

Brexit and the island of Ireland



The **UK** in a **Changing Europe**

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Introduction

From the not particularly sublime to the ever more ridiculous. Tempers are fraying and the row over Brexit and the Irish border rumbles on. And at the time of writing it has taken yet another twist.

It is perhaps emblematic of the pantomime that the negotiations have become that the latest installment sees the British government proposing something that it already knows will be unacceptable not only to the EU, but also to the Brexiters in its own ranks (though see [this](#) by Sam Coates for a different argument, and [here](#) for a debate on this issue).

So here we are. Gesture politics is front and centre. But behind the political theatre, the ‘Irish question’ is once again shaping choices that will have a profound influence on the long-term future of these Islands.

The EU has made great play of its principled stance that ‘cherry picking’ of the best bits of the single market is unacceptable. Her Majesty’s Government, for its part, has pointed to what it sees as a problem with this argument. The Northern Ireland backstop proposed by the EU would be a clear example of such cherry picking, given the region would remain only in those parts of the single market necessary to ensuring the functioning of the all-Ireland economy.

Both sides have a point. From the EU’s perspective, there are many reasons why the UK as a whole should not be allowed to pick and choose, not least that many member states are reluctant to give such a big concession to such a large economy.

And lurking behind these justifications is good old-fashioned Realpolitik. The EU wants the Irish question solved for principled and practical reasons. The principled ones are well known – the need to save the 20-year-old Good Friday Agreement, which has brought peace to Northern Ireland. The practical ones relate to its desire not to allow the Irish border issue to spill over into the trade talks, providing London with leverage in its attempts to secure frictionless trade without the obligations of membership of the customs union and single market.

Viewed from London, the new Government initiative on an all-UK backstop not only highlights what is seen in the UK as the EU’s inconsistency (if they can offer the backstop to Northern Ireland, why not to the whole of the UK?). It also creates an opportunity to divide the member states – should the idea of continued UK customs union and partial single market membership appeal to those on the continent concerned by the economic implications of Brexit.

And so the drama – or farce – continues. And it has profound implications, obviously for the Brexit talks as well but also, as importantly, in that it distracts attention from many of the substantive issues that Brexit raises for the island of Ireland. In this report, The UK in a Changing Europe has analyzed a number of those issues.

Of course, the border is crucial. It encapsulates a number of both constitutional and values-related issues that will prove impossible to solve effectively without some agreement on the border, as Colin Harvey argues.

And assuming my skepticism concerning the Government’s new proposal is well placed, we will eventually go back to the choice detailed by Catherine Barnard, between options that will only be sorted out once the UK has left the EU (either a negotiated UK-EU deal that addresses the border, or UK proposed solutions to the border issue), and another (the backstop for Northern Ireland

proposed by the EU and included in the Joint Report from December) that is unpalatable to the DUP and many in the Conservative Party. The absence of an Executive and Assembly in Northern Ireland further implies that, even in the event that the UK Government decided to ask Stormont for consent to new regulatory barriers between the North and the rest of the UK (as specified in the December joint report signed by the UK and the EU), it is hard to see who they could ask.

Now, clearly there are different opinions as to whether options A and B are practical. Graham Gudgin is one who feels that technology does offer a potential solution. Even if that is the case, however, Barnard's point about the future and the present holds true. The EU is simply not going to put its faith in promises about future technological developments. So in the short term, the stark choice confronting negotiators remains unchanged. Moreover, membership of the customs union alone would not address the border issue since, as Katy Hayward underlines, regulatory divergence between the UK and Ireland would immediately necessitate a border. This implies staying in the single market, at least for goods.

Politically, the study by Garry, McNicholl, O'Leary and Pow underlines the way that Brexit feeds into the sectarian divide, as well as the broad hostility across both communities towards the idea of a hard border between North and South. As Alan Wager and Matt Bevington explain, this is also roiling the politics of the North, at a time when the moderate centre has already been squeezed.

And the consequences of Brexit will be economic as well as political. As Philip McCann and Raquel Ortega-Argilés point out, almost all the Republic's exports and imports to and from the rest of the EU pass through the UK. Thus, a hard Brexit will have serious consequences, not least for the agricultural sector. This of course has implications for the negotiations themselves. While Dublin is – understandably – concerned about the creation of a hard border with the North, the future trading relationship between the UK and the EU is hardly a minor concern for the Irish Government. In that sense, they need to ensure not only a border solution but a way of maintaining the dense trading relationship with the UK.

Meanwhile, and away from the negotiations themselves, plenty of changes are afoot, either spawned by the prospect of Brexit or accelerated by the outcome of the June 2016 referendum. Brexit has, according to Brigid Laffan, proven catalytic for the Irish Republic. Deliberative and consultative processes following the Brexit vote have generated broad societal consensus around Ireland's EU future. The country's positioning as a small Northern state, within the new 'Hanse League', reinforces Dublin's self-confidence in its ability to make a success of its EU membership after Brexit.

Whatever the outcome of the Brexit process, the implications will be profound. Whether there is a border or not, the Republic is preparing for a post Brexit future as an influential small, English-speaking state in the EU. Meanwhile, the politics and economics of the North will be severely affected by whatever kind of outcome the negotiations produce. The island of Ireland is changing, and Brexit has been a significant cause of that change.

Professor Anand Menon
Director, the UK in a Changing Europe



What do people in Northern Ireland think about Brexit?

John Garry, Kevin McNicholl, Brendan O’Leary and Jamie Pow

To assess systematically the views of people in Northern Ireland concerning the United Kingdom’s departure from the EU, [our research team conducted two empirical investigations](#). The first was a survey of a representative sample of over 1000 people. We then invited a smaller sample – 48 people – to participate in a deliberative forum. These 48 were broadly representative of the population as a whole and were balanced with respect to how people had voted in the 2016 referendum.

At the deliberative forum, the participants listened to expert presentations on the implications of the UK’s exit for Northern Ireland before engaging in small group discussion and deliberation. Using the combination of a statistically robust large-scale representative sample of over 1000 people, and qualitatively rich information from deliberative discussions, we can shed light on what people in Northern Ireland think about the decision of the UK to leave the EU and the current negotiations between the UK and the EU27.

In the deliberative discussions on the possible introduction of checks on the border between Northern Ireland and the Republic of Ireland, a number of themes emerged (see Box 1). Participants thought that checks would represent a retrograde step for Northern Ireland, and expressed concern that checks might inconvenience them on daily basis. Participants also emphasised their fears that any physical infrastructure such as cameras would likely be vandalised and voiced concern that more serious protests could occur which would be reminiscent of the recent conflict. Some participants, though not many, highlighted their indifference to the prospect of border checks.

