

# The Case for Enhanced Cross Border Co-Operation

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## Introduction

The UK's decision to depart the European Union has highlighted the difficulties that the existence of the border continues to present, not just to the economies that exist along the border itself, but also the wider economy on the island. In the past several years, the importance of cross border trade, seamless borders and the all-island economy were rightly in the spotlight, as both the UK and EU negotiated how the UK could leave the Union, without adverse impacts for the peace process and for the communities that benefit from the Good Friday Agreement (GFA). The ratification of the Ireland/Northern Ireland Protocol as part of the Withdrawal Agreement has ensured that the immediate risk of a "hard border" returning to the island of Ireland has been eradicated. However, questions remain as to how the Protocol will be implemented, and how the degree of co-operation that has evolved since 1998 will continue to function.

The conditions of the Good Friday Agreement that drove not only North-South co-operation, but also enhanced co-operation between Ireland and the UK, were made ideal because both jurisdictions shared EU membership. While the Protocol on Ireland and Northern Ireland contained in the Withdrawal Agreement is intended to protect the GFA and the gains of the peace process in all its parts, it may not be possible to fully mitigate many of the risks associated with Brexit. Therefore, it cannot be understated that the UK's exit represents an obvious challenge to the framework for North-South co-operation created by and resulting from the GFA.

## **The Case for Enhanced Co-Operation**

The important focus on the border, cross-border communities and the all-island economy since 2016 has also shone a light on other issues which require greater co-operation. Border impacts are not just limited to trade. They encompass social policy, regulation (particularly environmental regulation), infrastructure and competitiveness.

The two jurisdictions on the island of Ireland have traditionally had a lower than typical border effect, which is likely attributed to the shared history of Northern Ireland and the Republic of Ireland.<sup>1</sup> These historical, cultural, and linguistic commonalities reduce the effect of many of the typical impediments to cross-border trade, leading to greater prosperity for those – on both sides of the border – whose livelihoods depend on trade. This cohesion creates positive spill over effects into both domestic economies. The relative closeness of the economies was reiterated with firm level data and has been demonstrated to have an increasingly strong and positive effect in recent years.<sup>2</sup>

However, this relative 'closeness', which can be an asset to both economies on the island of Ireland (where increased prosperity in one jurisdiction promotes greater cross-border trade effects), can also be a liability, as inefficiencies on either side of the border move both jurisdictions onto sub-optimal growth trajectories with a greater effect than is typical of bordering countries.

What this demonstrates is that that externalities, both positive and negative, in either jurisdiction is transmitted to the partner jurisdiction more freely than is typical. This suggests a heightened need for co-ordination of activities so that the maximum benefit for the most number can be attained, while minimising the overall social and economic costs.

Chambers Ireland, and our members, are conscious that a lot more can be done to ensure that local economies across the island can prosper. As rightly pointed out in a briefing paper published by the Centre for Cross Border Studies, while the issue of the UK's departure from the EU may have provided an immediate focus on the question of cross-border impact assessment – or "border-proofing" – the underlying need for it predates Brexit and will continue to exist post-Brexit.<sup>3</sup>

Ahead of the recent Irish General election, Chambers Ireland called on the new Government to establish a "Super Junior" Ministry with responsibility for North-South Cooperation, which would focus on the infrastructural, economic, and regulatory impacts of government policy on border counties and Northern Ireland. It was, and is our view, that the creation of this post could support greater use of territorial impact assessments by state agencies, Regional Assemblies and Government departments on policies and proposed legislation, which can feed into the pre-legislative scrutiny process.<sup>4</sup>

While the new Government, formed in June of this year, did not create such a position in Cabinet, it has resolved in its Programme for Government to create a “Shared Island Unit” in the Department of An Taoiseach. This Unit will seek to work towards a consensus on a shared island; it will **examine the political, social, economic, and cultural considerations** underpinning a future in which all traditions are mutually respected.

As part of its work in the context of economic development, cohesion and trade, it will seek to do the following:

- continue to utilise the **All Island Civic Dialogue** as a forum for addressing Brexit-related issues and other challenges arising for the island.
- Enhance, develop, and **deepen all aspects of north-south cooperation** and the all-island economy.
- Seek to adopt an all-island approach to **national planning frameworks**.
- Explore how bodies established under the Good Friday Agreement can ensure that there is a **joined-up approach to environmental issues** on an all-island basis and seek to develop an all-island strategy to tackle climate breakdown and the biodiversity crisis.
- Work with the Northern Ireland Executive to deliver **key cross-border infrastructure** initiatives, including the A5, the Ulster Canal connection from Clones to Upper Lough Erne, the Narrow Water Bridge, and cross-border greenways, in particular the Sligo-Enniskillen Greenway (subject to feasibility).
- Work with the Executive and the UK Government to achieve **greater connectivity** on the island of Ireland.
- Promote an all-island approach to **land-use planning** and river-basin management plans to stop cross border pollution.
- Work with the Executive and the UK Government to commit to investment and **development opportunities** in the North West and Border communities, including third-level opportunities for young people from across the region at the Ulster University Magee Campus in Derry.
- Support a **north-south programme of research and innovation**, including an all-island research hub, through Universities Ireland.

