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# Relate

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## UK-EU relations after Brexit and implications for the island of Ireland

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On Friday, 31 January 2020, the United Kingdom's membership of the European Union ended. Its departure is regulated by a Withdrawal Agreement, which is an international treaty between the UK and the European Union.

One of the key features of the [Withdrawal Agreement](#) was a Transition Period, which means that most of the EU laws and practices would apply to the UK until 31 December 2020. After this date, many of these laws and practices will either cease to have effect, or the UK may decide to reject or alter them.

The extent to which the UK will lawfully be able to change those laws will be decided by the terms of any trade and other agreements which the EU and the UK enter into between now and the end of the Transition Period. This means that a great deal of uncertainty remains about the future relationship between the UK and the EU (and by extension, Ireland). That said, many rights of Irish citizens in the UK and UK nationals in Ireland are independently protected by the Common Travel Area.

Another key feature of the Withdrawal Agreement is the Protocol on Ireland/Northern Ireland, which should automatically come into effect at the end of the Transition Period. The Protocol would provide greater certainty as to what the cross-border trade relationship will be like between Ireland and Northern Ireland after the Transition Period. However, the UK has recently proposed legislation ([The UK Internal Market Bill](#)) that conflicts with the Protocol, and this has intensified negotiations in the final stage of the Withdrawal Agreement.

This issue of *Relate* explains:

- The Withdrawal Agreement, including the Transition Period
- The Protocol on Ireland/Northern Ireland
- The Political Declaration (framework for EU/UK relations)
- The Common Travel Area
- What happens if no further agreements are reached in the Transition Period?
- Key issues which still have to be decided before the end of the Transition Period

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## The Withdrawal Agreement including the Transition Period

The [Withdrawal Agreement](#) between the EU and the UK was published in October 2019 after two and a half years of negotiations.

The Withdrawal Agreement is the main document governing the relationship between the EU and the UK, but it does not intend, nor does it, resolve all the issues between the two jurisdictions. Much was left to be agreed, particularly in terms of trade and customs. That is why the Withdrawal Agreement contains a Transition Period to allow agreements to be reached without major changes in practices between the EU and the UK.

### **The Transition Period**

Part 4 of the Withdrawal Agreement sets out the terms of the Transition Period. During this time, the UK is treated as if it was a member state. The Transition Period is due to last until 31 December 2020. Under the Withdrawal Agreement, one extension could have been agreed but the deadline for an extension has now passed. An extension may still be possible if the UK sought this, and if all of the remaining member states agreed. However, this is unlikely as the UK has indicated it does not want an extension.

#### ***UK must follow EU laws and international agreements***

During the Transition Period, most EU laws, rules and regulations continue to apply to the UK. This includes any changes made to rules during this period.

The UK remains a part of the single market and customs union during the Transition Period, which means trade between the UK and other European countries remains the same. The UK must continue to comply with EU trade policy, to apply EU customs tariffs, and collect EU customs duties and to ensure that all EU checks are being performed on its borders. Similarly, the rights of EU citizens to travel to the UK and of UK citizens to travel to the EU remain unaffected.

The UK can make trade deals with countries outside the EU although they cannot come into force until the end of the Transition Period.

The UK remains bound by any international agreements previously entered into by the EU, but it can play no part in any bodies established under those agreements, unless it is taking part on its own behalf or is invited to take part by the EU.

The UK also remains under the jurisdiction of the European Court of Justice and is subject to enforcement action by the EU institutions (see 'The role of the Court of Justice of the European Union in relation to the UK' below).

#### ***Voting rights, commissioner and MEPs***

The UK now has no voting rights in any EU institution. However, the EU can invite the UK to take part in meetings where UK-related issues are being discussed.

The UK no longer has a commissioner or any Members of the European Parliament (MEPs). Many of the seats vacated by UK MEPs elected in May 2019 have been taken by the back-up (reserve) candidates elected in the other member states. As a result, Ireland's allocation of MEPs has increased from 11 to 13.

#### ***Consumer rights***

During the Transition Period, your consumer rights remain the same in relation to purchases from UK sellers. For instance, you continue to have the right to cancel most types of online purchases within 14 days of delivery. You also have a right to complain through the European Consumer Centre Network by using [ECC Ireland](#), who can raise your complaint in the UK. Similarly, there's also a [European Small Claims procedure](#) available.

