



## **Response to Prosperity UK Alternative Arrangements Commission Consultation on Interim Report**

This document has been prepared by the Centre for Cross Border Studies<sup>1</sup> as a contribution to the call from Prosperity UK Alternative Arrangements Commission for feedback to its interim report, “Alternative Arrangements for the Irish Border”.<sup>2</sup>

### **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, 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.<sup>3</sup>

**The response that follows, therefore, is closely informed by the Centre’s particular concerns, organisational aims and experience. It focuses on the Interim Report’s analysis of the potential consequences of the UK’s withdrawal from the European Union on the Belfast/Good Friday Agreement and on cross-border and North-South cooperation, and the extent to which the alternative arrangements it sets out are compatible with that Agreement.** In terms of what the interim report proposes in terms of trade, CCBS would point to the views of representative business organisations such as the British Irish Chamber of Commerce.<sup>4</sup>

---

<sup>1</sup> Authored by Dr Anthony Soares, Acting Director, Centre for Cross Border Studies.

<sup>2</sup> Prosperity UK Alternative Arrangements Commission, “Alternative Arrangement for the Irish Border: Interim Report” (24 June 2019), <https://www.prosperity-uk.com/wp-content/uploads/sites/43/2019/06/AAC-Interim-Report.pdf> [last accessed 7/07/2019]. The call for responses can be found at <https://www.prosperity-uk.com/aacconsultation/>.

<sup>3</sup> For further information, please visit [www.crossborder.ie](http://www.crossborder.ie)

<sup>4</sup> British Irish Chamber of Commerce, “Brexit Views 5 July 2019”, <https://www.britishirishchamber.com/brexit-views-5-july-2019/> [last accessed 7/07/2019].

1. Unusual for a report of this nature, it is certainly the case that the Belfast/Good Friday Agreement is offered comparatively significant attention, both in terms of how the UK's withdrawal from the European Union may impact on its operation, and how the proposals it sets out attempt to protect the Agreement and the ongoing peace process. Although much of the content is concerned with the cross-border movement of goods, nevertheless the Belfast/Good Friday Agreement is present from the outset, with the Rt Hon Nicky Morgan MP and the Rt Hon Greg Hands MP noting in the interim report's foreword how they had "tasked members of the Panel with seeking solutions that protect the Belfast/Good Friday Agreement and the team have worked tirelessly to respect this vital remit" (p.4).

2. Whilst the general thrust of the interim report in terms of the Belfast/Good Friday Agreement goes some way to what CCBS has repeatedly been stating from before the 2016 referendum on the UK's membership of the EU, which is that the Agreement should be the starting point and ultimate framework for the approach taken to the UK's withdrawal,<sup>5</sup> ultimately it fails to do so fully.

3. Whereas in June 2017 CCBS argued "that the 1998 Belfast/Good Friday Agreement should not be viewed simply as a problem to be overcome during the negotiations over the UK's exit from the EU",<sup>6</sup> in setting out the context for its proposals the interim report notes how the "most important constraint is that whatever we suggest must guarantee the Belfast/Good Friday Agreement" (p.21). However well-meaning, this characterisation of the 1998 Agreement imbues it with the sense of being an obstacle to arriving at a desired goal that would be much easier to achieve if it were not for the Agreement's existence. This approach does not inspire confidence in those who regard the Belfast/Good Friday Agreement as the fundamental guarantee of the ongoing peace and reconciliation process, and of the maintenance of good relations within and between these islands.

4. It is clear that in preparing this interim report, welcome attempts have been made to seek the views of members of border communities, businesses and relevant actors in order to understand the realities of Northern Ireland, the island of Ireland and of the role of the Belfast/Good Friday Agreement. Nevertheless, its understanding of the Agreement is at times contradictory or insufficiently sensitive to the full import of the issues it raises.

5. While, for example, the report incorrectly states "One of the goals of the Belfast/Good Friday Agreement (BA/GFA) was to protect the all-island economy" (p.27), later it concludes that "Significantly the BA/GFA makes no provision for an all Island of Ireland economy though the [Withdrawal Agreement] tends to imply otherwise" (p.42). Whatever the contradiction, what is not fully grasped is how the Belfast/Good Friday Agreement created the political and institutional conditions to allow for greater exploitation of the opportunities presented by the UK and Ireland's

---

<sup>5</sup> CCBS's responses to the UK's withdrawal from the EU can be found in many of its Briefing Papers (<http://crossborder.ie/category/research-and-policy/policy/briefings/>) and Consultation Responses (<http://crossborder.ie/category/research-and-policy/policy/consultation-responses/>).

