



CENTRE FOR CROSS BORDER STUDIES

Civic engagement in the Windsor Framework

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Civic engagement in the Windsor Framework¹

Both the United Kingdom and the European Union have recognised that civic society was not sufficiently consulted on the implementation of the Protocol on Ireland/Northern Ireland. By building on initial proposals made in this regard in 2021², the Windsor Framework appears to respond to criticisms of a ‘democratic deficit’ in decisions made on the operation of the Protocol³.

The consent vote, by which the continued operation of Articles 5 to 10 of the Protocol is decided every 4 to 8 years by the Northern Ireland Assembly, is not, according to the UK Government, a sufficient mechanism in itself to guarantee the democratic character of this treaty⁴. The dynamic regulatory alignment between Northern Ireland and EU laws has not been well received by some political parties and people in Northern Ireland.⁵ They argue that there is an absence of democratic accountability, in that the people of Northern Ireland are prevented from having a direct say on regulations decided in the institutions of the European Union, where they have no seat.

Improved engagement with civic society and businesses features among the changes brought about by the Windsor Framework. UK legislation, in the form of the [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#), which implements elements of the Windsor Framework, refers to consultation of ‘stakeholders’, ‘when relevant’, although with a lack of detail on what this will entail. While the terminology is quite vague – there is a lack of clarity on who and how representative these stakeholders will be, and how accessible they will be – it could allow people representing the business sector and civic society organisations to offer their views in a manner that will improve the decision-making processes, not only within

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² Among the proposals in its non-paper of October 2021 on [Engagement with Northern Ireland Stakeholders and Authorities](#), the European Commission set out that ‘structured dialogue would be established between stakeholders (including Northern Ireland civic society and business), the experts working in the Union institutions, bodies and agencies and their UK counterparts (including Northern Ireland authorities)’ (paragraph 17). The UK Government’s July 2021 Command Paper, the [Northern Ireland Protocol: the way forward](#), called for ‘more robust arrangements to ensure that, as rules are developed, they take account of their implications for Northern Ireland – and provide a stronger role for those in Northern Ireland to whom they apply (including the Northern Ireland Assembly and Executive, and wider Northern Ireland civic society and business)’ (paragraph 71).

³ In their *Irish Times* article of 5 September 2021, “[Northern Ireland’s voice on the protocol needs to be heard](#)”, for example, Katy Hayward and David Phinnemore note: ‘If opposition towards the protocol in Northern Ireland is to be tempered and acceptance of its arrangements – potentially refined or reformed – is to improve, there is an urgent need to shift perceptions of the protocol. Put simply, it needs to move from being seen as something that has been imposed “on” Northern Ireland to being something clearly developed and implemented “with” Northern Ireland’.

⁴ ‘We recognise [...] that the consent mechanism is not sufficient in and of itself to tackle the democratic deficit challenge in Northern Ireland’; [The Windsor Framework: a New Way Forward](#) (paragraph 60).

⁵ Lisa Claire Whitten notes how dynamic regulatory alignment ‘has proved politically controversial, not least because it involves EU acts applying in Northern Ireland in which, after Brexit, neither the UK nor Northern Ireland has had a direct role in adopting’; “[Dynamic Regulatory Alignment and the Protocol on Ireland/Northern Ireland – Two Year Review](#)” (February 2023).

Northern Ireland's democratic institutions, but also within the existing EU-UK mechanisms under the Protocol that have been further expanded by the Windsor Framework to include the Special Body on Goods and the Joint Consultative Working Group's structured sub-groups⁶. The references to consultation of civic society, alongside the consultation of businesses, makes it possible to broaden the scope of the monitoring of the implementation and operation of the Protocol, by taking into account any difficulties encountered across sectors, and not just the business sector.⁷

In terms of Northern Ireland's institutions, one of the main new features resulting from the Windsor Framework is the creation of the Windsor Framework Democratic Scrutiny Committee within the Northern Ireland Assembly. The Committee's principal function will be to examine new and replacements of EU acts by conducting inquiries that may involve consultation of representatives of businesses and/or civic society potentially affected by these pieces of law.⁸

