



The Ad-Hoc Group for North-South and East-West Cooperation

c/o Centre for Cross Border Studies

39 Abbey Street

Armagh BT61 7EB

***Supplementary Written Submission to the House of Lords European Affairs
Sub-Committee on the Protocol on Ireland/Northern Ireland's introductory
inquiry into the operation of the Protocol on Ireland/Northern Ireland***

5 November 2021

This document has been prepared by the Centre for Cross Border Studies on behalf of the Ad-Hoc Group for North-South and East-West Cooperation,¹ which it convenes, and it supplements the submission made on its own behalf by the Centre for Cross Border Studies in response to the initial call for evidence issued by the House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland.²

About the Ad-Hoc Group for North-South and East-West Cooperation

Established in May 2020, the Ad-Hoc Group for North-South and East-West Cooperation is a grouping of over twenty organisations from Northern Ireland and the Republic of Ireland on the front-line of the support and delivery of cross-jurisdictional initiatives on the island of Ireland, and between the island of Ireland and Great Britain across a broad spectrum of areas of interest, and with decades of accumulated experience. The primary objective of the Ad-Hoc Group is to secure the continued means to cooperate within and between the island of Ireland and Great Britain, and to act as the prime contact point for purposes of meaningful consultation between cross-border civil society organisations and regional, national and EU bodies on matters relevant to cooperation between Northern Ireland and Ireland, and between the island of Ireland and Great Britain. To this end the Ad-Hoc Group has been discussing with a range of UK and European Commission officials and political representatives (including from the Cabinet Office and the Secretary of State for Northern Ireland), as well as officials and political representatives in Northern Ireland and the Republic of Ireland on the issue of monitoring the quality and intensity of North-South cooperation, and how such

¹ This response was authored by Dr Anthony Soares, Director of the Centre for Cross Border Studies and Convenor of the Ad-Hoc Group for North-South and East-West Cooperation (a.soares@qub.ac.uk).

² The Centre for Cross Border Studies – Written evidence (IIO0020), <https://committees.parliament.uk/writtenevidence/36878/html/>.

monitoring must involve engagement with civic society organisations involved in such cooperation.³

About this submission

The short submission that follows is informed by the Ad-Hoc Group's particular concerns, expertise and priorities, focusing on the extent to which the UK Government's July Command Paper and the EU's proposals of 13 October provide opportunities for agreement and for effective monitoring of the maintenance of the necessary conditions for North-South cooperation.⁴ In terms of the latter, this will include how both sets of proposals address civic society engagement with the mechanisms of the Protocol on Ireland/Northern Ireland.

UK Government's July Command Paper

1. In its recounting of the domestic circumstances and negotiations that led to the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland, the UK Government's July Command Paper makes the following assessment of the approach taken in 2017:

However, this initial UK approach, of holding all three strands to be interlocking and of equal importance in line with the Belfast (Good Friday) Agreement, was not fully reflected in the December 2017 'Joint Report'. Although this document does refer to the importance of Strand Three, more weight is devoted to the protection of the North-South dimension. [Paragraph 7].

2. Although it can be assumed that the July Command Paper's concern with the East-West dimension is centred on trade between Great Britain and Northern Ireland rather than cooperation and relations between the two islands, it is important to note that most, if not all, the organisations involved in the Ad-Hoc Group for North-South Cooperation are active in cooperating with their counterparts in the other jurisdiction on the island of Ireland, *as well as* with counterparts in England, Scotland and Wales. This activity corresponds to the totality of relations encompassed by the Good Friday/Belfast Agreement.

3. The apparent disparity in the weight devoted by the Protocol to the protection of the North-South dimension in relation to the East-West dimension was an issue identified by the Centre for Cross Border Studies during the negotiations, and noted, for example, in a Briefing Paper published in August 2018, which concluded:

The post-Brexit preservation and development of the full range of socio-economic relations and North-South cooperation between the two jurisdictions on the island of Ireland are essential to the continued adherence to the 1998 Agreement. But so is the preservation and development of relations and cooperation between the island of Ireland and Great Britain, which includes not only relations between Northern Ireland and the rest of the UK, but also between England, Scotland, Wales and Ireland. That is

³ For more information on the Ad-Hoc Group for North-South and East-West Cooperation see <https://crossborder.ie/what-we-do/projects/ad-hoc-group/>.