<sup>6</sup> Centre for Cross Border Studies, "Flexible and imaginative solutions: The 1998 Belfast/Good Friday Agreement as a framework for post-Brexit relations within and between these islands" (June 2017), p.1; <http://crossborder.ie/site2015/wp-content/uploads/2017/07/Brexit-GFA-19.07.2017-revised.pdf>.

common membership of the EU and its Customs Union and Single Market, which has led to an increasingly all-island economy, particularly in the agri-food sector.<sup>7</sup>

6. The post-1998 increase in North-South trade and the development of all-island supply chains is both a part of and conducive to the deepening of North-South socio-political relations, both of which are essential to the ongoing peace and reconciliation process, and owe much to the signing of the Belfast/Good Friday Agreement within the overarching context of shared UK and Ireland EU membership. Thus, while the interim report is factually correct in its assertion that “trade across the border is much less in value terms than trade East-West between [Ireland] and [Great Britain] and [Northern Ireland] and [Great Britain]” (p.13), or that “What crosses the border is predominantly either via large company supply chains (such as Coca-Cola, Diageo and Glanbia) with multiple repeat transactions, or very high frequency low value trade from SMEs and micro-businesses” (p.21),<sup>8</sup> this fails to account for what social value such cross-border economic activity brings to border communities, particularly those in rural areas.<sup>9</sup>

7. This is not to suggest the interim report is not attentive to the concerns of border communities. Indeed, it stresses a crucial issue that must be addressed as the UK withdraws from the EU:

“Border communities have stressed in our meetings with them the importance of identity, and that the twin identities of people as both Irish and British, as well as the local identity must be preserved. Perceptions often become reality and there will need to be significant investments by both the UK and Irish governments to ensure that the underpinnings of this identity such as the Common Travel Area are preserved, and understood to be preserved. While there will be changes associated with the UK leaving the EU, these must be minimised. Any disruptions should be counterbalanced by meaningful and sustained efforts to generate new opportunities and sources of support for the people of NI” (p.21).

However, the report’s suggestion that the disruption provoked by Brexit can simply be counterbalanced by the generation of “new opportunities and sources of support” is to greatly underestimate how finely balanced the Belfast/Good Friday Agreement is in terms of accommodating competing identities in Northern Ireland.

---

<sup>7</sup> A crucial insight into this development was provided by Sir George Quigley in an interview for the Centre for Cross Border Studies’ *Journal of Cross Border Studies in Ireland*, published in 2013 under the title “North-South Cooperation in 2013: Towards an ever closer working partnership” (pp.15-28); <http://www.crossborder.ie/site2015/wp-content/uploads/journal8-2013.pdf>.

<sup>8</sup> The Centre for Cross Border Studies has noted this both before and after the UK’s referendum on EU membership. See, for example, Centre for Cross Border Studies and Cooperation Ireland, “The UK Referendum on EU Membership: Economic Development” (June 2016), p.11, <http://crossborder.ie/site2015/wp-content/uploads/2016/06/EU-Referendum-Briefing-Paper-5.pdf>; and Centre for Cross Border Studies, “Brexit and Economic Development: EU Referendum Briefing Paper 5 *Update*” (August 2017), p.15, [http://crossborder.ie/site2015/wp-content/uploads/2017/08/UpdatedEUReferendumBriefingPaper5\\_Final.pdf](http://crossborder.ie/site2015/wp-content/uploads/2017/08/UpdatedEUReferendumBriefingPaper5_Final.pdf).

<sup>9</sup> It is important to note that the Oireachtas Joint Committee on Rural and Community Development will be publishing its report, “Brexit and the Border: The Impact on Rural Communities”, on 10 July 2019. The Centre for Cross Border Studies appeared before the Committee to give evidence as part of the inquiry that informed this report ([https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_rural\\_and\\_community\\_dev/development/submissions/2019/2019-06-12\\_opening-statement-dr-anthony-soares-acting-director-centre-for-cross-border-studies\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_rural_and_community_dev/development/submissions/2019/2019-06-12_opening-statement-dr-anthony-soares-acting-director-centre-for-cross-border-studies_en.pdf)).

