

BlogDUE

The Windsor Framework: a step Forward more stable EU-UK relations?

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SUMMARY: 1. Introduction. - 2. Movement of goods. - 3. The Stormont Brake: a break in the storm? - 4. Conditions and procedure to trigger the Stormont Brake. - 5. Main legal issues of the Stormont Brake. - 6. Conclusions.

1. On 27 February 2023, UK Prime Minister Rishi Sunak and the President of the European Commission Ursula von der Leyen reached a political agreement to overcome the deadlock surrounding the Ireland/Northern Protocol. The [‘Windsor Framework’](#), named after Windsor Park, where the meetings took place, is a set of joint solutions made of several documents from political declarations to legal acts to be implemented, covering the arrangements on customs, agri-food, medicines, VAT, and the application of EU Law in Northern Ireland (NI). The main document of the Windsor Framework is the [EU-UK Joint Committee decision](#) adopted on 24 March 2023, amending the [Ireland/Northern Ireland Protocol](#). It is worth reminding that the EU-UK Joint Committee is a body established by the Art. 164 - Part VI ‘Institutional and Final Provisions’ of the [Withdrawal Agreement \(WA\)](#), and it is responsible of its implementation. It is composed by EU and UK representatives, and the decisions taken by mutual consent are legally binding as the WA. This short comment will first analyze the provisions regarding the movement of goods. Then it will move to the main innovation of the agreement, namely the ‘Stormont Brake’, questioning its effectiveness. Finally, it will reflect on the Windsor Framework’s effect on the long-term EU-UK relationship.

2. Concerning the movement of goods, it is worth recalling the provisions already contained in the Ireland/Northern Ireland Protocol (below NI Protocol) in articles 4-6. Art. 4 of the NI Protocol establishes that Northern Ireland is part of the customs territory of the United Kingdom, meaning that the UK can include NI in the territorial scope of any agreement it may conclude with third countries. Art. 5 NI Protocol regulates trade between NI and Great Britain (GB) and vice versa. The movement between NI and GB poses *nulla questio*, and those goods are not subject to customs duties. On the contrary, the movement from GB to NI was subject to customs duties if and when the goods were at risk of entering the European Union (EU). The NI Protocol had left this asymmetry in trade, creating *de facto* a border in the

Irish Sea and leaving the burden to further define the technicalities to the Joint Committee. Finally, art. 6 establishes the protection of the UK internal market.

The Windsor Framework did not substantially alter these provisions. Instead, the approach adopted for the movement of goods is more practical and attempts to meet the needs of businesses and companies. The most significant part of the Joint Committee decision, indeed, regards the reduction of checks on goods going from Great Britain to Northern Ireland to fill the gaps left by article 5 NI Protocol and remove the border in the Irish Sea. The Windsor Framework sets up arrangements for a UK internal market system, the so-called ‘green lane’ for internal trade, relieving goods being sold in Northern Ireland from paperwork, checks, and duties. In simple terms, traders will declare whether goods are being sold in Northern Ireland or in the Republic of Ireland. In the first case, the goods will go through the ‘green lane’, with the minimum documents needed. On the contrary, goods being exported in the Republic of Ireland will go through a ‘red lane’, and trade moving into the EU will be subject to third-country processes and requirements. On closer inspection, this system is reminiscent of the one previously established by the Northern Ireland Protocol. The main novelty, and one capable of making trade traffic smoother, would therefore be the exchange of real-time trade data, which the parties will share to avoid smuggling in the Irish Sea. Article 6 (2) was also amended without substantive alteration. It was added: *‘This includes specific arrangements for the movement of goods within the United Kingdom’s internal market, consistent with Northern Ireland’s position as part of the customs territory of the United Kingdom under this Protocol, where the goods are destined for final consumption or final use in Northern Ireland and where the necessary safeguards are in place to protect the integrity of the Union’s internal market and customs union’*, which is nothing more than a specification. Although the changes made are not substantive in nature, the Windsor Framework was nonetheless welcomed by both the EU and the UK Parliament, which considered it a victory for protecting the integrity of the UK market.

3. As mentioned before, the Windsor Framework’s adoption was welcomed positively despite the lack of substantive changes, as it represents a break of the political stalemate surrounding the Northern Ireland Protocol. However, on the other hand, its main development, the so-called Stormont Brake, caused debate as to its effectiveness.

