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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

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This document has been prepared by the Centre for Cross Border Studies in response to the call for evidence issued by the House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland.¹

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 (for more details visit www.crossborder.ie).

The short submission that follows, therefore, is closely informed by the Centre's particular knowledge of and experience in cross-border socio-economic development involving a range of sectors from both Northern Ireland and Ireland, including public bodies, business and civil society. **It is also centred on the Centre's ongoing efforts in monitoring the extent to which the necessary conditions for North-South cooperation are being maintained following the UK's withdrawal from the EU,**² as well as the Centre's role in convening the Ad-Hoc Group

¹ This response was authored by Dr Anthony Soares, Director of the Centre for Cross Border Studies (a.soares@qub.ac.uk).

² The Centre has responded to a range of relevant parliamentary inquiries and produced a number of Briefing Papers, which can be consulted at <http://crossborder.ie/category/research-and-policy/policy/consultation-responses/> and <http://crossborder.ie/category/research-and-policy/policy/briefings/>.

for North-South and East-West Cooperation,³ and will only focus on issues more immediately relevant to our work.

Political and social impacts upon Northern Ireland of the Protocol on Ireland/Northern Ireland

1. It is important to recognise from the outset that the Protocol on Ireland/Northern Ireland is the negotiated legal outcome resulting from the political choices made by the UK Government in relation to the nature of the withdrawal from the European Union it wished to pursue. In this sense the Protocol is an effect of a wider political turn that would find it difficult to fulfil commitments not to undermine the 1998 Belfast/Good Friday Agreement in any of its parts, and whose consequences – forecast repeatedly by many – have placed Northern Ireland under severe political strain.

2. Those strains are playing out in several ways, including in terms of the stance taken by Unionist parties in relation to North-South cooperation and the Strand 2 institutions established by the Good Friday/Belfast Agreement. Thus, the Democratic Unionist Party's five-point plan of 2 February 2021 set out 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",⁴ which has effectively meant some scheduled meetings of the North South Ministerial Council being called off due to the failure of DUP ministers making themselves available to attend.⁵ However, the Centre for Cross Border Studies considers actions to undermine one strand of the 1998 Agreement in reaction to perceived threats to another strand (in this case the East-West dimension) as ultimately reducing the space to find potential resolutions. It also politicises North-South cooperation and fosters divisiveness by encouraging perceptions that Strands 2 and 3 of the Belfast/Good Friday Agreement are differently valued by unionist and nationalist politicians, with allegiance to one suggesting less than fulsome support for the other.

3. The Centre for Cross Border Studies notes that there has been a failure to take responsibility for political choices made and to be honest with citizens in regards to the consequences of those choices, therefore making it more difficult to arrive at realistic solutions. In this context, the Protocol has become the scapegoat that must be sacrificed immediately, even in the absence of any viable and agreed alternative in place, and even if this entails unilateral actions

³ The views expressed in this submission are entirely those of the Centre for Cross Border Studies, and should not be seen as representing the opinions of the organisations supporting the Ad-Hoc Group for North-South and East-West Cooperation. For further information on the Ad-Hoc Group, see <https://crossborder.ie/ad-hoc-group-for-north-south-and-east-west-cooperation/>.

⁴ Democratic Unionist Party, "DUP – free us from Protocol" (2 February 2021), <https://mydup.com/news/dup-free-us-from-protocol> [last accessed 13/06/2021].

⁵ Having been one of the DUP ministers previously failing to attend NSMC meetings, following his election as leader of his party Edwin Poots has been reported as confirming he and his DUP ministers will attend the upcoming NSMC plenary meeting; see BBC News, "DUP: Edwin Poots will attend next North South Ministerial Council" (3 June 2021), <https://www.bbc.co.uk/news/uk-northern-ireland-57342118> [last accessed 13/06/2021].

that seriously undermine trust in the UK Government's ability to abide by international agreements (of which the Good Friday/Belfast Agreement is one). Such an approach also increases the risk that among certain communities in Northern Ireland social attitudes towards North-South cooperation begin to become more hostile and, crucially, points to a failure to take a longer-term outlook to the Protocol and to the possibility of finding mutually agreed alternatives that can replace it in part or in its entirety.

