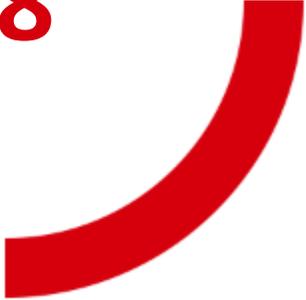




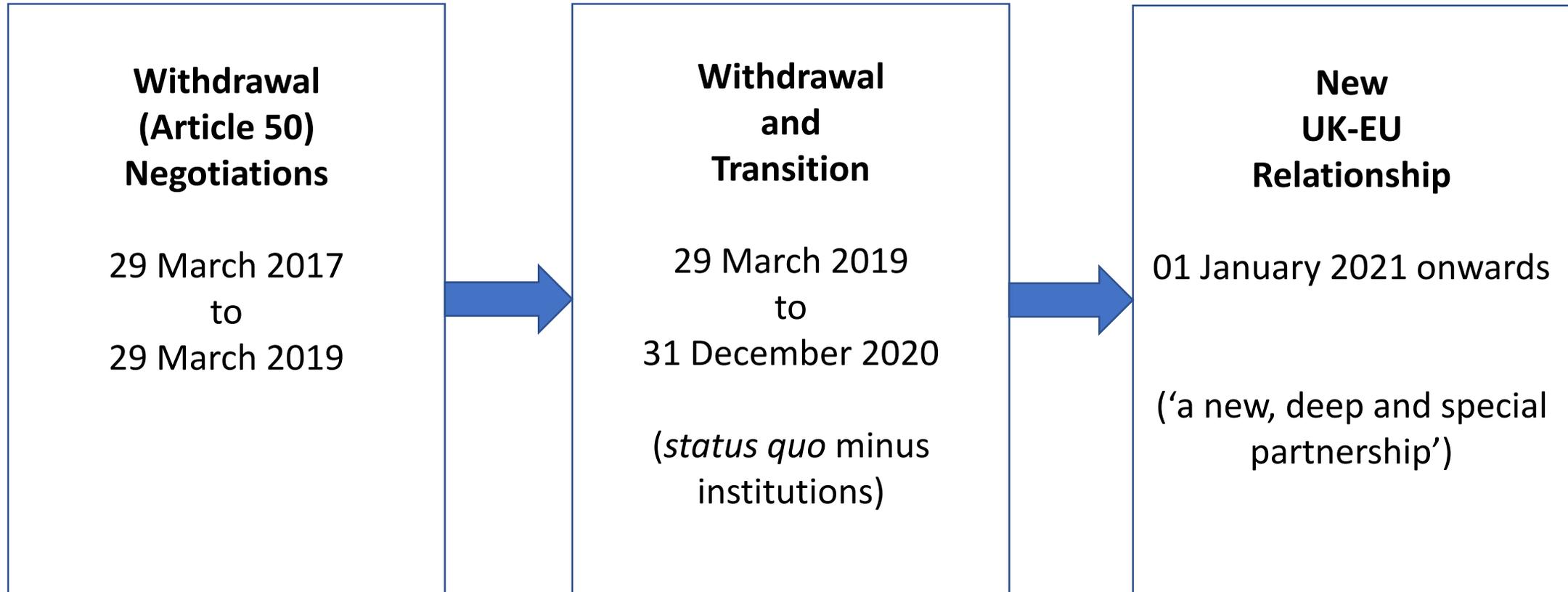
# QPol Brexit Clinic

20 September 2018



Prof David Phinnemore (@Dphinnemore)

