

CENTRE FOR CROSS BORDER STUDIES

Briefing Paper:

Civic Society engagement in
maintaining the conditions for North-
South cooperation

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Introduction

The purpose of this Briefing Paper is to consider the extent to which the mechanisms established by the Protocol on Ireland/Northern Ireland as part of the [Withdrawal Agreement](#) that formalised the United Kingdom's departure from the European Union are open to engagement by civic society. More specifically, the objective is to assess how civic society organisations involved in North-South cooperation are able to inform those responsible for the implementation of the Protocol as to whether it is hampering their ability to collaborate cross-border.

But underlying considerations of how civic society may engage with the Protocol's mechanisms on issues regarding North-South cooperation is the wider principle of the active participation of civic society in the shaping of North-South and East-West relations, which is a principle that goes beyond the specific case of the Protocol. It is a principle at the heart of the [New Common Charter for Cooperation Within and Between these Islands](#), developed by a range of community organisations, and which:

“[came] about in recognition of the need for cross-border and cross-boundary cooperation to be independently valued and enacted at the grass-roots level, with people and communities setting their own priorities and advocating for their inclusion in regional and local strategies. Without this engagement, it will continue to be hostage to the political environment and the time-limited pursuit of European funding, hampering the ability of cross-border and cross boundary cooperation to contribute to the development of meaningful and productive relations among people and communities within and between these islands”.

In the preamble to the Protocol, the United Kingdom and European Union recognise “that cooperation between Northern Ireland and Ireland is a central part of the 1998 [Belfast/Good Friday] Agreement”, and recall “the commitment of the United Kingdom to protect North-South cooperation”. Article 11 of the Protocol sets out how “this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation”. The same article also states that “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”.

However, two issues arise that this Briefing Paper will outline. The first concerns the areas of North-South cooperation that may be encompassed by the Protocol, whereas the second is how will assessments be made of the extent to which the necessary conditions for North-South cooperation are being maintained.

The invisibility of informal, local and community-level cooperation

A mapping exercise on North-South cooperation was undertaken during the initial phase of the negotiations on the UK's withdrawal from the EU. 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.

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).

Given the lack of visibility afforded in this mapping exercise to cooperation in which many community organisations would normally be involved in, there is a risk that they will not readily be taken into account as the Protocol on Ireland/Northern Ireland takes effect. Therefore, the potential invisibility of areas of informal, local and community-level cooperation could result in those charged with monitoring the Protocol’s implementation, and specifically the extent to which the necessary conditions for North-South cooperation are being maintained, basing their conclusions on narrow criteria that marginalise forms of cooperation undertaken by community organisations.

Article 14 of the Protocol sets out the functions of the Specialised Committee, which shall:

- “(a) facilitate the implementation and application of this Protocol;
- (b) examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South implementation bodies set up under the 1998 Agreement;
- (c) consider any matter of relevance to Article 2 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland;
- (d) discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty; and
- (e) make recommendations to the Joint Committee as regards the functioning of this Protocol”.

In terms of designated channels of communication with the Specialised Committee on matters relating to North-South cooperation, Article 14 relies on the formal structures established under Strand 2 of the Belfast/Good Friday Agreement. There is no immediate

scope here for similar channels of communication between the Specialised Committee and those involved in informal, local and community-level cooperation, although the question arises as to whether this would have been the case had the independent consultative forum proposed in the 1998 Agreement and called for by the 2006 St Andrews Agreement been established.¹ **The current situation serves to underline the pre-existing absence of a North-South forum representative of civil society from the two jurisdictions, and whose absence will continue to be felt beyond the immediate issues arising from the Protocol. It is an absence that will contribute to the invisibility of informal, local and community-level cooperation in important moments of policy development and decision-making unless concerted action is taken to ensure engagement with civic society on a North-South basis.**

