principles of direct effect and supremacy. Faced with this scenario, the UK also acknowledged the need for a dispute resolution mechanism and proper oversight to ensure compliance with the Agreement resulting from the Brexit negotiations. Additionally, they recognized the necessity for certain restrictions on the Union’s ability to agree upon certain matters.

Autonomy is considered part of the very fundamental foundations of the Union’s legal order (Wessel & Blockmans, 2013, p. 10), since it affects the authority to determine the validity and interpretation of EU law as a self-sufficient and self-referential legal system, distinct and independent from international law (Eckes, 2020, p. 2). It is worth noting that the Court also referred to this principle in its recent Brexit-related *Wightman* case, stating that: “The autonomy of EU law with respect for both the law of Member states and international law is justified by the essential characteristics of the EU and its law relating, in particular, to the constitutional structure of the EU and its very nature” (EU Court of Justice, 2018). In the light of this principle underlying the debate about the very nature of EU law, and taking into account the need to conclude an Exit Agreement in accordance with Art 50 of the EU Treaty (Agreement, 2020), an international treaty between the EU and a member State that has become a third country, including effective mechanisms for law enforcement and dispute settlement, is of interest as a fundamental requirement for protecting the autonomy of the Union’s law by formulating clear restrictions for the process of leaving the EU.

Despite the red line on the termination of the jurisdiction of the EU Court on British territory, the UK proposed several models for resolving disputes between the two Parties in the Withdrawal Agreement. The UK acknowledged that in certain EU international agreements, if provisions similar to the pertinent Union regulations exist, Contracting Parties have the right to seek clarification from the EU Court regarding these rules. It is noteworthy that while some EU agreements grant this appeal privilege to an independent arbitration body rather than the parties involved, the UK still recognized the opportunity for such an application (UK Government, 2017b). Thus, the UK eventually agreed to what it designated as one of the most significant red lines: the dispute resolution mechanism agreed in the Withdrawal Agreement is undoubtedly one of the most integrative of the existing models developed by the EU to protect the Union’s rule of law. However, after a closer examination of the agreed dispute resolution mechanism, we may find that even this model, despite the parties’ efforts to comply with the principle of autonomy, may still face certain objections if ever brought before the Court.

3. Challenges of Northern Ireland

Issues related to Northern Ireland occupied one of the central places in the framework of Brexit. It was not about independence, but about the future legal regime of the border with the Republic of Ireland, which remained an EU member state. The problem was that the UK was leaving the Common Market, which provides for the functioning of a single customs space, which could potentially require tighter control over the border, fuelling contradictions between supporters and opponents of the idea of a united Ireland in Northern Ireland (Doyle & Connolly, 2017).

In fact, before Brexit, there was no border between the United Kingdom and the Republic of Ireland, because in 1923 passport control between the countries was abolished, and when the common market was created in 1993, customs control was eliminated. A common migration space was established between the countries, which regulated the residence rights of non-residents in both countries (Ryan, 2001). Restoring a full-fledged border was not part of the future plans of both London and Dublin. Initially, the problem was that if the border between Great Britain and Northern Ireland remained open, it would be almost impossible to restrict freedom of movement, which was advocated by both the British government and the EU (Keating, 2021). Ireland has remained a full-fledged member of the EU single internal market, and thus retains obligations to comply with all the principles of its functioning, including guaranteeing the free movement of citizens of the European Union.

Due to the special political significance, the solution of the Northern Ireland issue required separate attention and an acceptable solution. In addition, Northern Ireland received a significant share of subsidies from the EU, including the PEACE program funded from the Union funds, aimed at resolving the Northern Irish problem – the conflict in Ulster (O'Neill, 2018). After Brexit, these costs fell on the Government of the United Kingdom.

Although there was a level of consistency in the Protocol text during the negotiations, a new important element appeared in the final version of the document. This provision provided that Northern Ireland should be able to express its opinion on its new position, although it was not specified whether it would be a referendum, or whether the opinion would be expressed within the existing institutional structures. The idea was that if Northern Ireland was to remain within the framework of this new status, which provides for the harmonization of many rules with EU law, then some kind of consent mechanism was needed that would take into account the opinion of the residents of this region. The fact that Northern Ireland did not support the UK's withdrawal from the European Union at the referendum, and that

proposals to retain observer status for British members of the European Parliament were rejected, led some to doubt the authenticity of the desire to participate in the withdrawal process, as well as the degree of support for Brexit.