The Stormont Brake will enable members of the devolved Northern Ireland Assembly (which meets at Stormont) to initiate a procedure that could delay or even block the entry into force of EU Single Market rules in Northern Ireland. Its purpose is to alleviate the perceived “democratic deficit” in Northern Ireland, wherein the territory is subject to EU rules without having a democratic input into the making of those rules. The inclusion of the Stormont Brake in the Windsor Framework was intended to entice the political parties in Northern Ireland – and in particular the Democratic Unionist Party

(DUP) – to restore the Stormont Assembly and the Northern Ireland executive, which are currently suspended.

Article 13 (3) of the Northern Ireland (NI) Protocol states that ‘when this Protocol refers to a European Union act, that reference shall be read as referring to that European Union act as amended or replaced’.¹ Article 13 (4) of the NI Protocol refers to the adoption of new legislation by the EU. In that case, the Union shall inform the UK of the adoption of such new legislation within the Joint Committee. The parties can request to have an exchange of views within the Joint Committee, within 6 weeks of its adoption. The new Stormont Brake, in fact, adds an exception to Article 13 (3) of the NI Protocol. The United Kingdom may block the application of an amended or replaced European Union act by notifying the Joint Committee that it has activated the procedure. It is therefore an emergency measure and triggers a suspension of the application of the amended or replaced EU act. However, the procedure’s initiation requires compliance with certain criteria, both substantive and formal. First of all, the United Kingdom has to meet the two months deadline - from the publication of the act - to notify the Joint Committee. Second, the notification must be accompanied by a detailed substantial and procedural explanation. In other words, the UK must make clear the reason behind the procedure’s activation, how the assessment was conducted, and the steps followed to trigger the Stormont Brake. The EU representatives sitting in the Joint Committee can request further explanation within two weeks.

4. What is the rationale behind this emergency measure? The image below represents the dual path that is available. Indeed, the Stormont Brake can be activated if:

(a) the content or scope of the European Union act as amended or replaced by the specific European Union act significantly differs, in whole or in part, from the content or scope of the European Union act as applicable before being amended or replaced; and

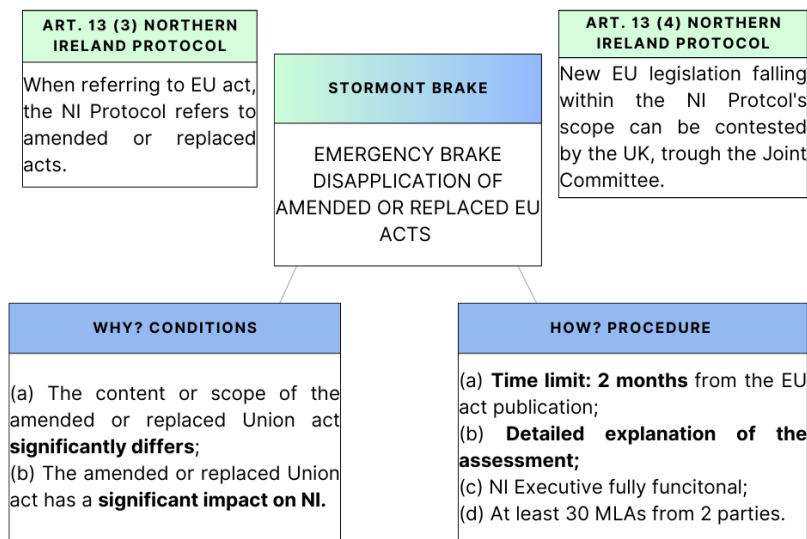
(b) the application in Northern Ireland of the European Union act as amended or replaced by the specific European Union act, or of the relevant part thereof as the case may be, would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.

The Stormont Brake can be activated if the conditions (a) and (b) met, but only in relation to the part of the European Union act amended or replaced interested by (a) and (b), meaning that the rest of the European Union act shall apply. The procedure is activated within the Joint Committee with a number of additional conditions. The mechanism can be activated only if the NI Executive is fully functional. The Executive should be in place, with a First Minister (FM) and a Deputy First Minister in regular session. Members of the Legislative Assembly (MLAs) should act in good faith, including in the appointment of the FM. The minimum threshold is an activation by thirty

MLAs (out of a total of ninety in the Assembly) from at least two parties (excluding speakers and deputy speakers). They have to demonstrate that they considered other options prior such activation, including the consultation of the social parties.