⁴ HM Government, Northern Ireland Protocol: the way forward (21 July 2021), <https://www.gov.uk/government/publications/northern-ireland-protocol-next-steps>; European Commission, Protocol on Ireland/Northern Ireland: Commission proposes bespoke arrangements to benefit Northern Ireland (13 October 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5215.

to adhere to the full spirit of the Belfast/Good Friday Agreement. If we have (yet again) reached a point in the negotiations over the UK's withdrawal from the EU where the post-Brexit location of controls is being debated – whether customs, regulatory or both – this surely indicates that the full nature and geographical scope of the Belfast/Good Friday Agreement has not provided the central framework for those negotiations.⁵

4. Nevertheless, the Ad-Hoc Group for North-South and East-West Cooperation believes that in fulfilling its commitment set out in the preamble to the Protocol on Ireland/Northern Ireland 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 UK Government must not undermine the protections afforded to North-South cooperation by Article 11 of the Protocol. Instead, the Ad-Hoc Group recommends that the UK Government fully supports and facilitates East-West channels of civic society cooperation and engagement through the mechanisms established (or being established) under the EU-UK Trade and Cooperation Agreement (TCA), particularly the UK Domestic Advisory Group and the EU-UK Civic Society Forum. Moreover, given how the TCA may have the potential to impact on the effective implementation of the Protocol, it is crucial that East-West channels of communication are established between their respective mechanisms.

5. Paragraph 25 of the July Command Paper notes how 'There has been some constructive engagement through the structures established by the Withdrawal Agreement, including joint engagement with businesses and civic society in Northern Ireland'. In relation to proposals on consultation and legislative processes going forward, paragraph 71 calls for more robust arrangements that would 'provide a stronger role for those in Northern Ireland to whom [EU laws and rules] apply (including the Northern Ireland Assembly and Executive, and wider Northern Ireland civic society and business)'. However, while the Ad-Hoc Group for North-South and East-West Cooperation acknowledges that there has been some joint UK-EU engagement with civic society, and that there should be more robust arrangements put in place to provide a stronger role for civic society, it is essential that such arrangements must include representatives of civic society in the Republic of Ireland involved in North-South

⁵ Centre for Cross Border Studies, "Briefing Paper 4: The Belfast/Good Friday Agreement and the negotiations on the UK's withdrawal from the EU" (August 2018), p.27, Brexit and the UK-Ireland Border Briefing Paper Series, <http://crossborder.ie/site2015/wp-content/uploads/2018/08/Briefing-Paper-4.pdf>. It should also be noted that the Centre for Cross Border Studies' statement of November 2018 on the draft Withdrawal Agreement concluded: 'The Protocol on Ireland/Northern Ireland in the draft Withdrawal Agreement of November 14th represents the best deal on offer for Northern Ireland that safeguards against a 'hard' border on the island and protects North-South cooperation. **As it presently stands, however, the Protocol does not protect the totality of existing socio-economic relations within and between these islands, notably the East-West dimension, of the 1998 Belfast/Good Friday Agreement.** Although primarily concerned with the "unique circumstances on the island of Ireland", the Protocol could have more fully integrated the institutions created under Strand 3 of the 1998 Agreement, in recognition that some of the "unique circumstances" on the island of Ireland arise from its relations with Great Britain. However, we also recognise the difficulty in this, given the UK's decision to leave the Single Market and Customs Union' (p.3), <http://crossborder.ie/site2015/wp-content/uploads/2018/11/CCBS-Statement-on-draft-EU-Withdrawal-Agreement-of-14-November-2018.pdf>.

cooperation where issues relating to North-South cooperation are being discussed. No proper consideration or monitoring of North-South cooperation and the extent to which the Protocol on Ireland/Northern Ireland is safeguarding the necessary conditions for such cooperation can take place by engagement with only one pole of that cooperation. Indeed, to do so is to reinforce a damaging vision of Northern Ireland divorced from its external relations, and one that damages the framework of the Belfast/Good Friday Agreement as supportive of the totality of relations within and across these islands. As noted in paragraph 4 of this submission, the Ad-Hoc Group would hope that East-West channels of civic society cooperation and engagement should be facilitated through the mechanisms established (or being established) under the EU-UK Trade and Cooperation Agreement (TCA).

6. The Ad-Hoc Group for North-South and East-West Cooperation is supportive of the Command Paper's proposal in paragraph 77 that the UK and EU 'should agree a "standstill" on existing arrangements', as long as this were to be used for the purpose it sets out: 'to ensure there is room to negotiate without further cliff edges, and to provide a genuine signal of good intent to find ways forward'. Currently, it does not appear that this is happening, which would represent a failure to grasp the opportunity to create a space for discussion conducive to the maintenance of stability in Northern Ireland. The parties to the discussions must show they are continually employing the tone and civility required for solution-orientated thinking rather than confrontation, and there is a need for strong but also conciliatory leadership – there are not mutually exclusive.