Ultimately, Art. 18 of the Protocol on Ireland/Northern Ireland has established a consent mechanism. Despite the importance of this democratic institution, nevertheless, there are good reasons to doubt the reasonableness of such a decision. Brexit crosses the line of ethno-national politics in Northern Ireland and is a highly moot issue. This process is poised to potentially become a recurring examination of the resilience of the power institutions in the vicinity. The way in which the Protocol is implemented in practice, as well as the progression of the UK and the EU post-Brexit, will determine the contextual narrative.

The mechanism, in particular, provides for an opportunity to verify democratic consent regarding the continuation of the application of Arts. 5-10 by the end of 2024 (Art. 18 of the Protocol). It is established that this should be done “strictly in accordance” with the British unilateral statement, which should set out the details of the process (UK Government, 2019). It is planned to conduct a vote of the members of the Northern Ireland Assembly, deciding on the outcome by majority vote.

This provision means that the Assembly has the right to authorize the continuation or termination of the application of the rules on the special status of the region by a simple majority vote. If the First Minister and his First Deputy do not submit the relevant petition within the established time frame, then the members of the Assembly receive the right to do so.

If the consent process cannot be implemented according to the procedure described above, then the UK has the right to initiate an alternative process. For example, this may happen in the case of non-functioning executive or legislative authorities of the region. In such situation, the voting will be organized by the British government, and the decision will be made by a majority of the votes of those present and participating in the voting.

Although a simple majority can either terminate or continue the special provisions in relation to Northern Ireland, the Protocol enshrines the principle of recognizing the importance of the existing intercommunal system in the region. According to para. 5 of Art. 18 of the Protocol, if the decision is taken by a simple majority, the special legal regime for Northern Ireland will continue to apply for the next four years, however, with intercommunal support for such a decision, the validity of these agreements increases to eight years. In addition, the UK is obliged to conduct consultations and independent verification if such intercommunal support cannot be achieved.⁷

⁷ Declaration by Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland concerning the operation of the ‘Democratic consent in Northern Ireland’

At the same time, if, as a result of the vote, it is decided to terminate the application of the provisions relating to the special status of Northern Ireland, in accordance with para. 4 of Art. 18 of the Protocol, the Joint Committee must formulate recommendations within two years on what measures are necessary to, for example, avoid a hard border between the two parts of the island of Ireland. Given the debate surrounding the Protocol and its complexity, combined with the inability to establish any other reliable basis for achieving the agreed goals, it can be assumed that this time may not be enough.

It is difficult to predict the impact of the consent mechanism. The necessity of the decision is being questioned, alongside concerns about the potential repercussions it may have on the effectiveness and operations of regional authorities. These concerns also extend to its compliance with the Good Friday Agreement (Hayward, 2020). The future of the provisions on democratic consent may depend on how the practical implementation of the Protocol develops; how they will be perceived by a wide range of private actors, especially representatives of both confessional groups. Such issues may determine the fate of the provisions on democratic consent.

At the same time, a fundamental question remained in all iterations of the Protocol: how likely is that both sides will reach a “follow-up agreement” that meets the agreed goals related to the island of Ireland? This is important because it remains possible to conclude a subsequent agreement to replace the Protocol in full or in any part of it (Art. 13 of the Protocol). In the light of the UK’s desire to significantly move away from the EU in order to realize some of the ambitions and promises of Brexit, it can be assumed that the Protocol may stand the test of time and become a built-in agreement for Northern Ireland between the two parties. The parties struggled to reach an agreement for a long time, which underscores the difficulties of reaching new agreements if one party were to initiate them.

The UK government hailed the consent mechanism as a “fundamental element of the new agreement”⁸. More importantly, it allowed to declare that the “anti-democratic” support regime had been abolished. However, the largest Unionist party in Northern Ireland did not share government’s view/stance and continued to oppose the deal. Presenting party’s manifesto for the 2019 general election, unionist leaders stated that the differentiated agreement after Brexit for Northern

provision of the Protocol on Ireland/Northern Ireland. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840232/Unilateral_Declaration_on_Consent.pdf (1. 7. 2023).

