



Does the Windsor deal herald warmer ties between Britain and the EU?

by Charles Grant, 1 March 2023

The Windsor deal on the Northern Ireland protocol may herald warmer UK-EU ties. It has strengthened von der Leyen and Sunak. But the Retained EU Law bill promises trouble.

Nearly seven years after the referendum on EU membership, Brexit is finally done – in the sense that the legal framework for UK-EU relations has been settled. There will of course be continual negotiations between London and Brussels, probably until Doomsday – the Trade and Co-operation Agreement (TCA) is set for review in 2026 – but the basic structure of the relationship is set for many years to come. The final part of that structure – the section of the Withdrawal Agreement known as the Northern Ireland Protocol – fell into place on February 27th, when Prime Minister Rishi Sunak and Commission President Ursula von der Leyen signed off on the ‘Windsor Framework’, a document that covers the implementation of the protocol.

The agreement in Windsor may well herald a much happier period in EU-UK relations. But not everything will be tickety-boo. A row is looming over the British government’s insistence on pushing ahead with the Retained EU Law (REUL) Bill, currently in the House of Lords.

Soon after Boris Johnson struck a deal with the EU in October 2019 on the Withdrawal Agreement, including the Northern Ireland protocol, the British government demanded that the protocol be changed. It had some strong arguments: the protocol required checks on goods flowing from Great Britain to Northern Ireland, which inconvenienced some businesses and consumers in that region. Furthermore, the application of EU law to Northern Ireland, with the consequent role for the European Court of Justice (ECJ), threatened many unionists’ sense of British identity. But the EU refused to change the protocol, arguing that in order to avoid a hard border between Northern Ireland and the Republic of Ireland, the former had to stay in the EU’s single market for goods, and that required a border in the Irish Sea.

The deadlock over the protocol continued for three years. Negotiations gathered momentum after Sunak became prime minister in October 2022. Sunak and his ministers and officials worked hard for a settlement, but a deal could not have been reached without the Commission – an institution not known

for its suppleness in negotiation – proving more flexible than many commentators, myself included, thought likely. The protocol will be modified in some places, even though the Commission is adamant that the Windsor Framework remains within the principles of the protocol.

The Commission has accepted that goods going from Great Britain to Northern Ireland should pass through a ‘green channel’ with minimal checks, if that region is their final destination, and if the retailer has signed up to a trusted trader scheme. The Commission has also accepted that food and farm produce destined for shops in Northern Ireland will not have to comply with EU standards and will face minimal checks – so long as they are labelled ‘not for EU’. Medicines approved by UK but not EU regulators may be freely sold in Northern Ireland. London, not Brussels, will set VAT rates for many sorts of good, as well as excise duty. Pets crossing the Irish Sea will not need passports, parcels for friends or family will not require paperwork and steel will not pay tariffs. As for the application of EU state aid rules to Northern Ireland, the Commission undertakes to use them only when the subsidy in question causes a significant distortion to trade with the EU.

Concerning the ‘democratic deficit’, the Stormont assembly gains the opportunity to pull an ‘emergency brake’ against a new EU law that it dislikes. Sunak has claimed that this provision could stop an EU law being applied in Northern Ireland. In fact the procedure for pulling the break is complex and unlikely to be used very often. If 30 members of the Legislative Assembly (out of 100), from two parties, can claim that a law will have a significant impact on life in Northern Ireland, they may as a last resort ask the British government to pull the brake; the matter then goes to the EU-UK Joint Committee; and if the two parties still cannot resolve the problem, the EU may take remedial measures, such as reducing market access for the goods in question, though there is the possibility of arbitration.

The Commission insisted that the ECJ remain the ultimate arbiter of EU law in Northern Ireland. But the British government claims that because the Windsor Framework greatly reduces the scope for EU law to apply in Northern Ireland, in practice the court’s role has been curbed. It also points out that both parties have undertaken to try to resolve disputes through political dialogue rather than legal means.

Why did the EU end up giving the UK quite a lot of what it wanted – and enough for self-styled Brexit hardman Steve Baker, a Northern Ireland minister, to proclaim the deal a “fantastic result”? Von der Leyen was able to lead the EU’s governments towards compromise because Sunak had succeeded in restoring an element of trust between the UK and European leaders.

His two predecessors were not trusted: Johnson and Liz Truss promoted the Northern Ireland Protocol Bill, a draft law which would allow the UK to tear up much of the protocol. Many Conservatives are unaware how angry that bill made the EU: legislating to over-ride a recently signed international treaty was seen, at best, as frivolous. If Sunak had persisted with the bill there would have been no deal, but he parked it in the House of Lords and it will now be dropped. “Johnson and David Frost’s [Johnson’s Brexit negotiator] attitude was, ‘if you don’t give us what we want we will scrap the protocol,’” said one Commission official closely involved in the talks. “But threats don’t work. Sunak, by contrast, has taken a completely different attitude.”

It also helped that Sunak’s government tried some old-fashioned diplomacy. The prime minister has forged a good relationship not only with von der Leyen but also with French President Emmanuel Macron – who has long been among the most hard-line of EU leaders on how the British should be treated. In the end the French did not complain about the flexibility shown by the Commission. Foreign Secretary James

Cleverly has got on well with Annalena Baerbock, his German opposite number, and Maroš Šefčovič, the commissioner responsible for Brexit. Since Sunak became prime minister, British ministers have stopped making the gratuitous insults that they used to periodically hurl at the EU. And Sunak – unlike his two predecessors – does not make a point of criticising certain EU governments for being soft on Ukraine.