Box 1: Border between Northern Ireland and the Republic of Ireland	
GOING BACK TO THE PAST	
<i>“I think it would be a disaster, I really do. It would be back to the days when traffic was queued up to try and get across the border, and the police were there, the army was there. I mean, you felt very intimidated by it all no matter which side of the border you were coming from.”</i>	Female, 60+, C2DE, Catholic, Remain
<i>“I could see it going the way it was before... Roads being closed off in various places because they can’t properly police it.”</i>	Female, 60+, ABC1, Protestant, Remain
INCONVENIENCE	
<i>“... I would go to the Slieve Russell all the time and it’s over the border. You know, if you’re wanting to just go to the spa or go for something to eat, do I need to bring my passport? ... What about normal day-to-day stuff? Say I want to walk the dog. I’m literally 10 minutes across the border. It would be a nightmare.”</i>	Female, 18-29, ABC1, Catholic, did not vote
POSSIBLE VANDALISM OF CAMERA TECHNOLOGY	
<i>“I can see vandalism because even on the main road there from Derry to Belfast and you’ve even the Londonderry sign scored out. So what’s the chances of a camera getting graffitied over? Sure it’s just another item to destroy like.”</i>	Male, 18-29, ABC1, Catholic, Remain

RISK OF VIOLENCE
<p><i>"I think if there was police or army, it's not going to be the customs people. Because the customs people fear for their lives so it'll be police and army. And adding that into the equation, you're just lighting the spark."</i></p> <p style="text-align: right;">Female, 60+, ABC1, Catholic, Remain</p>
INDIFFERENCE
<p><i>"It wouldn't annoy me about the border. It wouldn't annoy me at all. We had it years ago, and also too I go to Spain and Gibraltar; it's exactly the same."</i></p> <p style="text-align: right;">Female, 60+, C2DE, Protestant, Leave</p>

Participants also considered the possible introduction of border checks between Northern Ireland and Great Britain (Box 2). Protestant respondents tended to highlight political and constitutional concerns while Catholics spoke of their fear that a border in the Irish Sea might have negative economic consequences. As with the North-South border, there was also a marked concern that any new border checks would lead to protests.

These findings were complemented by those from our representative attitude survey. Significant proportions of the population were opposed to the introduction of any new border controls and indicated that they would support protests against their introduction. One in five Catholics, and 31% of those who support Sinn Féin regard camera-based technology at the North-South border as 'almost impossible to accept'. Almost one in ten Catholics (9%), and 15% of Catholics who support Sinn Féin, would support cameras being vandalised. There is roughly equal hostility in each community to the idea of a border in the Irish Sea, 29% of Catholics and 28% of Protestants would find any new customs checks 'almost impossible to accept'.

Box 2: Border between Northern Ireland and Great Britain
POLITICAL CONCERNS
<p><i>"We're still part of the UK. Why should there be a border? If you're travelling from the south to the UK, you're travelling from a different country. Yes, that's going to be different. But from Northern Ireland, that's still part of the UK."</i></p> <p style="text-align: right;">Male, 45-59, C2DE, Protestant, Leave</p>
<p><i>"I think it would come down to if you're living in Northern Ireland, religion comes into it. Seeing you're separate, seeing that you're not part of GB, that's what it comes down to."</i></p> <p style="text-align: right;">Female, 18-29, ABC1, Protestant, Leave</p>
ECONOMIC CONCERNS
<p><i>"It wouldn't be political it would be more financial... It's the inconvenience and the expense. I'm thinking from a business point of view and that's the way I'm thinking. Not politically at all."</i></p> <p style="text-align: right;">Female (T2), 60+, ABC1, Catholic, Remain</p>
POSSIBLE PROTESTS
<p><i>"I don't think it would be accepted at all. Now you're talking about big trouble maybe between the north and the south of the border. I think there would be more trouble, more than that created, because we are – in the constitution – part of the UK."</i></p> <p style="text-align: right;">Female, 30-44, ABC1, Protestant, did not vote</p>
<p><i>"I do, I think a border in the Irish Sea is a united Ireland through the back door, which is tearing up the Good Friday Agreement. So I think protests are justified. It would be a united Ireland through the back door."</i></p> <p style="text-align: right;">Male, 30-44, ABC1, Protestant, Leave</p>

When respondents were asked to choose between different types of Brexit, a majority (61%) opted for one that would largely eliminate any need for checks either on the island or between Northern Ireland and Great Britain – specifically, the option of the UK as a whole remaining in the customs union and single market. Crucially, a majority for this particular option emerged in both of the main communities in Northern Ireland: 61% of Catholics and 62% of Protestants. The second preference (at 24%) was for Northern Ireland remaining in the customs union and single market while Great Britain left both – the so-called ‘back-stop’ option. Only 15% favoured the UK leaving the customs union and single market.

Box 3: Link between UK exit and a united Ireland

HARD BREXIT ENCOURAGES PRO-UNITY ATTITUDES

“It all depends on if a hard Brexit happens ... A hard Brexit and a hard border, terrible economically whatever, and people say it’s time for the referendum it would probably influence people and how they would vote.”

Male, 18-29, ABC1, Catholic, Remain

NOT NOW...

“I don’t think people could wrap their heads round that at the minute, there’s enough going on. We’ll cross one bridge at a time.”

Male, 60+, C2DE, Protestant, Leave

POSSIBLE DISQUIET

“I would say if a referendum is mentioned, even just the word, you’d have people who would go, excuse the Belfast language, but they would go buck mad ... there’d be riots. I don’t think we would actually get as far as voting, people would go berserk before that.”

Female, 60+, ABC1, Catholic, Remain

Participants in the deliberative forum also discussed a possible connection between Brexit and attitudes towards a united Ireland. A strong reluctance emerged towards holding a referendum on a united Ireland in the short term. Some participants highlighted the potential for any such referendum to prompt a certain amount of hostility and disquiet. Some also pointed out that a hard UK exit, which led to north-south border checks, might encourage pro-unity attitudes. This was also reflected in our representative survey. Overall, 42% of Catholics would vote for a united Ireland, 21% would vote to remain in the UK and the rest would either not vote or don’t know. However, if the UK left the customs union and single market 53% of Catholics would support a united Ireland compared to only 28% if the UK remained fully in the EU.

Significant anxiety also emerged from the deliberative discussions with regard the possible diminution of citizens’ rights, including equality and anti-discrimination rights, if and when the UK leaves the EU.

Finally, it is worth noting that if there was a further referendum, the results of our representative survey indicate that the proportion (69%) who would now support remaining in the EU referendum is significantly higher than the 56 percent who voted to remain in 2016.