Additionally, the UK and the EU also agreed to give the Northern Ireland Assembly a more active voice by setting up the Stormont Brake mechanism through UK domestic legislation.⁹ It is conceived as an emergency measure, whereby 30 Members of the Legislative Assembly (MLAs) can trigger the Stormont Brake to prevent the application to Northern Ireland of EU acts that amend or replace EU legislation that is already within the scope of the Protocol.¹⁰ These 30 MLAs, who can be of the same designation (i.e. either unionist or nationalist), must show how this change affects Northern Ireland's everyday life or the fluidity of the movement of goods, services and people with Great Britain. To do so and in order to prevent abuse of this mechanism, safeguards have been put in place that include a stage where the MLAs must conduct investigations, consult with businesses and civic society representatives, and report on their actions.¹¹

The EU also proposed its own measures to include civic society consultation. In its "Enhanced engagement with Northern Ireland stakeholders", the European Commission placed discussion with Northern Ireland civil society at the centre of its proposals for improvements. It plans to inform Northern Ireland stakeholders about upcoming EU initiatives that may fall within the scope of the Protocol through an annual discussion on the Commission Work Programme, public consultations, and an updated and dedicated website on the Protocol. The Commission has also included a consultation stage with Northern Ireland stakeholders in its

⁶ Joint Declaration by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on dialogue and goods; Northern Ireland Protocol: the Windsor Framework, Commons Library Research Briefing, 21 March 2023.

⁷ In this regard, C.R.G. Murray and Niall Robb, in their paper "[From the Protocol to the Windsor Framework](#)" (March 2023), note: 'Inclusion of both business and civil society responds to requests from those in Northern Ireland and widens the aperture beyond the narrow business-focussed structures previously proposed' (p.17).

⁸ Northern Ireland Protocol: the Windsor Framework, Commons Library Research Briefing, 21 March 2023 ; The Windsor Framework (Democratic Scrutiny) Regulations 2023

⁹ Article 18 of the Windsor Framework

¹⁰ The Stormont Brake cannot be used to stop the application of new EU laws that amend or replace laws that are already part of the Protocol and listed in its Annexes.

¹¹ 'The Windsor Framework: a New Way Forward', 60 ; Decision No 1/2023 of the Joint Committee of 24 March 2023 laying down arrangements relating to the Windsor Framework.

impact assessments, to ensure that new EU legislation does not cause problems in Northern Ireland. Northern Ireland stakeholders may also request workshop sessions to discuss these new EU initiatives. However, it could be argued that while the EU appears to give an active role to civil society, the UK tends to promote a comparatively more passive, and only advisory engagement. Consultations with civil society are presented in conditional statements using adjectives such as ‘appropriate’ or ‘relevant’, appearing to limit the frequency of meetings with civil society stakeholders.¹²

While statements of intent to engage with civil society are encouraging, the lack of detail, particularly regarding the representativeness of stakeholders, makes it difficult to imagine how they will be implemented in practice. The communication on the functioning of the Protocol/Windsor Framework is not optimal, which leaves room for some uncertainty among businesses and citizens.¹³ The EU website about the Protocol is updated, but complex, listing a lot of laws, which could leave limited scope for comprehensibility. Furthermore, it is not clear whether these consultations would be made public, or remain private.¹⁴

The EU’s own proposals for engagement with Northern Ireland stakeholders present significant opportunities to assess the potential impacts of new EU legislation and initiatives in Northern Ireland, involving those who work daily in the areas where those impacts might be felt. However, for these channels of engagement between the EU and Northern Ireland stakeholders to be effective they must operate in a manner that is sensitive to the fact that they will involve actors from a devolved region of the United Kingdom and a supranational institution made up of 27 member states. There must be clarity from the outset on what limits these channels of engagement may have to function under, thereby allowing Northern Ireland stakeholders to understand what the potential outcomes of their engagement will be. If this understanding is not there from the outset, and if the EU, fearing it may impinge on UK sovereignty, then sees the necessity to constrain its engagement with Northern Ireland stakeholders wishing to raise specific issues, this will lead to frustration and loss of confidence in the process. Therefore, bearing in mind these considerations, while these EU-NI channels of engagement will be an enormously useful tool in providing the EU with a more informed *ex-ante* understanding of how proposed EU initiatives or legislation may impact Northern Ireland, the joint UK-EU mechanisms established by the Withdrawal Agreement and the Protocol/Windsor Framework must be the primary targets of engagement for civic society. It is in these spaces – the Joint Committee, the Specialised Committee, the Joint Consultative Working Group – that stakeholders can speak directly to *both* parties with responsibility for the implementation and operation of the Withdrawal Agreement and the Protocol.