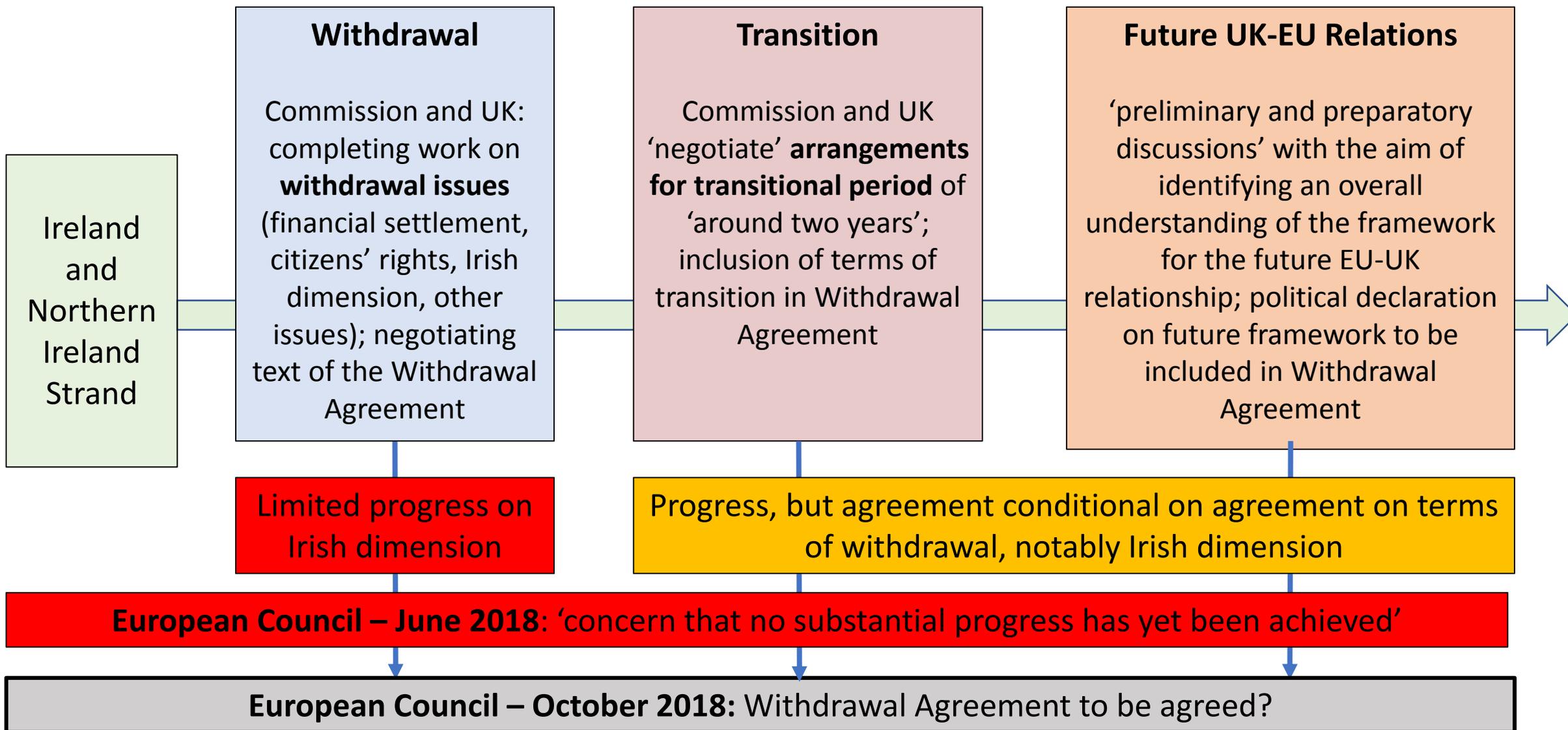
## Brexit – a timeline



# Article 50 Process – A Timeline

<b>2017</b>	29 March	Notification of Intention to Withdraw	√
	29 April	European Council (EUCO) adopts guidelines	√
	19 June	Withdrawal Negotiations start	√
	15 December	EUCO agrees 'sufficient progress for move to second phase; adopts additional guidelines	√
<b>2018</b>	29 January	Council Supplementary Negotiating Mandate	√
	February	Negotiations on transition arrangements start; draft Withdrawal Agreement (WA) published	√
	23 March	EUCO adopts 'guidelines on the framework for the future EU-UK relationship'	√
	April	'preliminary and preparatory discussions' on framework for the future EU-UK relationship' start	√
	<i>October</i>	<i>WA to be concluded; political declaration on future framework for UK-EU relations to be adopted</i>	
	<i>December</i>	<i>WA to be signed</i>	
<b>2019</b>	<i>January</i>	<i>Ratification of Withdrawal Agreement by European Parliament and UK Parliament begins</i>	
	<i>29 March</i>	<i>UK Withdraws from the EU; transition period begins</i>	
	<i>30 March</i>	<i>UK-EU negotiations on future relationship start</i>	
<b>2020</b>	<i>31 December</i>	<i>Transition period ends</i>	
<b>2021</b>	<i>1 January</i>	<i>UK-EU 'new, deep and special partnership' to enter into force</i>	

# Article 50 Negotiations – Phase Two (2018)



## Protocol on Ireland/ Northern Ireland

### Preamble

Commitments from Joint Report

### Rights of Individuals

No diminution of rights, safeguards and equality of opportunity as set out 1998 Agreement; UK to facilitate work of human rights and equality bodies (Article 1)

### Movement of People

Common Travel Area and associated rights to continue (Article 2)

### Common Regulatory Area

Establish an area without internal borders in which free movement of goods is ensured and North-South cooperation protected (Article 3)

### Free Movement of Goods

Northern Ireland shall be considered to be part of the customs territory of the EU (Article 4)

### Agriculture and Fisheries

EU law on (a) sanitary and phytosanitary rules and (b) production and marketing of agricultural and fisheries products to apply to Northern Ireland (Article 5)

### Single Electricity Market

EU law governing wholesale electricity markets to apply to Northern Ireland (Article 6)