⁸ Prime Minister’s Statement to the House of Commons of 19 October 2019. Available at: [https://hansard.parliament.uk/commons/2019-10-19/debates/8C3F5267-8186-4536-83EC-56E3C88DCC8E/PrimeMinister’s Statement](https://hansard.parliament.uk/commons/2019-10-19/debates/8C3F5267-8186-4536-83EC-56E3C88DCC8E/PrimeMinister’s%20Statement) (1. 7. 2023).

Ireland violates the principle of consent⁹ “because the continuation of the Protocol does not require the consent of the majority of unionists and nationalists” (Phinnemore, 2020). Obviously, the reason why “intercommunal support” was not considered necessary to preserve a differentiated agreement after Brexit for Northern Ireland was to ensure that neither Unionists nor nationalists would have the right to veto its further application. However, given the fact that the majority of voters in Northern Ireland voted for the UK and, consequently, the region to remain in the EU, the question arises whether there could be a more appropriate consent mechanism requiring “intercommunal support” for the region’s exit from the single market and customs union. However, since the conclusion of the Withdrawal Agreement, which includes the Protocol, the Unionists have made it clear that they will seek to annul this agreement. Such a statement of intent indicates the underestimated danger posed by the provisions of the Protocol, including the practice of using each international institution as another arena for political struggle (Özersay & Gürel, 2009, p. 273). The consent mechanism, despite being a welcome channel for democratic communication, could lead to another proxy war over a constitutional issue that divides the two main communities in Northern Ireland.

4. Implementation of the Protocol on Ireland/Northern Ireland

The Withdrawal Agreement (Agreement, 2020) uses the terms “implementation” and “application” as combined technical terms: the Joint Committee is responsible for implementation and application, and controls and facilitates both processes (Art. 164 of the Agreement). In the most general sense, application presupposes the existence of rules that are explicit and unconditional, while implementation requires that the rules are not self-applicable (Bradley, 2020).

A brief history of implementation of the Withdrawal Agreement is interspersed with cases of the UK’s refusal to comply with its terms (Galushko, 2022). In particular, in July 2021, the UK government called for a revision of the Protocol on Northern Ireland, arguing that it should be implemented differently.¹⁰ The need to amend the Protocol was indicated among others on the following issues:

⁹ Bain, M. 2019. Boris Johnson’s deal has breached the principle of consent: Arlene Foster. *Belfast Telegraph*, 29 November 2019. Available at: <https://www.belfasttelegraph.co.uk/news/politics/general-election-2019/boris-johnsons-deal-has-breached-the-principle-of-consent-arlene-foster-38736613.html> (July 1, 2023).

¹⁰ Northern Ireland Protocol: The Way Forward. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible__1_.pdf (1. 7. 2023).

- customs procedures for the import of goods to Northern Ireland from the UK;
- sanitary and phytosanitary inspections and control of goods imported into Northern Ireland¹¹;
- regimes of trade in goods that were subject to grace periods, such as medicines, veterinary drugs;
- managing the implementation of the Protocol, which focuses on the jurisdiction of the EU Court of Justice as the final arbitrator in the event of disputes between the UK and the EU over the interpretation of EU legislation in accordance with the Protocol.

In March 2021, the UK government decided to unilaterally extend the grace periods in connection with the requirement to provide export certificates of conformity for all animal products and postal items imported into Northern Ireland from the UK, for which customs declarations are required.¹² In response, the European Commission initiated legal proceedings against the UK Government, which immediately requested a suspension of the trial and offered to renegotiate the Protocol, while the European Commission focused on attempts to improve the work of the Protocol in its current form.

In October 2021, the European Commission published four documents outlining proposals that should improve the implementation of the Protocol¹³. The submitted proposals related to the following aspects:

- sanitary and phytosanitary inspections;
- introduction of flexible customs formalities to facilitate trade in goods between the UK and Northern Ireland;
- enhanced engagement with Northern Ireland stakeholders on Protocol implementation;
- uninterrupted supply of medicines from the UK to Northern Ireland.

However, the Commission's proposals did not contain any provisions regarding the role of the EU Court of Justice in enforcing the Protocol or in controversial areas such as government subsidies and VAT rules in Northern Ireland.

¹¹ Sanitary and phytosanitary checks and Points of Entry. Available at: <https://www.daera-ni.gov.uk/articles/sanitary-and-phytosanitary-checks-and-points-entry> (1. 7. 2023).