As both Sunak and von der Leyen made clear at their press conference in Windsor, the geopolitical situation mattered in this negotiation. The war in Ukraine has fostered good UK-EU co-operation on sanctions against Russia and made it obvious that a united West would be better able to stand up to Russia and China. That was precisely the message President Joe Biden had been sending across the Atlantic, and he will now visit the UK for the 25th anniversary of the Good Friday Agreement in April. He would not be coming without a deal between the UK and the EU.

The Windsor Framework will stick: there is a clear majority in Parliament for it – and probably even among Conservative MPs. Leading Brexiteers such as David Davis and Andrea Leadsom have strongly supported the deal, while Jacob Rees-Mogg, a disciple of Johnson, has offered cautious approval. Even [Frost's criticism](#) – that the new deal doesn't change a great deal – has been fairly gentle in tone.

As for the DUP, a party which has vowed to boycott the Northern Ireland executive until the protocol is torn up, it may continue with its boycott for a while. Jeffrey Donaldson, the DUP leader, has not been too critical of the Windsor Framework, but others in his party have taken a harder line. The DUP is a party that is accustomed to say no. But it cannot stop the deal and may in time become reconciled to it; let us not forget that 25 years ago it ardently opposed the Good Friday Agreement, before coming round to accept it.

The Windsor Framework has strengthened its chief authors. Von der Leyen was already emerging as a powerful Commission President – probably the strongest since Jacques Delors. She has led from the front on Ukraine, pushing through ten rounds of sanctions against Russia and cajoling the member-states to make Ukraine a candidate for EU membership. The deal with Sunak is another feather in von der Leyen's cap. She and Sunak hatched the plan for the Stormont brake and she did not inform the other member-states (except for Ireland) – but they trusted her not to betray the principles of the protocol or the integrity of the single market, and they supported the deal when it came.

Sunak is stronger, too. If he had flinched in the face of growling by the Democratic Unionist Party (DUP) and the European Research Group (ERG), the most hard-line Conservative Brexiteers, he would have appeared an extremely weak leader. Instead he has chalked up a success – and one which will have several positive consequences. The EU will allow the UK back into the Horizon science programme, agree to a memorandum of understanding between financial services regulators and accept closer links between the British and EU energy markets. The more harmonious atmosphere could lead to closer ties in other areas too, such as climate change, foreign policy and perhaps even illegal migration.

However, the REUL Bill may become a significant irritant in the relationship. Drafted by Rees-Mogg when he was in government, support for the bill has become an item of faith for hard-line Brexiteers. The bill would oblige the government, before the end of 2023, to review most of the UK's legislation that derives from EU law – and decide whether to scrap, retain or amend each piece. Those laws retained or amended would be pushed through Parliament with minimal scrutiny. Any law not specifically retained or amended would automatically be abolished, with no further reference to Parliament. It seems that neither the government nor anybody else knows how many pieces of legislation would be subject to this review; some estimates are in the range of 4,000 to 5,000.

The purpose of the bill is supposedly to liberate the UK economy from the accumulated shackles of more than 40 years of EU membership. Implicitly, the bill would make rejoining the EU much harder. The problem is that the civil service lacks the capacity to review so many laws so quickly. Environmental and social NGOs, business lobbies and trade unions, as well as the bodies representing lawyers, have all called for bill to be dropped. The NGOs fear important protections will be lost, while business lobbies dislike the uncertainty. But Sunak, though he almost certainly knows the bill makes little sense, appears committed to proceeding with it: having taken on the ERG's MPs over the protocol, he is reluctant to annoy them even further over REUL.

The bill is currently in the House of Lords and likely to face many amendments – for example, that certain categories of law should be exempt from the sunset clause, that the government should specify which laws are covered by the bill (it has not yet done so) and that the sunset should be postponed beyond end-2023. Many amendments are likely to pass, and when the bill returns to the Commons in late April or early May, the government will have to decide what to do. If it rejects the amendments the Lords will probably put them back in – and ministers would then have to invoke the Parliament Act to override the Lords, which would delay the bill for a year. More likely, they would try to compromise with the Lords – accepting some amendments, for example on the sunset date, in return for the Lords passing the bill.

The EU is starting to become concerned about the REUL bill, worrying that the dismantling of social and environmental protections could breach the level playing field provisions of the TCA. A number of MEPs and commission officials have started to focus on this problem – some of the latter raising the REUL bill during the talks on the Northern Ireland protocol.

In practice, Sunak's government is highly unlikely to pursue a 'Singapore-on-Thames'-style deregulated economy of the sort that the EU fears. But the bill may well cloud relations with the EU. If Sunak persists with it, he will remind the EU that – for all his politeness – there are powerful forces in his party that are driven by ideological dislike of Europe. It was only last October that Suella Braverman, the Home Secretary, [called for the UK to leave the European Convention on Human Rights](#) (though she acknowledged that was not government policy), apparently unaware that Britain's participation in the ECHR is an integral part of both the Good Friday Agreement and the justice and home affairs provisions of the TCA. Sunak, alongside von der Leyen, deserves credit for sorting out the Northern Ireland protocol. But the nature of today's Conservative Party places limits on how far a UK-EU *rapprochement* can proceed.

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