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Commentary

## Living Within and Outside Unions: the Consequences of Brexit for Northern Ireland

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## Abstract

This article considers the possible consequences of Brexit for Northern Ireland. It begins by analysing the political context leading up to the UK's referendum on EU membership, which was preceded only weeks earlier by the elections to the Northern Ireland Assembly. It then offers an overview of the reaction of a divided Northern Ireland Executive to the UK's decision to leave the EU, before considering some of the potential consequences for Northern Ireland of the UK's departure from the EU. These include the future nature of the Northern Ireland-Ireland border, North-South relations, the possibility of retaining the Common Travel Area, the loss of EU funding for cross-border cooperation, as well as customs controls and trade. It concludes by suggesting how Northern Ireland could retain some degree of continuing relationship with the EU.

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### **NORTHERN IRELAND'S POLITICAL LANDSCAPE BEFORE THE EU REFERENDUM**

On 5<sup>th</sup> of May 2016, the people of Northern Ireland went to the polls – as did those in Scotland and Wales. In Northern Ireland, they were voting for who would represent them in the Northern Ireland Assembly to make decisions on their behalf on those matters that had been devolved to them by the UK Government in London as a result of the 1998 Belfast/Good Friday Agreement. To the annoyance of Northern Ireland politicians, the campaign for the Assembly elections frequently drew the parties into an area over which the institution they were running for had no ultimate power: the United Kingdom's membership of the European Union. What political leaders in Northern Ireland had feared and communicated to the then Prime Minister, David Cameron – as had their counterparts in Scotland and Wales – appeared to have come to pass. Campaigning for elections to the devolved institutions had been side-tracked into addressing an issue that merited a greater amount of political energy than could be devoted to it as the parties fought for supremacy in the Northern Ireland Assembly's next mandate. This bleeding of one campaign into another could at least in part explain why the debate in Northern Ireland on the upcoming referendum on EU membership was characterised by many as belated, ill-informed and lacklustre. Nevertheless, Northern Ireland's political parties (some more forcefully than others) began to outline their positions during the campaign for the Assembly elections, and put them to the people during the official campaign for the EU referendum.

Of the main parties, only the Democratic Unionist Party (DUP) stood on a platform for the UK's withdrawal from the EU, stating that it would be in the best interests of the United Kingdom as a whole and of Northern Ireland itself, and a means of reasserting the UK's sovereignty. Its MPs in Westminster were particularly active, appearing in campaign hustings alongside prominent figures in the 'Leave' campaign such as UKIP's Nigel Farage, both in Great Britain and in Northern Ireland. All the other main Northern Ireland parties were in favour of the UK remaining in the EU, including not only those on the nationalist side (Sinn Féin and the Social Democratic and Labour Party (SDLP)), but also the Alliance Party and, significantly, the Ulster Unionist Party (UUP), the second largest Unionist party. The latter's 'remain' stance not only reinforced its political positioning stance as apparently more progressive than their Unionist rivals in the DUP, which had already been dramatically made when it pulled out of the power-sharing Government – the Executive – towards the end of the

Assembly's mandate, but it also served to undercut fears that the EU referendum would divide parties along sectarian lines.

The UUP's political manoeuvring, which included its positioning on EU membership, did not reap the rewards it had been hoping for in the results of the Northern Ireland Assembly elections. It made no gains, remaining with 16 seats in the Assembly, although the numbers also remained unchanged for the two largest parties, with the DUP keeping its 38 and Sinn Féin 28. The biggest losers were the SDLP, which lost two seats (from 14 to 12), whilst Alliance kept its eight seats. It was away from the largest parties that electoral shifts were seen, with the Green Party, which was pro-remain, adding another seat to its sole representative in the Assembly and People Before Profit, which was pro-leave, gaining two seats in its first venture into Northern Ireland Assembly elections as a party that already had a presence in the legislature of the Republic of Ireland. Two other minor parties with an anti-EU stance that had hoped for electoral success were the Traditional Unionist Voice (TUV), which could not add to its single seat, and UKIP, which lost its only representative in the Assembly, while one independent was elected. This was the largely unchanged make-up of the Northern Ireland Assembly as the political parties moved towards the EU referendum and its aftermath, although the complexion of the Northern Ireland Executive would undergo some major changes when the SDLP refused its allocation of ministerial posts and joined the UUP to form an official opposition. The Alliance Party also decided to turn down the opportunity of a seat in government, leaving the DUP and Sinn Féin as the only two parties in the Executive, with the independent Member of the Legislative Assembly, Claire Sugden, taking up the position of Minister of Justice.