### Environment

EU law or environmental protection concerning movement of goods to apply to NI (Article 7)

### Other Areas of North-South Cooperation

Maintain conditions for continued cooperation, *including* in the areas of environment, health, agriculture, transport, education and tourism, as well as energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport (Article 8)

### State Aid

EU law governing state aid to apply in respect of trade between NI and the EU (Article 9)

### Specialised Committee

Establish a Specialised Committee to facilitate and implementation and application of Protocol (Article 10) including discussion of proposals from North-South Ministerial Council (Article 10)

### Supervision and Enforcement

EU institutions and bodies – including Court of Justice – to have jurisdiction over Common Regulatory Area (Article 11)

### Common Provisions

Application and implementation of Protocol; application of new EU law; representation in EU decision-shaping; risk assessments; personal data protection (Article 12)

### Safeguards

Safeguards in cases of serious economic, societal or environmental difficulties (Article 13)

### Protection of Financial Interests

counter fraud and any other illegal activities relating to EU and UK interests in Northern Ireland (Article 14)

### Subsequent Agreement

Replacement in part or in full of Protocol by future agreement (Article 15)

### Annexes

Lists of relevant EU law in three annexes to be integral part of the Protocol (Article 16)

UK Position - UK wide

## UK White Paper – ‘Chequers’

- **Facilitated Customs Arrangement** that would remove the need for customs checks and controls as if in a combined customs territory, while enabling the UK to control tariffs for its own international trade and ensure businesses pay the right tariff;
- **common rulebook for manufactured goods**, alongside UK participation in EU agencies that facilitate goods being placed on the EU market;
- **common rulebook for agriculture, food and fisheries products**, encompassing rules that must be checked at the border, alongside equivalence for certain other rules, such as wider food policy; and
- robust domestic **market surveillance** and cooperation between the UK and the EU to ensure the rules are upheld in both markets.