The ambition in the Programme for Government in this context is laudable, but for this Unit to be effective, it will need to be driven by stakeholder engagement as well as inter-departmental collaboration, with increased North-South co-operation through the North-South Ministerial Council.

The issues for inclusion in this approach to policy making should not be exhaustive. But as a start, it should include the portfolios which impact the economic well-being of communities right across the island, namely trade, competitiveness, and infrastructure. In the following sections, we will outline some of the issues that could benefit from “border-proofing” and a more nuanced approach to investment, planning and policy development.

### *1. The All Island Economy and Cross Border Trade*

The issue which has gained the most attention since the UK voted to leave the EU has been the impact on trade, both between Ireland and the UK, but also between Northern Ireland and the 26 counties south of the border. A border of any kind to be administered between the two jurisdictions on the island raises serious concerns as to how supply chains would be managed, how local economies operating the border region would function, and most importantly, how peace and stability in the region would be sustained. Post-partition, the “All-Island Economy”, is a term that only came into its own in the years following the peace process.

To illustrate this fact, in a paper for the European Parliament’s Committee on Constitutional Affairs authored by David Phinnemore and Katy Hayward, it was noted that “all-island economic activity up to the early 1990s was characterised by ‘fragmentation’ [...] and [...] poor integration”.<sup>5</sup> This fragmentation manifested in long delays for trucks at the border for customs processing prior to the creation of the single market, inhibiting and obstructing cross-border trade. “In addition”, according to Phinnemore and Hayward, “there was the poor quality of road and railway systems connecting the two parts of the island. Based on import and export statistics provided by the Central Statistics Office, total trade between the Ireland and Northern Ireland in 1993 was IR£1,127 million” (ibid). The same statistics note the dominance of Great Britain (GB) as a market for both Northern Ireland and Ireland. This lack of cohesion in the past meant lost opportunity for growth in each jurisdiction.

However, through the European Commission’s influence, funding for regional development often came with clauses to the incentives for the Irish government and Northern Ireland Executive to collaborate, and so a habit of greater cross-border co-operation began to emerge. As the peace process progressed there was growing economic cooperation, integration and interdependence that followed the growth of cooperation in policy and political fields. Cross-border trade on the island of Ireland has grown substantially in the post-Agreement era. In 2015, Ireland accounted for 61% of Northern Ireland’s exports to the EU and for 34% of Ireland’s total exports. It also accounted for 49% of imports from the EU and 27% of total imports.<sup>6</sup> This leap in trade is crystallised in figures published by InterTradeIreland that show that in 1995, trade between Northern Ireland and Ireland was valued at €1,644.7m; by 2015 this had risen to €2,988.3m.<sup>7</sup>

After many months of negotiations to agree the Withdrawal Agreement, a customs and trade orientated border on the island was avoided, through the agreement of a situation where Northern Ireland would remain in both the EU’s Single Market, while simultaneously remaining in the UK’s Customs territory. The detail involved in the implementation is still to be determined, but it will be fair to assume that complexities will remain. The growth in all-island trade, particularly North-South trade, evolved not only because of co-operation, but also because of alignment in policy, particularly with respect of customs, regulations, and standards. The new arrangements under the Protocol alters the status quo, and without strategic co-operation, could cause diversion and disintegration.

If cross-border trade and the all-island economy are to continue to grow, it will require co-ordination of efforts to ensure that traders and businesses not only understand what will change, but also what has not changed and what opportunities remain. Organisations like InterTradeIreland will have a critical role to play and the North South Ministerial Council must also ensure that the continued access to the Single Market for traders in Northern Ireland is fully capitalised on. In general terms, SME engagement with the Single Market is an area that requires more attention. If legislators are to have success in offsetting any turbulence in trade

post-transition, they must ensure businesses, particularly SMEs, are empowered to play their strongest hand and make the most of all markets available to them. North-South co-operation in this regard must focus on customs training, communication of market opportunities, and provision of funding to support businesses to diversify. Lack of certainty or clarity in policy encourages businesses to be risk-averse, which may result in a decrease of cross-border trade. Through greater co-operation, trade can not only be protected, but economic opportunities can be properly exploited to the advantage of local economies and communities in all parts of the island.

