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**BRIEFING PAPER**

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# Brexit and UK-Irish Relations

**T**HIS BRIEFING PAPER is a more detailed analysis of the potential consequences of the UK's decision to leave the European Union on UK-Irish relations, which acts as a background document to the Centre for Cross Border Studies' submission to the House of Lords EU Select Committee inquiry into this topic. The issues it addresses are in line with the questions posed by that Committee, namely: how Brexit may undermine the present 'soft border arrangements'; North-South relations during Brexit; the Common Travel Area; how Brexit may affect the rights of UK and Irish citizens who live in each other's countries; and the trading relations between Ireland and the UK. These are also some of the issues explored in the Briefing Paper Series published by the Centre for Cross Border Studies, in collaboration with Cooperation Ireland, in the run-up to the referendum of 23<sup>rd</sup> June 2016.<sup>1</sup>

## Brexit and the present 'soft border' arrangements

**T**HE ABILITY OF THE IRISH AND UK Governments to maintain current 'soft border' arrangements is dependent on two overriding factors: the final outcome of the UK's negotiations with the European Union following the formal triggering of Article 50, and the capacity of both Governments to mitigate against any negative consequences of that outcome to

the present nature of the border. Moreover, the 'soft' nature of the Northern Ireland-Ireland border owes much to the cessation of paramilitary violence (which saw an end of the 'hard' securitisation of the border) and the UK and Ireland's membership of the EU and its Internal Market. Although reciprocal arrangements between the UK and Irish

Governments affecting the character of the border on the island of Ireland predate both countries' entry into the EU (then the EC), their continuation was legitimised through the EU Treaty provision contained in Protocol 20,<sup>2</sup> and it was only with accession to the Internal Market that customs checks were abolished.

If the UK Government – in order to control immigration of EU citizens to the UK – opts to relinquish access to the EU's Internal Market, then the current status of the Ireland-Northern Ireland border cannot remain unaltered. Whereas the continued freedom of movement of UK and Irish citizens is subject to the possibility of retention of the Common Travel Area, the movement of other EU citizens may be curtailed and, crucially, the free movement of goods as currently enjoyed across the Ireland-Northern Ireland border will come to an end. However, these developments need not necessarily result in the re-imposition of a physical border, although the border may nevertheless become more manifest as an administrative burden.

In terms of the movement of non-Irish EU citizens across the Ireland-Northern Ireland border, and assuming that work currently being undertaken by the UK and Irish Governments on the development of electronic border management systems under the auspices of the Common Travel Area Forum will continue,<sup>3</sup> there may be no need to establish *permanent* passport control posts at the more than 200 border

crossings between the two jurisdictions on the island of Ireland.<sup>4</sup> Instead, an approach could be taken that would permit the entry of non-Irish EU citizens into Northern Ireland from the Republic of Ireland in the knowledge that those who do so without the requisite entitlement (in line with any restrictions imposed by the UK Government following Brexit) would not legally be able to reside, seek employment or gain access to social welfare and healthcare services or benefits. Moreover, in order to avoid the political instability that would be caused in Northern Ireland if any passport controls were to be imposed that would shift the “hard border” into the Irish Sea, this approach could be extended to movement of non-Irish EU citizens from Northern Ireland into other parts of the United Kingdom.<sup>5</sup> Given the current UK political context, however, such an extension would appear unlikely as it would run against the grain of two of the prime objectives of leaving the EU – control of UK borders and restricting EU immigration to the UK. The result, in this case, may be retaining some of the “softness” of the Ireland-Northern Ireland border, but introducing some “hardness” to the boundaries between Northern Ireland and Great Britain.

In terms of the movement of goods across the Northern Ireland-Ireland border Brexit will undoubtedly have an impact. Although electronic means could be introduced to manage the administrative procedures for the exporting and transportation of goods

across the border, the current openness of the border will nevertheless be affected by some type of customs controls. Again, the nature of those controls will depend on the outcome of the UK's negotiations with the EU and whether it retains any access to the Internal Market or remains within an EU Customs Union, for example. Crucially, the need for the introduction of customs controls and their precise nature will also be informed by how the Republic of Ireland, as a Member State, will have to exercise its responsibilities in controlling an external border of the EU as set down in the Treaties.

