



Briefing to the Committee for the Executive Office:

The commitments in the Ireland/Northern Ireland Protocol and the Trade and Co-operation Agreement in relation to civic engagement and the opportunities for establishing mechanisms for such engagement

Executive summary

- There is currently no adequate system for structured, regular, and transparent engagement between civic society here and representatives of regional, national or EU bodies.
- This is perhaps exacerbated by the lack of existing structures for engagement with UK civic society in general, and with Northern Ireland civic society in particular and has been exposed during periods of major transition such as the ongoing Brexit process, which necessitates consultation with civic society on the Withdrawal Agreement (including the Protocol) and the Trade and Cooperation Agreement (TCA).
- As a result, policymakers at a local, UK Government and EU level wishing to consult with Northern Ireland stakeholders in relation to the Protocol are doing so on an ad-hoc basis, with no readily transparent or structured process.
- This is not reflective of civic society's willingness to engage or its ongoing attempts to do so, as seen in the establishment of the Ad Hoc Group for North-South and East-West Cooperation, the Northern Ireland Civic Working Group on the Protocol, the Northern Ireland Business Brexit Working Group, to name some examples.
- Crucially, civic society's desire to engage and to collaborate is a longstanding one and predates the UK's withdrawal from the EU as reflected in the work The Centre for Cross Border Studies began in late 2014 with a broad range of civic society organisations from Northern Ireland and the Republic of Ireland, as well as England, Scotland and Wales, to produce an agreed vision and set of principles for cooperation – the New Common Charter for Cooperation Within and Between these Islands.
- Looking to the near future, outstanding structures for engagement with civil society, agreed under the TCA include the establishment of respective UK and EU Domestic Advisory Groups, and a Civil Society Forum.

- In addition, the Government's July Command Paper and the European Commission's October proposals to reform the Protocol include recommendations for better and more transparent engagement with civic society, most notably the establishment of fora for structured dialogue between stakeholders (including NI civic society and business), experts working in EU institutions and their UK counterparts (including Northern Ireland authorities).
- While these proposals are welcome, we propose additional practical measures to further improve engagement as outlined on pages six and seven of this briefing.
- Furthermore, it should be noted that no proper monitoring as to whether implementation of the Protocol is maintaining the necessary conditions for North-South cooperation can be undertaken without engagement with civic society from both poles of that dimension of cooperation.
- Regarding the lack of protection afforded to East-West cooperation under the Protocol, it is crucial that the UK Government fully supports and facilitates East-West channels of civic society cooperation and engagement through the mechanisms established (or being established).

About The Centre for Cross Border Studies

The Centre for Cross Border Studies (CCBS), based in Armagh, Northern Ireland, has a strong reputation as an authoritative advocate for cross-border cooperation and as a valued source of research, information and support for collaboration across borders on the island of Ireland, between the island of Ireland and Great Britain, elsewhere in Europe and beyond.

The Centre empowers citizens and builds capacity and capability for cooperation across sectors and jurisdictional boundaries on the island of Ireland and further afield. This mission is achieved through research, expertise, partnership and experience in a wide range of cross-border practices and concerns.

1. Current structures for engagement from *all* stakeholders on the implementation of the Protocol under the Withdrawal Agreement