More details of the methodology and research findings are available in the full report.

The DUP and the politics of Brexit in Northern Ireland

Alan Wager and Matt Bevington

There is a certain irony that the firmly Remain-voting Northern Ireland is now solely represented in the House of Commons by Leave-backing MPs from the Democratic Unionist Party (DUP). These MPs matter all the more because their numbers are currently pivotal. The collapse of power-sharing in Stormont, with no imminent sign of its return, further adds to the imbalance in Northern Ireland's democratic voice. All this makes understanding the internal dynamics of the DUP, and the roots of its position on Brexit, a crucial piece of the puzzle in understanding the UK government's strategic direction in Brexit negotiations and, with it, the prospects for the government's survival.

Many of the government's complex arithmetic problems in the House of Commons are solved by the DUP's ten MPs. For a start, their numbers keep Theresa May in office. But the government's room for manoeuvre in negotiations with the EU is significantly reduced by the influence of the DUP's ten MPs. Based on the government's current red lines, the most plausible compromise position – the idea of Northern Ireland having the status of a 'special economic zone', and regulatory convergence in limited areas on the island of Ireland – is seemingly made politically unavailable by the DUP's insistence on no barriers between Great Britain and Northern Ireland. The EU27's position is the opposite: the [joint agreement of December 2018](#) showed the EU happy to be flexible and accept new rules and conditions to work around a position "specific to the unique circumstances on the island of Ireland", but unwilling to consider 'cherry picking' that would apply to Britain as a whole.

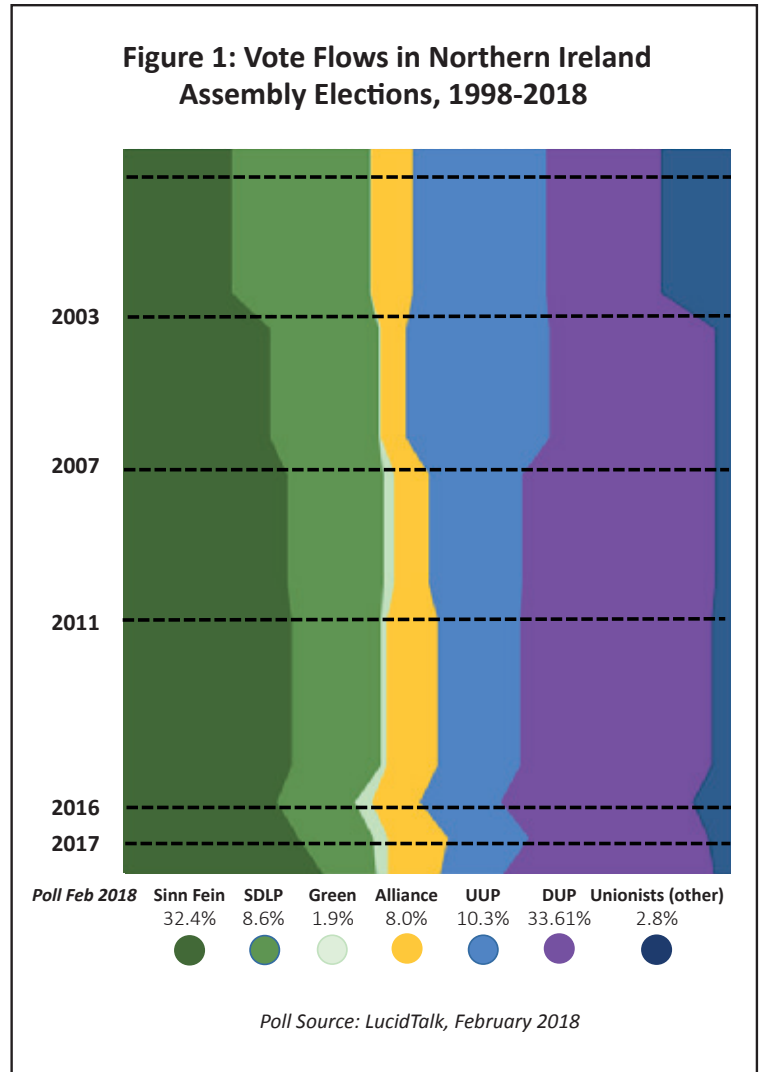
The resilience of the DUP's position is therefore a key question in assessing the government's path through the political challenges of the next nine months to March 2019. The party acted as effective kingmaker following the general election. But there hides a structural weakness in their position. The strength of these MPs lies in the fact that, for the first time in 25 years, since the Ulster Unionist Party (UUP) provided key votes in ensuring the passing of the Maastricht Treaty, the government's European strategy rests on Northern Irish votes. The DUP's one symbolic moment of strength was in December 2017, when the party railed against drafts of the joint report UK-EU that hinted at Northern Ireland's regulatory divergence from the rest of the UK. Yet DUP MPs may ultimately be faced with a Hobson's choice: acquiescence to a deal with some divergence for Northern Ireland, or derail May's negotiations and significantly increase the chance of Jeremy Corbyn – seen as sympathetic to the republican cause, and a fundamental threat to unionism – becoming Prime Minister.

When looking at the decision-making of political parties at these critical decision-points, one of the golden rules is to follow the votes. Parties are guided both by principle and the ballot box. But the DUP's electoral position is likely to be inoculated in this respect from any Brexit effect. This is because the polarisation of Northern Irish politics into the nationalist and unionist silos of Sinn Féin and the DUP has only quickened in pace since the referendum. As Raquel Ortega-Argilés and Philip McCann demonstrate in this report, Northern Ireland is one of the areas of the UK likely to be most affected by Brexit economically. Colin Harvey also sets out the effect on the province's constitutional settlement, and the likely profound effect on the day-to-day lives of those in border communities. Yet, despite this anticipated upheaval, it is also the place where party politics is most resistant to shifts in voting behaviour linked to the referendum.

This is because the prevailing story in Northern Irish politics from the creation of the Assembly in 1998 is a squeezing of the moderate centre. Figure 1 below shows the steady erosion of the moderate Ulster Unionist Party (UUP) and Social Democratic and Labour Party (SDLP). This process has been aided rather than stemmed by Brexit. Brexit has led to a decline of moderate unionism and the UUP. In the 2017 general election, UUP

representation in the House of Commons was wiped out. Similarly, the election removed the SDLP from the House of Commons for the first time since the Good Friday Agreement. This means the only republican representation at UK level is now Sinn Féin, effectively removing any republican voice at Westminster because of the party's abstention. Yet this long-term shift towards the DUP and Sinn Féin has happened despite levels of ethno-national self-identification – self-identifying as protestant or catholic – significantly decreasing. It is, in effect, a result of political dynamics rather than societal change.