Recent statements by the International Trade Secretary, Liam Fox MP, on the UK's future policy direction appear to indicate that customs controls will, indeed, need to be introduced as that direction implies the UK being outside both the Internal Market and the Customs Union.<sup>6</sup> For the Northern Ireland-Ireland border, the introduction of customs controls could not only make it a site for increased criminality linked to smuggling activities, but also – if such controls require a physical presence – a target for renewed violent activity capable of undermining the ongoing peace process. These would be enormously retrograde steps.

Brexit may also undermine the “softness” of the Northern Ireland-Ireland border in other areas where cross-border and wider North-South cooperation has been able to bring benefits to citizens in both jurisdictions. If during the Brexit

negotiations the UK Government does not secure continued access to EU cross-border and transnational programmes (either through lack of will, lack of agreement with the EU, or refusal to contribute to the relevant budgets), then the continued development of cross-border transport and energy infrastructure could be placed in jeopardy, resulting in a Northern Ireland-Ireland border that would inhibit growth of cross-jurisdictional flows. Cross-border cooperation between local councils and regional health authorities, for example, may also see a reduction in their intensity if EU funding for such cooperation is not replaced and if policy divergences result in increased administrative or regulatory obstacles.

Crucially, however, the potential negative consequences of Brexit for the Northern Ireland-Ireland border could be mitigated to a significant extent if the UK Government were to actively explore and pursue with the devolved administration in Northern Ireland, the Irish Government and the European Commission the possibility of Northern Ireland retaining some level of access to EU funding programmes and the Internal Market. Such a move would recognise not only Northern Ireland's specific circumstances in terms of its post-conflict context, but also its unique position within the UK as the only region sharing a land border with an EU Member State – and one that is of significant importance to Northern Ireland as a major destination of its exports and as a co-

guarantor with the UK of the 1998 Belfast/Good Friday Agreement.

The Centre for Cross Border Studies and a number of other organisations involved in cross-border cooperation have together considered the challenges for cross-border cooperation in the context of Brexit,<sup>7</sup> and the primary common concern is that the commitments for cross-border cooperation embedded in the 1998 Belfast/Good Friday Agreement remain a priority for both the UK and Irish Governments. Cross-border cooperation will be increasingly important to address the challenges resulting from economic, social and political uncertainty and instability. It is essential that the “soft infrastructure” that has been established to support cross-border cooperation – the statutory cross-border bodies, links at Departmental and local government level and within civil society networks and projects – be protected and nurtured. We are acutely aware of the centrality of the border to the conflict and the dangers that could materialise as a result of uncertainties about the nature of the border. Also, as migration and citizenship issues emerge in the context of any economic stagnation or decline, social cohesion in the border region and other disadvantaged areas will likewise be threatened.

We are concerned, therefore, to ensure that the interests of the border region remain central to the deliberations of both the UK and Irish Governments and the Northern Ireland Executive prior to and

following the notification of Article 50. In particular, it is essential that:

- ☀ measures be taken to ensure the sustainability of cross-border and transnational projects that are currently funded under EU 2014-2020 programmes. It is important that project promoters and participants be reassured that projects will continue to be financially supported until 2020;
- ☀ existing EU directives and regulations that have been transposed into UK/Northern Ireland law should remain in place until such time as any proposed changes have been subject to comprehensive territorial, equality and environmental impact assessments;
- ☀ means should be found to ensure the eligibility of continued participation by Northern Ireland ( and those parts of Wales and Scotland currently involved in INTERREG programmes with Ireland) in the European Territorial Cooperation Programmes and transnational programmes such as Horizon 2020, Erasmus+, Life and Europe for Citizens (which would require a financial commitment from the UK Government);
- ☀ whether or not the UK is excluded from EU programmes and projects, the Irish and UK Governments must take steps to ensure new and sufficient resources are available for the social and economic development of the border region, including local authority and civic society-led projects. On the UK

side, additional funding allocations should be derived from the UK's current contribution to the EU budget that will revert to HM Treasury post-withdrawal from the EU, and not from the "block grant";

- ☉ additional funding be allocated by the UK and Irish Governments to the PEACE IV programme specifically to address the challenges of inter-community conflict and cross-border relationships in the context of political

and economic uncertainty and instability arising in the post-referendum context; and

- ☉ a "PEACE V" programme, funded by the UK and Irish Governments should be developed – in consultation with civil society organisations and local authorities – specifically to address the challenges of inter-community conflict and cross-border relationships in the context of uncertainty and instability arising in the post-Brexit context.