8. The interim report also acknowledges that “Brexit presents an inherent problem to the continuation of the BA/GFA because it will strip away the EU citizenship dimension which was a perceived part of the nationalist community’s rationale in accepting the BA/GFA”, but goes on to say that “a number of moves have been made in mitigation” (p.41). Notably, the Emma de Souza case highlights how the question of the post-Brexit retention of the rights of EU citizenship and the commitments made in the Belfast/Good Friday Agreement is far from being resolved.<sup>10</sup>

9. CCBS is in agreement with the interim report in terms of what people generally conceive of “border checks” and what these imply for the Northern Ireland-Ireland border. It suggests:

“Clearly most people associate “border checks” as a physical encounter with a customs officer, an immigration officer, a police officer or a Border Force Officer. In Ireland this has, at the height of the Troubles, involved a military checkpoint. This encounter may involve an inspection of documents, an interrogation, and in some cases even a search of person and belongings” (p.42).

Similarly, in the first in a series of Briefing Papers on “Brexit and the UK-Ireland Border”, CCBS stated:

“State borders are not only lines at the edges of states. Contrary to the popular imaginary of borders as lines of separation delimiting the state, borders exist at multiple sites within and between states. Their power can be best seen in the enforcement of differential treatment within the jurisdiction of the state, and in every instance when and where different legislation, policies and their associated practices (e.g. with respect to citizens’ rights, immigration, or trade) are applied”.<sup>11</sup>

Where CCBS and the interim report disagree is on the implications of what this means in relation to approaching the UK’s withdrawal from the EU. The solutions proposed in the interim report are based on the supposition that by controlling cross-border movements *away* from the border, this will minimise the impact of Brexit on the Belfast/Good Friday Agreement. CCBS, on the other hand, is of the view that whether in terms of controlling the cross-border movement of goods or citizens, the fact that it may be undertaken away from the border will not diminish the negative effects on business and social cohesion, thereby undermining the totality of relations encompassed by the Belfast/Good Friday Agreement.

10. The interim report is also in alignment with CCBS’s position in that it includes the East-West dimension as well as the North-South dimension of the Belfast/Good Friday Agreement. It also states that “All future proposals must be based on the principle of consent” (p.13), and that “Solutions to the border must therefore seek to maximise cooperation in the relevant areas, and must be founded in the principle of consent” (p.14). CCBS’s position on the imperative to safeguard the Belfast/Good Friday Agreement *in all its parts* as the UK withdraws from the EU, and to thereby ensure the

---

<sup>10</sup> For more on this see, for Brexit Law NI, “What happened to the ‘paragraph 52’ commitments for Irish citizens to continue to exercise EU rights, opportunities and benefits where residing in Northern Ireland?” (April 2019), <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2019/04/09135143/Paragraph-52-Briefing-Note.pdf> [last accessed 7/07/2019]; and Brexit Law NI and Equality Coalition, “Post-Brexit Citizenship Status: Divided by the Rules?” (March 2019), <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2019/06/27083445/Divided-by-the-Rules-low-res.pdf> [last accessed 7/07/2019].

<sup>11</sup> Centre for Cross Border Studies, “Briefing Paper 1: A Roadmap” (November 2017), p.6, <http://crossborder.ie/site2015/wp-content/uploads/2019/01/Brexit-and-the-Border-BP1.pdf>.

principle of consent encapsulated within it, is summarised in the statement it issued on the Withdrawal Agreement:

“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”.<sup>12</sup>

At the core of this position is the incompatibility of the UK Government’s current approach to its withdrawal from the EU with the protection of the totality of relations encompassed by the Belfast/Good Friday Agreement – North-South *and* East-West. Resolution of that incompatibility is the prime responsibility of the UK Government as the co-guarantor of the 1998 Agreement withdrawing from a common framework under which the Agreement was reached, and under which its operation has been facilitated. It is not, therefore, the prime responsibility of the Irish Government as a Member State of the European Union, or of the other 26 Member States. Neither can a resolution be sought that results in satisfying the principle of consent of either those who could be characterised as privileging North-South relations or East-West relations. In this regard the interim report is unhelpful and simplistic when it states that “One of the backstop’s affects is to placate Northern nationalist sentiment” (p.41).