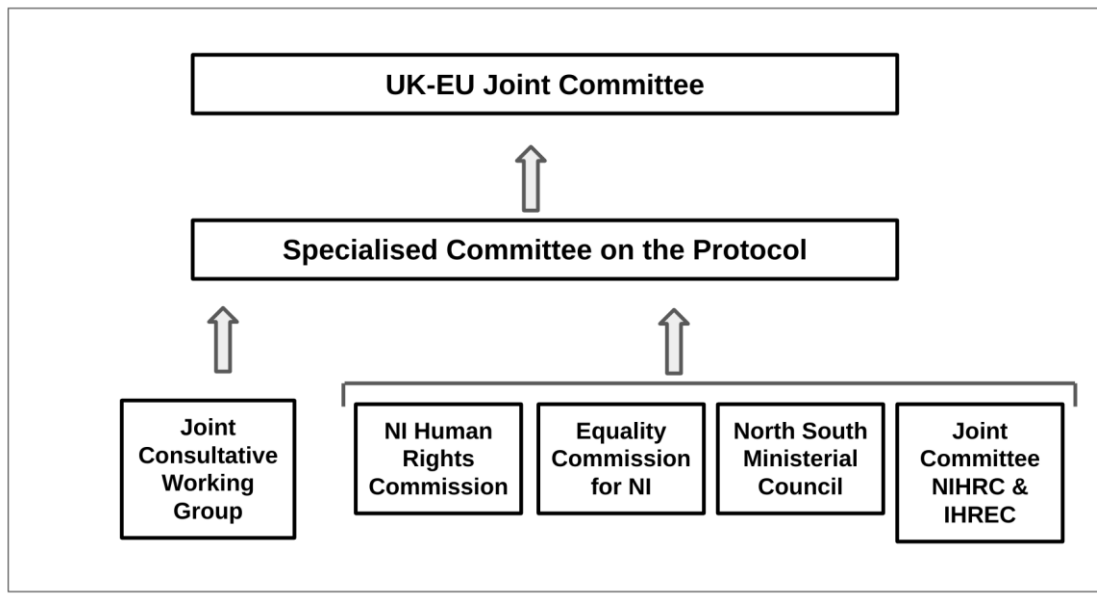


Table 1: Governance structure for the Withdrawal Agreement relating to the Protocol on Ireland /NI

- **UK-EU Joint Committee**

The Joint Committee oversees UK and EU implementation, application and interpretation of the Withdrawal Agreement, including the Protocol, and seeks to resolve any issues that may arise during implementation. It must meet at least once a year (currently more regularly). It supervises the work of six Specialised Committees, and takes decisions on their recommendations. The Joint Committee is co-chaired by the UK (David Frost) and the EU (Maroš Šefčovič).

- **Specialised Committee**

One of the six committees feeding into the Joint Committee is the Specialised Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland. It comprises

officials appointed by the UK and the EU and has no decision-making powers. It must meet at least once a year. Although not set out in Article 14 of the Protocol (on the Specialised Committee), the practice has been that representatives from Northern Ireland (invited by the UK) and from the Republic of Ireland (invited by the EU) have been in attendance at meetings of the Specialised Committee.

- **Joint Consultative Working Group**

The Joint Consultative Working Group (JCWG) was established to feed into the work of the Specialised Committee and ‘serve as a forum for the exchange of information and mutual consultation’. It has no decision-making powers. It must meet at least once per month. It is made up of representatives from the EU and UK and co-chaired by them. The regularity of its meetings and its membership makes the JCWP, in theory, the structure which comes closest to a litmus test for how the protocol is operating in NI. However, as outlined below, there are a number of reasons why this is not currently the case.

- **Ad-Hoc meetings**

Ad-hoc meetings have been taking place between Northern Ireland business representatives and civic society and the respective chairs of the UK-EU Joint Committee and of the Specialised Committee on the Protocol. Such meetings have been held both with the UK and EU jointly chairing, and with the UK and EU sides separately.

2. Assessment of current structures for civic society engagement under the Withdrawal Agreement

There is currently no adequate system for structured, regular, and transparent engagement between civic society and these committees. This is perhaps exacerbated by the lack of existing structures for engagement with UK civic society in general, and with Northern Ireland civic society in particular. As a result, policymakers at a local, UK Government and EU level wishing to consult with Northern Ireland stakeholders in relation to the Protocol are doing so on an ad-hoc basis, with no readily transparent or structured process. Recent moves made by the UK Government and the European Commission, both jointly and separately, to engage with civic society representatives are a welcome step, and have resulted in meetings attended by representatives from the Centre for Cross Border Studies and the Ad-Hoc Group for North-South and East-West Cooperation, which the Centre convenes. Nevertheless, there is a clear lack of an underpinning structure and process.

3. Engagement structures agreed under the TCA

Domestic Advisory Group

Under Article 12 (Participation of civil society) of the Trade and Cooperation Agreement, the UK and EU committed to each create a Domestic Advisory Group (DAG) which, according to Article 13, will comprise ‘a representation of independent civil society organisations including non-

governmental organisations, business and employers' organisations, as well as trade unions, active in economic, sustainable development, social, human rights, environmental and other matters.' Each Party committed to consult their DAG on issues covered by the TCA and any supplementing agreement at least once a year. They also agreed to promote interaction between their respective DAGs. It is envisaged that the UK DAG will generally meet twice a year and will rotate between all four nations of the UK. This is to be supplemented by the ongoing engagement of UK Government Departments in between plenary sessions and by the Brexit Business Taskforce.