## North-South relations during Brexit

**S**INCE THE UK'S REFERENDUM ON EU membership, formal considerations over the consequences of its result by the administrations in both jurisdictions on the island of Ireland have taken place at the North South Ministerial Council which, following its plenary session in July 2016, agreed to a number of actions.<sup>8</sup> Among others, these included:

- ☉ working "together to ensure that Northern Ireland's interests are protected and advanced and the benefits of North/South co-operation are fully recognised in any new arrangements which emerge as regards the United Kingdom's future relationship with the European Union";
- ☉ "that the frequency of the briefings on relevant EU matters provided by the Irish Government for senior Northern Ireland officials should increase and

include consideration of issues arising from the referendum decision"; and

- ☉ "that the Irish Permanent Representation in Brussels and the Northern Ireland Executive Office in Brussels will continue and intensify their close working relationship".

These proposals indicate a desire for a North-South collaborative approach between Ministers and senior officials to the UK's negotiations with the EU that have the potential to safeguard both Northern Ireland's interests and the post-Brexit future of North-South cooperation. The Republic of Ireland's position as a Member State of the European Union with a direct say on the outcome of the UK's negotiations following the triggering of Article 50, and as a co-guarantor with the UK of the 1998 Belfast/Good Friday Agreement, make it a vital additional

interlocutor for Northern Ireland. However, the full potential of the North-South collaboration between the two administrations can only be realised if the Northern Ireland Executive adopts a clear and unified policy on Northern Ireland's post-Brexit future.

Given the importance of that future, determining its shape must involve a North-South dimension that is not restricted to political representatives and senior officials from both administrations. North-South relations during Brexit must encompass all sectors of civic society in a way that actively involves them in the shaping of policies, ensuring that they do not privilege one sector to the detriment of others and support post-Brexit North-South collaboration that is not reduced to the political arena.

It is also important to note that North-South relations during Brexit can be affected by decisions made by the UK Government. The initial decision of HM Treasury and the Chancellor to "give an assurance that all multi-year projects administered by government with signed contracts or funding agreements in place, and projects to be signed in the ordinary

course of business before the Autumn Statement, will be fully funded" is an example of this.<sup>9</sup> HM Treasury's imposition of a cut-off date for submission of EU-funded projects that would be guaranteed by the UK Government appears not to have taken into account that projects under European Territorial Cooperation Programmes, such as the INTERREG VA and PEACE IV programmes involving Northern Ireland and the Republic of Ireland,<sup>10</sup> require the input of the Irish Government. The result has been increased uncertainty due to the Irish Government's apparent reluctance to approve cross-border projects submitted by the date imposed by HM Treasury, causing further delays.<sup>11</sup> Therefore, in order to prevent unnecessary obstacles to the maintenance of optimal North-South relations during Brexit, the UK Government should assess the impact on these relations of any policy decision or statement it makes during this period.

The ultimate test of the effectiveness of North-South relations and their place within the East-West dimension during Brexit will be the extent to which all parts secure a successful post-Brexit future.

## Retention of the Common Travel Area

**B**REXIT MEANS THE CONTINUATION of the Common Travel Area in its current form cannot be guaranteed. The land border between the UK and Ireland that is currently an internal

border will become an external border separating an EU Member-State from a non-EU country. The UK's departure from the EU will place into question the status of Protocol 20 of the Treaty on the

Functioning of the European Union, which functioned to give EU recognition of the CTA as a legitimate arrangement between two Member States subject to the principle of free movement of EU citizens.<sup>12</sup>

A Brexit means that of the two sovereign states responsible for the CTA only Ireland will remain a signatory to the EU Treaties and, therefore, the CTA's continuation becomes a matter for negotiation involving the UK, Ireland and the other remaining Member States of the EU. Crucially, the post-Brexit future of the CTA is not dependent on negotiations solely between the UK and Ireland – retention of at least some of the benefits of the CTA will be dependent on EU agreement.

