

# The Windsor Framework: Finding a New Way Forward for EU/UK relations?

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A contribution by Mel Kenny

## I. Foreword

This post supplements my recent article on the *NI Protocol Bill* [Das 2022 Northern Ireland Protocol Bill: Chronik eines angekündigten EU/UK Handelskrieges, ZEuS 1/2003, 57-96] a *Bill* which has now been suspended following political agreement on the *Windsor Framework*. Yet while a trade war may have been averted, have the parties to the *Windsor Framework* really found a new way forward?

## II. Introduction

The *Windsor Framework* was agreed to by the President of the EU Commission *von der Leyen* and UK PM *Sunak* in *Windsor Castle* on 27 February 2023

[[Political Declaration by the European Commission and the Government of the United Kingdom.pdf](#) ([publishing.service.gov.uk](http://publishing.service.gov.uk))]

The agreement was followed by an Audience with *King Charles III* [The Royal Family on Twitter: „The King this afternoon held an Audience with the President of the European Commission, Ursula von der Leyen, at Windsor Castle. <https://t.co/zPrYSiqOG9>“ / Twitter](#), an event seen by some as a ‘crass’ political instrumentalization of the Monarchy [Live news updates from February 27: UK and EU reach Northern Ireland deal, Russia launches air strikes | Financial Times \(ft.com\)](#)

Importantly, reciprocal commitments are made, in the *Political Declaration* (27 February 2023, page 4), to de-escalate tensions between the two sides: suspending the *NI Protocol Bill* on the UK side, and the *infringement proceedings* on the EU side

[Political Declaration by the European Commission and the Government of the United Kingdom.pdf](#) ([publishing.service.gov.uk](http://publishing.service.gov.uk)). *Sunak* went to great lengths to promote the *Windsor Framework* in Northern Ireland (NI):

“If we get this right (...) NI is in the unbelievably special position (...) in the entire world (...) in having privileged access, not just to the UK home market (...) but also the European Union single market. Nobody else has that (...) That’s like the world’s most exciting economic zone.” [Brexit: Sunak urges Tories not to create ‘another Westminster drama’ over Northern Ireland deal – as it happened | Politics | The Guardian](#)

Notwithstanding PM *Sunak*’s enthusiasm for the “unbelievably special position” now available to Northern Ireland (NI), this post argues that contradictions within the UK Government’s positions will continue to cause tensions within the UK and between the EU and the UK. The policy incoherence of the UK’s post-Brexit agenda augurs ill for both the territorial integrity of the UK and future EU/UK relations.

## III. Multi-level Components of the *Windsor Framework*

As the Commission was not prepared to “reopen” the *NI Protocol* [Von der Leyen rejects UK bid to reopen Irish protocol – EURACTIV.com](#), the *Windsor Framework* is composed of a collection of joint and unilateral Decisions, Declarations and Recommendations, incorporating “hard,” “soft” and “hybrid” law instruments; a combination which is designed to signpost the new way forward by addressing the multi-level tensions which Brexit has caused.

The *Windsor Framework* documentation can be found at: [Protocol on Ireland and Northern Ireland \(europa.eu\)](#) and [The Windsor Framework – GOV.UK \(www.gov.uk\)](#). In addition, further relevant documentation can be found in:

– The UK Government’s *Command Paper: vFINAL- 2023 02 27 – Command Paper 1245* ([publishing.service.gov.uk](https://publishing.service.gov.uk)) and a statement of the UK government’s legal position [1.b. HMG Legal Position: The Windsor Framework](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk)).

– The EU’s webpages add a press release [New way forward on the Protocol on Ireland/Northern Ireland](#) ([europa.eu](https://europa.eu)) and a catalogue of Questions and Answers on the planned operation of the *Framework Q&A: political agreement on the Windsor Framework* ([europa.eu](https://europa.eu)).