Other important pieces of legislation covering issues such as unfair terms and package travel continue to apply.

### **Other key provisions of the Withdrawal Agreement**

#### ***Residence rights after the Transition Period***

The right of Irish citizens to continue living in the UK after the Transition Period (and the rights of UK citizens to continue to live in Ireland) are protected by the terms of the [Common Travel Area](#). (This is explained in 'The Protocol on Ireland/Northern Ireland' below.)

The Withdrawal Agreement guarantees that EU citizens lawfully living in the UK before the end of the Transition Period and UK nationals lawfully living in an EU member state before the end of the Transition Period can continue to live in that host country after the Transition Period.

Family members who either lived in the host country at the end of the Transition Period or who would have been entitled to live there, for example, a spouse, a civil partner or a dependent child, will continue to be entitled to live in the host country.

However, they may have to register in the host country. For instance, the UK has set up an [EU Settlement Scheme](#), under which EU, EEA (European Economic Area) and Swiss citizens and their family members living in the UK can apply to continue living there after 30 June 2021.

If you are an ...	Then you ...
... EU citizen in continuous residence in the UK for five years	<p>... should get <b>settled status</b> under the EU Settlement Scheme. This allows you to continue to live in the UK for as long as you like. You will have access to public funds and services (if you qualify), and you can apply for British citizenship. Any children born in the UK after you get settled status will automatically be British citizens.</p> <p>You will lose your settled status if you spend five years in a row outside the UK.</p>
... EU citizen not in continuous residence in the UK for five years	<p>... may get <b>pre-settled status</b>. This allows you to continue to live in the UK for another five years. If you reach the five years' continuous residence during this time, you should then apply for settled status.</p> <p>If you get pre-settled status, you can spend up to two years in a row outside the UK without losing your status.</p>

### **Workers' rights**

The Withdrawal Agreement also guarantees certain rights for people living outside their countries of origin. The following people can continue to work or study in their host country with the same conditions as before:

- EU citizens lawfully working in the UK before the end of the Transition Period
- UK nationals lawfully working in an EU member state before the end of the Transition Period and
- Their relevant family members living in the host country

They will keep all their workers' rights based on EU law. For example, they will keep:

- The right not to be discriminated against on grounds of nationality as regards employment, payment and other conditions of work
- The right to take up and pursue work in line with the rules applicable to the nationals of the host state
- The right to employment assistance under the same conditions as the nationals of the host state
- The right to social and tax advantages
- Collective rights
- Housing rights and
- The right for their children to access education

And, if you are covered by the Withdrawal Agreement and your professional qualifications were recognised in the country where you currently live or work, you will still be able to rely on this recognition.

The rights of Irish citizens to continue working in the UK and UK nationals to continue working in Ireland is further protected by the terms of the Common Travel Area (see 'Common Travel Area' below).

### **Flow of most goods on the market uninterrupted**

The Withdrawal Agreement provides that most goods lawfully placed on the market in the EU or the UK before the end of the Transition Period may continue to freely circulate in and between the EU and the UK until they reach their end users. These goods will not need to be changed or relabelled.

The main exception to the above rule relates to the movement of live animals and animal products between the two jurisdictions. From the end of the Transition Period, they will have to undergo import checks and sanitary controls at the border between the EU and the UK, whether they were placed on the market before the end of the Transition Period or not. This is due to the increased sanitary risks associated with these products.

Goods in transit before the end of the Transition Period will also be subject to the existing customs rules.

### **Use of data and information exchanged before the end of the Transition Period**

#### **GDPR still applies**

Before the end of the Transition Period, any personal information received by any entity in the UK from companies and administrations in other member states will be [covered by the GDPR](#) (General Data Protection Regulation).

After the Transition Period, the UK must still apply the GDPR to that particular batch of personal information. It must do this until the Commission has made a formal decision (called an *adequacy decision*) to guarantee that the UK's data protection safeguards are the same as the GDPR's (or equivalent).

Existing GDPR rules continue to apply to personal information obtained from the UK and held by an entity in a member state before the end of the Transition Period or until an adequacy decision is in place.