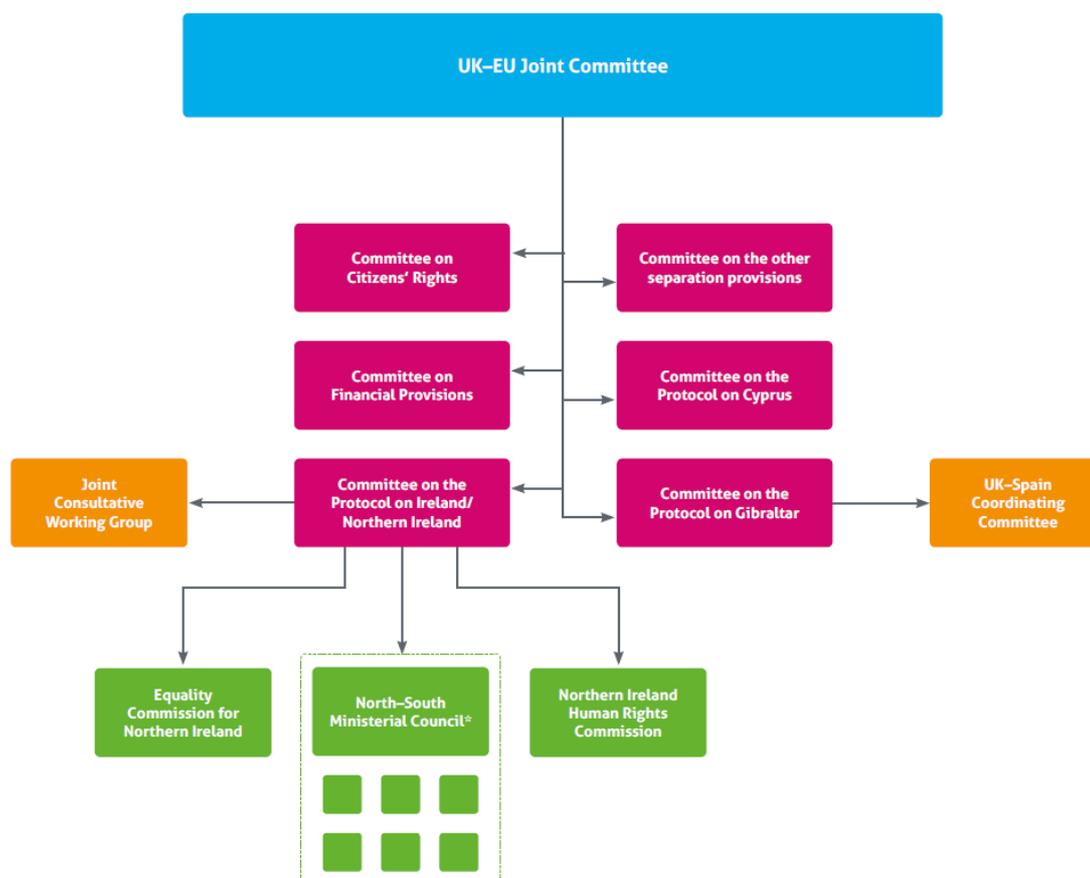
In order that any assessments of whether the necessary conditions for North-South cooperation are being maintained following the Protocol's implementation are fully informed, it is essential that the scope is widened to include levels of cooperation that may not have been captured in the mapping exercise of North-South cooperation. Without that widening of the field of North-South cooperation under consideration, and relying instead to a significant extent on formal cooperation structures more directly under political direction, any readings of the state of health of North-South cooperation are likely to be incomplete and not fully reflective of lived realities.

Moving towards a roadmap to engagement

A clear roadmap for engagement with civic society organisations involved in North-South cooperation and clarity around any mechanisms needed to ensure this engagement is urgently needed in order to help avert incomplete and therefore inaccurate assessments of the prevailing conditions for North-South cooperation under the Protocol. It is a question of *with whom* do civic society organisations engage with, and *how* do they undertake that engagement?

In terms of the first element of the question, a chart produced by the Institute for Government in a recent report points to the range of potential actors with whom civic society would need to engage with – or actors who should seek to engage with civic society. They are those who populate the governance structures arising from the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland, including the Joint Committee and Specialised Committee.

¹ Paragraph 19 in Strand 2 of the [Belfast/Good Friday Agreement](#) sets out: "Consideration to be given to the establishment of an independent consultative forum appointed by the two Administrations, representative of civil society, comprising the social partners and other members with expertise in social, cultural, economic and other issues". The 2006 [St Andrews Agreement](#) states that "The Northern Ireland Executive would support the establishment of an independent North/South consultative forum appointed by the two Administrations and representative of civil society".