It is imperative all parties take full cognisance of the fact that the Belfast/Good Friday Agreement, while reached in order to resolve the conflict in Northern Ireland, has bound all parts of the United Kingdom and Ireland together. Equally, all parties must recall the spirit under which the Agreement was reached, captured within its Declaration of Support, which includes the following declaration:

“We pledge that we will, in good faith, work to ensure the success of each and every one of the arrangements to be established under this agreement. It is accepted that all of the institutional and constitutional arrangements – an Assembly in Northern Ireland, a North/South Ministerial Council, implementation bodies, a British-Irish Council and a British-Irish Intergovernmental Conference and any amendments to British Acts of Parliament and the Constitution of Ireland - are interlocking and interdependent and that in particular the functioning of the Assembly and the North/South Council are so closely inter-related that the success of each depends on that of the other”.<sup>13</sup>

---

<sup>12</sup> Centre for Cross Border Studies, “Centre for Cross Border Studies Statement on draft Agreement on the withdrawal of the United Kingdom from the European Union” (20 November 2018), p.3.,

<http://crossborder.ie/site2015/wp-content/uploads/2018/11/CCBS-Statement-on-draft-EU-Withdrawal-Agreement-of-14-November-2018.pdf>.

<sup>13</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf).

Any approach to the UK's withdrawal from the EU that does not safeguard the full operation of all of the institutional and constitutional arrangements set out in the 1998 Agreement will not satisfy the principle of consent.

Furthermore, if the UK's withdrawal from the EU affects the socio-economic relations between the constituent elements of the United Kingdom – Northern Ireland, *and* England, Scotland and Wales – this will run counter to the principles underpinning the Belfast/Good Friday Agreement.

11. The interim report rightly notes the importance of ensuring North-South cooperation on the island of Ireland in the post-Brexit context, and makes reference to how the “mapping exercise conducted by the UK government, [Northern Ireland] executive and [Irish] government covers the areas of cooperation which are set out under the BA/GFA” (p.14). However, it also goes on to conclude that since the 1998 Agreement “a panoply of co-operative cross-border activities have been established, mostly although not wholly under the aegis of the North-South Ministerial Committee (NMSC) established by the BA/GFA” (p.53). This characterisation does not fully encapsulate the complexity and richness of cross-border and North-South cooperation, and how they are facilitated by the UK and Ireland's common membership of the EU. Equally, while the mapping exercise is a worthy endeavour, it cannot capture how the individual elements of North-South cooperation it includes are interdependent.

Indeed, the Centre for Cross Border Studies' flagship project, “Border People” is emblematic of this. It is included as one of the areas of cooperation within the mapping exercise,<sup>14</sup> but a cursory analysis of what this project encompasses demonstrates how interlinking are the various areas of North-South cooperation, and how many of those areas function on the basis of the common framework provided by EU membership.<sup>15</sup> CCBS would welcome further dialogue on this aspect as illustrative of the consequences of the UK's withdrawal from the European Union in its current form.

12. In conclusion, while CCBS acknowledges the attention paid to the Belfast/Good Friday Agreement and North-South cooperation in this interim report, it is symptomatic of the failure to offer the 1998 Agreement what it describes as the “the supremacy of the Belfast/Good Friday Agreement (BA/GFA) and the peace process” (p.13) in the debates that preceded the 2016 referendum or the UK Government's approach to implementing its result. Until such supremacy is offered to the Agreement, any outcome will not respect the totality of relations it represents or the principle of consent that underpins it.

---

<sup>14</sup> The Border People project is listed as item 109 in the UK Government's North-South Cooperation Scoping Exercise, disseminated by the House of Commons Exiting the European Union Committee on 20 June 2019, [https://www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Correspondence/UK%20Government%20scoping%20document%20\(1\).pdf](https://www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Correspondence/UK%20Government%20scoping%20document%20(1).pdf) [last accessed 7/07/2019].

<sup>15</sup> For more on the Border People project, see <http://borderpeople.info/>.