This process of polarisation, while not powered by Brexit, is strengthened by it. Brexit was undoubtedly a unionist project in the region. While it is often pointed out Northern Ireland voted by 56-44% to Remain in the EU, it is less well noted that 66% of those who identify as unionists in Northern Ireland voted to Leave. Yet one of the vote's direct effects has been to increase the salience of – and apparent public support for (if negotiations do not soften the impact of Brexit on the region) – Sinn Féin's driving political mission of a poll on a united Ireland.



This report coincides with the 20th anniversary of the referendum on the Good Friday Agreement. Yet the DUP has been largely absent from celebrations. Those advocating that Brexit demands a fundamental rethink of the core tenets of the Good Friday Agreement are tapping into longstanding unionist criticism of it. The overall scale of the majority in favour of the Good Friday Agreement in 1998 always hid clear unionist scepticism. Northern Ireland voted 78% in favour of the agreement, but unionist support ran significantly lower at 57%.

As Brexit has seen the UK government lock horns with the other devolved administrations, the absence of a voice for Northern Ireland raises important questions. The joint report between the UK and EU in December stated that no new regulatory barriers could arise between Northern Ireland and the rest of the UK without the express consent of the Northern Irish Executive and Assembly. But with no Executive or Assembly in place, it is unclear how consent or dissent could be sought across communities. It remains unlikely, though far from a given, that the Assembly will exist to give its say on the agreement before March next year. Similarly, the Good Friday Agreement itself states that terms will be agreed between “appropriate Assembly representatives” – one assumes from both communities in Northern Ireland – when co-ordinating on EU issues. As a result of the current composition of the UK parliament, the government’s agreement with the DUP and the lack of an assembly in Northern Ireland, Brexit is flexing the structures that are supposed to ensure cross-community representation.

It is an inconvenient truth for unionists in Northern Ireland that more Britons see exiting the European Union as a higher priority than keeping Northern Ireland within the UK. The DUP’s position on Brexit doesn’t necessarily create a binary choice for the government between unionism and a plausible deal for Britain to leave the EU. But it certainly puts these two governing priorities in direct conflict.

Brexit, the island of Ireland and the Good Friday Agreement

Colin Harvey

The island of Ireland is entering new constitutional and political terrain. One part of the island will remain within the EU and the other part seems destined to leave. That Northern Ireland voted against Brexit carries particular resonance in a region where the notion of consent is frequently contested. The disruptive and destabilising aspects of Brexit have been exhaustively examined. The connection to the Good Friday Agreement is clear. The EU is mentioned in the document, and EU law is central to the statute enacted to give it effect in the UK, the Northern Ireland Act 1998.

Brexit will unsettle many of the assumptions of the peace process around British and Irish identity and exacerbate divisions. National identity will become a signifier not only of national difference but also of those who are EU citizens and those who are not. The border on the island will change into an external border of the EU, with all that this implies. This is taking place without a regional government in Northern Ireland and in a society that continues to be concerned about retaining the gains of the peace process.

There are three senses in which the Good Friday Agreement is relevant to these discussions.

First, it is constructed in terms of foundational values and principles. That is easily overlooked, but it is essential to any serious assessment. A way was found to promote relational thinking that encouraged 'both/and' rather than 'either/or' reflection on how these islands engage with each other. This was



informed by European trends, as well as comparative and international experience of respect for values such as equality and human rights. The failure to deliver on these promises of peace should not detract from the principled focus of the 1998 Agreement.

Second, the Agreement addressed British-Irish identity matters through carefully crafted formulas that facilitated honourable compromises. That is too often neglected now, as is the scale of constitutional reform that has been undertaken in Ireland as a consequence. This remains a delicate and fragile balancing act, made all the more difficult as a result of Brexit. Resolving this in a credible way will require creative thinking that should include more detailed codification of the concept of 'equal citizenship' in Northern Ireland but also practical application across these islands. There are already special arrangements in place, so this would be a matter of formalising much of what is there now. That looks more like a project of conservation than any radical new agenda for constitutional change.

Third, some of the answers to the problems raised by Brexit are already there and can be found in the institutions created by that Agreement. There needs to be much more focus on the British-Irish Intergovernmental Conference, the British-Irish Council and the North-South Ministerial Council (to name just a few). The multi-stranded nature of the Agreement meant that people were already thinking in the 1990s about institutional co-operation across these islands. It is time to bring these Good Friday Agreement institutions into the light once again and ensure that they are known about and used effectively. If there is an additional need to enhance the internal UK intergovernmental structures of co-operation, then that should be considered too. But again, the Agreement provides the starting point.

Much careful thought went into the Good Friday Agreement. Although the drama of the negotiations attracts considerable attention, it is wise to note the focus in that document on matters of design and architecture. Many of the ideas evolved over time and were shaped by contextually sensitive consideration of how to transform conflict. There is still much to learn from this experience.

Brexit has significant implications for the island of Ireland; it is a minority preference in Northern Ireland. There is good reason to use the experiment that was the Good Friday Agreement as a guide and template for the approach in the months and years ahead. It would be regrettable if Brexit undermined the efforts made to build constructive relationships across these islands in the last 20 years.

Northern Ireland in the negotiations and the Withdrawal Agreement

Catherine Barnard

Dealing with the Northern Ireland/Ireland border has proved the most intractable problem in the Article 50 negotiations to date. Theresa May has presented two diametrically opposite positions. On the one hand, she wants to [uphold](#) the twenty year old Good Friday Agreement (GFA) which committed the UK government to, among other things, the removal of security installations on the border and, in effect, ensuring an open border between the North and South of Ireland. On the other, she wants the freedom for the UK to conduct its own trade deals – which means leaving the EU’s customs union.

Here’s the rub. Leaving the customs union means a hard border between the North and South of Ireland. And any hard border, even if [light touch](#) using the latest customs technology, such as cameras and number plate recognition, is a security threat. The Chief Constable of Northern Ireland put it graphically, [stating](#) that border infrastructure would be seen as ‘fair game’ by dissident republicans and that a “fortified frontier that would have to be policed around the clock would put his officers’ lives in greater danger from anti-peace process paramilitaries.”

The GFA is totemic. It was negotiated in 1998 between two, then Member States of the EU. And it operated successfully while both sides followed the same rules as members of the EU’s single market and customs union. The EU has proved deeply aware of the issues around the North/South border and [sympathetic](#) to the importance of the GFA to peace on the island of Ireland. Considerable [EU structural funds](#) have been deployed to help the peace building process. So it is perhaps not surprising that the EU pushed the UK government hard on the GFA issue in negotiations over the Joint Report of 8 December 2017 (the political agreement bringing to an end the first stage of the UK’s withdrawal from the EU). The Democratic Unionist Party (DUP), which is supporting the Conservative minority government, [objected](#) to an earlier version of the text; for a brief moment the whole Article 50 agreement appeared to be in jeopardy.