Institute for Government, "[Managing the UK's relationship with the European Union](#)", p.9

Bearing in mind the focus of this Briefing Paper is on civic society participation in the monitoring of the conditions for North-South cooperation, it is important to note that it is the UK Government and the European Commission (on behalf of and directed by the European Union's Member States) who oversee and co-chair all levels of these governance structures. The Joint Committee, for instance, that according to Article 11 of the Protocol on Ireland/Northern Ireland "shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation", is "co-chaired by a Member of the European Commission and a representative of the Government of the United Kingdom at ministerial level" (as set out in Rule 1 in Annex VIII to the Withdrawal Agreement).² Those attending meetings of the Joint Committee are, according to Article 164 of the Withdrawal Agreement, "representatives of the Union and the United Kingdom", with each side informing the other before each meeting of "the intended composition of the delegations" (Rule 3, Annex VIII). Additionally, as part of the January 2020 "[New Decade, New Approach](#)" agreement that enabled the restoration of a functioning Northern Ireland Assembly and Executive after a three-year absence, a commitment was made by the UK Government that it would:

² The European Commission Vice-President, Maroš Šefčovič, and the Chancellor of the Duchy of Lancaster, Michael Gove, co-chaired the Joint Committee on its establishment, with Lord David Frost replacing Michael Gove on 1 March 2021.

“ensure that representatives from the Northern Ireland Executive are invited to be part of the UK delegation in any meetings of the UK-EU Specialised or Joint Committees discussing Northern Ireland specific matters which are also being attended by the Irish Government as part of the European Union’s delegation” (p.47).

This commitment to the inclusion of representation from the Northern Ireland Executive also points to how, on the EU side, representatives of Member States – including Ireland – may be part of the EU delegation in meetings of the Joint and Specialised Committees.

Similarly, Article 165 of the Withdrawal Agreement sets out how the specialised committees – including the Specialised Committee on the Protocol on Ireland/Northern Ireland – “shall comprise representatives of the Union and representatives of the United Kingdom” (paragraph 1). It also stipulates that “The Union and the United Kingdom shall ensure that their respective representatives on the specialised committees have the appropriate expertise with respect to the issues under discussion” (paragraph 3). Finally, Article 15 of the Protocol on Ireland/Northern Ireland establishes a Joint Consultative Working Group to “serve as a forum for the exchange of information and mutual consultation” (paragraph 1) that “shall meet at least once a month” (paragraph 5). Co-chaired by the EU and UK, “The working group shall be comprised of representatives of the Union and the United Kingdom” (paragraph 2).

Therefore, from the perspective of civic society organisations on the island of Ireland involved in North-South cooperation and looking to engage with those responsible for the implementation and monitoring of the Protocol, the principal actors are the UK Government (and the Cabinet Office in particular) and the European Commission (and especially the Service for the EU-UK Agreements).³ However, although they are not guaranteed permanent representation in meetings of the Joint Committee, the Northern Ireland Executive and Irish Government, as well as officials from the two jurisdictions, need also to be seen as important points of contact for civic society organisations.

The potential importance of the Belfast and Dublin administrations as interlocutors with civil society organisations involved in North-South cooperation is given an added dimension as a result of Article 14 of the Protocol. As previously noted, this sets out how the Specialised Committee will “examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council”. It is entirely reasonable that the North South Ministerial Council (NSMC) should have been seen as a privileged interlocutor with the Specialised Committee given its role as established by Strand 2 of the Good Friday/Belfast Agreement, which is:

³ As explained in a European Commission [press release](#) of 19 January 2021, the Service for the EU-UK Agreements became operational on 1 March 2021, replacing the Task Force for Relations with the United Kingdom.

“to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation and action within the island of Ireland – including through implementation on an all-island and cross-border basis – on matters of mutual interest within the competence of the Administrations, North and South”.