# Deal or No Deal?

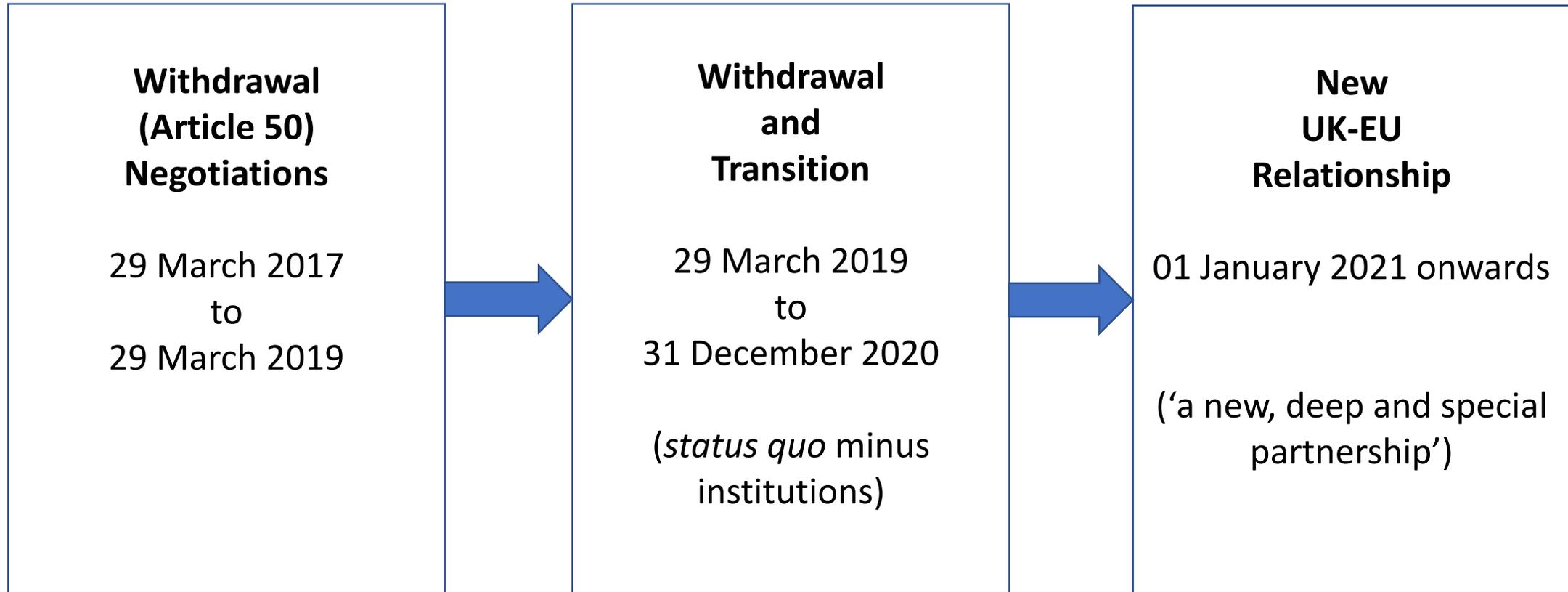
## Timeline to a deal ...?

- Tory Party Conference (30.09-03.10)
- European Council (18.10)
- Extraordinary European Council (November?)

## ... and a ratified deal?

- 'meaningful vote'
- UK ratification
- European Parliament consent

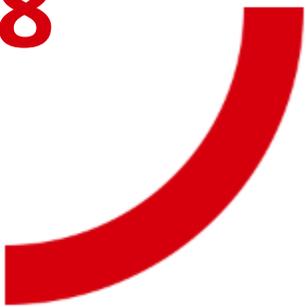
# Brexit – a timeline





# QPol Brexit Clinic

20 September 2018



Dr Viviane Gravey (@VGravey)

# What is new in the domestic Brexit agenda?

- ✓ In Westminster & Whitehall
- ✓ In the Devolved Administrations
- ✓ In the Supreme Court

“Political tensions are encouraging secrecy, where access to key documents is highly restricted. Important information is not being shared between departments, and those outside government with a legitimate reason to be kept informed, such as Parliament and business, are being kept in the dark.”

“The risk of Defra not delivering all its EU Exit portfolio in a no-deal scenario is high and, until recently, not well understood (...) In a no deal scenario, there is a high risk that Defra will be unable to deliver all the Statutory Instruments (SIs) it needs in time and it is identifying those that it needs to prioritise.”



