The shocking truth: Article 16 and the Northern Ireland Protocol – Part two

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By 'Titus' for Briefings for Britain

INTRODUCTION

We are indebted to our affiliate *Briefings for Britain* for exposing the reality behind the Northern Ireland Protocol in two articles. Here we publish Part Two.

Written by *'Titus'* – a lawyer and contributor who publishes under an assumed name – the first article was a forensic examination of the agreement itself, an orchestrated legal trap into which the UK government fell headlong and from which it is still trying to extricate itself five years later.

The second article below exposes the EU's wider political ambitions in relation to the NIP, namely to ***"get the United Kingdom to agree to confirm the EU's sovereignty over Northern Irish trade on a permanent basis."***

The non-existence of EU compromise on the Protocol

Following on from our previous article summarising his main paper, the author concludes that the EU had no intention of honouring the terms of Article 16 and thus ***"sold the Protocol on the basis of fraudulent misrepresentation."***

This leaves the EU with a choice:

- **It could make good on its promises.**
- **It could use the power with sufficient liberality that hardly anyone minds.**
- **Get the United Kingdom to agree to confirm the EU's sovereignty over Northern Irish trade, etc on a permanent basis.**

If we discount the first, and examine the heavy-handed approach which the EU has continued to apply to the second, we are left with the third – for the EU to assume control over Northern Ireland trade.

And in return?

"The EU promises to use its power a little more gently. However, as with the EU27's promises to Theresa May, the promises are given solemnly but are unenforceable."

It is important to be clear what the EU's proposals amount to:

1. The parts of the Protocol that give the EU prima facie sovereignty over N. Ireland's trade, goods, and state aid will remain in full.
2. The parts which uphold United Kingdom sovereignty are forgotten:
3. The Protocol will not change, so the promises to find alternatives and the clause in the Protocol anticipating this disappear.
4. The structural safeguards in the EU's Customs Non-Paper does not acknowledge any UK rights to protection should the EU's proposals deliver nothing.
5. The right of the UK to invoke Article 16 is ignored throughout.
6. The UK's internal market instead of being a goal of the process is dismissed as less valuable to N. Ireland than its participation in the Single Market.[2]
7. The EU's offer in both the sanitary and phytosanitary

(SPS) and Customs Non-Papers is simply to exercise such discretion as EU law allows to when importing into the EU so as to create less cost when moving goods from Great Britain to N. Ireland.

8. In both the SPS and Customs proposals, the UK would need to agree that removal of EU law checks will never happen.[3]
9. The EU will be able to remove all relaxations it agrees to should it ever be dissatisfied with the implementation or the results. There is no sign of due process. The EU is judge and jury. As the SPS proposal says: the EU will be able to react quickly and suspend or revoke access if there are failures by the UK government or traders.

The author's conclusions are withering:

"The result of all of this is to remove the vestiges of British sovereignty in N. Ireland where matters of the Protocol are concerned. Presently, the EU should worry that if it pushes things too far then Article 16 will be invoked. That is part of the structure of the Protocol. It will be replaced by a system whereby the UK will have a right to ask the EU if it will consider being less disruptive – and the EU will decide if it is in its interest to do so."

The full article can be found here.

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