

# The necessary conditions for North-South cooperation: A Position Paper from the Ad-Hoc Group for North-South and East-West Cooperation<sup>1</sup>

## 1. Introduction

1.1. Article 11 of the Protocol on Ireland/Northern Ireland that forms part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community legally binds the parties to the following:

### Article 11

#### Other areas of North-South cooperation

1. Consistent with the arrangements set out in Articles 5 to 10, and in full respect of Union law, **this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation**, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.

In full respect of Union law, **the United Kingdom and Ireland may continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation on the island of Ireland.**

2. **The Joint Committee shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation.** The Joint Committee may make appropriate recommendations to the Union and the United Kingdom in this respect, including on a recommendation from the Specialised Committee.

1.2. In light of the above, and the recognition contained within the preamble to the Protocol that “the United Kingdom remains committed to protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks for cooperation”, the Ad-Hoc Group for North-South and East-West Cooperation is seeking urgent clarification on two overarching issues: what is the understanding of the parties to the Protocol of the conditions necessary for continued North-South and East-West cooperation; and how will their shared responsibility for the maintenance of the necessary conditions for continued North-South cooperation be enacted in practice.

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<sup>1</sup> This paper was authored on behalf of the Ad-Hoc Group for North-South and East-West Cooperation by Dr Anthony Soares, Director of the Centre for Cross Border Studies.

## 2. Understanding the conditions necessary for North-South cooperation

**2.1. In advance of the implementation of the Protocol on Ireland/Northern Ireland it is essential that the UK Government and the European Union set out clearly and publicly their understanding of *what* underlying conditions are necessary for North-South cooperation, and a joint commitment that such cooperation will not diminish in intensity, quality or in the diversity of actors taking part in it as a result of the Protocol's implementation. It will not be acceptable or in line with the spirit of the 1998 Belfast/Good Friday Agreement to point to reduced levels and intensity of North-South cooperation as nevertheless complying with the basic commitments made in Article 11 of the Protocol to maintain the necessary conditions for North-South cooperation.**

2.2. It is arguable the extent to which the mapping exercise on North-South cooperation undertaken during the initial phase of the negotiations on the UK's withdrawal from the EU achieves an explicit understanding of the conditions necessary for such cooperation. With the results of the exercise only made public by the House of Commons Select Committee on Exiting the European Union in June 2019 after it was provided to the Committee by the Cabinet Office following a Freedom of Information request, they show that the focus was to determine the relative reliance of 142 identified areas of North-South cooperation on EU law and regulatory frameworks, and how the Common Travel Area might act as a core or partial facilitator. It also notes the role of any separate UK legal frameworks or wider obligations, including those arising from the Good Friday/Belfast Agreement.

2.3. Crucially, as both the UK Government and European Commission admit, with the 142 areas of North-South cooperation examined as part of the exercise coming under three categories determined by the areas of cooperation defined in Strand 2 of the 1998 Agreement, "Further areas of informal, local and community-level cooperation may not have been captured by this exercise" (paragraph 16 of Department for Exiting the European Union's December 2018 "Technical Explanatory Note: North-South Cooperation Mapping Exercise", and p.4 of European Commission's Communication to EU27 on "Negotiations on Ireland/Northern Ireland, Mapping of North-South Cooperation" of June 2019).

2.4. As well as forms of North-South cooperation undertaken by community-level actors, for example, and that may not necessarily map neatly onto the categories of cooperation employed by the UK Government and the European Commission in their joint mapping exercise, it is not evident that there is clarity on *what* are the underlying and interrelated conditions that support North-South cooperation. Without a shared understanding of those conditions and how they interrelate it will be extremely difficult to monitor how they are being affected by the implementation of the Protocol.

2.5. Informed by decades of accumulated experience of North-South and East-West cooperation and relations, the organisations involved in the Ad-Hoc Group for North-South and East-West Cooperation understand the complex nature of the conditions necessary for such cooperation. These include, but are not in any way limited to, the following areas:

- **The Political Conditions:** The ability of actors at all levels to engage in effective North-South cooperation is always dependent on the political context prevailing at any given

time. Those conditions may deteriorate if the implementation of the Protocol on Ireland/Northern Ireland exacerbates existing political divisions or gives rise to new ones, particularly in Northern Ireland. Such divisions may be exacerbated if North-South cooperation and relations are perceived to be given priority over East-West relations, above all in terms of Northern Ireland's trading relations with Great Britain. Political tensions are almost inevitably going to arise on a regular basis as the provisions of Article 18 of the Protocol (Democratic consent in Northern Ireland) are enacted, which could result in political obstacles to the effective operation of North-South cooperation.