Status update:

- On 8 August 2021, the Cabinet Office launched a consultation on engagement with business and civil society groups,¹ to which the Centre for Cross Border Studies submitted a response.²
- On 14 October 2021, the Cabinet Office issued a call for expressions of interest for membership of the UK DAG and the EU-UK Civil Society Forum (see below). The original deadline for submission of expressions of interest was 9 November 2021, but was subsequently extended to 29 November.
- The UK Government has stated its intention that 'involvement in these groups is as balanced as it can be, including considering geographical and regional representation'.
- It is noteworthy that the UK Government made clear in its response to the consultation, published on 19 October,³ that it will not provide any financial support to organisations taking part in these mechanisms.
- At the time of writing there has been no announcement of the outcome of the expression of interest campaign or a date for the first meeting of the UK DAG.
- The EU's DAG, on the other hand, held its first meeting on 25 November, with the agenda including the election of a Chair, the provisional adoption of rules of procedures, and a discussion on priorities.⁴

Civil Society Forum

Under Article 14 of the TCA, the UK and EU agreed to establish a Civil Society Forum to conduct a dialogue on the implementation of Part Two of the TCA, which covers trade, transport, fisheries and other arrangements. The Civil Society Forum will be open for the participation of independent civil society organisations established in the EU and UK, including members of the UK and EU

¹ See Cabinet Office, [Consultation on engagement with business and civil society groups](#) (8 August 2021).

² Centre for Cross Border Studies, [Submission to the consultation on Government engagement with business and civil society groups on implementation of the Trade and Cooperation Agreement](#) (13 September 2021).

³ HM Government, [Government Response to the Consultation on Engagement with Business and Civil Society Groups on the Implementation of the Trade and Cooperation Agreement](#) (19 October 2021).

⁴ The meeting elected Tanja Buzek of the European Economic and Social Council as Chair, and nominated Luisa Santos, Deputy Director General of Business Europe, and Tina Blohm of Friedrich Ebert Stiftung as Vice-Chairs.

DAGs. Each Party has agreed to ‘promote a balanced representation, including non-governmental organisations, business and employers’ organisations and trade unions, active in economic, sustainable development, social, human rights, environmental and other matters’.

Status update:

- At the time of writing there has been no announcement of the outcome of either the UK or EU expression of interest campaigns regarding the Civil Society Forum, or a date for the first meeting of the Forum.

4. Most recent UK and EU proposals for enhanced civil society engagement

The UK’s July Command Paper and the EU’s October proposals give further detail on potential engagement with civic society. Both are analysed below.

UK Government’s July Command Paper

In relation to proposals on consultation and legislative processes going forward, Paragraph 71 of the UK Government’s July Command Paper 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)’.

EU proposals of 13 October 2021

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’.⁵ Among the core issues addressed by these proposals are:

- increased transparency;
- improving the work of the Joint Consultative Working Group (JCWG);
- fora for structured dialogue between stakeholders (including NI civic society and business), experts working in EU institutions, bodies and agencies and their UK counterparts (including Northern Ireland authorities);
- structured dialogue between stakeholders and co-chairs of the Joint Committee;
- participation of stakeholders at the Specialised Committee.

⁵ European Commission, [Non-Paper – engagement with Northern Ireland stakeholders and authorities](#) (13 October 2021).

5. Assessment of most recent UK and EU proposals for enhanced civic society engagement

To an extent these proposals address some of our concerns in terms of engagement with the mechanisms established by the Protocol.⁶ Although meetings between civic 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 civic 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 civic 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.
- A **record of the principal issues discussed should be made publicly available** after each meeting.

6. Transboundary cooperation and UK and EU proposals for civic society engagement

Given its core mission, the Centre for Cross Border Studies has further central concerns regarding the UK and EU's proposals on enhanced civic society engagement, and the extent to which the

⁶ More detail on this can be found in the Centre for Cross Border Studies' Briefing Paper, [Civic Society engagement in maintaining the conditions for North-South cooperation](#) (May 2021).

mechanisms envisaged are capable of safeguarding transboundary cooperation in the context provided by the UK's withdrawal from the EU.