And yet **the NSMC’s ability to set out proposals to the Specialised Committee concerning the implementation and application of the Protocol, and its use as a site for civic society engagement, cannot be seen as divorced from the political conditions pertaining on the island of Ireland and Northern Ireland in particular. Whereas it would have made sense for community organisations involved in North-South cooperation to engage with the NSMC with regards to the Protocol, outright unionist opposition to the Protocol has made that a less realistic prospect.** Opposition to the Protocol among Northern Ireland’s unionist political parties saw the Democratic Unionist Party publish a [five-point plan](#) on 2 February 2021, which included the commitment “to send a strong signal to the Government of the Republic of Ireland that North-South relationships are also impacted by the implementation of a Protocol which they supported”. Effectively, that has meant some scheduled meetings of the NSMC being called off due to the failure of DUP ministers making themselves available to attend, particularly where any aspect of the Protocol is likely to be discussed. Since it could be difficult for the Northern Ireland Executive to reach an agreed position to take to the NSMC, it is therefore doubtful whether efforts by civic society organisations to communicate their views on the implementation of the Protocol to the NSMC would be reported by that body to the Specialised Committee.

The same difficulties pertain if civic society organisations seek to engage with the Northern Ireland Executive in light of provisions made for its attendance at meetings of the UK-EU Joint or Specialised Committees where Northern Ireland is to be discussed, and where the Irish Government will also be attending as part of the EU’s delegation. Here, again, **there is the risk that given divisions between its constituent parties, the Northern Ireland Executive would not be in a position to convey concerns or recommendations communicated to it by civic society organisations in relation to the maintenance of the necessary conditions for North-South cooperation.** This would also be an underlying concern if community society organisations were to pursue engagement with individual Northern Ireland government departments.

While this remains the political context in Northern Ireland, alternative *indirect* channels of engagement for civic society organisations would appear to be the Irish Government, the North-South implementation bodies established under Strand 2 of the Good Friday/Belfast Agreement, and the Human Rights and Equality Commissions. However, in terms of the latter, it is important to note that their ability to bring issues to the attention of the Specialised

Committee is limited to matters of relevance to Article 2 of the Protocol,⁴ whereas in terms of the implementation bodies (who are directly answerable to the NSMC), their focus will be on their own specific areas of operation. As for engaging with the Irish Government, this would appear to resonate with its role as a co-guarantor of the 1998 Agreement and of its constituent strands, including the North-South *and* East-West dimensions, and with its role as a Member State of the European Union that will have representation at meetings of the UK-EU Joint or Specialised Committees where Northern Ireland is to be discussed.

Nevertheless, while there is value in civic society organisations engaging with all these actors in order to highlight issues of relevance to the maintenance of the necessary conditions for North-South cooperation,⁵ they are not ultimately responsible for deciding whether those conditions are being maintained or not as the Protocol is implemented. That is why **the prime sites for civic society organisations on the island of Ireland involved in North-South cooperation and looking to engage with those responsible for the implementation and monitoring of the Protocol must always be the UK Government and the European Commission.** Moreover, **while it will be important for civic society organisations to engage with both parties separately, in order to guarantee transparency and a shared understanding of the issues, it is vital that regular and structured engagement takes place with the UK-EU Joint Committee and the Specialised Committee on the Protocol,** and that consideration should be given to similar engagement with the Joint Consultative Working Group.

Cementing the structures of engagement

There have been recent signs of efforts from the UK Government and the European Commission to jointly engage with civic society in relation to the implementation of the Protocol on Ireland/Northern Ireland. Following the seventh meeting of the Specialised Committee on 26 March 2021, for example, the UK Prime Minister's Office issued [a statement](#) that "welcomed the EU's commitment jointly to engage with business, civil society and other stakeholders in Northern Ireland". Similarly, the European Commission's [statement](#) following the same meeting noted "both parties agreed to start joint engagement again with business groups, civil society and other stakeholder in Northern Ireland". These statements reflect the fact that a meeting had taken place on 18 February 2021 involving the co-Chairs of the Joint

⁴ Article 2 of the Protocol (Rights of individuals) stipulates in paragraph 1 that the "United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union". The second paragraph states that the UK "shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards".

⁵ It is important to recognise, however, that this type of engagement requires significant investment from civic society organisations in terms of resources, which not all organisations will be in a position to avail of. This in turn raises questions of equity in terms of representation, and should place an onus on governments and relevant public authorities to put in place mechanisms to address these issues.