## One agricultural bill – 4 agricultural policies?

1. Health & Harmony
2. Brexit and our Land
3. Stability and Simplicity
4. Northern Ireland Future  
Agricultural Policy  
Framework

# Where is Scotland?

## PART 8

### WALES AND NORTHERN IRELAND

**27 Wales**

Schedule 3 makes provision in relation to Wales.

**28 Northern Ireland**

Schedule 4 makes provision in relation to Northern Ireland.



### *Sustainable Food Production: From the Local to the Global*

Keynote Speakers:

Prof Fiona Smith, School of Law, University of Leeds  
Prof Thomas Cottier, World Trade Institute, University of Bern

Thursday 29<sup>th</sup> November 2018 at 11 a.m. until 6 p.m.

Friday 30<sup>th</sup> November at 9.15 a.m. until 2 p.m.

**Canada Room and Council Chamber,  
Lanyon Building, Queen's University Belfast, Belfast, BT7 1NN.**

Sustainable food production is fundamental to food rights, farming industry and the economy, as well as cultural and social objectives. This is reflected in recent EU policy documents, attempts to 'green' the Common Agricultural Policy, 'slow food' movements and recent agricultural policy proposals within the UK. Balancing these objectives and rights is undeniably complex, as highlighted in the concept 'sustainable intensification'. A collaborative approach across the levels and disciplines is essential if to achieve an appropriate balance and resolve any potential clashes.

Food crises and political upheavals, including the evolving phenomenon of Brexit, put this challenge of sustainable food production in sharp focus. However, they also present an opportunity for actors to come together and reflect upon food production and identify innovative solutions that will work from the local to the global level.

This workshop will consider the future of food production in our societies, focusing on three main themes: 1) conflicting rights; 2) interconnected supply chains; and 3) trade and environmental protection. It will consider these from interdisciplinary perspectives and address questions such as:

- Which rights ought to underpin food production?
- How should these rights interrelate?
- How interconnected or interdependent should supply chains be?
- How can resilient and sustainable supply chains be developed?
- How does one achieve food safety and combat food fraud in a global supply chain?
- What controls should there be over plant genetic resources?
- How can trade be used to promote environmental standards?
- How can trade promote animal welfare?

Queries and bookings to the workshop organisers: Dr Mary Dobbs ([m.dobbs@qub.ac.uk](mailto:m.dobbs@qub.ac.uk)) or Dr Ludivine Petetin ([PetetinL@cardiff.ac.uk](mailto:PetetinL@cardiff.ac.uk)).

This workshop is generously supported by the AHSS Faculty Research Initiative Fund, QUB; School of Law, QUB; and the Centre for European and Transnational Studies, QUB.



# Northern Ireland & “Brexit” – between the draft protocol and the threat of “hard Brexit” – legal perspectives

**Dagmar Schiek @dschiek, @treup**

Professor of Law, Director of Centre for European and Transnational Studies

20 September 2018

- Draft protocol on Ireland/Northern Ireland PLUS other aspects of draft withdrawal agreement

- “Brexit” without agreement (pure Article 50 TFEU)

# What are the needs of Northern Ireland?

## Joint letter FMDFM August 2016

- Closest to a cross community position
- Surprisingly current

## “Border”

- No “impediment to the movement of people, goods and services
- no “catalyst for illegal activity”, or reason to compromise arrangements in criminal justice and tackling organized crime”
- no incentive to undermine the peace process or political settlement

## Economy/business competitiveness

- Retain ease of trade with EU Member States
- Retain access to labour, unskilled as well as skilled
- Maintain ease of commute for frontier workers