5. The importance of the political temperature for the maintenance of the necessary conditions for North-South cooperation was highlighted, for example, by the Ad-Hoc Group for North-South and East-West Cooperation in the following terms in its Position Paper of August 2020:

The ability of actors at all levels to engage in effective North-South cooperation is always dependent on the political context prevailing at any given time. Those conditions may deteriorate if the implementation of the Protocol on Ireland/Northern Ireland exacerbates existing political divisions or gives rise to new ones, particularly in Northern Ireland. Such divisions may be exacerbated if North-South cooperation and relations are perceived to be given priority over East-West relations, above all in terms of Northern Ireland's trading relations with Great Britain. Political tensions are almost inevitably going to arise on a regular basis as the provisions of Article 18 of the Protocol (Democratic consent in Northern Ireland) are enacted, which could result in political obstacles to the effective operation of North-South cooperation.⁶

6. In order to understand the extent to which the necessary conditions for North-South *and* East-West cooperation were being maintained for civic society organisations and local authorities on the island of Ireland following the implementation of the Protocol, the Centre for Cross Border Studies initiated a quarterly survey, the first of which took place between 9 and 26 March 2021.⁷ Of the 80 organisations and local authorities who completed the survey, 60% believed that the political context for North-South cooperation had deteriorated, with 36% also noting a deterioration in the social conditions for such cooperation.⁸ The same percentages of respondents reported a deterioration in the political and social conditions for East-West cooperation.⁹ The second survey is taking place currently, with results to be published in early July 2021.

The Protocol and engagement with stakeholders

⁶ Ad-Hoc Group for North-South and East-West Cooperation, "The necessary conditions for North-South cooperation: A Position Paper from the Ad-Hoc Group for North-South and East-West Cooperation" (August 2020), pp.2-3, <http://crossborder.ie/ad-hoc-group-for-north-south-and-east-west-cooperation-issues-position-paper-on-the-protocol-and-maintaining-the-conditions-for-cooperation/>.

⁷ For more information, see <https://crossborder.ie/ccbsquarterlysurvey/>.

⁸ Ben Roshier and Anthony Soares, "Quarterly Survey on the conditions for North-South and East-West cooperation: Briefing on the findings from the 1st Quarterly Survey (January to March 2021)" (Centre for Cross Border Studies, April 2021), p.7, <https://crossborder.ie/research-briefing-on-1st-quarterly-survey/>.

⁹ Ibid, p.10.

7. Securing meaningful civic society engagement with those responsible for the implementation and monitoring of the Protocol on Ireland/Northern Ireland and for ensuring the maintenance of the necessary conditions for North-South cooperation has been an important priority for the Centre for Cross Border Studies. It has also been a core objective of the Ad-Hoc Group for North-South and East-West Cooperation.

8. The importance of securing such engagement is all the more acute in light of the admissions made by the UK Government and European Commission following the mapping exercise they undertook in 2017 of North-South cooperation that “areas of informal, local and community-level cooperation may not have been captured by this exercise”.¹⁰ 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. To avoid this, it is imperative that channels of engagement are secured between those involved in informal, local and community-level cooperation and those responsible for the implementation and monitoring of the Protocol.¹¹

9. In pursuit of this objective, since mid-2020 the Centre for Cross Border Studies and the Ad-Hoc Group for North-South and East-West cooperation have held meetings with a number of policy and decision-makers, including UK Government and European Commission. Since the Protocol came into force those engagements have continued, and have included participation in meetings with the co-Chairs of the Withdrawal Agreement Joint Committee and the Specialised Committee on the Protocol on Ireland/Northern Ireland, as well as unilateral meetings with both parties and other relevant actors. These are positive signs, but the Centre for Cross Border Studies would point to the vital need to show how these meetings are part of a structured process rather than a series of isolated opportunities for participants to voice concerns. That is why one of the recommendations made in the Centre’s recent Briefing Paper was that:

Agendas for meetings between representatives of civil society and the Joint and Specialised Committees (and Joint Consultative Working Group, if such meetings are

¹⁰ Department for Exiting the European Union, “Technical Explanatory Note: North-South Cooperation Mapping Exercise” (December 2018), paragraph 16, <https://www.gov.uk/government/publications/technical-explanatory-note-north-south-cooperation-mapping-exercise>; and European Commission, “Communication to EU 27 on Negotiations on Ireland/Northern Ireland, Mapping of North-South Cooperation” (June 2019), p.4, https://ec.europa.eu/info/sites/default/files/mapping_of_north-south_cooperation_0.pdf.

¹¹ See Anthony Soares, “Briefing Paper: Civic society engagement in maintaining the conditions for North-South cooperation” (Centre for Cross Border Studies, May 2021), <https://crossborder.ie/civic-society-engagement-bp/>.

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.¹²

What work would you like to see this Committee undertake in scrutinising the operation and impact of the Protocol?

10. Given that the UK and EU 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. The Centre for Cross Border Studies would therefore welcome the Committee’s scrutiny of the Protocol’s operation and impact to include close consideration of how the conditions for North-South cooperation at informal, local and community levels are being maintained, and how civic society organisations are being engaged by those responsible for the Protocol’s implementation. Crucially, these aspects should also be approached in light of the fact that many such organisations are involved in both North-South *and* East-West cooperation, and that the North-South and East-West dimensions also rely on the involvement of organisations from the Republic of Ireland whose voices also need to be heard.

¹² Ibid, p.8.