The relevant part of the Joint Report, paragraph 49, is expressed in strong terms. It opens with the statement that “The United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border” (which includes any “physical infrastructure or related checks and controls” (para. 43)) and that “Any future arrangements must be compatible with these overarching requirements”. Paragraph 49 then offers three options to deliver these objectives:

- Option A: a negotiated EU-UK relationship which addresses the Northern Ireland border issue; if this is not possible then
- Option B: the UK to propose specific solutions to address the unique circumstances of the island of Ireland. This is thought to refer to technological solutions such as ‘maximum facilitation’ (‘max fac’) currently being pushed by some of the hard Brexiters. This involves number plate recognition, trusted trader schemes, data-sharing and enforcement measures away from the border. However, as the [Northern Ireland Affairs Committee](#) recently said “[W]e have had no visibility of any technical solutions, anywhere in the world, beyond the aspirational, that would remove the need for physical infrastructure at the border.” Since this option seems a long way off, then
- Option C: “In the absence of agreed solutions, the *United Kingdom will maintain full alignment* with those rules of the Internal Market and the customs union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.” (emphasis added)

Option C is thus the default position yet it is Option C which features prominently in the text of the draft Withdrawal Agreement (WA). The WA drafted up by the EU and published on 28 February 2018, is designed to put the Joint Report into legal form. It contains a specific Protocol on Ireland/Northern Ireland. The Preamble at the start of the Protocol says that the GFA should be protected in “all its parts”. The crucial provision is Article 3 of the Protocol which is supposed to reflect Option C. It provides:

A common regulatory area comprising the Union and the United Kingdom *in respect of Northern Ireland* is hereby established. The common regulatory area shall constitute an area without internal borders in which the free movement of goods is ensured and North-South cooperation protected in accordance with this Chapter. (emphasis added)

Article 3, as currently drafted, makes the default option the rule, and so has effectively kept Northern Ireland (not the UK as a whole) in the customs union and single market for goods. This has the effect of introducing a ‘hard’ border down the Irish Sea. This appears to contradict paragraph 50 of the joint report, introduced to get the DUP back on board, which says that the UK will ensure that “no new regulatory barriers” develop between NI and the rest of the UK. The so-called ‘East-West’ border envisaged in Article 3 is unacceptable to the DUP which sees this as a step towards a United Ireland.

It is striking that there is no mention of Options A and B in the draft Withdrawal Agreement. This is, perhaps, unsurprising since Options B and C mainly impact on the UK’s relationship with the EU once the UK has left the EU. The future trading relationship between the UK and the EU is not the subject of the Article 50 Withdrawal Agreement negotiations. Article 50 concerns the divorce (and transition) only. It therefore seems that Option C is the only option that can be included in the Withdrawal Agreement. Options A or B will have to be left to the negotiations on the future relationship which will not take place



until after the UK has left the EU (ie after 29 March 2019, although some indications of what that future relationship might look like will be included in the political guidelines which will accompany the WA).

So Options A and B are for the future and Option C, which is for the Article 50 Withdrawal Agreement, is unpalatable to the DUP and many hard Brexiters. Is there a way out of this dilemma? There are indications that the Cabinet is exploring the possibility that the UK as a whole stays in the customs union and single market for goods and that's exactly what was envisaged by paragraph 49 of the Joint Report ("the *United Kingdom will maintain full alignment* with those rules of the Internal Market and the customs union ...") and paragraph 50 (the UK will ensure that "no new regulatory barriers" develop between NI and the rest of the UK). A UK wide arrangement would continue until the technology is ready to deliver on some sort of Option B max fac arrangement (which some suggest will be 2023, others suggest much longer). Yet as [Katy Hayward](#) has pointed out, while technology might combine a hard Brexit with a soft border, "[i]n a place, on an island, where modern history, politics, identity and culture is deeply defined by the border, this is one bit of magical thinking too far."

But it is by no means clear that the EU will accept this broad reading of Option C, not least because, as Connolly points out, it merges the question of the terms of the divorce with the terms of the future relationship. Paragraph 46 of the joint report indicates these are distinct questions. Some might dismiss this as a technicality. But there is a more profound point: a UK wide application of Option C means that a non-EU state will be applying EU rules but without being subject to the jurisdiction of the Court of Justice and the main enforcement body, the European Commission. This will be unacceptable to the EU. Yet continued acceptance of the Court of Justice's jurisdiction, combined with continued membership of the single market and customs union, even if only for goods and for a limited period, may be a bridge too far for the Brexiters. The question is who will blink first. Northern Ireland is proving more of a testing ground than many had envisaged.

The UK government's Irish dilemma: continuity or divergence?

Katy Hayward

The UK's withdrawal from the EU may take one of two forms. It could be based on the principle of '*continuity*', in which large parts of UK legislation and practice will continue to be closely aligned to that of the EU in order to minimise disruption. Or, it could be a process of '*divergence*', in which the costs of leaving the EU are balanced by the benefits of a new-found freedom in international trade and a 'bonfire' of regulations.

Northern Ireland is perhaps the overriding reason why UK government policy seems to sit uneasily between these two poles. The most obvious way of upholding the UK government's commitment to avoid a hard Irish border would be for the UK to ensure as much continuity as possible. Indeed, this was effectively what the First Minister and deputy First Minister set out as Northern Ireland's priorities in Brexit, in their letter to the Prime Minister May of August 2016.

However, due to the focus of the Leave camp on divergence, the logic of the internal politics of the Conservative Party, and as the EU has not been willing to allow the UK to cherry pick from the 'four freedoms,' a process of divergence between the UK and EU post-Brexit is most likely. The UK's 'red lines' the (leaving the jurisdiction of the Court of Justice of the EU, the internal market and being outside an EU customs union) also point towards such an outcome.

Divergence, however, would immediately put the UK and Ireland on different trajectories, with material consequences for the Irish border. The less divergence there is between standards applied in Northern Ireland and those of the EU, the less friction there will be 'at' the border. In contrast, a 'hard Brexit' makes a 'hard border' inevitable in the absence of specific solutions for post-Brexit Northern Ireland.

Further progress on the issue of Ireland/Northern Ireland has to be made before the next European Council summit at the end of June 2018. This is, in part, because the case of the Irish border is totemic. What the UK proposes here will exemplify the degree to which it grasps the implications of leaving the



single market and customs union. How long can the UK and EU continue to talk at cross purposes, with different interpretations of such core concepts as 'hard border', 'alignment' and 'customs laws'?