EU proposals of 13 October 2021

7. As in the UK Government's July Command Paper, the EU's proposals of 13 October included suggestions on structures for engagement with civic society stakeholders, set out in its Protocol on Ireland and Northern Ireland Non-Paper: Engagement with Northern Ireland Stakeholders and Authorities.⁶ Among the core issues of addressed by these proposals are:⁷ increased transparency; the work of the Joint Consultative Working Group (JCWG); fora for structured dialogue; structured dialogue between stakeholders and co-chairs of the Joint Committee; and participation of stakeholders at the Specialised Committee.

8. To an extent these proposals address some of the concerns of the Ad-Hoc Group for North-South and East-West Cooperation in terms of engagement with the mechanisms established by the Protocol, and touch on the suggestions put forward by the Centre for Cross Border Studies in a May 2021 Briefing Paper that acknowledged some initial joint UK-EU engagement with civic society representatives. That Briefing Paper stated:

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

⁶ European Commission, Protocol on Ireland and Northern Ireland Non-Paper: Engagement with Northern Ireland Stakeholders and Authorities, https://ec.europa.eu/info/publications/protocol-ireland-and-northern-ireland-non-paper-engagement-northern-ireland-stakeholders-and-authorities_en.

⁷ The Ad-Hoc Group also notes the pressing need for "myth-busting" – and independent fact-checking service – as part of a process of structured engagement, thereby countering the effects of scaremongering and political posturing.

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.
- 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.
- A record of the principal issues discussed should be made publicly available after each meeting.⁸

9. While the EU's proposals contain greater detail on the potential structures for engagement with the mechanisms of the Protocol than the UK Government's Command Paper, the Ad-Hoc Group for North-South and East-West Cooperation is concerned that they also do not envisage representation from civic society organisations in the Republic of Ireland. This is a serious shortcoming, and such representation must be an essential element in contributing

⁸ Centre for Cross Border Studies, "Briefing Paper: Civic Society engagement in maintaining the necessary conditions for North-South cooperation" (May 2021), pp.8-9, <https://crossborder.ie/newsite/wp-content/uploads/2021/09/NORTH-1.pdf>.

to the ongoing monitoring of the extent to which the Protocol is maintaining the necessary conditions for the Protocol.

10. In particular, paragraphs 17 to 19 of the Non-Paper refer to the establishment of fora for structured dialogue ‘to enable views to be expressed in the areas relevant for the implementation of the Protocol’ (paragraph 18). It is critical that one of these fora should be devoted to Article 11 of the Protocol, and that it involves engagement of civic society from both jurisdictions on the island of Ireland.

Areas of agreement between the two parties

11. In what immediately concerns the Ad-Hoc Group for North-South and East-West Cooperation, there is a general level of consensus between the UK Government and the European Commission in terms of the need for more structured engagement with civic society. However, based on the precedent that relevant meetings of the mechanisms established under the Protocol on Ireland/Northern Ireland have included representatives from the Irish Government, the existing level of general agreement on structured engagement with civic society must be extended to a specific agreement on representation from relevant civic society organisations from the Republic of Ireland where matters related to North-South cooperation are being discussed. Moreover, for structured engagement to work effectively, it needs to be resourced and supported by the parties, thereby providing civic society organisations who are on the frontline of service delivery the necessary capacity to engage.

The implications if agreement is not reached on areas of disagreement

12. The Ad-Hoc Group for North-South and East-West Cooperation stresses the need for the UK Government and the European Union to continue discussions on areas of disagreement, recalling the valuable space provided by the UK’s Command Paper proposal on a “standstill” on existing arrangements. If both parties do not approach discussions with the necessary tone and language to reduce tensions, the serious implications for relations within Northern Ireland, and for relations between Northern Ireland and the Republic of Ireland, between the island of Ireland and Great Britain, and between the UK and the EU cannot be underestimated. This is particularly the case if either side reneges on its existing legal commitments under the Withdrawal Agreement and its Protocol on Ireland/Northern Ireland.

13. Any move to renege from the existing commitments set out in the Protocol in the absence of agreed solutions to resolve issues arising from its implementation will further undermine confidence and trust in relation to commitments set out in other important agreements for Northern Ireland, including the 1998 Belfast/Good Friday Agreement and the 2020 New Decade, New Approach agreement. While the UK Government’s July Command Paper notes that ‘the absence of buy-in to the existing arrangements from the unionist community leaves an ongoing tension within the power-sharing institutions, undermining the basis which the

Belfast (Good Friday) Agreement established for those institutions to function effectively' (paragraph 29), abandonment of the discussions to reach agreement between the UK and EU on the Protocol and the commitments contained therein will do nothing to secure the institutions established by the Good Friday Agreement. On the contrary, the resulting breakdown in trust and the absence of the necessary leadership and accountability will increase the threat to those institutions, and to the totality of relations encompassed by the 1998 Agreement – relations within and across these islands.