Committee and representatives of civil society in Northern Ireland, and that a subsequent meeting would take place on 23 April 2021 with representatives of the Specialised Committee.⁶

Although such meetings between civil society and the parties responsible for the implementation of the Protocol are a positive step, in order for them to become mutually beneficial to all concerned, and to avoid them resulting in frustration, unrealistic expectations, or undermining trust, they must become part of a meaningful and transparent structure. This implies the introduction of a number of measures, including:

- The identification of contact points for civic society organisations within the UK-EU Joint Committee and the Specialised Committee on the Protocol, with consideration to be given as to whether the same should apply to the Joint Consultative Working Group. In collaboration with civic society organisations, these contact points (perhaps the Committees' respective Secretariats) should triage issues being initially raised in order to decide whether they are relevant to the Protocol, the wider Withdrawal Agreement, or whether they could be more properly addressed bilaterally by the UK and Irish Governments, for example.
- Establishment of outline schedule of meetings between representatives of civil society and the UK-EU Joint Committee and Specialised Committee on the Protocol. Given the status and functions of these Committees, it may be more appropriate for meetings with the Specialised Committee to take place on a more regular basis.
- Consideration should be given as to the potential benefits of timetabling meetings with the Joint Consultative Working Group, particularly in light of its role "as a forum for the exchange of information and mutual consultation", and that Article 15 (paragraph 5) of the Protocol states that it "shall meet at least once a month", denoting a greater degree of regularity than in respect of the Joint and Specialised Committees.⁷
- Agendas for meetings between representatives of civil society and the Joint and Specialised Committees (and Joint Consultative Working Group, if such meetings are considered appropriate) should be agreed and made public in advance. Meetings must consider the progress made on issues raised previously and identify concrete action points and the parties responsible for implementing them. The status of the conditions for North-South cooperation must be a standing item on the agenda.

⁶ The author of this Briefing Paper attended both meetings in his capacity as Director of the Centre for Cross Border Studies and Convenor of the Ad-Hoc Group for North-South and East-West Cooperation. The meeting with the co-chairs of the Joint Committee was [reported by the BBC](#), among others, while his discussion points for the meeting with representatives of the Specialised Committee are publicly [available](#).

⁷ In this regard it is important to note that [in a letter](#) to the author of this Briefing Paper, the European Commission Vice-President and co-chair of the EU-UK Joint Committee, Maroš Šefčovič, stated that the Joint Consultative Working Group "serves solely the purpose of a forum for a formalised exchange of relevant information between the Union and the United Kingdom, but it is not entitled to take any substantive decisions".

- A record of the principal issues discussed should be made publicly available after each meeting.

These are only some of the measures that should be introduced in order to establish a meaningful and transparent structure for engagement between civil society and those responsible for the implementation of the Protocol on Ireland/Northern Ireland and for the overall Withdrawal Agreement. It will only be as a result of the introduction of such a structure that potential difficulties arising from the Protocol's implementation can be identified and addressed at an early stage, and that a mutual understanding can be reached as to the exact origins of issues giving rise to difficulties within and between communities in Northern Ireland and the island of Ireland.

Conclusion

Only a short time has passed since the end of the Brexit transition period and the beginning of the implementation of the Protocol on Ireland/Northern Ireland. However, in that short space of time it has become increasingly apparent that the UK Government and European Commission must seek a wider process of engagement with civil society that goes beyond the business community. While disruptions to business will undoubtedly have direct and indirect negative repercussions on wider society, we must avoid embarking on the search for solutions in the absence of representation from civic society organisations, otherwise we risk arriving at solutions that may remedy disruption to business but can simultaneously create problems in terms of social cohesion.

It is crucial, therefore, that a clear process for engagement between civic society organisations and those responsible for the implementation of the Withdrawal Agreement and its Protocol on Ireland/Northern Ireland is established as a matter of urgency. Recent meetings represent steps in the right direction, which must become part of a more structured approach, enabling civic society representatives and other stakeholders to be involved in an ongoing process that not only identifies relevant issues but also finds solutions and monitors their implementation.