Despite repeated calls for flexibility and imagination, the more innovative proposals for addressing this matter – such as creating a special economic zone, or some special NI status regarding 'rules of origin' – have not gained much traction. The EU are wary of such ideas in principle. Its flexibility towards Northern Ireland is not intended to give the region an advantageous position that could become exploited by Great Britain or resented by other states or regions.

The EU can make the case for Northern Ireland having de facto EEA (European Economic Area) membership for goods and being part of the EU's customs territory. This is because this means minimal bending of the rules of the single market or customs union (except that it applies to a region of a non-member-state and that it concentrates on just one of the freedoms of movement). Much more unique and complex rules for a region of a non-member-state would not only be harder to apply in practice, they would also be harder to sell to the rest of the EU/EEA.

For its part, the UK government is stuck on the very idea of showing particular flexibility towards Northern Ireland. Despite the emphasis upon the 1998 Agreement, the purported protection of devolution, the recognition that Northern Ireland dominates the several dozen policy areas where new non-legislative common frameworks for the UK will be required post-Brexit, and the ongoing talks to restore power-sharing, the UK government is insisting that Northern Ireland should be treated no differently from the rest of the UK. Graham Gudgin's article in this volume presents some of the arguments in support of that approach.

This is much more a rhetorical ruse than a realistic policy stance. The constitutional status of Northern Ireland is secured by majority consent, in accordance with the 1998 Agreement. To not wish to be seen to allow a differentiated approach to Northern Ireland within the UK is to impose an entirely gratuitous and unnecessary rod for the government's own back. As well as weakening the very principle of devolved governance, this approach makes it harder to find agreed solutions for Northern Ireland vis-à-vis Brexit. A single-UK approach to Brexit and the Irish border question does not sit well even with the very existence of the Protocol, unless the UK as a whole goes for an outcome that is, to all intents and purposes, characterised by continuity.

The indications are that Northern Ireland/Ireland will be subject to a further squeeze between the red lines of the EU and UK. Other countries are watching with interest as to how the UK shows respect for Ireland in all this, as its closest neighbour and partner. Indeed, they may be bewildered that so many UK politicians feel irritated by, rather than protective of, the fragile peace agreement in Northern Ireland.

And the peace process is the absolutely critical context here. It is what explains the willingness of the EU to be 'flexible and imaginative' in the case of Northern Ireland. And it is why future economic plans are inseparable from potential political sensitivities. The need to avoid a 'hard border' is motivated by far more than the likelihood of republican paramilitaries taking potshots at Automatic Number Plate Recognition (ANPR) cameras. It is about a respect for the process of post-conflict 'normalisation', in which cross-border cooperation is unburdened by political significance and through which economies of scale can flourish.

The peace process is also why the British-Irish relationship needs a public show of harmony – for the sake of the Agreement, for restoring power-sharing in Northern Ireland and for managing Brexit. The UK government must formally acknowledge that the Irish dimension is a means of protecting the existing political settlement in Northern Ireland. This has been recognised and institutionalised since the 1985 Anglo-Irish Agreement. It reiterates the very basic point that Northern Ireland is no mere 'domestic concern' of the UK but is historically, politically, culturally, economically, socially a place of transnationalism: British, Irish and both.

Possible solutions to the Irish border

Graham Gudgin

The Brexit talks have reached an impasse. The Irish government, backed by Brussels, is threatening to veto any further progress towards an implementation period or trade talks until they have what they see as a “[satisfactory solution](#)” to the Irish border issue. Both the EU proposal that Northern Ireland remain within the EU customs union, and the UK proposal of a customs partnership, have been rejected by the other side.

Policy Exchange’s publication [Getting over the line: solutions to the Irish border](#) outlines how the UK got itself into this difficult position. A key factor is the wording of last December’s [Joint Progress Report](#), when the UK conceded too much on the Northern Ireland issue in its anxiety to move onto trade talks. The lesson of that mistake is that all concessions will be punished, as UK flexibility comes up against EU intransigence.

An Irish border without physical infrastructure is fully attainable, and the overly complex customs partnership is unnecessary. Arrangements based on the UK’s proposals for an expanded trusted trader scheme and exemptions for small traders will suffice to operate a border without infrastructure. The additional idea of a ‘cordon sanitaire’ around the whole island for animal health may have additional merit, as long as it carries no constitutional implications that unionists would reject. All of this would be greatly facilitated with the Free Trade Agreement that the UK wishes to negotiate and which the EU is delaying and frustrating.

The key point is that modern technology means that physical customs posts, or even cameras, are no longer essential at borders. This is the case made by the EU’s own customs expert, [Lars Karlsson](#), who envisages the use of mobile phone and GPS technology to track HGVs, together with the computer-based customs clearing which is the norm across much of the world.

Supporters of UK membership of the EU customs union assert that no border exists anywhere in the world without some physical infrastructure. This is true but irrelevant. Mr Karlsson says that arrangements without physical infrastructure have been successfully trialled on the Norway-Sweden border. The



only reason that they have not been adopted for general use on this border is that the existing border arrangements are satisfactory, and hence the cost of new electronic systems is not justified.

Our conclusion in the report is that the UK can deliver the promise of no hard border in Ireland. This can be done without remaining in the EU customs union or inventing new and complex schemes involving the tracking of individual consignments to their final destination. Since very few consignments are actually checked at existing EU borders, and those checks are usually based on intelligence received, such checks can easily be made away from borders.

Nor do we believe that the Good Friday Agreement is particularly affected by Brexit – a view confirmed by Lord Trimble, a key architect in the creation of the agreement. The reason for avoiding a hard border is to avoid endangering officials charged with erecting, maintaining or operating border infrastructure. The danger of dissident paramilitaries attacking infrastructure or the associated officials has been heightened by the over-reaction of opponents of Brexit, but precautions are now necessary.

The Irish Government is playing a dangerous game by demanding that Northern Ireland remains within the EU customs union and by threatening vetoes. Ireland more than any EU economy needs free trade with the UK but has made no efforts to promote such an agreement in Brussels. Indeed, its main effort has been to frustrate moves in this direction, because the Irish border is being used as a weapon by Brussels to influence the Brexit negotiations to its advantage.

The priority now should be for the British and Irish sides to return to the co-operative approach last seen under Leo Varadkar's predecessor, Enda Kenny. Mutually acceptable border arrangements can be devised in the context of the free-trade agreement that Ireland badly needs.