At this point, the NI Assembly notifies the UK, which then notifies the EU.

Stormont Brake



5. As noted above, the main legal issues for applying the Stormont Brake are related to both its scope of application and its procedure. In terms of scope of application, the Stormont Brake refers to *amended or replaced* European Union acts. Article 13 (4) of the NI Protocol, on the other hand, refers to *new* EU legislation. Moreover, Art. 13 (4) NI Protocol establishes that the UK can object to new EU legislation falling within the NI Protocol scope for *any reason* – meaning without any impact assessment on Northern Irish communities, in contrast with the Stormont Brake provision. The issue is therefore to distinguish what is new and what is amended or replaced. Furthermore, the main legal issues will surely arise from the grey area: for example, how to consider European legislation that is primarily new but only amends some provisions of existing legislation? ([S. PEERS, 'Just Say No? The New Stormont Brake in the Windsor Framework', in EU Law Analysis, March 2023](#)). Moreover, it is not clear what 'significant impact on the Northern Irish communities' means.

Finally, in terms of procedure, the Stormont Brake raises concerns about its actual applicability ([D. ALLEN GREEN, *Is the Stormont Brake an Instrument or an Ornament? And Does It Matter?*, in the Law and Policy Blog, March 2023](#)). Even though the time limit - two months after the adoption of

the EU act to activate the procedure – seems reasonable, the requirements related to the NI Executive and to the Members of the NI Legislative Assembly might be difficult to meet. Those criteria imply political stability and the perfect functioning of the power sharing mechanism established by the Belfast/Good Friday Agreement, factors that have faltered in Northern Ireland precisely because of Brexit.

All these issues lead to questioning the effectiveness of Stormont Brake. On the one hand, the Stormont Brake certainly represented a break in the political stalemate surrounding the NI Protocol but, on the other hand, it remains to be seen how it can pass the test of practical implementation, and any future political storms ([J. FAUDONE, *Stormont Brake: a break in the storm?*, in *Brexit Institute Blog*, April 2023](#)).

6. In conclusion, could adopting the Windsor Framework be expected to lead to more stable EU-UK relations in the medium-long term? The fact that not precisely substantive changes have been met with so much political favor would lead one to say yes. However, it is impossible not to notice the asymmetry between politics and the law of the Windsor Framework. It certainly is a break from the political stalemate of recent years, but it remains to be seen if it will really succeed in bringing clarity to practical challenges. For instance, from a legal perspective, it is difficult to predict how the practical implementation will play out or how any legal and practical snags will be resolved. Furthermore, if there are legal snags, the risk that these could create political deadlock again cannot be entirely excluded. The most cautious approach is to welcome this as a positive step in having unblocked the political relationship between the EU and the UK while remaining vigilant on both the implementation of the legal aspects and the stability of the EU-UK relationship. From a political point of view, the question to ask is not whether the Windsor Framework will enable a more fruitful relationship between the EU and the UK. Instead, it might be wondered how long it will last before a new wave of instability in British politics sweeps it away. At the moment, PM Sunak achieved the adoption of the Windsor Framework with a large majority in the House of Commons ([I. COOPER, *The Windsor-Westminster Split-Screen Drama*, in *Brexit Institute Blog*, March 2023](#)). Sunak strongly wanted the UK Parliament to have a say, although it was optional for this type of act. It is a remarkable result, in the novelty of Brexit, without any doubt. Sunak has the merit to have generated a wave of positivity in EU-UK relations from the beginning of its appointment. However, it may be too soon to salute British political stability. Moreover, it could be argued that tying the overcome of internal political division to a single political figure, albeit the PM, is a double-edged sword. If we accept the narrative that a step forward has been made thanks to a single political figure, we should be ready to face the consequences once his consent shifts.

In conclusion, the Windsor Framework is to be welcomed more for its political weight than for the legal changes that have been made. It is a step

toward a more fruitful relationship between the EU and the UK, but its stability still looks pretty fragile.