The documentation includes a Joint Declaration on the *Renaming of the I/NI Protocol* [Joint Declaration by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on the Windsor Framework.pdf](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk)) and a UK Declaration on the “consent” process on the future existence of the Windsor Framework (Article 18). [Unilateral Declarations by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on Article 18.pdf](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk)).

In addition to these Unilateral and Joint measures, the Commission has tabled proposals for flanking EU legislation in support of the *Windsor Framework*:

– A proposal for a Regulation on Sanitary and Phytosanitary Standards: [Proposal for a Regulation of the European Parliament and of the Council – Sanitary and Phytosanitary measures](#) ([europa.eu](https://europa.eu))

– A proposal for a Regulation on Tariff Rate Quotas: [Proposal for a Regulation of the European Parliament and of the Council – Tariff Rate Quotas](#) ([europa.eu](https://europa.eu)).

– An implementing Regulation on High-risk Plants: [Commission Implementing Regulation \(EU\) High-risk plants \(Ligustrum delavayanum and Ligustrum japonicum\) originating in the UK](#) (Document in all EU languages) ([europa.eu](https://europa.eu)).

Position papers have also been tabled by the Commission on agri-foods, plants and pet animals [Position paper on agri-food, plants and pet animals](#) ([europa.eu](https://europa.eu)) and on enhancing the involvement of NI stakeholders [Commission statement on Enhanced engagement with Northern Ireland stakeholders](#) ([europa.eu](https://europa.eu)).

#### **IV. Joint Committee Decision 1/2023: Amendments and Clarifications to the I/NI Protocol**

The EU/UK *Joint Committee* as established under the terms of the *Withdrawal Agreement* worked out the content of the *Windsor Framework* in the form of *Joint Committee Decision 1/2023*, on 24 March 2023 [Joint Committee Decision No 1-2023.pdf](#) ([europa.eu](https://europa.eu)). The central amendments to the *I/NI Protocol/Windsor Framework* concern measures aimed at:

- Facilitating trade between GB and NI (Section A);
- NI democratic scrutiny of the amendment of EU laws relevant to NI trade (Stormont Brake)(Section B);
- VAT and excise measures (Section C); and, finally, clarifies:
- the continued CJEU jurisdiction and the application of EU State Aid law in NI (Section D).

##### **A. Trade Facilitation**

Amendment is made to Article 6(2) *I/NI Protocol/Windsor Framework*, inserting the following clarification on the need for: “...specific arrangements for the movement of goods within the [UK’s] internal market, consistent with [NI’s] position as part of the customs territory of the [UK] in accordance with this Protocol, where the goods are destined for final consumption or final use in [NI] and where the necessary safeguards are in place to protect the integrity of the Union’s internal market and customs union.”

The new trade facilitations aim at improving the market access of GB goods to NI. Among these facilitations are the provision for “green” and “red” lanes; for the recognition of “trusted traders;” and for fewer, simplified checks. The *Framework* also seeks to resolve issues on parcel deliveries, medicines and pet travel. These measures reflect the greater confidence the sides now have in one another. Nevertheless, the EU *maintains* a suspension power should the system break down and reserves the right to take remedial action should the Brakes be

engaged. On the UK side, meanwhile, London has accepted that there is a need for data-sharing, administrative cooperation, market surveillance and enforcement obligations: GB goods in NI will, *inter alia*, now need to be labelled “not for the EU.”

Importantly, the *Joint Committee Decision 1/2023* also replaces the *Joint Committee Decision 4/2020* concerning the definition of ‘at risk’ goods [EUR-Lex – 22020D2248 – EN – EUR-Lex \(europa.eu\)](#) (*at risk* of being traded into the EU). This is designed to reduce checks on goods going from GB to NI. *Joint Decision 1/2023* defines the circumstances in which goods are not “at risk” because, *inter alia*, they are to be used in the construction industry in NI or concern the sale of food to a UK consumer. Moreover, exemptions will apply where the importer sells the goods to another entity, rather than directly to consumers. Meanwhile, the small business exemption has been broadened from a £500,000 to a £2 million turnover-threshold. Finally, a new provision helps enhance the movement of parcels from GB to NI.