The Irish border issue has disproportionately dominated discussion over the United Kingdom's withdrawal from the EU. It has been used as a tool for negotiating advantage by Brussels and political advantage by Dublin. In London, arch-Remainers have used it to scaremonger about the threat to the Good Friday Agreement and peace in Northern Ireland. These concerns are not supported by evidence. A solution that respects the Brexit referendum and maintains a light-touch border is achievable. A recognition of the economic and political reality, and a little good faith, can help achieve a solution that promotes prosperity for all sides – and preserves peace.



The economic implications of Brexit on both sides of the Irish border

Philip McCann and Raquel Ortega-Argilés

Discussions regarding the potential impacts of Brexit on the island of Ireland have tended to focus, not surprisingly, on social, political and security-related issues regarding the border between the Republic of Ireland and Northern Ireland. As this report shows, how to manage customs-related issues on this border have recently become central to the whole question of the exact nature of the UK's withdrawal from the EU. While these social, political and security-related issues are of utmost importance, there are also other economic issues which Brexit raises for the island of Ireland. Until now, they have received relatively less attention.

The UK is the Republic of Ireland's largest direct trading partner. In purely economic terms, the economy of Northern Ireland accounts for only 2.1% of UK Gross Domestic Product (GDP). So, from the perspective of the Republic of Ireland, it is the effect of the EU withdrawal of the whole of the UK which is critical. In addition, the UK is the country through which almost all the Republic of Ireland's exports and imports travel. As such, any customs-related disruptions in transportation and logistics systems between the UK and the EU at the sea or air borders of Great Britain could inadvertently affect the Republic of Ireland's economy, even if ways are found to keep the Irish land border completely open. For both parts of the island of Ireland the details surrounding Brexit are therefore of critical importance economically as well as politically.



We know from the World Input-Output Database 2013 release that final demand in the UK accounts for 5.8% of the GDP of the Republic of Ireland and 6.1% of its employment. In relative terms, Ireland is therefore the country which is the most dependent on UK markets for its prosperity, followed by Malta (4.9% of its GDP), the Netherlands (3.7%) and Belgium (2.9%). Not surprisingly, the level of dependence on the UK economy is often commented on in the Irish media with genuine concern. However, to put this into perspective, the UK economy is much more dependent on the economy of the rest of the EU, with a two-thirds greater level of dependence, than the Irish economy has on the UK economy.

Our [analysis](#) has calculated the level of trade-related risk exposure that European regions and nations face as a result of Brexit. This is done by considering the effects on all trade flows and global value-chains criss-crossing countries across the world, including the EU. Our results show that the Brexit trade-related risk exposure of the Republic of Ireland as a whole is 10.12% of its GDP. In terms of countries, the Republic Ireland's trade-related exposure to Brexit is second only in size to that of the UK itself, at 12.2% of its GDP.

The Brexit trade-related exposure of UK regions varies between 9.8% and 10.2% of local GDP in North-Eastern Scotland and London, up to 15.8% in East Riding and North Lincolnshire, and 16.3% in Cumbria. In contrast, the average for the EU as whole without the UK is only 2.64% of EU GDP. Exposure of different areas of the Republic of Ireland to Brexit sits at 10.12-10.13%, while that of Northern Ireland is 11.7% of its GDP. In other words, the UK is 4.6 times more exposed to Brexit than the rest of the EU; the Republic of Ireland is 3.8 times more exposed to Brexit than the EU as a whole excluding the UK; and Northern Ireland is 4.4 times more exposed than the rest of the EU.

If we consider broad industrial sectors, we see that in the Republic of Ireland it is the primary industries which are the most exposed to Brexit – and in particular those sectors related to agriculture – whose exposure levels vary between 20% and 30% of the primary sector's GDP. The Brexit trade-related exposure of manufacturing industries in the Republic of Ireland is approximately 18% of their GDP, while for the service and construction industries it is approximately 6% and 2%, respectively. For Northern Ireland, the Brexit trade-related exposure of primary industries – mainly agriculture – is 19% of primary industries' GDP, for manufacturing it is 32% of manufacturing GDP, for services it is 8% of service industries' GDP, and for construction it is 1% of Northern Ireland's construction sector's GDP.

As such, although in aggregate the Brexit trade-related exposure of both parts of the island of Ireland are very similar, and also slightly lower than for the UK as whole, there are also marked sectoral differences in the Brexit trade-related risk exposure between Northern Ireland and the Republic of Ireland. Both manufacturing and service industries in Northern Ireland are relatively more exposed to Brexit than their counterparts in the Republic of Ireland, while primary industries in the Republic of Ireland are more exposed than their counterparts in Northern Ireland. In particular, the largest differences are between the relative levels of Brexit trade-related exposure for manufacturing industries north and south of the Irish border.

What these observations imply is that whatever the final UK-EU post-Brexit deal agreed, unless exposure to trade disruption on both parts of the island of Ireland is limited by remaining in both the customs union and the single market, then the impacts of Brexit are likely to differ significantly between the north and south of the Irish border.

Ireland after Brexit

Brigid Laffan

For reasons of both history and geography, Brexit receives more sustained attention in Ireland than any other EU member state apart from the United Kingdom. For Ireland, Brexit is a matter of high politics and 'raison d'état'. The objectives of the Irish Government, backed by a strong societal consensus, are fourfold.

To ensure that Brexit does not undermine the hard-won normalization of the Irish border achieved with the Good Friday Agreement and the EU single market. To 'Brexit proof' – as far as possible - the Irish economy. To engage with Irish society on what Brexit means for Ireland's place in Europe. And, finally, to actively re-position Ireland in an EU without the UK. The Irish government has embarked on a comprehensive and cohesive EU level and domestic strategy to meet these objectives.

Ireland faces the numerous Brexit challenges with some real advantages. Being part of the EU, 45 years after accession, is the settled will of the Irish people. A staggering 92% of respondents in a [May 2018 poll](#) favoured Ireland's membership of the EU, rising to 97% among 18-24 year-olds. There is no temptation to follow the UK out of the EU. Irish society understands that Ireland is a small state with limited political capital and influence, but with the ability to deploy that capital effectively in a targeted manner when the need arises. This is built on a cohesive political, administrative and diplomatic culture characterised by short lines of communication between political and official levels and a high degree of trust. Irish society itself is resilient and adaptable. President Michael D. Higgins [described](#) Brexit as a "special delivery", to which Irish society is capable of adjusting over time.

Over the last seven years, deliberative democracy has become a vital and energising element of Irish democratic politics. Citizen's assemblies have led to major shifts in Irish public policy including on same sex marriage and, more recently, abortion. They have enabled Irish politicians to move on what were controversial and highly contested issues and have provided space for genuine dialogue, participation and the shifting of opinion. Most issues were followed up in parliamentary committees which added a further layer of legitimacy and deliberation to the preparation of government policy and law.