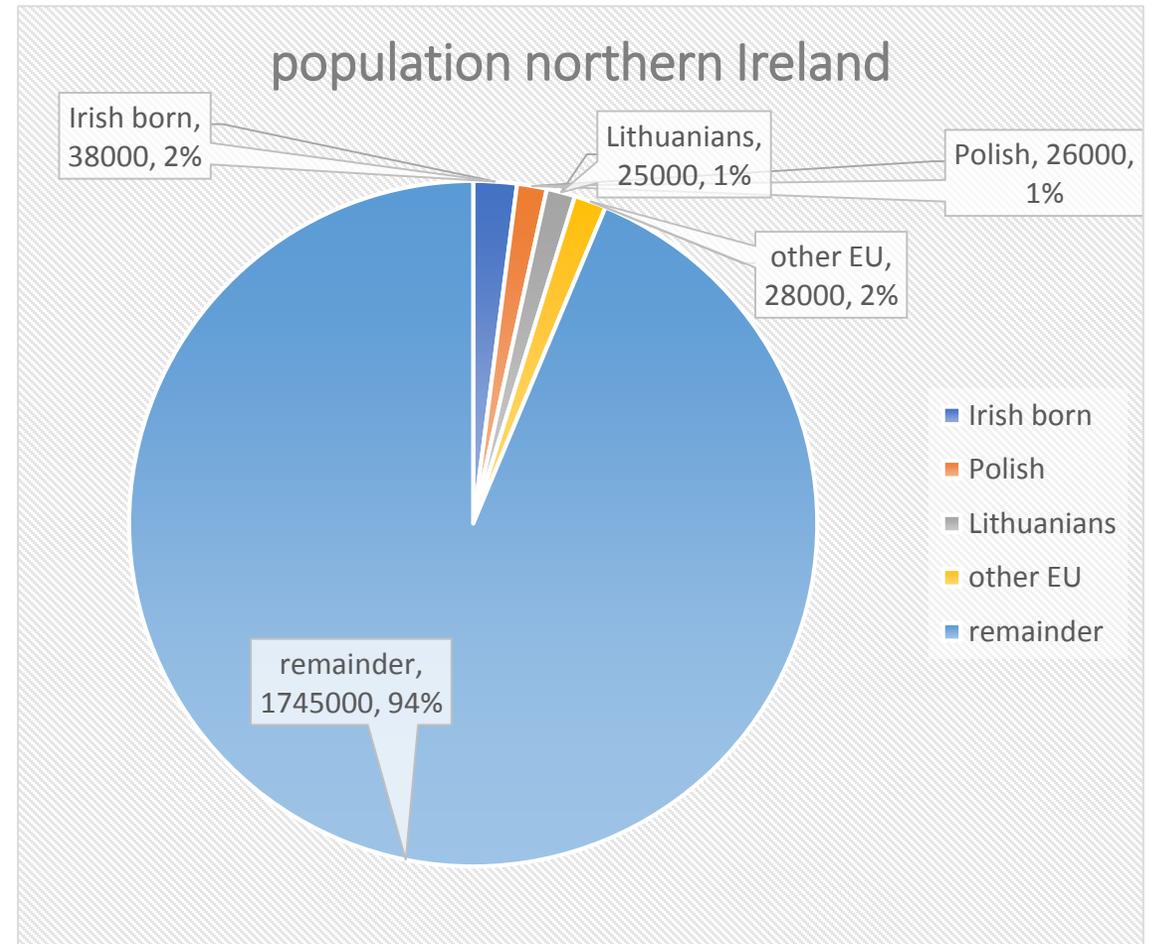
## Specific sectors

- Energy: an isolated market to be avoided
- Agri-food and fisheries
  - CAP receipts
  - Export options to other EU and non-EU countries

## EU funds

- Regional funds
- “peace money2

- Northern Ireland: 38,000 Irish-born residents, 26,000 Poles, 25,000 Lithuanians and 28,000 residents who were born in other EU countries (recent report by Office of National Statistics)
- British-Irish international agreement to which Good Friday agreement annexed: only persons born in Northern Ireland to either a UK or an Irish citizen or someone otherwise entitled to permanent residence protected .
- population growth in Northern Ireland is based on “international immigration” (mainly from the EU, Poland, Ireland, Romania in 2016, NISRA)
- Next to being part of civil life in NI, these free movers are also an integral part of economic life as employees and self-employed persons