Further Documentation on the trade facilitation measures can be found in:

[Recommendation\\_of\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_market\\_surveillance\\_and\\_enforcement.pdf](#) ([publishing.service.gov.uk](#));

Unilateral UK Declaration on “market surveillance and enforcement:” [UNILAT\\_1\\_1\\_.pdf](#) ([publishing.service.gov.uk](#)).

[Unilateral\\_Declarations\\_by\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_and\\_the\\_European\\_Union\\_in\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_export\\_procedures.pdf](#) ([publishing.service.gov.uk](#))

Unilateral UK Declaration on *interim arrangements* for parcels moving from GB to NI [UNILAT\\_4.pdf](#) ([publishing.service.gov.uk](#)).

#### *B. Stormont Brake: Democratic Input on Provisions of EU law Applicable in NI*

The second important amendment to the *I/NI Protocol/Windsor Framework* is the “Stormont Brake” inserted by the new Art 13(3a) *I/NI Protocol/Windsor Framework*; and allowing a process whereby NI may challenge/suspend the application of amended/replaced provisions of EU law applicable in NI (Art 13(3a)). [Recommendation\\_of\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_Article\\_13\\_3a\\_.pdf](#) ([publishing.service.gov.uk](#)).

This supplements the pre-existing “Westminster Brake,” which had previously allowed for the UK to challenge measures of “new” EU law applicable to NI, under Article 13(4).

It is important to understand the differences between the *Stormont* (Article 13(3a)) and *Westminster* (Article 13(4)) *Brakes*: while the *Stormont Brake* concerns objections to *amended/replaced* EU laws applicable in NI by virtue of the *I/NI Protocol/Windsor Framework*, the *Westminster Brake* concerns objections to *new* EU laws in general. Moreover, while the *Westminster Brake* allows objections on any grounds, the *Stormont Brake* can only be initiated where a “significant impact” on the “everyday life” of “communities” in NI can be proven. Furthermore, any “impact” must be likely to be persistent.

Clearly, there is room for disagreement in the application of the *Brakes*: a provision of EU law may, for example, be both “new” and “amend” EU law. Similarly, the EU laws to which an objection can be raised may vary, depending on which *Brake* is used. Finally, the meaning of “impacts,” “everyday life” and even the relevant “communities” under Article 13(3a) are all terms whose scope can be contested.

Under Article 13(3a) an initial *suspension* of EU measures can be triggered by 30 Members of the *Stormont Legislative Assembly* from 2 political parties; if cross-community consent to any changes is not subsequently obtained a *national veto* is then possible.

But strict conditions apply to use of the *Brakes* by virtue of the *Joint Committee Recommendation* [Recommendation\\_of\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_Article\\_13\\_3a\\_.pdf](#) ([publishing.service.gov.uk](#)). Meanwhile, a *Joint Declaration* on procedure applies should the UK invoke the

*Stormont Brake* illegitimately [Microsoft Word – Joint Declaration by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on Article 13\(3a\).docx \(publishing.service.gov.uk\)](#).

To engage the *Stormont Brake*, as the UK's *Unilateral Declaration* specifies, MLAs (NI Members of the Legislative Assembly) need to demonstrate: "... in a detailed and publicly available written explanation:

*i. that they have met the same requirements... namely that the notification is only being made in the most exceptional circumstances and as a last resort, having used every other available mechanism;*

*ii. that the conditions set out in the third subparagraph of Article 13(3a) of the Windsor Framework are met; and*

*iii. that MLAs have sought prior substantive discussion with the UK Government and within the NI Executive to examine all possibilities in relation to the Union act; taken steps to consult businesses, other traders and civic society affected by the relevant Union act; and made all reasonable use of applicable consultation processes provided by the EU for new Union acts relevant to NI."*

Subsequently, the UK undertakes to follow a procedure, whereby it verifies:

"2. ...that the conditions in paragraph 1(a) and (b) have been met and that the explanation provided under paragraph 1(c) is satisfactory, the [UK] will notify the Union in accordance with the first subparagraph of Article 13(3a) of the Windsor Framework.