Given that the UK and EU have jointly made a legal commitment that the "Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation", **it is imperative that civic society organisations involved in North-South cooperation are represented in any process for engagement between civic society and those responsible for the implementation of the Withdrawal Agreement and its Protocol.** It is only by ensuring these steps are taken that we can become more confident that all parts of the Good Friday/Belfast Agreement will be safeguarded in the new context resulting from the United Kingdom's withdrawal from the European Union.

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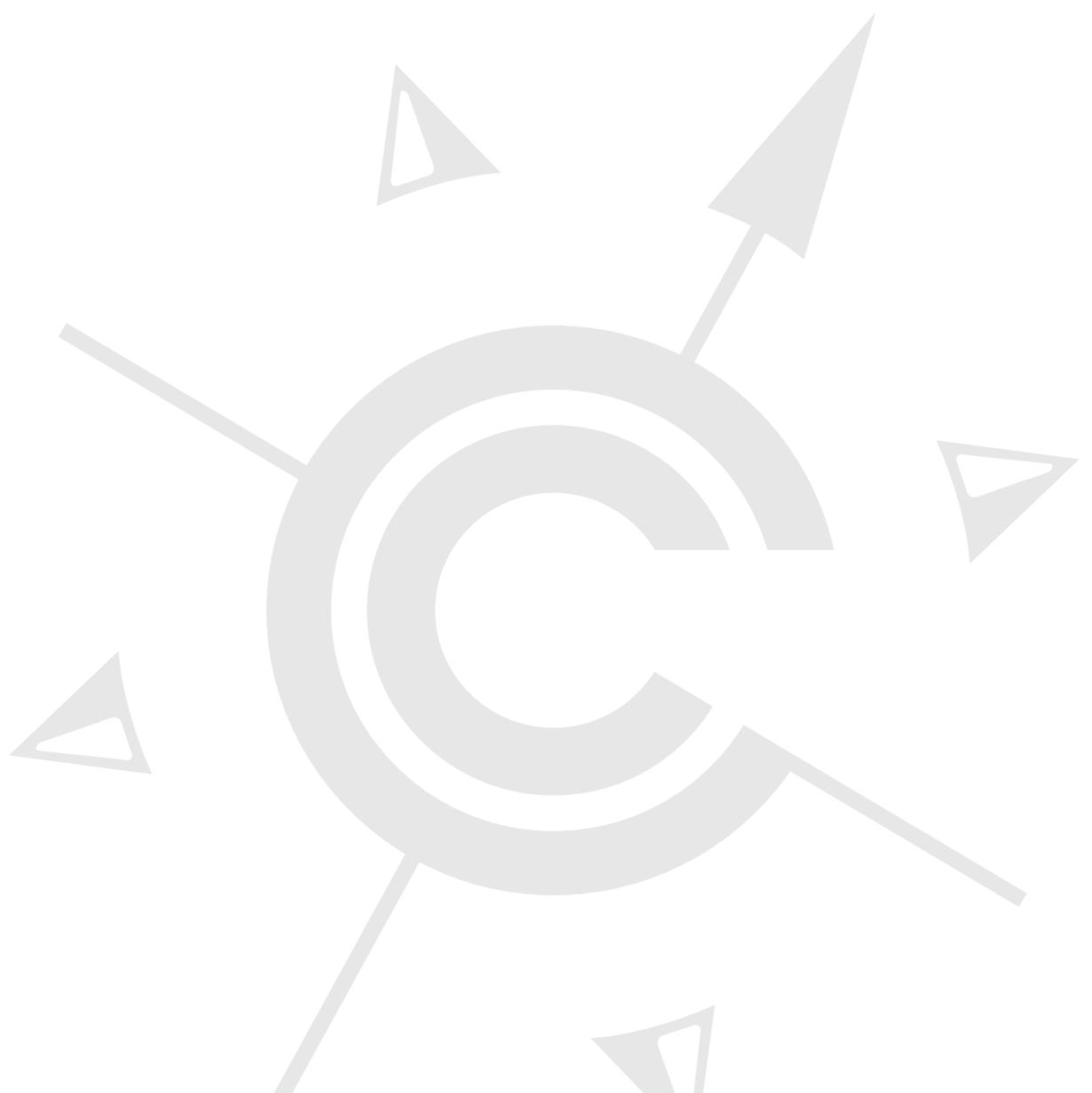
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