Weighing on post-Brexit negotiations regarding the status of the CTA, apart from Ireland's own interests and ability to influence its continuation,<sup>13</sup> is whether the UK will seek to retain access to the Internal Market. If the UK's future relationship with the EU included access to the Single Market then – like Norway, for example – it would have to continue to accept the principle of free movement of EU citizens. In this case, and with EU citizens still able to move freely to the UK, there would be no obvious reasons for the EU to oppose the retention of the CTA. This would offer the greatest possibility of continuing with the current CTA arrangements post-Brexit. However, given that one of the primary issues driving the arguments for the UK to leave the EU is immigration and in light of

recent statements from UK Ministers, it appears unlikely that the UK will seek to retain access to the Internal Market. Not only would such a position ignore the concerns raised by Northern Ireland's First and Deputy First Ministers,<sup>14</sup> it would also influence the EU's position regarding negotiations on the retention of the CTA.

Another factor influencing the EU's approach to the post-Brexit status of the CTA will be the effect its discontinuation would have on North-South relations in the context of the 1998 Belfast/Good Friday Agreement. Given its role in supporting the peace and reconciliation process in Northern Ireland, the EU and its constituent Member States may be reluctant to be seen as contributing to a hardening of the border with the Republic of Ireland by blocking the retention of the CTA.<sup>15</sup> Instead the EU may opt not to obstruct Ireland, as one of its Member States, in continuing to participate in the CTA, and leave the responsibility of seeking to revise the current arrangements to the UK.

If post-Brexit the UK were not within the Internal Market, the reasons that may drive it to review the CTA are highlighted in a House of Commons Library Briefing Paper:

“As an EU Member State, Ireland could not restrict the entry of EU citizens, so if the UK wanted to increase controls on EU citizens entering the UK through the Republic, it might reconsider the operation of the CTA. Any such reconsideration



would have to be undertaken within the new context created by the Belfast (Good Friday) Agreement”.<sup>16</sup>

In the event the UK does not retain access to the Internal Market with its associated principle of the free movement of EU citizens, the UK could opt to continue with the current arrangements in terms of freedom of entry to Irish citizens as set out in the Immigration Act 1971,<sup>17</sup> as well as the associated rights conferred to them under the British Nationality Act 1981.<sup>18</sup> The Nationality Act explicitly places Irish citizens outside the definition of “alien”, stating: “‘alien’ means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland”. This special status for citizens from the Republic of Ireland under UK law is not offered to any other nationality, and alongside the Republic of Ireland’s inclusion within the Common Travel Area means they are treated as being habitually resident for some social welfare benefits as they have spent the required period within the Area to become eligible automatically.

The ability of the Irish Government to

maintain reciprocity with a post-Brexit UK outside of the Internal Market will be dependent on whether it is able to secure from the EU and the other Member States the necessary exemptions. This will mean not simply retaining the Common Travel Area in terms of allowing entry of UK citizens into the Republic of Ireland, but also in terms of continuing to offer them the same rights as EU citizens in areas such as employment and social welfare.<sup>19</sup>

In order to achieve this outcome leadership must come from the Irish Government, with the UK Government giving the Northern Ireland Executive the freedom to publicly voice its support to the Irish administration. What is essential here is that the post-Brexit retention of CTA arrangements is not seen by the EU and its Member States as conferring preferential treatment to a departing Member State, but rather as the EU adopting a flexible approach to accommodate the specific needs of one of its Members. Those needs are a result of its geographical location, its position outside the Schengen *acquis*, and its vital role as co-guarantor of the 1998 Belfast/Good Friday Agreement.