¹² Northern Ireland Protocol: Implementation, grace periods and EU-UK discussions (2021-22). Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9333/CBP-9333.pdf> (1. 7. 2023).

¹³ Protocol on Ireland/Northern Ireland: Commission proposes bespoke arrangements to benefit Northern Ireland. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5215 (1. 7. 2023).

Negotiations between the UK and the EU have continued since the publication of the Commission’s proposals; however, no practical progress has been achieved. The lack of significant progress in the discussions has led to the fact that the UK government published a Northern Ireland Protocol Bill on 13 June 2022¹⁴. Announcing the introduction of the bill, Minister Liz Truss said: “This is a reasonable, practical solution to the problems facing Northern Ireland. The bill will protect the EU Single Market and ensure that there is no hard border on the island of Ireland. We are ready to achieve this through negotiations with the EU. But we can make progress through negotiations only if the EU is ready to change the Protocol itself — at the moment they are not doing that. At the same time, the serious situation in Northern Ireland means that we cannot let the situation go with the flow.”¹⁵

According to the UK government, the Bill offers solutions in four key areas:

- eliminating unnecessary costs and paperwork for businesses trading in the UK, while ensuring full verification of goods imported into the EU;
- business entities should be able to place goods on the Northern Ireland market in accordance with the UK or EU commodity rules to ensure that Northern Ireland consumers will not be deprived of the opportunity to buy British goods, including due to differences in UK and EU rules;
- guarantees that Northern Ireland can benefit from the same tax benefits and financial measures as the rest of the UK, including a reduction in VAT on energy-saving materials and loans for restoration in the post-pandemic period;
- normalization of governance mechanisms so that disputes are resolved by independent arbitration, and not by the EU Court of Justice.

The UK Government has also published a special document outlining its position that the Bill complies with international law (UK Government, 2022).

The European Commission has responded to the introduction of the Northern Ireland Protocol Bill, indicating that it will seek to ensure further implementation of the Protocol, as provided for in the Withdrawal Agreement. In addition, the Vice-President of the European Commission, Maroš Šefčovič, indicated that the Commission would take “proportionate actions” in response to such approach by the British government to fulfilling its international obligations.¹⁶

¹⁴ Northern Ireland Protocol Bill. Available at: <https://bills.parliament.uk/bills/3182> (1. 7. 2023).

¹⁵ Government introduces bill to fix the Northern Ireland Protocol: Press release. Available at: <https://www.gov.uk/government/news/government-introduces-bill-to-fix-the-northern-ireland-protocol> (1. 7. 2023).

¹⁶ Statement by Vice-President Maroš Šefčovič on the UK government’s decision to table a bill

On 15 June 2022 the European Commission announced that the previously suspended litigation against the UK government, resulting from unilateral actions by the UK to extend grace periods, will be resumed. In addition, the Commission announced that a new case has been initiated against the UK government in connection with the alleged inability of the UK to implement border control posts in Northern Ireland ports, as well as to provide real-time data on the movement of goods between the UK and Northern Ireland.¹⁷ Šeščovič pointed out that “trust is built on compliance with international obligations. Acting unilaterally is unconstructive. Violation of international agreements is unacceptable. The UK does not comply with the Protocol. That’s why today we are starting this infringement proceedings. The EU and the UK should work together to solve the practical problems that the Protocol creates in Northern Ireland due to Brexit. I remain convinced that if there is a genuine political will to make the Protocol work, we will be able to achieve our goals. I urge my colleagues from the UK to act in good faith and explore the full potential of the solutions we have proposed. Only joint solutions will create the legal certainty that people and businesses in Northern Ireland deserve.”¹⁸

5. Trying to Fix It: Windsor Framework

However, in order to level the previously identified problems in the implementation of the Protocol on Ireland / Northern Ireland and issues related to Northern Ireland, on February 27, 2023, after a meeting between British Prime Minister Rishi Sunak and President of the European Commission Ursula von der Leyen, the Windsor Framework (Windsor Framework) was concluded in accordance with Arts. 16 and 17 of the Protocol. The Windsor Framework was formally adopted on March 24, at the Joint Committee on the Withdrawal Agreement meeting in London as it did not formally require the approval of the British Parliament¹⁹.