¹² For example, the Windsor Framework Democratic Scrutiny Regulations contains subparagraphs such as “engagement with businesses, civil society and others as appropriate in relation to replacement EU acts” (Part 2 ‘Windsor Framework Democratic Scrutiny Committee’, paragraph 3, (2)(c)). The subparagraph dealing with NI stakeholders’ engagement in the Draft joint declaration by the UK and the EU in the Withdrawal Agreement Joint Committee on dialogue and goods is worth mentioning : “as appropriate, representatives from businesses and civic society stakeholders may be invited to attend relevant meetings”.

¹³ Windsor Framework: NI businesses 'need more detail on Brexit deal', 20th April 2023, BBC.

¹⁴ Hayward, K. (21 March 2023). Written evidence (IWF0003) The draft Windsor Framework Democratic Scrutiny Regulations 2023, Queen’s University Belfast.

CIVIL SOCIETY INCLUSION IN THE WINDSOR FRAMEWORK			
UK Government	Northern Ireland Assembly	Joint UK-EU mechanisms	European Union
Support to the NI executive in consulting with civil society groups, representative organisations and trade unions on the democratic consent decision	Evidence of consultation with civil society in the justification for triggering the Stormont Brake (Article 13(3a)) given by the Members of the Legislative Assembly's	EU-UK Joint Committee	Dedicated overview of NI stakeholders' input in relevant impact assessments for new EU policy initiatives
Inclusion of close consultation with civil society groups representative organisations and trade unions within the independent review	Engagement with civil society in relation to replacement EU acts by the Windsor Framework Democratic Scrutiny Committee , when notified by the UK Government if a new or replacement law has been proposed or published by the European Commission	Specialised Committee on the Protocol Can sit as a Special Body on Goods and invite representatives from civic society stakeholders	Annual discussion with NI stakeholders on the Commission Work Programme
Support for civic society and traders to help prepare for the changes implemented by the Windsor Framework		Joint Consultative Working Group Creation of specialised subgroups that can take into account input provided by stakeholders in NI	Specific information sessions and workshops on new EU initiatives organised if requested by NI stakeholders
			Publication of informations and public consultation with NI stakeholders on the Protocol's website

The absence of any mention of Northern Ireland's neighbouring stakeholders in the Republic of Ireland and Great Britain in all the proposals regarding engagement is regrettable. On the one hand because they are collaterally impacted by the Protocol, for example concerning the movement of goods, persons and services, where regulatory or legislative obstacles could arise. On the other hand, because their views are essential to ensuring the conditions for cooperation on the island of Ireland and with Great Britain are maintained. Presumably consultation can be carried out internally, by the EU with the Republic of Ireland as a member state, and by the UK with Scotland and Wales, but there is no mention of this in the Windsor Framework. However, in light of Article 11 of the Protocol/Windsor Framework, which commits the UK and EU to maintaining the necessary conditions for continued North-South cooperation, it is critical to consider the fact that cross-border cooperation does not only imply civic society stakeholders from Northern Ireland, but also from the Republic of Ireland. Therefore, where it concerns North-South issues, any structures for engagement with civic society must involve representatives from both jurisdictions on the island of Ireland who work on a cross-border basis and will have direct knowledge of and expertise in how to address potential problems arising from the application of this agreement. The inclusion of stakeholders from Great Britain should also be considered where their relations with counterparts in Northern Ireland are being discussed. Ensuring that the opportunities arising from the Windsor Framework are properly exploited, and avoiding minor difficulties becoming major obstacles to cooperation and causes for unnecessary divisions and tensions, will only

come about if those with whom Northern Ireland's civic society cooperates with are given their rightful place in any structures for engagement.

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