## Rights of UK and Irish citizens living and working in each other's countries

**W**HILST OTHER EU TREATIES established general rights for the freedom of movement of citizens, the freedom of movement of EU workers within the European Union was secured in Article 45 of the Lisbon Treaty. It establishes:

- ☉ the right to accept offers of employment in another Member State
- ☉ the right to move freely and the right to stay in the territory of a Member States for the purpose of employment;
- ☉ the right, subject to certain conditions, to remain in a Member State after having been employed there; and
- ☉ the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State.

In addition to EU migrant workers the Ireland-Northern Ireland border region also has a high prevalence of cross-border employment. Approximately 23,000 to 30,000 people commute across the Irish border to work, returning home daily or at least once a week.<sup>20</sup> Although a number of these are non-Irish and non-UK EU citizens, the vast majority are Irish and UK citizens travelling across the border to work in each other's jurisdictions.

Currently the rights of cross-border workers are protected by EU regulations, which have in turn created a confident and mobile workforce on the island of Ireland. EU workers are entitled to:

- ☉ travel across an open border;
- ☉ recognition of their professional qualifications;<sup>21</sup>
- ☉ take up employment without restriction;
- ☉ be treated equally and without discrimination based on nationality;
- ☉ access healthcare both where they live and where they work; and
- ☉ access, and occasionally export, social welfare payments based on their EU record of social insurance contributions.<sup>22</sup>

According to a Northern Ireland Assembly research paper, "Any changes to the Free Movement of Labour could impact on NI in a more significant manner than other UK countries as a result of the land border with the Republic of Ireland (ROI)."<sup>23</sup>

Post-Brexit, and dependent on the outcome of the UK's negotiations with the EU, existing cross-border workers may face daily passport controls and visa or work permit systems. The recognition of professional qualifications is also reliant on EU legislation and could present further obstacles for jobseekers, cross-border workers seeking promotion or alternative

employment, or employers seeking specific skills.

Currently employment and equality legislation is derived from EU legislation, so cross-border workers can expect protections whether they work in Ireland or Northern Ireland/UK. Post-Brexit uncertainty and complications for cross-border workers and employers could occur should the UK amend or weaken existing legislation or – given that the Prime Minister has indicated that the Government’s Repeal Bill will safeguard workers’ rights derived from existing EU law – fail to implement new and emerging EU legislation.

Brexit will also affect arrangements for UK and Irish citizens working in each other’s jurisdictions currently provided for under EU Social Security Coordination. To qualify for certain social security benefits (e.g. illness and maternity benefits, unemployment benefit, old age pensions) cross-border workers can currently combine their records of Social Insurance Contributions paid throughout the EU. Following Brexit, and in the absence of EU Social Security Co-ordination being replaced, this would no longer occur and cross-border workers may fail to qualify for assistance.

Even if the worker in the example (box) has paid sufficient Irish contributions and does not need to rely on aggregation, another obstacle will be encountered: without an agreement to replace EU Social Security Co-ordination the Irish Illness Benefit may

**Post-Brexit example:** A cross-border worker resident in Northern Ireland has been working in Ireland for one year. The worker falls ill, cannot attend work and applies for Illness Benefit from Ireland. The person has insufficient Irish Social Insurance Contributions and will not qualify unless post-Brexit agreements are in place to allow for the transfer of National Insurance Contributions paid in Northern Ireland/UK.

no longer be exportable to the UK and the worker would instead be required to claim Employment and Support Allowance in Northern Ireland.

Aggregation is often an important issue for cross-border workers at the end of their working life. In this highly mobile region citizens’ records may show many periods of cross-border working. These workers rely on their contribution records being combined in order to qualify for a State Pension. Again an agreement between the UK and Ireland will be required to allow the transfer of Social Insurance Contributions, and this may require input from the EU as Ireland would be securing arrangements for non-EU citizens.