3. The [UK], following a notification by MLAs, commits to informing the Union without delay.

4. The [UK], following a notification to the Union that the emergency brake has been triggered, commits to intensive consultations in the Joint Committee on the relevant Union act as for provided by Article 13(4) of the Windsor Framework.

London and Brussels seem to agree that both the *Stormont* and the *Westminster Brake* will only be used in exceptional circumstances. Yet while the Brakes should not, perhaps, be so easily discounted, do NI Stakeholders, politicians and the NI administration have, in any case, the resources to navigate assessment of the relevant legal issues? The suspicion is that, without such resources, the *Stormont Brake* may prove little more than an elaborate *Cérémonie chinoise*; in which the NI engagement effectively ensures the application of the *Windsor Framework*. As Lord McCrea (DUP) has observed: "*This brake does not provide democratic control. To tell you the truth, this brake could not stop a tricycle, never mind the EU juggernaut travelling down the track...*" [Windsor Framework \(Democratic Scrutiny\) Regulations 20 – Hansard – UK Parliament \(Hansard Vol. 829, Col. 302, 29 March 2023\)](#).

### C. VAT and Excise Taxes

A third important area of amendment regards VAT and excise taxes, the Joint Committee decision has amended Annex 3, *INI Protocol/Windsor Framework*. This sets out derogations from the EU's VAT Directive [LexUriServ.do \(europa.eu\)](#) and gives greater flexibility to the UK in reducing VAT rates in NI. A Joint Declaration allows for further amendments to VAT provisions. [JO2DDF\\_1.pdf \(publishing.service.gov.uk\)](#).

### D. Continued Jurisdiction of the CJEU and application of EU State Aid law

The *Windsor Framework* confirms the continued jurisdiction of the CJEU. However, as the *Windsor Framework* widens the measures of trade facilitation, the argument can be made that the effective remit of the CJEU has been reduced.

A *Joint Declaration* goes on to provide guidance on the applicability of the EU rules on State aid in NI: [Joint Declaration by the United Kingdom of Great Britain and the European Union in the Withdrawal Agreement Joint Committee on the application of Article 10\\_1\\_.pdf \(publishing.service.gov.uk\)](#).

## V. Wider Context: Semiotics and Economics of Brexit

### A. Semiotics of Windsor Framework: Threat to UK Territorial Integrity

The symbolism of the *Windsor Framework*, the allusion to *Windsor*, *Westminster* and *Stormont*, the instrumentalization of *King Charles III* are all carefully choreographed aspects of arrangements which seek to assure NI Unionists of their place in the UK [Michael Dougan on Twitter: „Having read the various elements of the “Windsor Framework” \(the title may be designed to appeal to unionists, but it is actively alienating for nationalists\)... here is a short thread summarising my second impressions:“ / Twitter](#). Yet the *Windsor Framework* is simultaneously corrosive of Unionism: whereas Unionist Brexiters in England get “to have their cake and eat it!” [Post-Brexit trade: UK having its cake and eating it, says Boris Johnson – BBC News](#), Unionist Brexiters in NI may not touch any piece of this “English” cake. Instead, they are offered Article 13(3a). Meanwhile, in Scotland, a smaller circle of Unionist Brexiters get to have and eat as much of their “English” cake as they like, regardless of the majority view. Brexit continues to subject the UK to unprecedented tests of its territorial integrity.

#### *B. Wider Context I: Continuing Unionist Boycott of the Stormont Assembly*

Unsurprisingly, the main Unionist party in NI, the DUP, has subsequently refused to return to power-sharing in the Stormont Assembly. If the aim of the *Windsor Framework* was to resuscitate Stormont, then it has been a failure. Axiomatically, in the absence of a sitting Assembly, the *Stormont Brake* cannot be applied, further alienating both Unionists and Nationalists from the constitutional arrangements within NI.