When faced with Brexit, the government went into consultative mode to ensure that business and the wider society understood what was at stake. There was a layering of institutional nodes such as (a) a Brexit Stakeholder Forum, (b) an All Island Civic Dialogue and (c) the Future of Europe Citizens' Dialogue. Thus, Brexit preparations involved a focus not just on EU level negotiations but also on domestic preparations. The Stakeholder Forums were directed at key economic sectors and have acted as a two-way flow of information and opinion. The All Island Civic Dialogues provide an all island perspective and focus and provides for EU level input. On April 30, the Head of the EU Brexit Task Force addressed the Forum in Dundalk. Michel Barnier took the opportunity to [visit](#) the border region to get grassroots input into the policy process and to demonstrate that the EU27 cared about the border issue.

The continuing dialogues on the Future of Europe are part of a domestic conversation concerning what kind of EU Irish society wants to be part of. Since the establishment of the Irish state and most notably after the Second World War, Ireland has remained outside military alliances. In other words, for many Irish people, their image of Ireland is that of a non-aligned, neutral country unsullied by the compromises of membership of large military alliances. Because of Ireland's benign geographical location in the late 20th and 21st centuries, neutrality is more about identity than defence. There is a sizeable group in Irish society ever vigilant to the threat of a European army. That said, public opinion has moved, and Ireland joined PESCO – the EU's new security integration structure – following a parliamentary vote of 75 in favour and 42 against. The Irish approach to EU defence co-operation is likely to follow a case by case assessment and engagement.

Ireland's growth model has been extraordinarily consistent from the late 1950s, characterized by Foreign Direct Investment (FDI) and export led economic growth. FDI has brought growth, employment, a thriving export sector and has greatly enhanced the managerial competence in Irish society. The big tech sector, for example, is in a leading position in the contemporary Irish economy. One of Ireland's main attractions for FDI remains its low level of corporation tax, set at 12.5%, which has long been contentious and viewed as unfair competitive advantage in Europe.

This crystallised when the Commission concluded in August 2016 that Ireland's tax benefits to Apple were illegal under EU state aid rules. The Irish government was requested to recoup €13 billion from Apple and, when it had not done so by October 2017, the Commission referred the Irish government to the European Court of Justice. There is an awareness in Dublin that it cannot be seen to assist the giant tech companies in evading tax. But its preferred arena for this discussion is the OECD not the EU. The extent and depth of EU solidarity to Ireland during Brexit may well lead to a demand for reciprocity on tax. But there is no evidence that Ireland will give up on their effective veto on EU-level directives on taxation, given the current rules require member state unanimity.

More generally, Ireland is positioning itself as a small 'Northern' member state, a net contributor to the EU budget and liberal on trade. It is part of what has been called the new 'Hanse League' of small states extending from Ireland in the west to Finland in the north. The driving force behind this grouping is the Netherlands, fearful that the southern or eastern states will dominate the EU.

Ireland did not want Brexit and is determined to limit its damage to Irish society. But it is not afraid of an EU without the UK. The project for Ireland's future is interdependence in Europe rather than dependence on the UK. Brexit will be the severing of the umbilical cord that has joined these two states for good and ill. The Anglosphere holds little attraction as the primary anchor for Ireland, notwithstanding the ties that have bound these two islands over many centuries.

The implication of a hard Brexit for the island of Ireland: challenges and possible solutions

Federico Fabbrini

The scenario of a ‘hard Brexit’ may not look likely at this stage, but it cannot be excluded either. In fact, the Irish question is precisely what may ultimately derail the whole Brexit negotiation process. On 28 February 2018 the European Commission published a draft withdrawal agreement, which the UK Government mostly accepted on 19 March 2018. Yet no agreement has yet been reached between the EU and the UK on the Protocol on Northern Ireland, which is part and parcel of the draft withdrawal treaty. And because nothing is agreed until everything is agreed, the possibility that the whole withdrawal accord may collapse remains a distinct possibility.

Preparations for a worse-case scenario are therefore necessary on the European side. In a recent [report I was commissioned to write by the European Parliament](#), I detailed what the institutional implications of a hard Brexit would be for the EU generally, and Ireland specifically. While the consequences of a disorderly UK withdrawal on the EU institutions would not fundamentally differ from those that would follow from an orderly exit – including the end of UK participation in the European Council and the council, and the automatic termination of the British Commissioner’s mandate – a hard Brexit would greatly impact trade relations and security and justice cooperation between the EU and the UK.

If the UK were to leave the EU in March 2019 without an agreement that kept it closely connected with the EU single market and customs union, commerce between the EU and the UK would be governed by World Trade Organization (WTO) rules. Free movement of goods, services, people and capital would come to a halt, and custom controls would need to be set up at the border between the EU and the UK to levy tariffs and verify rules of origins of imported and exported goods.

At the same time, if the UK were to leave the EU without an agreement that keeps it closely connected to the EU Area of Freedom Security and Justice, criminal justice and law enforcement cooperation would bounce back to classical instruments of international law. Mechanisms of police and judicial mutual assistance like the European arrest warrant, the European investigation order and the sharing of information under the



Security Information System would be immediately suspended, and much more cumbersome instruments like extradition requests and so called ‘letters rogatory’ – judicial requests to other courts on a case by case basis, rather than a framework for co-operation – would have to be used to secure cooperation in the field of security.

This would pose vital challenges particularly for the Republic of Ireland, given its 500+ km border with the UK in Northern Ireland: a hard border with customs control and the absence of cross-border police cooperation would in fact call into question the achievements of the peace process.

To address these challenges, I have suggested in my report that the EU could consider taking a number of contingency measures. On the side of trade, the EU could invoke the “frontier traffic exception” – a never-used clause of the Global Agreement on Tariffs and Trade (GATT) codified in Article XXIV(3) – to declare the whole territory of Northern Ireland as a border region to the EU customs union – which would avert the need for a customs border (at least on the EU side) but not, it should be noted, the need for sanitary and phytosanitary checks. On the side of justice and security, the EU could instead try to replicate with the UK some of the cooperation agreements it has put in place vis-à-vis other non-EU countries, such as Iceland and Norway.

Nevertheless, the frontier traffic exception is not without problems – and there are clear limits to what the EU can agree in areas of freedom, security and justice with third countries which do not abide by the same EU human rights and data protection standards, and are not subject to jurisdiction of the European Court of Justice.

In the end, from a policy perspective, it is to be hoped that Brexit negotiations will successfully result in an orderly withdrawal process, with an agreement on the future relations that addresses the abovementioned challenges. But the future of Brexit depends on Ireland.



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