- **The Material Conditions:** Organisations at all levels involved in North-South and East-West cooperation across a variety of sectors (including, *but not only*, health, education, environment, agriculture, culture, sports, research, rural development, gender equality, migration, human rights) make use of and exchange a vast range of goods *and services* in order to undertake their cooperation. Any negative impact on their ability to access and exchange goods and services due to trading friction arising from the UK's withdrawal from the EU will result in a material alteration of the conditions necessary for North-South cooperation, especially if no appropriate mitigations are put in place for organisations involved in North-South and/or East-West cooperation.
- **The Social Conditions:** While community support in Northern Ireland for North-South cooperation may be impacted if East-West relations are perceived as having been damaged as a result of the Protocol's implementation (a perception more likely to take hold if it is replicated at the political level), the conditions for North-South cooperation are shaped to a significant extent by citizens' ability to engage in cross-border mobility. This includes, for example, their ability to work and to access public services in the other jurisdiction, to have their qualifications (including professional qualifications) recognised on a cross-border basis, to drive in the other jurisdiction without any additional insurance requirements. Moreover, that ability and the safeguarding of certain accompanying rights and entitlements is not currently dependent on whether a citizen is British, Irish or from any of the other 26 EU Member States. If a particular section of citizens in Northern Ireland were to see a reduction of their current rights and entitlements associated with cross-border mobility, this would likely undermine social cohesion and affect the conditions for North-South cooperation and relations.
- **The Regulatory Conditions:** The joint mapping exercise of North-South cooperation undertaken by the UK Government and European Commission offers a good understanding of the extent to which the conditions for such cooperation are affected by the degree to which there are common regulatory frameworks. The introduction of regulatory divergence will affect the conditions for North-South cooperation, whether directly or indirectly, unless mitigations for such divergence are actively and promptly put in place. This includes, for example, the rules governing the exchange of data, which is essential for some areas of North-South cooperation.

- **The Funding Conditions:** Unsurprisingly, the intensity of North-South (and East-West) cooperation is dependent on the levels of funding available, accessibility to such funding, and the diversity of those availing of that funding. Funding conditions for North-South (and East-West) cooperation are also affected by the degree to which there are any synergies between different funding streams, or any shared strategic approach adopted by funding entities (including governments), and whether an appropriate range of stakeholders, including those with experience of North-South and East-West cooperation, help shape those funding strategies. Currently, the EU's PEACE programme is a core pillar of the funding conditions for North-South cooperation, with the Ireland's Department of Foreign Affairs and Trade's Reconciliation Fund also playing an important role; the EU's INTERREG A programme supplies another significant pillar for the conditions for North-South cooperation, while also helping to create the conditions for East-West cooperation through the inclusion of Western Scotland in the Ireland-Northern Ireland-Western Scotland programme, and through its funding of the Ireland-Wales programme. In this regard it is important to note that the eligible area for the forthcoming PEACE PLUS programme does not include Western Scotland, nor are we aware of any similar future programme to replace the current Ireland-Wales programme. Moreover, there appears to be no explicit inclusion of a cross-border dimension in the proposed UK Shared Prosperity Fund, thereby potentially missing a vital opportunity to provide an equivalent to the Irish Government's Reconciliation Fund, one that could perhaps build on the East-West dimension.

2.6. These are some of the interrelated elements that make up the conditions necessary for effective North-South cooperation. If these elements are negatively affected by the implementation of the Protocol, then unless mitigations are put in place the necessary conditions for North-South cooperation will not be maintained. **It is vital, therefore, that the European Commission and the UK Government, along with the Irish Government and the Northern Ireland Executive, communicate clearly and publicly their understanding of these conditions, and how any potential impacts on those conditions will be mitigated in practical terms.**

### 3. Shared responsibility for maintaining the conditions for North-South cooperation

3.1. The key here is understanding the shared responsibility for maintaining the conditions for North-South cooperation. The development of policies and legislation in Belfast, London and Dublin (including the latter's implementation of Brussels directives), and any resulting divergence between them may impact negatively on the ability of actors on the ground to engage in North-South cooperation. Notwithstanding the absolute need not to undermine the functioning of Strand Two of the Belfast/Good Friday Agreement (or, indeed, any of the Agreement's parts), this also means the Northern Ireland Executive cannot be seen from the UK perspective as being solely or primarily responsible, along with the Irish Government, for maintenance of the necessary conditions for North-South cooperation.

3.2. While the six broad areas of cooperation where common policies and approaches can be agreed by the North South Ministerial Council, as well as the work of the six implementation

bodies established by the 1998 Agreement, are in line with the devolved powers of the Northern Ireland Executive and Assembly, it cannot be assumed that the conditions for all aspects of North-South cooperation can be maintained by the Executive and Assembly. The means to preserve those conditions will in some cases require the exercise of competences that have not been devolved to the Northern Ireland Executive and Assembly, and they will also be potentially impacted directly or indirectly by legislation enacted in London.