#### **POLITICAL REACTIONS TO THE OUTCOME OF THE REFERENDUM**

On June 23<sup>rd</sup> 2016, 55.8 per cent of the electorate in Northern Ireland voted in favour of the UK remaining in the European Union. In Scotland, that desire was expressed in even stronger terms with 62 per cent voting to remain. In the aftermath of the result of the referendum, in which the weight of England's decision to vote in favour of leaving (as did Wales) determined the overall UK result, the political reaction in Northern Ireland has stood in stark contrast to that of Scotland's and has once again highlighted underlying tensions inside the Northern Ireland Executive. Whereas Nicola Sturgeon, as First Minister of Scotland, was quick to state that her Government would defend the Scottish people's decision to remain in the EU and to appoint a 'Brexit Minister', Northern Ireland's First and Deputy First Ministers were diametrically opposed in their reactions to the outcome of the referendum. Arlene Foster, the First Minister and leader of the DUP, emphasised the need to accept the UK's decision to leave the EU and that Northern Ireland could not have a 'special status' by becoming a UK region retaining a post-Brexit relationship with the EU. The Deputy First Minister, Sinn Féin's Martin McGuinness, on the other hand, stressed that Northern Ireland had clearly voted to remain and therefore its will had to be accommodated. Moreover, just as Nicola Sturgeon announced that she would immediately begin the process in the Scottish Parliament to pass legislation for another independence referendum in order to maintain Scotland's place within the EU, Martin McGuinness and Sinn Féin called for a border poll to determine Northern Ireland's future – as part of a united Ireland or to remain within the United Kingdom. That call was immediately rejected by the then Secretary of State for Northern Ireland, Theresa Villiers, and repeated by her successor, James Brokenshire, as well as being condemned by Northern Ireland's Unionist politicians.

Although the deep divisions in the Northern Ireland Executive can be understood in light of the opposing positions taken in the run-up to the referendum by Northern Ireland's two largest parties, they do not bode well as the Executive faces up to the consequences of the UK's decision to leave the EU. Some of the concerns raised by that decision were, nevertheless, communicated to the Prime Minister, Theresa May, in a joint letter signed by the First and Deputy First Ministers in August 2016. Those concerns were: the nature of the border between Northern Ireland and the Republic of Ireland; access to the Single Market and movement of labour; energy supply; EU funding; safeguarding of the agri-food sector; and involvement in discussions between the Irish and UK Governments relating to the border. However, aside from the fact that all of these concerns had been raised by a number of organisations and bodies from a range of sectors in Northern Ireland before the referendum, it was notable that this correspondence did not include any concrete proposals on how to address them, nor did it refer explicitly to any potential constitutional consequences. Neither were there any specific plans proposed by the leaders of the Irish or Northern Ireland administrations at the July 2016 plenary meeting of the North South Ministerial Council (NSMC), where concerns were raised concerning the economy and trade, Northern Ireland and British-Irish relations, the Common Travel Area and relations with the EU. Ministers did agree, however, that the NSMC would be the privileged vehicle for joint discussions on the UK's withdrawal from the EU.

The very question of where discussions on the consequences of Brexit for the island of Ireland should take place, and who should be involved in them, has itself become a matter of contention. In the immediate aftermath of the referendum, Ireland's Taoiseach, Enda Kenny of the Fine Gael party, called for an All-Island Forum that would bring together political parties from both jurisdictions to discuss the concerns raised by Brexit. While other parties in Northern Ireland reacted positively, the Taoiseach's proposal was promptly rejected by the DUP as unwelcome Irish interference in internal UK matters – a rejection perhaps in part provoked by public statements on the inevitability of a united Ireland by, among others, Enda Kenny and Micheál Martin, the leader of Ireland's second largest party, Fianna Fáil; but it was also rejected as a consequence of the DUP's insistence that ministerial discussions at the NSMC made the creation of an All-Island Forum unnecessary. An additional motivation, however, may have been DUP resistance to allowing any direct input into political considerations of Brexit from parties outside the Northern Ireland Executive, particularly since they had adopted a 'remain' position in the EU referendum. By insisting that such discussions should only take place at the NSMC means the DUP and Sinn Féin – as the parties that make up the Executive – would maintain a degree of control over the direction taken and any resulting policy initiatives. In this scenario, given the general stalemate within the Northern Ireland Executive on how to approach Brexit as a result of the diametrically opposed views of the DUP and Sinn Féin, the likelihood of any radical policies would have been greatly reduced. As an alternative, the Taoiseach announced in October the convening of an All-Island Civic Dialogue, to take place in Dublin in November, which would not only bring together representatives from the main political parties on the island of Ireland, but also civic society groups, trade unions, business groups and non-governmental organisations to discuss the consequences of Brexit. This time, however, like the DUP, the UUP stated that they would not be attending, leaving the other parties to present the concerns of Northern Ireland.

