



The Centre for
Cross Border Studies

Brexit and the UK-Ireland Border

Briefing Paper Series

Briefing Paper 4 Executive Summary: The Belfast/Good Friday Agreement and the negotiations on the UK's withdrawal from the EU

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Executive Summary

- In line with its role as one of its co-guarantors, the UK Government must be fully committed to developing a backstop solution that affords the 1998 Belfast/Good Friday Agreement comprehensive protection. Such protection should be delivered through a backstop with the territorial scope necessary to safeguard the 1998 Agreement in both its North-South *and* East-West dimensions, but it cannot have the in-built insecurity of a time-limit. Neither can it require the EU to risk the integrity of its own common frameworks in order to protect the framework provided by the 1998 Agreement, of which it has been supportive but, ultimately, of which it is not a co-guarantor. That is the responsibility of the UK Government, and one that it must place at the heart of its approach to the negotiations.
- Through its three interdependent strands the 1998 Belfast/Good Friday Agreement (GFA) defines the constitutional status of Northern Ireland within the UK and with respect to the Republic of Ireland, with whom it shares an international border.
- According to the GFA the disappearance of the border with the Republic of Ireland as a marker separating the territorial scope of two sovereign states can only come about with the consent of a majority of the people of Northern Ireland. Whatever its invisibility, the border's current status as an internal EU border has not diminished its role as a line separating the United Kingdom from the Republic of Ireland, nor has it altered Northern Ireland's constitutional status as an integral part of the United Kingdom.
- The GFA presupposed that both Ireland and the UK would be members of the European Union. Its post-Brexit operation across all of its dimensions will depend on the UK's future relations with the EU.
- Both the EU and the UK Government identified the protection of the GFA *in all its parts* as an objective from the outset of Brexit negotiations.

However, protection of the GFA was only one among a number of other distinct objectives, such as avoidance of a “hard” border, not necessarily seen as intimately linked to the GFA in all its dimensions. This is a conceptual flaw with consequences for the ensuing negotiations.

- Although the East-West dimension of the GFA is present at various points in the December 2017 Joint Report, there is arguably a tendency to view the scope of the 1998 Agreement through a geographically limited lens focused more on its North-South aspects. The December 2017 Joint Report set out how any resolution to the issue of the post-Brexit border between Ireland and Northern Ireland could neither infringe on the rules of the EU’s Customs Union and Single Market, nor on Northern Ireland’s constitutional position within the UK and its ability to trade without any barriers with the rest of the UK, in line with the GFA. However, its “backstop” proposal, which would among other things support North-South cooperation, does not fully reconcile these positions.
- Contained in the Protocol on Ireland/Northern Ireland in the draft Withdrawal Agreement published in March 2018, the European Commission’s proposals on a common regulatory area would obviate the need for controls at the border between Ireland and Northern Ireland and would potentially support areas of North-South cooperation. But they do not avoid the need for controls between the island of Ireland and Great Britain. The EU’s proposals are flexible enough to accommodate within its internal arrangements part of what will be a non-EU country and to support the North-South dimension of the GFA, but not enough to prevent some seeing them as introducing what they would judge to be unacceptable barriers between one part of the UK and its other constituent nations, and therefore undermining other dimensions of the 1998 Agreement.

- By putting forward proposals in June 2018 that would see the whole of the UK within the EU's customs territory, the UK Government is applying the wider territorial scope necessary to support the geography encompassed by the 1998 Belfast/Good Friday Agreement, which is not limited to the island of Ireland. However, without addressing how it proposes to replace the common regulatory framework provided for by the EU's Single Market that alongside the EU's Customs Union has come to underpin the totality of relations within and between these islands, the UK Government cannot achieve its often repeated objective of not undermining the GFA in any of its parts, nor will it achieve agreement from the EU.