3.3. **It is important, therefore, that for the sake of clarification, the UK Government explicitly state how it will uphold its responsibility for maintaining the necessary conditions to enable Northern Ireland to engage in meaningful North-South cooperation**, although conscious of the fact that this can only be successfully achieved if the other parties fulfil their own responsibilities. The precise nature and extent of North-South cooperation between the governments in Dublin and Belfast is, of course, a matter for the Northern Ireland Executive and Assembly in regards Northern Ireland; but significant responsibilities for maintaining the underlying conditions for North-South cooperation “across the full range of political, economic, security, societal and agricultural contexts and frameworks”, including cooperation by non-governmental actors, will lie with the UK Government.

3.4. The need for clarity from the UK Government on this issue is all the more necessary in light of the publication in January 2019 of the “UK Government Commitments to Northern Ireland and its Integral Place in the United Kingdom”. That document was absolutely clear in committing the UK Government to not making any changes to any area of North-South cooperation as a result of the implementation of the Protocol without the explicit agreement of the Northern Ireland Executive. Indeed, this commitment has been enacted in Section 24 (“No alteration of North-South co-operation”) of the European Union (Withdrawal Agreement) Act 2020. Meanwhile paragraph 32 of the document suggests that Article 11 of the Protocol “does not require any application of EU law in Northern Ireland”, and that therefore “Cooperation will remain a matter for the two sovereign jurisdictions on the island of Ireland to decide in accordance with their respective legal regimes”.

3.5. Paragraph 34, however, refers to the crucial issue of the maintenance of the necessary conditions for North-South cooperation:

It is right, however, to ensure that the necessary conditions for practical cooperation are maintained. The net legal effect of the UK’s withdrawal and the implementation of a backstop arrangement would be substantial legal divergence of Northern Ireland away from the rules applying in Ireland, which will be governed throughout by EU laws in all relevant areas and will be subject to full EU supervision and enforcement mechanisms. This applies even in the context of the small fraction of EU Single Market rules that will continue to apply in Northern Ireland in a backstop scenario – the vast majority of Single Market rules and associated supervision and enforcement will cease to apply in Northern Ireland but will apply in full in Ireland. That is why it is right that there is a high level commitment to maintaining the conditions for cooperation, including on practical issues where there is widespread support for cooperation, such as on habitats and cross-border management of Special Areas of Conservation.

3.6. While it is acknowledged that “It is right [...] to ensure that the necessary conditions for practical cooperation are maintained”, and that “there is a high level commitment”, there is no detail on how the UK Government will discharge its responsibility in ensuring those conditions are maintained by introducing appropriate measures where these become necessary. Moreover, it is unhelpful to reduce (even if unintentionally) the scope of North-South cooperation “where there is widespread support for cooperation” to two interrelated examples. North-South cooperation is much more than this, and much of it takes place outside the formal structures of the North South Ministerial Council.

3.7. Such clarity remains necessary, despite the two paragraphs (48 and 49) on East-West and North-South cooperation contained in the UK Government’s command paper of May 2020 – “The UK’s Approach to the Northern Ireland Protocol”. Although this document declares “We have also committed in Article 11 of the Protocol to maintain the necessary conditions for North-South cooperation”, it does not set out *how* this will be achieved in any detail or in a manner comparable to the Government’s assurances to not making any changes to any area of North-South cooperation set out in the January 2019 document, which were subsequently incorporated into domestic legislation.

**3.8. Crucially, while the UK Government will play a vital role in ensuring Northern Ireland has the necessary conditions to undertake North-South cooperation, the European Commission will also need to assume its share of the responsibility for maintaining the conditions for North-South cooperation, and for monitoring how the implementation of the Protocol is affecting those conditions. To that end, it is vital that all parties undertake appropriate cross-border territorial impact assessments – “border-proofing” – of the Protocol’s implementation, and of the introduction of any new legislation, directives or other measures by any of the parties considered relevant to North-South cooperation.**

#### 4. Conclusion

4.1. For all parties (which includes the Irish Government and the Northern Ireland Executive) to properly monitor the impact of the implementation of the Protocol on the conditions for North-South cooperation, and to undertake meaningful “border-proofing” of any new policies or legislation, there needs to be sustained and effective engagement with those who are intimately involved in such cooperation. The Ad-Hoc Group for North-South and East-West Cooperation, which brings together a range of organisations with decades of accumulated experience in North-South and East-West cooperation and relations, represents an invaluable asset in this regard, and calls on all parties to continue and deepen their engagement with the Ad-Hoc Group, including through the bodies established under the Protocol.

4.2 The Ad-Hoc Group for North-South and East-West Cooperation is committed to work with the relevant parties to preserving and building on the full richness of the relations that bind us together across these islands.

**For further information or to engage with the Ad-Hoc Group please contact Dr Anthony Soares, (Director, Centre for Cross Border Studies) at [a.soares@qub.ac.uk](mailto:a.soares@qub.ac.uk).**