- Paragraphs 17 to 19 of the European Commission's 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 (Other areas of North-South cooperation), and that it should involve engagement of civic society from both jurisdictions on the island of Ireland. No proper monitoring as to whether implementation of the Protocol is maintaining the necessary conditions for North-South cooperation can be undertaken without engagement with civic society from both poles of that dimension of cooperation.
- Given that the Protocol on Ireland/Northern Ireland does not provide specific mechanisms for the safeguarding and monitoring of East-West cooperation,⁷ it is crucial 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.⁸

7. Existing models for engagement on dialogue and cooperation

There are multiple official forums for engagement and dialogue on a political and policymaking level, which have the potential to be models at civic society level, including:

- The British Irish Council
- The British Irish Parliamentary Assembly
- The North South Ministerial Council
- The Interparliamentary Assembly (NI Assembly and Oireachtas)

Additionally, Article 11 (Parliamentary cooperation) of the TCA provided for the establishment of 'a Parliamentary Partnership Assembly consisting Members of the European Parliament and of Members of the Parliament of the United Kingdom, as a forum to exchange views on the

⁷ Although the preamble to the Protocol refers 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', its constituent articles do not make reference to East-West cooperation.

⁸ The Centre for Cross Border Studies has previously raised its concerns regarding the lack of protection afforded to East-West cooperation during the 2018 negotiations. See, for example, [The Belfast/Good Friday Agreement and the negotiations on the UK's withdrawal from the EU](#) (August 2018), p.27; and [Centre for Cross Border Studies Statement on draft Agreement on the withdrawal of the United Kingdom from the European Union](#) (20 November 2018).

partnership'.⁹ The PPA may request information from and make recommendations to the Partnership Council which is chaired by the UK (David Frost) and EU (Maroš Šefčovič) to oversee the implementation, application and interpretation of the TCA. It is anticipated that the first meeting of the PPA could be held in early 2022.

8. Existing civic society engagement

Despite the lack of formal mechanisms for civic engagement, civic society has gone to great lengths to provide that engagement when requested. There are a number of groups which have come together to provide core points for engagement between regional, national and EU bodies and civic society here on a number of issues, including but not limited to the impact of the Protocol. These include the Ad Hoc Group on North-South and East-West Cooperation,¹⁰ the Northern Ireland Civic Working Group on the Protocol, as well as the Northern Ireland Business Brexit Working Group.

The New Common Charter

The absence of any structured system for civic society engagement is not reflective of civic society's willingness to engage or its ongoing attempts to do so. Civic society here has already started drawing up principles for engagement on issues impacted by the TCA and the Protocol.

Crucially, civic society's desire to engage and to collaborate is a longstanding one and predates the UK's withdrawal from the EU. An important reflection of this is the work Centre for Cross Border Studies began in late 2014 with a broad range of civic society organisations from Northern Ireland and the Republic of Ireland, as well as England, Scotland and Wales, to produce an agreed vision and set of principles for cooperation – the New Common Charter for Cooperation Within and Between these Islands.

This initiative to empower civic society to drive cross-border, North-South and East-West cooperation across these islands is more important now than ever before. It includes within it a clear desire to engage to 'Improve policy-making by matching it to the realities on the ground and identifying cross-border opportunities to collaborate to solve shared problems or exploit common resources'.¹¹

⁹ The European Parliament intends to appoint a delegation of 35 members to the PPA. This matches the envisaged size of a UK delegation, respecting the party balances in both Houses, with 21 MPs and 14 Lords members. The full PPA is likely to meet twice yearly and it is anticipated that observers from the devolved legislatures will also be invited to attend. The PPA will be led by a Bureau, consisting of a Co-Chair from both delegations. The Bureau is likely to meet between plenary meetings. For more see [update from House of Lords Commission on EU-UK Parliamentary Partnership Assembly](#) (25 November 2021)

¹⁰ For more on the Ad-Hoc Group for North-South and East-West Cooperation, see <https://crossborder.ie/what-we-do/projects/ad-hoc-group/>.

¹¹ [A New Common Charter for Cooperation Within and Between these Islands](#).

9. Conclusions

- There is currently no adequate system for structured, regular, and transparent engagement between civic society here and representatives of regional, national or EU bodies.
- It is at times when such a system would be most beneficial that its absence is also most strongly exposed, i.e. during moments of social, economic and political upheaval such as Brexit, and the Covid-19 pandemic.
- Civic society in Northern Ireland is ready and eager to engage in a structured way with policymakers at all levels who may find civic society's collective insights beneficial in a decision-making process which ultimately lies with our democratically elected representatives.