### **The role of the Court of Justice of the European Union in relation to the UK**

The [Court of Justice of the European Union](#) is the final arbiter for EU law. It continues to have authority over the UK during the Transition Period.

Proceedings brought by or against the UK in the European courts will continue until concluded, regardless of when that is. Similarly, any requests for rulings on EU law by a UK court which are sent before the end of the Transition Period will be treated in the normal way by the European courts.

Judgments and orders of the European courts will also apply in the UK until the end of the Transition Period.

The European Commission may bring new infringement cases against the UK for breaches of EU law that occurred before the end of the Transition Period. The EU can bring these types of cases for up to four years after the Transition Period ends. Again, these cases will be dealt with by the European courts.

### **Other EU administrative procedures in relation to the UK**

All the other EU institutions and bodies continue to have authority in relation to the UK and can continue their investigations or prosecutions if they started before the end of the Transition Period. Any decision made under those procedures will be binding on the UK or any particular person in the UK to which it is addressed. This may be particularly important for alleged breaches of EU competition law, as the EU can now intervene for up to four years for certain breaches, including breaches by companies and individuals which happened before the end of the Transition Period.

The EU must notify the UK of all ongoing procedures at the end of the Transition Period.

### **Making sure the UK complies with the Withdrawal Agreement**

The Withdrawal Agreement includes arrangements to make sure the UK complies with the Agreement. It outlines steps to take if any disputes emerge arising from the Agreement.

**Joint Committee:** This step deals with issues arising from the Withdrawal Agreement and will be dealt with by a joint committee, co-chaired by the EU and the UK. The UK and the EU can refer any relevant issue to this committee, which has specialised sub-committees including ones on citizens' rights and the implementation of the Protocol on Ireland/Northern Ireland.

A joint committee decision has a binding effect on both the EU and the UK. However, those decisions and any recommendation can only be made by mutual consent.

If no solution is agreed, the issue must proceed to a second step.

**Panel of independent members:** This is where the issue is referred to a panel of five independent members for binding arbitration. While the panel must try to resolve disputes by consensus, it can resolve issues by majority vote. The panel's ruling is binding on both the EU and the UK, and it may impose financial penalties for non-compliance. If a party does not comply with a ruling or penalty, the other party can suspend specified parts of the Withdrawal Agreement (except parts that cover citizens' rights) or any other agreement.

If an issue referred to the panel involves the interpretation of EU law, it must be referred to the Court of Justice of the EU. This court's ruling is binding.

An independent monitoring authority will be established to ensure that the UK has complied with its obligations for citizens' rights.

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## **The Protocol on Ireland/Northern Ireland**

The Irish-Northern Irish border is the only land border which the UK has with the EU, and, as a result, both Ireland and Northern Ireland are at risk of being disproportionately affected by any change in trade or customs arrangements. In addition, we need to consider the longstanding Common Travel Area between Ireland and the UK and the commitments of the Irish and UK governments under the [Good Friday Agreement](#) and the various

institutions established under that Agreement. This special relationship meant that the Irish Government sought to prevent a 'hard border' (a physically noticeable border) throughout Brexit negotiations.

Initially, this was provided for in the 'backstop' agreement which would have come into effect only if no other agreement had been negotiated between the UK and EU. This backstop arrangement has been replaced by the [Protocol on Ireland/Northern Ireland](#) which is scheduled to legally come into effect at the end of the Transition Period. However, the terms of the Protocol can be overridden ('disapplied') in any further agreement between the UK and the EU. The proposed [UK Internal Market Bill](#) conflicts with parts of the Protocol and this is why there is controversy over it.

### **Main provisions of the Protocol**

#### ***The Common Travel Area (CTA) remains recognised***

The Protocol continues to recognise the CTA between Ireland and the UK and the rights it grants to Irish and UK citizens in each country (see also 'The Common Travel Area' below).

#### ***Northern Ireland still part of the UK customs and VAT territory***

Northern Ireland is still part of the customs and VAT territory of the UK. As a result, it can be included in any free trade agreement which the UK may make with other countries.

Goods moved between Ireland and Northern Ireland will not have any customs or tariffs applied or any restrictions on their movement.