Entitlement to Family Benefits is another social security challenge for cross-border workers and EU Regulations 883/2004 and 987/2009 outline which jurisdiction is responsible. A straightforward example with only one parent employed is outlined below:

Resident of	Employed in	Country responsible for family benefits
Northern Ireland	Republic of Ireland	Republic of Ireland
Republic of Ireland	Northern Ireland	Northern Ireland

Current EU legislation explains how to process very complex cases. In the post-Brexit context the above scenario could quickly become complicated, for example when there is employment in more than one jurisdiction or when family separation has occurred. EU Regulation 4/2009 also ensures enforcement of child maintenance agreements across EU borders.<sup>24</sup>

Brexit brings an additional potential complication for non-UK EU citizens living in Northern Ireland who are not economically active (e.g. a spouse of a worker or a self-sufficient person). Currently, to pursue their right to establish permanent UK residence after 5 years of lawful residence they must have adhered to EU legislation which requires that, in addition to being self-sufficient, they have held comprehensive health insurance.<sup>25</sup> If the person has instead relied on the NHS for their healthcare needs it may be considered they have not been lawfully present and their permanent residence/right to reside denied. This issue would need to be addressed by the UK Government in order to avoid adversely affecting non-Irish EU spouses of Irish workers residing in Northern Ireland or elsewhere in the United Kingdom.

If the CTA survives Brexit, permanent residence for Irish citizens may be safeguarded, although an exemption to

the health insurance rule would be required for all other EU nationals in order not to deny the same status to those who are spouses or dependents of Irish citizens. If the CTA does not remain, an exemption will also be required for Irish citizens currently living in Northern Ireland or elsewhere in the UK.

However, as discussed in relation to the CTA specifically, the ability of the Irish Government to offer similar rights to UK citizens will depend on the outcome of negotiations with the EU. Again, the Government of the Republic of Ireland should lead interactions with the EU on these matters, emphasising its specific geographical context, as well as its role in supporting the peace and reconciliation process in Northern Ireland. Negotiations on these matters should not be presented as offering “special deals” to the UK, but rather as accommodating the needs of a Member State.

Brexit has created many uncertainties for cross-border workers in Ireland and Northern Ireland. Citizens need access to clear, accurate information now and while negotiations take place. As Brexit unfolds citizens need to understand how the EU rights and entitlements they currently rely on, and are possibly unaware of, are at risk and may be altered. Crucially, we have focused here on how Brexit may affect the

rights of UK and Irish citizens to live and work in each other's countries. Access to accurate information, however, is also vital for non-Irish EU citizens – citizens whose

## UK-Irish trade

**A** POST-BREXIT UK OUTSIDE THE Internal Market would have serious consequences for the economies of both jurisdictions on the island of Ireland. Whereas the UK is Ireland's largest trading partner in Europe, for Northern Ireland the Republic of Ireland is its most important export market, and for the UK as a whole the Irish market ranks fifth in its global export destinations. In 2014 Ireland's exports to the UK were worth €33.9bn (17.4% of total exports),<sup>26</sup> exports of UK goods and services to Ireland were worth £27.9bn (approximately 5.8% of total exports),<sup>27</sup> while Northern Ireland's exports to the Republic of Ireland were worth £3.6bn (36.7% of total exports).<sup>28</sup>

The imposition of tariffs on trade with the UK would have a potential negative effect on the overall flows between the UK and Ireland. However, it would perhaps affect Northern Ireland more deeply given its trading links with the Republic of Ireland. In terms of relative importance, the volume of cross-border trade going from North to South (36.7%) on the island of Ireland is much larger as a proportion of total volume than trade going from South to North (1.8%).<sup>29</sup> Therefore, whilst the UK as a whole is of significant importance to

labour has been essential for sectors of the economies in both jurisdictions of the island of Ireland.

Ireland's exports, it nevertheless has a greater diversity of sales destinations than Northern Ireland, where its Southern neighbour is vital to its exports.

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% of its total sales in the EU to the Republic of Ireland, with only 3% of its export sales going outside the EU.

If the UK Government does not secure access to the EU's Internal Market, therefore, and if barriers in the form of tariffs and customs controls are imposed, then the current trade between the UK and Ireland, and specifically between Northern Ireland and the Republic of Ireland cannot remain unaffected. Any customs controls will mean additional administrative and financial burdens to Irish and UK businesses engaged in trade between their jurisdictions, even if those burdens are kept to a minimum through the use of digital technology. Moreover, restrictions to the movement of EU labour into the UK will also impose further obstacles to UK businesses, including those in Northern Ireland where the agri-food sector, for example, is particularly reliant on non-Irish EU labour.