## *2. Infrastructure and Competitiveness*

Competitiveness and productivity are problems for both Northern Ireland and the Republic of Ireland with both economies exhibiting high costs in the SME/non-traded sectors. Firstly, there are the skills shortages which exist in both jurisdictions and the mobility that highly skilled individuals from both Northern Ireland and the Republic of Ireland have traditionally exhibited. Secondly, businesses on the island of Ireland face obvious competitive disadvantages relative to competitors that are operating in the British, or continental Europe, domestic markets. Thirdly, both jurisdictions have higher input-factor costs relative to their competitors in either economy because of the scale of the domestic markets and the competitiveness challenges therein. With these three processes driving up costs, and reducing productivity, it becomes increasingly important to create efficiencies where possible, which is why infrastructure on the island is of such importance.

Given that investment in infrastructure is one of the few areas where there is freedom of action, it is of central importance to businesses of both jurisdictions that the most effective actions are taken. Inefficient infrastructure across the island is a burden that has been increasing costs for businesses while also depriving them of opportunity. Infrastructure is also an area that the “Shared Island Unit” has rightly identified as an issue which requires significantly more co-operation. This applies to everything from transport to energy. To achieve this, how we plan, fund and implement large scale capital projects needs to be jointly considered. In the implementation of these plans, strategic cross-border dialogue between legislators will need to be enhanced.

The National Planning Framework (NPF) affords Ireland the opportunity to support more effective regional, national and indeed all-island coordination and integration across a wide scope of stakeholders. In submissions made ahead of the NPF’s publication, Chambers Ireland recommended that successful implementation of the Framework would require regional and national strategies to be aligned and developed in close co-operation, and should include strategies on economic development, environmental protection and sustainability, decarbonisation, transport and energy infrastructure, broadband, flood defence and cross border cooperation. There must be greater levels of inter and intra-regional communication, co-operation, and coordination for each region to successfully differentiate and develop itself. The interdependence of places to one another must not be forgotten and the effective management of growth in a region will require stakeholders to engage with one another and with their neighbours to effectively plan and coordinate.<sup>8</sup>

While the Shared Island Unit has identified all-island infrastructure as a priority, this alone will not serve to improve how and where we invest. The delivery of capital investment is not as simple as identifying the need for a project, it must look at how these projects are determined and delivered. Firstly, when calculating social cost benefit analyses, it is not typical for states to consider the benefits that are experienced by those who are on the opposite side of the

border.<sup>9</sup> This results in sub-optimal border and cross-border infrastructure. Secondly there is scale. Looking narrowly at regions along each side of the border in their respective jurisdictions, or looking at the jurisdictions individually, it may not be possible to justify investing in pieces of infrastructure.

However, by taking a wider view on the impacts of an individual project or plan it may be possible to justify projects that would not be viable if the prospective benefits within only one jurisdiction were being considered. It is therefore even more important for those jurisdictions which are on islands to strive to do all that can be done to promote competitiveness relative to our trading partners, the alternative is wasteful of our providence; creating want where there should be wealth.

Given the uniqueness of the situation, if the potential of the All-Island economy is to be realised, legislators, planners and local government on both sides of the border must be enabled to collaborate, co-ordinate and communicate so greater cohesion can be achieved.

### *3. Environmental Regulation*

Lastly, an area of cross-border collaboration which will be essential following the end of transition relates to regulation, in particular, environmental regulation. EU membership provided the ideal context for regulatory activity, with shared environmental standards, supranational enforcement mechanisms, a funding agenda designed to encourage co-operation, and a trade agenda which removed the need for a hard border.<sup>10</sup> Transition from EU to UK law has the potential to significantly undermine this North-South regulatory alignment as there is a risk that a divergence – or uneven enforcement resulting in de facto regulatory divergence – will threaten the maintenance of environmental co-operation required by the Good Friday Agreement, and will result in increased disintegration in cross-border communities, where through regulatory and policy divergence, it becomes possible to undermine the spirit of various policy objectives.