#### **BREXIT AND THE NORTHERN IRELAND-IRELAND BORDER**

Indeed, the effects of Brexit will be most keenly felt in Northern Ireland as it becomes the only region in the UK immediately placed at an external land border of the EU. What had become to all

intents and purposes an invisible and open border as a result of its de-securitisation following the cessation of paramilitary violence and the removal of customs posts with the establishment of the EU's Internal Market, now risks regaining some of its 'hardness'. The extent to which the border becomes a significant obstacle will depend on the ultimate nature of the UK's post-Brexit relation to the EU and particularly whether it retains access to the Internal Market and, therefore, accepts the principle of the freedom of movement of EU citizens – a proposition that appears extremely unlikely at the present juncture, where even membership of the Customs Union is doubtful.

The negotiations with the EU that will follow the UK's triggering of Article 50 will test the extent to which the Conservative Government can accommodate Northern Ireland's position within the Union of nations that is the United Kingdom and immediately contiguous to another Union – the European Union – which had become an important framework for the region's external relations and a supporter of its peace and reconciliation process. Full accommodation of Northern Ireland's position would mean, among other things, retention of the Common Travel Area, access to the EU's Internal Market, absence of border controls, replacement of EU funding for the agricultural sector and financial support for the continuation of cooperation between the two jurisdictions on the island of Ireland. However, the Government will be keenly aware that the other devolved nations – and Scotland above all – will be following with close interest the extent to which it addresses Northern Ireland's concerns, and in particular the degree to which it is able to keep the border with the Republic of Ireland – and therefore the European Union – open.

#### **NORTH-SOUTH RELATIONS AFTER BREXIT**

Yet it is precisely that border – which was both the site and symbolic cause of the decades-long violent conflict in Northern Ireland – that makes it a unique concern as the UK heads towards Brexit. It is the point of separation between two sovereign states that, as member states of the European Union, became co-guarantors of the 1998 Belfast/Good Friday Agreement that put an end to 'the Troubles'. They did so, as set out in the Agreement: 'Wishing to develop still further the unique relationship between their peoples and the close cooperation between their countries as friendly neighbours and as partners in the European Union' (British-Irish Council n/d). Although the UK's departure from the EU should not be seen as an immediate and fatal blow to that Agreement (and the Agreement has already informed the basis of the arguments for two legal challenges to Brexit in Belfast's High Court), its spirit may be slowly undermined in the aftermath of Brexit if the border becomes an increasingly difficult obstacle to North-South relations.

Those relations are formally embodied within the second of three strands in the 1998 Belfast/Good Friday Agreement, which not only set out the creation of the North South Ministerial Council, but also specific areas for North-South cooperation that led to the creation of six implementation bodies. Whilst the Agreement specifically provided for the NSMC to facilitate North-South cooperation and coordination in EU matters, some of the cross-border implementation bodies are either directly dependent on common EU membership (such as the Special EU Programmes Body, which manages cross-border EU Structural Funds programmes) or have responsibilities that are facilitated by adherence to a common EU regulatory framework. Brexit, therefore, will require not only a reassessment of the NSMC's future role, if any, in North-South considerations of EU matters but also of the functioning of the cross-border implementation bodies. These reassessments need not represent an existential threat to the 1998 Agreement (although greater difficulties may arise as revisions are made to the 1998 Northern Ireland Act), but they are nevertheless an indication of how the UK's departure from the EU has the potential to make the border between Northern Ireland and

the Republic of Ireland if not more physically visible, at least more of a dividing line between jurisdictions moving in different policy directions.