#### *C. Wider Context II: Retained EU law Bill*

Reflecting the new pragmatism under PM *Sunak*, the government has dropped plans to hold the report stage of the *Retained EU law Bill* in the House of Lords. [Government retreats from Brexit bill plan to ditch EU laws | Brexit | The Guardian](#). Again, this a pragmatic step which avoids the folly of scrapping EU derived law *en bloc* from UK statute books by the end of 2023. Sources suggest that “only” 800 measures will now be targeted in the “Bonfire” of EU law [Bonfire of EU laws watered down to just 800 after meeting of Brexiter MPs | Brexit | The Guardian](#).

#### *D. Wider Context III: CPTPP Membership... and Economic Decline*

The UK has, by agreeing to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) [UK strikes agreement to join Asia-Pacific trade bloc | Financial Times \(ft.com\)](#) (31 March 2023), followed Lord Hannan’s advice to “unshackle” itself from the “economic corpse” of the EU [Ici Londres: Time for Brexit; we are shackled to a corpse – YouTube](#).

Leaving the EU has come at an annual cost to UK GDP of –4–5.5%. Joining the CPTPP is predicted to increase GDP by 0.08% per year [CPTPP: UK-Asia trade deal boosting economy by 0.08% could be overestimate | The Independent](#). The combination of leaving the EU and joining the CPTPP therefore produces a net ongoing decline in yearly GDP of between –3.92—5.42% per year.

Controversially, CPTPP membership involves signing up to the CPTPP Investor-State dispute resolution (ISDR) mechanism. The costs of the ISDR mechanism may weigh heavily on the UK.

Of course, the UK could always have continued trade with most CPTPP States, as the rest of the EU does, based on existing FTAs, without signing up to the CPTPP ISDR. To take just the example of trade with Vietnam in 2021: UK exports to Vietnam of \$829m (0.25% of Vietnamese imports) rank behind the exports achieved by the EU States of Belgium \$890 (0.27%); the Netherlands \$1.1bn (0.33%); Italy \$1.47bn (0.44%); France \$1.52bn (0.46%); Ireland \$2.12bn (0.64%) and Germany \$4.4bn (1.33%) [Vietnam \(VNM\) Exports, Imports, and Trade Partners | OEC – The Observatory of Economic Complexity](#).

The UK’s problem is not so much being shackled to Hannan’s “corpse” and being “prevented” from global trading opportunities by the EU, as the ongoing “deadweight loss” of Brexit to the UK economy.

#### *E. Wider Context IV: Industrial Strategy – “Unicorn Kingdom”*

The PM sees a partial answer to the economic problems now besieging the UK in encouraging high-value technology companies (“Unicorns”) to establish themselves in the UK [PM doubles down on driving growth with new Business Connect series – GOV.UK \(www.gov.uk\)](#). Yet even this project is frustrated by Brexit: UK

technology companies have no access to the EU's Horizon programme, while contending with a post-Brexit 18% "London discount" on shares registered in London, which makes Amsterdam, Paris and Frankfurt more attractive destinations. [Why Rishi Sunak's "unicorn kingdom" is a fantasy – New Statesman](#)

#### F. Wider Context V: *Illegal Migration Bill 2023*

The UK continues to promote the toxic language of culture war extremism: tabling legislation which it explicitly acknowledges will break its international obligations on the provision of asylum and the protection of refugees [Illegal Migration Bill – Parliamentary Bills – UK Parliament](#). Expelling asylum seekers to Rwanda without hearing their appeals and abandoning the jurisdiction of the ECtHR may win plaudits from *Le Pen* and *Meloni*, but it is a step which is incompatible the *Good Friday Agreement* and the trade and security aspects of the *Trade and Cooperation Agreement*.