Should the UK take a different path to the EU with its future environmental laws, this island would find itself in a scenario where there are two different legal frameworks covering the one relatively small biosphere. This could serve to undermine efforts in Ireland to implement EU principles if a more relaxed framework of environmental protections is created in the North; whereas an all-island environmental regulatory framework, with a transboundary consultation where impacts have the potential for effects of a transboundary nature has the potential to considerably advance efforts to achieve climate action goals in both jurisdictions over the coming decades as well as protecting the competitiveness of indigenous businesses.<sup>11</sup>

Common environmental standards play a crucial role in providing a level playing field and preventing unfair regulatory competition across key sectors in relation to cross-border trade, indirectly securing more robust protection of the environment.

Co-operation on issues relating to climate action extend outside of the EU legislative framework and encompass policies that can be initiated and legislated for in both Dublin and Stormont. For example, cohesion in carbon tax policy is one such area where North-South co-operation can positively benefit the environment and economies in both regions as it encourages alternative energy by making it cost-competitive with cheaper fuels. Lack of cohesion in carbon tax policy, for example, could be a major risk to local economies operating in the border regions as the change in consumer behaviour that is induced could be travelling for lower cost, and potentially less “green” options that compromise the climate ambitions of either region.

However, should the Irish Government proceed with gradual increases to carbon tax, as it is committed to in the recent Programme for Government, a significant price gap for fuels post-Brexit may emerge between the regions should the Northern Executive choose not to simultaneously adopt a corresponding measure.

Preserving cross-border cooperation and preventing unfair competition in relation to environmental protections post-Brexit will depend on maintaining the closest possible regulatory alignment, and regulatory co-operation, between Northern Ireland and the Republic of Ireland. Appropriate mechanisms need to be put in place to guarantee this close regulatory alignment on environmental and regulatory matters (i.e. to resolve any regulatory divergences and maintain common minimum standards at least as high as those currently in place). This should include consideration of the potential need to secure the on-going application of key EU Directives across the island of Ireland.<sup>12</sup> It could also include opportunities for stakeholders from both, or either jurisdiction to be consulted and feed into the process of pre-legislative scrutiny. Common frameworks will need to be developed between the UK, Northern Ireland and Ireland in order to safeguard agreement on co-operation.

## Concluding thoughts

Tremendous progress has been made over the past two decades to improve the economic cohesion and collaboration between the two jurisdictions on this island. In order to ensure that progress continues, it is imperative that we take the opportunity now to ensure that the frameworks for dialogue and decision making are robust and flexible enough to meet the challenges of the coming decade. The context of the UK's departure means that there is an urgency in having these frameworks. However, while the occasion of the UK's departure from the EU may have inspired the need for greater scrutiny on how we make policy and drive cross-border cooperation, the need for "border-proofing" as noted by the Centre for Cross Border Studies long predates Brexit, and will continue to exist long after the UK departs.

Our geography and status as a small island on the edge of Europe will continue to require us to consider the "shared" nature of our environment. At the dawn of a new decade, let us not waste the opportunity to ensure that economies and communities that exist throughout it can be improved and made more prosperous through better collaboration and increased cooperation.

## Notes

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<sup>1</sup> Emla Fitzsimons et al, "Explaining the Volume of North-South Trade in Ireland: A Gravity Model Approach" (1999).

<sup>2</sup> Martina Lawless et al, "South-North Trade in Ireland: Gravity and Firms from the Good Friday Agreement to Brexit" (2019).

<sup>3</sup> Anthony Soares, "The need for regulatory cross-border territorial impact assessment" (2019).

<sup>4</sup> Chambers Ireland, "General Election 2020: Chambers Ireland Manifesto" (2020).

<sup>5</sup> David Phinnemore and Katy Hayward, "UK Withdrawal (Brexit) and the Good Friday Agreement- A Study for the AFCCO Committee" (2017), p.22.

<sup>6</sup> House of Commons Northern Ireland Affairs Committee, "Northern Ireland and the EU referendum" (May 2016), p.7.

<sup>7</sup> InterTradelreland, "Potential Impact of WTO Tariffs on Cross-Border Trade" (2017).

- <sup>8</sup> Chambers Ireland, “Submission to Department of Housing, Planning and Local Government on the National Planning Framework: Ireland 2040” (2017).
- <sup>9</sup> Piet Rietveld, “Barrier Effects of Borders: Implications for Border-Crossing Infrastructures” (2012).
- <sup>10</sup> Sharon Turner, “Transforming Environmental Governance in Northern Ireland” (2006).
- <sup>11</sup> Juan Calero et al, “Summary Report 5: Regulatory Framework for Environmental Protection” (2016).
- <sup>12</sup> Northern Ireland Environment Link and Environmental Pillar, “Joint Briefing: Brexit and cross-border environmental cooperation on the island of Ireland” (2017).

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