### THE COMMON TRAVEL AREA

Both in the run-up to the referendum and since the decision to leave the EU was made, the existence of the Common Travel Area (CTA), which predates Ireland's and the UK's accession to the European Community, has been seen as a means of keeping the border open. In its current incarnation as a line separating two EU member states, the Ireland-Northern Ireland border sees some 30,000 people freely travelling to work in the other jurisdiction (Centre for Cross Border Studies and Cooperation Ireland 2016), and almost 2.5 billion GBP worth of yearly cross-border trade (InterTradeIreland 2016). The possibility of maintaining the CTA post-Brexit may safeguard the free movement of cross-border workers (as long as they are either UK or Irish nationals, since the CTA only applies to citizens of these countries), but it cannot guarantee the same for the free movement of goods, services or capital as these are outside its remit. Survival of the CTA, however, is not solely dependent on the willingness of the Republic of Ireland and the UK to uphold an arrangement that they originated but also on the EU's acceptance that one of its member states should offer privileged rights to citizens of a third country.

The EU's acceptance of the continuation of the CTA, which it had recognised as a legitimate arrangement through the attachment of Protocol 20 to the EU Treaties to which both the Republic of Ireland and the UK were signatories, would be more likely if the UK were to retain access to the Internal Market and its associated principle of the free movement of EU citizens. In such a scenario, with the Republic of Ireland outside the Schengen area, there would be no obvious need to impose passport controls. However, although a post-Brexit UK outside both the EU and its Internal Market would be free to opt to continue with the current arrangements in terms of freedom of entry to Irish citizens as set out in the Immigration Act 1971, as well as the associated rights conferred to them under the British Nationality Act 1981, the same would not be the case for the Republic of Ireland since the EU would have to give its approval. Moreover, in order to guarantee full reciprocity, the EU would also have to allow the Republic of Ireland and UK citizens the current rights they enjoy in terms, for example, of residency and employment.

Even with EU consent, in order to avoid the imposition of passport controls that would seek to deny entry across the Ireland-Northern Ireland border, the UK would have to accept the argument that the absence of such controls would allow free travel across the border from the Republic into Northern Ireland but that any non-Irish EU citizen would be doing so in the knowledge that they would have no right to access employment, welfare assistance or public services in line with any restrictions imposed by the UK. However, in order not to shift the border to the Irish Sea by imposing passport controls at ports of entry in Great Britain for travel from Northern Ireland that would be unacceptable to Unionists, the same principle would have to be applied to the entire United Kingdom. In other words, by accepting a common approach to entry of non-Irish EU citizens, the Government would not be imposing what would be seen as discriminatory measures to citizens of the United Kingdom travelling from Northern Ireland into Great Britain, and would avoid making Northern Ireland live the tension of being placed at the border of two Unions.

## CUSTOMS CONTROLS AND TRADE

Whatever the outcome of the UK's negotiations with the EU in terms of its departure, the Ireland-Northern Ireland border will become the subject of some degree of controls related to the crossing of goods. Although the physical nature of those controls may be attenuated by the introduction of electronic mechanisms, this will not entirely relieve businesses involved in cross-border trade from additional administrative burdens and their associated costs, nor the imposition of customs controls such as those in place between Sweden (an EU member state) and Norway (a member of the European Economic Area). Such controls would become even more necessary if the UK (as currently appears to be the case) decides to remain outside both the Internal Market and the Customs Union. Crucially, the possible introduction of either physical passport or customs controls (or both) at the Northern Ireland-Ireland border would become potential targets for violent attacks by elements opposed to the ongoing peace and reconciliation process.

A post-Brexit UK outside the Internal Market or the Customs Union would have serious consequences for the economies of both jurisdictions on the island of Ireland, but potentially affecting Northern Ireland more than its southern neighbour given the greater importance of the Irish market to Northern Ireland businesses. In terms of relative importance, the volume of cross-border trade going from North to South (36.7 per cent according to the Northern Ireland Statistics and Research Agency 2016) on the island of Ireland is much larger as a proportion of total volume than trade going from South to North (1.8 per cent according to the Central Statistics Office 2016). This is especially the case for Northern Ireland's agri-food sector, which is not only involved in all-island supply chains, but was also the sector that in 2014 sold 57.4 per cent of its total sales in the EU to the Republic of Ireland, with only 3 per cent of its export sales going outside the EU (Department of Agriculture and Rural Development 2015). Brexit, therefore, represents a significant challenge to a Northern Ireland economy with underlying structural deficiencies resulting from the dominance of the public sector and a comparatively weak export performance.