However, the movement of goods from Northern Ireland to another part of the UK should have the same customs checks and obligations as if the goods were going to any other non-EU country. The UK government has tried to override (disapply) this obligation in its recently published Internal Market Bill. This bill seeks to allow the UK to waive custom checks and obligations between Northern Ireland the UK.

Goods moving from another part of the UK to Northern Ireland will be subject to customs duty, unless there is no risk that the goods may then enter Ireland or the rest of the EU. If the EU customs duty is applied due to such a risk and it is higher than any UK customs duty, the UK can pay any difference in duty to the payer if the payer proves that the goods stayed in Northern Ireland.

Northern Ireland must also fully align with EU VAT laws. The UK government's Revenue and Customs Department (HMRC) will still have to apply VAT legislation, including the collection of VAT. The UK will keep revenues from the VAT in Northern Ireland. Any VAT exemptions or reduced rates applied in Ireland may also be applied in Northern Ireland.

#### ***Northern Ireland must honour relevant EU regulations***

Northern Ireland must continue to have many of the rules of the EU's Single Market, such as in the technical regulation of goods, agricultural and environmental protection and regulation, and state aid (financial support from Government for businesses). Again, the UK government has tried to override the state aid obligation in the recently published Internal Market Bill.

Where EU law or rules apply under the Protocol, this generally includes any changes in these laws or rules which take effect after the end of the Transition Period.

#### ***Existing EU law still covers the Single Electricity Market and other areas***

The [Single Electricity Market](#) between Ireland and Northern Ireland will continue to be governed by existing EU law despite Northern Ireland no longer being part of the EU.

Cooperation in areas such as agriculture, transport, education and tourism is also preserved.

#### ***Implementation rules and EU Supervision***

The UK is responsible for making sure EU law is being complied with, as set out in the Protocol in Northern Ireland. It must carry out necessary checks, such as on live animals or animal goods.

EU representatives are entitled to be present during any of the activities governed by the Protocol, including the transit of goods and the UK must provide those representatives with any information they request. The EU representatives can also require the UK authorities to carry out certain checks in individual cases for stated reasons.

EU administrative bodies can take action to enforce laws if non-compliance is an issue and the Court of Justice of the EU will continue to have a role in ensuring compliance.

### The Northern Ireland Assembly's new consent mechanism

The Protocol contains a new mechanism on 'consent', which gives the Northern Ireland Assembly the final decision on the long-term application of certain parts of the Protocol in Northern Ireland. This consent mechanism covers regulatory alignment on goods and customs, the Single Electricity Market, VAT and state aid.

This means that four years after the end of the Transition Period, the Assembly can, by simple majority, consent to the continued application of relevant EU law or vote to discontinue its use.

If the Assembly votes to discontinue the use of these laws, they will no longer apply two years later. This means that the current cross-border regime between Ireland and Northern Ireland is scheduled to continue for at least six years after the Transition Period ends unless both the UK and the EU agree otherwise.

Every four years after that, the Assembly can vote to decide on whether or not to apply relevant EU law. However, if an Assembly vote has cross-community support for the continued use of relevant parts of the Protocol, the next vote can only take place after eight years.

Cross-community support is where there is:

- A simple majority of both the unionist and nationalist designations voting or
- A 60% majority of those voting, which includes at least 40% of the unionist and nationalist designations voting

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## The Political Declaration (framework for EU/UK relations)

The Withdrawal Agreement is accompanied by a [Political Declaration](#). Unlike the Withdrawal Agreement, it is not a legally binding agreement, but it acts as a framework for what the relationship between the EU and the UK might look like in the future.

This framework is an 'ambitious, broad, deep and flexible partnership' across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement. It also refers to law enforcement and criminal justice, foreign policy, security and defence, and wider areas of cooperation.

The Declaration states that any future agreement should be based on values shared by both the EU and the UK such as:

- Respect for and safeguarding of human rights and fundamental freedoms
- Democratic principles
- The rule of law

The parties commit to establish general principles for the UK's participation in any EU programmes, such as in science and innovation, education, overseas development, civil protection and space policy. The continued involvement of both parties to delivering the PEACE PLUS programme in Northern Ireland is clearly referred to.