#### VI. Conclusions: *Global Britain of Fantasy Island?*

Yet while *Sunak* has brought a new pragmatism to the role of PM after the chaos of the *Cameron*, *May*, *Johnson* and *Truss* years, does his wider policy agenda for a "Global Britain" contain any deeper coherence? Will, for example, a "Global Britain" be relevant in the coming era of de-globalisation? Or will US/EU co-operation, along the lines set out in the *US/EU Trade and Technology Council* [EU-US Trade and Technology Council \(europa.eu\)](#), and reflected in moves to collaborate, *inter alia*, in such strategic areas as photolithographic technology and rare earths, become much more important?

According to the UK Government's Command Paper, the *Windsor Framework* is designed to "fundamentally amend" the *I/NI Protocol* [Windsor Framework: a New Way Forward, Command Paper, 27 February 2023, summary, point c, page 3]; "permanently" removing the border checks in the Irish Sea, [Live news updates from February 27: UK and EU reach Northern Ireland deal, Russia launches air strikes | Financial Times \(ft.com\)](#) and scrapping 1,700 pages of EU legislation [PM statement to the House of Commons: 27 Feb 2023 – GOV.UK ([www.gov.uk](http://www.gov.uk))].

The EU views the *Windsor Framework* much more modestly: as a Framework which allows pragmatic measures of trade facilitation, provides NI Stakeholders with a measure of democratic scrutiny, confirms the continued jurisdiction of the CJEU and marks a new more constructive relationship with the UK [New way forward on the Protocol on Ireland/Northern Ireland \(europa.eu\)](#). Moreover, the agreement is underpinned by *robust safeguards* to ensure the integrity of the EU's Single Market, to which, Northern Ireland (NI) is to continue to enjoy unique access.

Viewed positively, the combination of the *Windsor Framework* and the suspension of the *EU Retained Law Bill* gives shape to an emergent multi-level legal framework facilitating GB/NI and EU/UK trade. Yet, seven years after the Brexit vote, actions will speak louder than words. Acid tests of progress will be provided by the completion of the Stormont Border Posts, the long-overdue introduction of border checks on EU products coming into GB, and how the parties react should smuggling and trade displacement result in Ireland. Winnowing out the ever-smaller range of EU Retained law to be consigned to the "bonfire of regulation" will also provide a moment of reflection, as Brexiters are forced to clarify the precise items of EU law which they cannot easily re-badge, and to which they really object.

Yet PM *Sunak* is trying to do more than "simply" pursue an *economic agenda*, he is also pursuing a *national conservative* agenda which not only cuts NI loose from GB arrangements and traps Scotland outside the EU Single Market, but also foments a culture war targeting refugees and asylum seekers. *Sunak's* economic agenda is just as stark: the "Indo-Pacific tilt;" deregulating the City of London; and chasing "Unicorns." This is a pointillistic rather than a coherent catalogue of objectives: leaving the ECHR would cripple both the *Trade and Cooperation Agreement* and the *Windsor Framework*. Meanwhile, the collapse of *Credit Suisse* reminds us that further deregulating the City of London is also fraught with economic risk. Moreover, insisting on national regulatory frameworks is both costly and counter-productive: UK exporters will still need to comply with EU standards on their exports to the EU, in addition to the new UK requirements. Similarly, joining the CPTPP bears its own risks, and hardens the internal trade border between GB and NI. Yet the strength of the English *national conservative* agenda is that it partially obscures the contradictions of Brexit's *economic message*, indeed the

economic goals themselves obscure the many individual inconsistencies: chasing the many “Unicorns” on *Fantasy Island* [On Fantasy Island – Conor Gearty – Oxford University Press \(oup.com\)](#) may obscure that, for example, the most practical measure of real deregulation for UK SMEs would be to re-join the EU Single Market.

*Further resources:*

[How the Windsor framework changes Northern Ireland's trading arrangements | Financial Times \(ft.com\)](#)

[The Windsor Framework | Institute for Government](#)

[Northern Ireland Protocol: The Windsor Framework – House of Commons Library \(parliament.uk\)](#)

[The Windsor Framework Summary – British Irish Chamber](#)

[Windsor Framework: What are the main points of the new UK-EU deal? – The Irish Times](#)

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