# EU law underpinning good Friday Agreement

## Internal Market & Funds

- Free movement of goods, services, persons and capital
- Competition law (includes state aid)
- Contributes to addressing economic disadvantage deriving from miniature statelet
- Structural, regional and agricultural funds benefit NI disproportionately within UK

## Customs Union

- No tariffs to other EU states, uniform tariffs with non EU states (from 1965)
- Customs Code (1993, subsequent reforms)
  - Customs, phyto-sanitary and other standards controlled based on trust
- Common VAT collection (EU budget)
- No physical border posts

## Equality acquis & citizenship rights

- Free movers
  - UK and Irish (more efficient than CTA )
  - Other EU citizens (EU acquis)
- Non discrimination directives
  - uniformity of Irish and UK law
  - racial and ethnic origin, religion and belief, disability, sexual orientation, age and sex

## Supranational law

- EU law has direct effect and supremacy
- Accepted by UK and Irish Courts in spite of dualism
- For UK: adds quasi-constitutional law in a country which does not effectively enforce rights at all

## Institutional aspects

- Communicative aspects of EU membership
- Representation of regions via Committee of Regions

# Withdrawal Agreement and Northern Ireland - max

## Internal Market & Funds

- Indivisibility of economic freedoms
- Continuing validity of secondary EU law
  - e.g. professional qualifications
  - Employment, company law, standards in many fields
- Continuing participation in funds, consider outer region status for island of Ireland

## Avoiding bordering

- No physical posts on the island
  - Customs, phyto-sanitary and other standards [customs union]
- No barriers for all-island economy
- No barriers for all-island society

## Equality acquis & citizenship rights – to maintain

- free movement rights fully
  - UK and Irish (beyond CTA)
  - Other EU citizens (EU acquis)
- Non discrimination directives

## Direct effect and supranationality

- Maintain authority of ECJ
  - “Francovich” not sufficient
- Ensure common law judge / AG

## Institutional aspects

- Ensure that Northern Ireland politicians participate in supervisory structures
- Provide auxiliary mechanisms for when GFA/BA institutions are dysfunctional

# DRAFT PROTOCOL IRELAND/NORTHERN IRELAND – LEGAL STRUCTURE

- Chapter I “rights”
  - UK to guarantee no diminution of rights
  - UK to maintain GFA institutions
  - No institutional or judicial protection
- Chap III: Common regulatory area
  - Alludes to Internal Market, but only partial coverage
  - Devious: full coverage by state aid law, but not full advantage of economic freedoms
  - These provisions are directly effective, supreme and protected by ECJ, no guarantee for Irish/Northern Irish judge or AG
- Chapter II movement of persons
  - UK and Ireland may maintain CTA as far as no violation of EU law
  - i.e. no preference of UK citizens over Irish citizens (and vice versa)
- Chapter IV & V
  - Some institutional participation of UK (no guarantee for NI or cross community aspects)

# HOW TO DEVELOP PROTOCOL (UTOPIA?)

- Add to Chapter I
  - Include equality acquis
  - Cover these by judicial protection and effects of EU law
- Extend common regulatory area
  - Indivisibility of Internal Market
  - extension of annex
  - Might be achieved by special joint committee work in future
- Add to Chapter II
  - Include citizenship rights
  - Cover these by judicial protection and effects of EU law
- Chapters IV and V
  - Ensure NI presentation / cross community consent in special joint committee
  - Ensure Irish/Northern Irish AG at ECJ

# Pure Article 50 TFEU scenario

(“no deal”)

- Border controls for customs, VAT, phyto-sanitary standards and all other standards added to Custom’s code (environment) needed
  - No rights to travel, work and leisure across borders
    - CTA does not grant rights, has no legal quality
    - EU citizens other than “people of NI” wholly unprotected
    - Not even protection of those who relied on free movement rights
  - Transborder health care, other care, education, transport, electricity no longer guaranteed
- ➔ NI as the new bargaining chip?



Happy to answer  
your questions



<https://nilq.qub.ac.uk/index.php/nilq/article/view/174>

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