Northern Ireland's export performance becomes noticeable when considering that of its total sales (with a total value in 2014 of 65,800 million GBP) the majority are within Northern Ireland itself (65.9 per cent), with the second most important destination being Great Britain (19.3 per cent) (Northern Ireland Statistics and Research Agency 2016). Only 14.8 per cent of Northern Ireland goods were exported in 2014: 59.1 per cent of those exports was to the EU, with the other 40.9 per cent going to the rest of the world. Of Northern Ireland's total sales in 2014 to the EU, 62.3 per cent (worth 3,599 million GBP) were to the Republic of Ireland alone, making it the single most important destination within the EU (Northern Ireland Statistics and Research Agency 2016). Consequently, given its current characteristics, Brexit has the potential to weaken what is already a structurally fragile Northern Ireland economy, especially if the UK departs the EU without guaranteeing access to the Internal Market or membership of the Customs Union. The negative effects would be most keenly felt in the agricultural and wider agri-food sector, which not only has a more prominent role in the Northern Ireland economy than is the case in other parts of the United Kingdom, but also depends on 87 per cent of its income from Single Farm Payments under the EU's Common Agricultural Policy and sees the Republic of Ireland as one of its most important markets (Department of Agriculture, Environment and Rural Affairs 2016). Compounding these difficulties will be restrictions on accessing foreign labour and the imposition of tariffs, with agricultural produce attracting some of the highest tariffs under WTO rules.

## CROSS-BORDER COOPERATION AND EU FUNDING

While the potential consequences for the movement of people and goods across the Ireland-Northern Ireland border may be the more immediately visible signs of how Brexit may affect Northern Ireland and its relationship with an EU member state, there are other possible effects that can be easily overlooked if the focus is purely on trade and immigration. Unless alternative solutions are found, the UK's departure from the EU will deny Northern Ireland access to EU programmes that have funded cross-border cooperation projects not only with the border counties of the Republic of Ireland but also, in the case of the INTERREG programme, with western Scotland. With Northern Ireland receiving approximately 13 billion EUR since 1994 in total EU funding (The Executive Office 2016), Brexit represents a real threat to the continuation not only of cross-border cooperation projects but also to a range of organisations throughout Northern Ireland that have depended on such funding to deliver front-line services.

Uniquely, Northern Ireland and the Border Region of Ireland have benefited from a European Territorial Cooperation programme specifically created to reinforce a peaceful and stable society by fostering reconciliation, and to promote social and economic stability in the region. Since its beginning in 1995 as an EU response to the paramilitary ceasefires and the developing peace process in Northern Ireland, the PEACE programme has brought approximately 1.56 billion EUR in EU funds to the region (Special EU Programmes Body 2016).

If the UK post-Brexit and in its negotiations with the EU prior to its departure gives too narrow a focus on trade – important as it is, including for Northern Ireland – there is a serious risk that the 'softer' mechanisms for supporting peace and reconciliation and cross-border cooperation made possible through EU funding programmes will wither due to neglect. Unless Northern Ireland is able to access such EU funding programmes beyond Brexit, or funding is replaced by the UK Government, not only will the types of projects currently delivering services with EU support be reduced or discontinued completely, but with them we will also lose a significant amount of skills and knowledge of cross-border cooperation and peace and reconciliation built up over the years by many organisations and local authorities. Such a situation would, in turn, risk Northern Ireland becoming increasingly insular and peripheral to both the Union of the United Kingdom and the European Union on its doorstep.

## CONCLUSION

To conclude, it should be noted that there are possible options that could be taken in order to mitigate the negative consequences of Brexit for Northern Ireland. In general terms, they would allow Northern Ireland to retain a degree of access to EU funding for cross-border cooperation, maintain some aspects of the Common Travel Area and perhaps some access to the Internal Market. Crucially, for these possibilities to become realities, the Republic of Ireland must take the lead. It would have to seek these things in a way that would not be seen by the European Commission and the other member states as rewarding the UK for leaving the EU, but rather as accommodating the specific needs of a member state due to its geographic location and its position as a co-guarantor of the Northern Ireland peace process – a peace process in which the EU has invested politically and financially. However, this returns us to the question of whether the UK Government would be equally willing to accommodate the needs of one of the nations that make up the Union of the United Kingdom, allowing Northern Ireland to retain a relationship with another Union with which Scotland, England and Wales would be cutting all ties.



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