The Declaration envisages that a trade agreement covering a wide variety of areas and sectors will be agreed which will ensure a future relationship based on open and fair competition. To do so, the parties have committed in theory to maintaining common high standards in the areas of state aid, competition, social and employment standards, the environment, climate change and relevant tax matters. This will help to avoid unfair competitive advantages for either the EU or the UK.

The parties also plan to form a security partnership, covering matters such as:

- Law enforcement and judicial cooperation in criminal matters, including the exchange of information and coordination of anti-money laundering and counter terrorist financing
- Foreign policy, security and defence
- Cyber security
- Health security
- Illegal migration

The Political Declaration recognises that there will have to be appropriate mechanisms for dialogue and for dispute settlement, such as joint committees and arbitration panels.

The Political Declaration also recognises that any future agreement should not affect the Common Travel Area between Ireland and the UK and that the Good Friday Agreement should be fully protected.

Negotiations in relation to future arrangements between the UK and the EU are ongoing and are currently more intense due to the UK's proposed Internal Market Bill.

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## The Common Travel Area

The Common Travel Area (CTA) is the term used for a variety of rights that apply to citizens of Ireland and the UK. It includes more than the basic right to travel freely between both countries. The Common Travel Area is unaffected by Brexit and the Withdrawal Agreement.

In 2019, the Irish and UK governments signed a [Memorandum of Understanding\(pdf\)](#) reaffirming the Common Travel Area and identifying the rights of Irish and UK citizens within the Common Travel Area. It also reaffirmed the commitment to maintain the CTA after Brexit.

The CTA does not relate to goods or customs arrangements.

### Rights within the CTA

Common Travel Area rights only apply to citizens of Ireland and the UK. If you are not a citizen of Ireland or the UK, you will not be able to use Common Travel Area rights. However, many similar rights of non-Irish and non-UK citizens are protected in the Withdrawal Agreement, at least until the end of the Transition Period.

The UK, for the purposes of the Common Travel Area, covers England, Scotland, Wales, Northern Ireland, the Isle of Man and the Channel Islands.

Irish and UK citizens have the right to live, travel, work and study within the CTA. The rights of Irish citizens have been recognised in [the UK's Immigration and Social Security \(EU Withdrawal\) Bill 2020](#).

Irish and UK citizens can live in either country and enjoy rights and privileges, including:

- Access to social benefits
- Access to healthcare
- Access to social housing supports
- The right to vote in certain elections

### Border control and the CTA

By law, Irish and UK citizens travelling between the two countries do not need to have a passport to enter the other country. However, it is best to always travel with a passport to prove your nationality.

In 2011, the Irish and UK governments agreed [measures to secure the external Common Travel Area border](#). This includes exchanging biographic and biometric visa information (like fingerprints and digital photo of faces) and cooperating on information about failed asylum seekers. There is a joint UK-Ireland Common Travel Area Forum which implements these measures.

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## What happens if there are no further agreements between the EU and the UK?

### Ireland and Northern Ireland and the rest of the UK

If there are no further agreements reached between the EU and the UK before the end of 2020, we know that:

- The rights for Irish and UK citizens living under the Common Trade Agreement will still apply. That means Irish citizens can continue to choose to work, study and access public services when living in the UK.
- Trade and customs arrangements should be governed by the Protocol on Ireland/Northern Ireland, which maintains the current checks and tariff-free trade in goods between Ireland and Northern Ireland. However, goods coming from the rest of the UK into Northern Ireland with a risk of entering Ireland will likely have to go through customs and incur duties. UK authorities check such goods, supervised, if necessary, by EU representatives.

- Northern Ireland will continue to apply EU VAT rules and many other EU rules and regulations to prevent customs checks on the Irish-Northern Irish border. If these rules are not followed, the EU authorities may take action to enforce them.
- There will continue to be close cooperation between Ireland and Northern Ireland in areas such as agriculture, transport, education and tourism.
- The use of UK driving licences to drive in Ireland will be allowed during the Transition Period.