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<sup>1</sup> “The UK Referendum on Membership of the EU: What does it mean for us?”

(<http://crossborder.ie/site2015/wp-content/uploads/2016/02/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-1.pdf>), “Potential Constitutional Consequences” (<http://crossborder.ie/site2015/wp-content/uploads/2016/03/EU-Referendum-Briefing-Paper-2.pdf>), “Cross-Border Cooperation, Peace-Building and Regional Development” (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-Cooperation-Ireland-EU-Referendum-Briefing-Paper-31.pdf>), “Citizen Mobility” (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-4.pdf>), and “Economic Development” (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/EU-Referendum-Briefing-Paper-5.pdf>).

<sup>1</sup> Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and to Ireland, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FPRO%2F03> [last accessed 26/09/2016].

<sup>2</sup> Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and to Ireland, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FPRO%2F03> [last accessed 26/09/2016].

<sup>3</sup> Work on the development of electronic border management systems was outlined in a joint statement in December 2011 by the UK’s Minister of State for Immigration and Ireland’s Minister for Justice and Equality, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/99045/21197-mea-sec-trav.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/99045/21197-mea-sec-trav.pdf) [last accessed 26/09/2016]. It should be considered, however, that there may be a call for discussions over the share of any financial burden such systems would incur in light of the UK’s decision to leave the EU.

<sup>4</sup> Although permanent passport control posts may not be necessary, there will be the need – as is already the case – for spot-checking of immigration or residency status of those crossing the border.

<sup>5</sup> If such an approach were to be adopted in terms of travel between Northern Ireland and the rest of the UK, the possibility may arise that the UK Government whilst not requiring that Northern Ireland citizens should be subject to passport controls at ports of entry in Great Britain, may instead make transport carriers responsible for ensuring that non-UK and non-Irish EU citizens are in possession of any necessary documentation proving their right of entry into the UK.

<sup>6</sup> Department for International Trade, “Liam Fox’s free trade speech” (29 September 2016), <https://www.gov.uk/government/speeches/liam-foxs-free-trade-speech?hootPostID=d2ab979130cfaa83c5583220730cf3a2> [last accessed 30/09/2016].

<sup>7</sup> The other organisations involved are: Cooperation and Working Together (CAWT), Cooperation Ireland, Derry and Strabane District Council, Donegal County Council, East Border Region, Irish Central Border Area Network, and the North West Regional Working Group.

<sup>8</sup> North South Ministerial Council (4 July 2016), <https://www.northsouthministerialcouncil.org/sites/northsouthministerialcouncil.org/files/publications/Plenary%20Joint%20Communique%20-%20English%20-%202004%20Jul-16.pdf> [last accessed 30/09/2016].

<sup>9</sup> HM Treasury, Letter from the Chief Secretary to the Secretary of State for Exiting the European Union regarding EU funding commitments (13 August 2016), <https://www.gov.uk/government/publications/european-union-funding> [last accessed 30/09/2016].

<sup>10</sup> The INTERREG VA Programme also includes Western Scotland within its eligible area.

<sup>11</sup> BBC News NI, “Máirtín Ó Muilleoir warns over £100m EU funding ‘log jam’” (27 September 2016), <http://www.bbc.co.uk/news/uk-northern-ireland-37488802> [last accessed 30/09/2016].

<sup>12</sup> Although the CTA already includes territories that are not within the EU, the Channel Islands and the Isle of Man are not sovereign states, and it is the UK Government that represents them at EU level and in all external foreign policy matters.

<sup>13</sup> That interest is expressed, for example, by the Houses of the Oireachtas Joint Committee on European Affairs’ report, “UK/EU Future Relationship: Implications for Ireland” (June 2015): “in the context of a reformed UK/EU relationship, that a key objective for Ireland should include the retention of the Common Travel Area (CTA) between Ireland and the UK” (p.19), [http://www.oireachtas.ie/parliament/media/committees/euaffairs/Agreed-Report-UK-EU-Future-Relations\\_Updated.pdf](http://www.oireachtas.ie/parliament/media/committees/euaffairs/Agreed-Report-UK-EU-Future-Relations_Updated.pdf) [last accessed 30/09/2016].