The Windsor Framework does not change the fundamental legal norms of the Protocol on Ireland/Northern Ireland. Nevertheless, it concerns the Protocol’s implementation in practice due to some simplification of the movement of

disapplying core elements of the Protocol on Ireland/Northern Ireland. Available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_3698 (1. 7. 2023).

¹⁷ Commission launches infringement proceedings against the UK for breaking international law and provides further details on possible solutions to facilitate the movement of goods between Great Britain and Northern Ireland: Press release. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3676 (1. 7. 2023).

¹⁸ *Ibid.*

¹⁹ UK and EU to formally adopt the Windsor Framework. Available at: <https://www.gov.uk/government/news/uk-and-eu-to-formally-adopt-the-windsor-framework> (25. 3. 2023).

goods between the UK and Northern Ireland, taking into account the new decision of the Joint Committee and the proposed EU legislation (Windsor Framework). Although the UK government’s statement that the agreement “cancels” 1,700 pages of EU legislation regarding Northern Ireland is technically incorrect, it is fair to say that in many cases integration law will no longer apply *de facto*, even if it should be applied *de jure* (Peers, 2023).

In accordance with the Windsor Framework, some changes in the legal regulation of the territory of Northern Ireland will be implemented by unilateral acts of the EU, and not by joint decisions of the UK and the Union. This increases the likelihood that the application of newly adopted EU regulations may be rejected based on the application of the Stormont Brake procedure. This legal mechanism gives the Northern Ireland Assembly the right to object to changes in EU acts that apply in Northern Ireland. According to the established procedure, 30 members of the Northern Ireland Assembly from at least two parties must notify the UK Government of their objections to the amendment or replacement of EU acts that apply in Northern Ireland in accordance with the Protocol on Ireland/Northern Ireland. They mainly relate to the rules of goods, and not to the amended or replaced laws relating to state aid, the single electricity market or most of the EU Customs code.

However, despite the enthusiasm for the conclusion of a new agreement between the EU and the UK, many researchers express scepticism about the success of the new agreement and its ability to solve all the problems between the UK and the EU regarding Northern Ireland. In particular, the preliminary legal analysis conducted by J.F. Larkin, Attorney General of Northern Ireland in 2010-2020, points out that the provisions of the Windsor Framework Agreement not only do not comply with the constitutional Acts of the Union of 1800, but also do not strengthen constitutional guarantees regarding the constitutional status of Northern Ireland (Thoburn *et al.*, 2023).

6. Conclusion

It seems that the practical implementation of the special arrangements for Northern Ireland and their impact on the region will be the dominant topic in the coming years. Many provisions raise questions of interpretation, implementation, and enforcement. The decision to empower the Northern Ireland Assembly to implement special procedures for the expression of democratic consent attracted a lot of attention, while its prospects were questioned. However, this means that the Protocol and the practices it creates will occupy a prominent place in public life for many years to come.

The task of proper implementation of the Protocol on Northern Ireland is also complicated by the fact that the UK and the EU are moving in different directions, seeking to find some form of settlement of the fragile situation of Northern Ireland that satisfies all parties. Although the UK and the European Union initially recognized the region's problems in the context of Brexit, they disagreed on many other issues. The first year of the Protocol's implementation largely reflected the process of its approval and adoption, in which a significant number of disagreements were of a political nature.

In addition, the tension that the application of the Protocol can create in economic relations between Northern Ireland and the rest of the UK should not be underestimated. Trade between the two shores of the Irish Sea is not unimpeded after the end of the transition period in accordance with the provisions of the Withdrawal Agreement considered. Goods imported from the UK to Northern Ireland may even face tariffs if they are deemed to be "at risk of subsequent movement to the Union". The extent of obstacles to trade within the UK will depend on the development of future relations between the UK and the EU. The greater the Europeanization of the legal regime of trade between the parties, less friction there will be in trade between Northern Ireland and its metropolis. The more they deviate from the regulatory impact of the EU, the more significant obstacles will be created in the UK domestic market. The initiated Windsor Framework Agreement confirms this, and also points to the UK's attempts to "work on mistakes", normatively minimizing the negative consequences of leaving the European Union. Nevertheless, it is precisely in such a situation that the threat to constitutional and territorial integrity becomes more and more tangible and urgent.

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