### The EU and the UK

If there are no further agreements reached between the EU and the UK, we know that:

- Non-Irish, EU citizens and their non-EU family members living and working in the UK at the end of the Transition Period will keep those entitlements if they comply with the UK Government's Settlement Scheme. Irish citizens are covered by the Common Travel Area. UK citizens living in the EU (other than Ireland) at the end of the Transition Period will also keep those entitlements if they too comply with any rules of the relevant member state.
- The EU can take action against the UK for breaches of EU law before the end of the Transition Period within defined times.
- The EU and the UK would have to rely on previous international conventions for security cooperation and would trade with each other on World Trade Organization terms (except in relation to Northern Ireland). This would mean the customs duties would be imposed on a wide range of goods and services moving between both jurisdictions.
- Issues arising from the Withdrawal Agreement should be dealt with in the first instance by a joint committee of the EU and UK and then by an independent arbitration panel.

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## Key issues that still have to be decided before the end of the Transition Period

There are many important issues that still have to be negotiated and decided on before the end of the Transition Period. There are also many unknowns at this stage, particularly in light of the recent UK Internal Market Bill.

However, some of the key remaining issues to be resolved before the Transition Period ends include:

### **Trade agreement – or not**

A key issue is whether the EU and the UK will be able to agree a trade agreement, and, if so, what its terms will be. This will decide on the amount of customs and other tariffs to pay on goods going between the EU and UK (other than between Ireland and Northern Ireland) and what checks are needed. It will also determine how aligned the UK (other than Northern Ireland) will need to remain with EU regulations and standards.

### **Fisheries deal – or not**

Another issue will be to decide if a deal will be done on fisheries.

### **Products that will have customs checks**

It also needs to be decided which goods arriving from the rest of the UK into Northern Ireland will be identified as being at risk of entering the EU, and, therefore, would have to go through customs checks and duties in Northern Ireland.

### **Consumer rights**

It is unclear what consumer rights Irish or other EU buyers will have when they purchase from a UK seller. Unless there is an agreement between the EU and the UK which retains the existing rights, consumers will have to be especially careful when purchasing from a UK seller. It may be particularly important to check the terms and conditions available on the seller's website carefully.

Depending on what is agreed, consumers may or may not be able to avail of the [14-day cancellation period](#) for most online orders after 31 December 2020, even if the order is made before 31 December 2020. Similarly, you may not be able to complain through [ECC Ireland](#) or use the [European Small Claims procedure](#). VAT and import duties may be payable on the goods on arrival in Ireland, meaning that the price on the website may not be total price you pay. Claiming refunds of these additional charges will be a separate process if you choose to return the goods.

There is also the risk that existing roaming arrangements for mobile phone customers will not be available. However, this will also depend on the decisions made by the mobile phone network operators.

#### ***The rights of non-Irish EU citizens to live and work in the UK if not doing so at the end of the Transition Period***

The rights of non-Irish, EU citizens to choose to live and work in the UK if not doing so at the end of the Transition Period also needs to be decided. At present, the UK Government is proposing a points-based system under the Immigration and Social Security (EU Withdrawal) Bill. It has yet to work out how points will be allocated under such a system.

#### ***The rights and status of UK and other citizens***

The rights of UK citizens to choose to live and work in the EU (other than Ireland) if not doing so at the end of the Transition Period also needs to be decided on. Their rights may differ depending on the member state involved.

There is also uncertainty about the status of non-EEA family members of UK citizens who hope to come to Ireland after the Transition Period.

#### ***How cross-border private disputes will be managed***

It needs to be decided how cross-border private disputes will be managed between EU and UK courts after the Transition Period.

#### ***UK divorces***

The Irish Government has announced that it will legislate to [continue to recognise UK divorces](#) after the Transition Period on the same basis as it currently does if no EU-wide agreement is reached on this issue.

#### ***Status of driver licences***

The status of UK driving licences in Ireland and throughout the EU after the Transition Period is another issue that needs to be finalised. The [National Driver Licencing Service \(NDLS\)](#) recommends that you exchange your UK licence for a local one before the end of 2020.

There are significant areas of disagreement between the EU and the UK as the end of the Transition Period approaches ever closer. In addition, the recent UK Internal Market Bill has further complicated negotiations, by raising the question of whether the UK will comply with certain parts of the Protocol. The impact of decisions eventually made will seriously affect the island of Ireland.

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