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<sup>14</sup> In their joint letter to the Prime Minister, the First and Deputy First Ministers voiced the “need to retain as far as possible the ease with which we trade with EU member states and, also importantly retain access to labour”, noting also “the matter of the many thousands of people who commute each way across the border to work on a daily basis” (10 August 2016), <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp> [last accessed 01/10/2016].

<sup>15</sup> A significant example of how restricting the freedom of movement across the Ireland-Northern Ireland border would impact on the functioning of the 1998 Belfast/Good Friday Agreement is the question of citizenship. As co-guarantors of the Agreement, the UK and Irish Governments “recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments”; [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf) [last accessed 30/09/2016].

<sup>16</sup> House of Commons Library, Briefing Paper, “Exiting the EU: impact in key UK policy areas (June 2015), p.136; <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213> [last accessed 30/09/2016].

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/1971/77> [last accessed 01/10/2016].

<sup>18</sup> [http://www.legislation.gov.uk/ukpga/1981/61/pdfs/ukpga\\_19810061\\_en.pdf](http://www.legislation.gov.uk/ukpga/1981/61/pdfs/ukpga_19810061_en.pdf).

<sup>19</sup> It should be noted that currently there is not direct equivalence in relation to how the UK and the Republic of Ireland treat each other’s citizens in terms of residency status. Whereas Irish citizens have a privileged status in the UK in comparison with other nationalities, UK citizens in the Republic of Ireland have to satisfy the same conditions as any other EU citizen in order to acquire habitual residency status.

<sup>20</sup> Centre for Cross Border Studies, *Border People Briefing No.5*, “The Referendum on UK Membership of the EU: Freedom of Movement of People”, <http://borderpeople.info/wp-content/uploads/2016/06/Briefing-5-revision15June2016.pdf>

<sup>21</sup> The regulations concerning recognition of professional qualifications are laid down in Directive 2005/36/EC (as amended by Directive 2013/55/EC), which enable the free movement of professionals such as doctors or architects within the EU.

<sup>22</sup> As laid down in Regulations 883/2004 and 987/2009 (<http://ec.europa.eu/social/main.jsp?catId=857&langId=en&intPagId=983>) [last accessed 02/10/2016].

<sup>23</sup> Northern Ireland Assembly Research and Information Service, “EU Referendum Update” (30 August 2016), p.32, [http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive\\_office/4616.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/4616.pdf) [last accessed 02/10/2016].

<sup>24</sup> Council Regulation (EC) No 4/2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:007:0001:0079:EN:PDF> [last accessed 02/10/2016].

<sup>25</sup> [Comprehensive Sickness Insurance: what is it, and who needs it?](http://www.freemovement.org.uk) Colin Yeo, [www.freemovement.org.uk](http://www.freemovement.org.uk)

<sup>26</sup> CSO (2016) ‘Goods Exports and Imports’ and CSO (2015) ‘International Trade in Services’, all figures relate to 2014, the most recent year that full data is available, <http://www.cso.ie/en/releasesandpublications/er/gei/goodsexportsandimportsdecember2015/> [last accessed 03/10/2016].

<sup>27</sup> ONS (2016), <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/adhocs/005436annualimportsandexportsofuktradebycountryfrom1999to2014> [last accessed 03/10/2016].

<sup>28</sup> NISRA, “Northern Ireland Broad Economy Sales and Exports Statistics: Headline Results 2014” (17 February 2016); [https://www.economy-ni.gov.uk/sites/default/files/publications/deti/BESES-Publication-2014-Headline-results\\_0.pdf](https://www.economy-ni.gov.uk/sites/default/files/publications/deti/BESES-Publication-2014-Headline-results_0.pdf) [last accessed 03/10/2016].

<sup>29</sup> Alan Barrett et al, “Scoping the Possible Economic Implications of Brexit on Ireland”, ESRI Research Series No 48 (November 2015), <https://www.esri.ie/pubs/RS48.pdf> [last accessed 03/10/2016].