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Submission to the Northern Ireland Affairs Committee Inquiry: Implications of the EU Withdrawal agreement and the backstop for Northern Ireland

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This response has been prepared by the Centre for Cross Border Studies as a contribution to the House of Commons Northern Ireland Affairs Committee Inquiry into the Implications of the EU Withdrawal Agreement and the backstop for Northern Ireland.

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

The response 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. **Crucially, it is also informed by the Centre's ongoing work on the potential impacts of the UK's withdrawal from the EU on the ability of administrations, public bodies, business and civil society to engage in mutually beneficial North-South cooperation post-Brexit.**¹

¹ 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/>.

(II) Scrutiny of the Withdrawal Agreement mechanisms

- **How should the views of Northern Ireland be represented on the Joint Committee? In the continued absence of devolved Northern Ireland Ministers, should UK politicians or Northern Ireland civil servants represent Northern Ireland?**

Several options for expanding or ensuring representation of Northern Ireland on the Joint Committee need to be considered. First and foremost – and to the extent to which the Committee has responsibilities in relation to the Ireland/Northern Ireland Protocol – such representation must include expert knowledge in understanding the breadth of conditions necessary for maintaining North-South cooperation as well as in the detailed rules relating to trade in goods. The inclusion of any political representatives from Northern Ireland must reflect the broadest range of political views and be cross-community.

We would further support NILGA’s position, as stated in their response to this Inquiry, that any senior civil servants representing Northern Ireland’s interests on the Joint Committee should be obliged to consult the NI Central – Local Government Forum (convened by NILGA to assist policy deliberations in the absence of the Ministerial Partnership Panel²) on key issues which require political direction.

- **To what extent can the Joint Committee behave dynamically to develop the backstop during its implementation?**

In our submission to the House of Commons European Scrutiny Committee Inquiry ‘Dispute Resolution and Enforcement in the draft Withdrawal Agreement’ (June 2018) we stressed the importance of undertaking preparatory work, including on interworking and communications between the Joint Committee and Specialised Committee, and between these and the broad range of other bodies and institutions necessary to gather relevant intelligence to identify potential problems at the earliest possible stage. Related to this point, we also stressed the importance of clarifying *who* will provide the Committee with the necessary information for decision-making, under what *domestic* legal standing, and the necessity for adequately resourcing the Joint Committee to undertake in-depth examinations and take appropriate and timely decisions.

Moreover, and in line with our suggestions in response to the representation of Northern Ireland on the Joint Committee question, it must be ensured that there is regular consultation with and representation from the NI Executive (Office), local authority networks and, additionally, North-South and East-West cooperation bodies (as established by Strands II and III of the Belfast/Good Friday Agreement) at any meetings of the Joint Committee relating to the implementation of the Protocol on Ireland/Northern Ireland.

- **How will membership of the Specialised Committee on the Northern Ireland Protocol be constituted?**
- **Should consideration be given to cross-community representation?**

² The statutory instrument in the NI Local Government Act.

- **How will the Joint Working Group on Northern Ireland be constituted?**
- Should consideration be given to cross-community representation?

It is important to take steps to ensure that both the Specialised Committee and the Joint Working Group on Northern Ireland have cross-community representation while, equally, not lacking the necessary direct knowledge and expertise relating to all areas of life in Northern Ireland, particularly to cross-border life, commerce and relationships.

Being tasked with examining proposals from the North-South Ministerial Council and North-South Implementation Bodies concerning the implementation and application of the Protocol, the Specialised Committee must take into account the fact that the North-South Ministerial Council cannot function at Ministerial level in the absence of a functioning Northern Ireland Assembly and Executive (as is currently the case). Therefore also, the North-South Implementation bodies may be limited by the fact that decisions on aspects of their work are made by the NSMC. It is, therefore, doubly imperative that the Specialised Committee be open to representation from other organisations and actors involved in North-South cooperation, including local authorities and civil society organisations with cross-border expertise.³ More generally speaking, the Specialised Committee should engage with all relevant organisations involved in cross-border cooperation, particularly the bodies engaging in activities identified in the mapping exercise.

Importantly also, since local government in Northern Ireland has continued to operate all throughout the period since January 2017 (when the devolved institutions in Northern Ireland ceased to function) local authority representation on the Committee must be considered. Ensuring input of local knowledge and expertise into the Committee is particularly important not only in terms of the Committees' role in reviewing the implementation and application of the Protocol [for] maintaining the necessary conditions for North-South cooperation, but also to ensure that they are properly equipped to make their own proposals to the UK and Irish Governments for additional areas of cooperation on the island of Ireland.⁴ Equally important is ensuring that there is meaningful cross-border civil society input into channels of communication with both the Specialised Committee and the Working Group.

Given that the Joint Consultative Working group is a forum of consultation and exchange of information with respect to the Protocol, it is similarly important it comprises of bodies and organisations who have local expertise. We support NILGA's position that membership of the Group should comprise cross-party representation from all the main political parties in Northern Ireland and that the Central – Local Government Partnership Forum in Northern Ireland may be a body which provides such representation.

³ CCBS Submission to the House of Commons European Scrutiny Committee Inquiry: Dispute Resolution and Enforcement in the draft Withdrawal Agreement, 8 June 2018.

⁴ As previously stated in CCBS Submission to the House of Commons European Scrutiny Committee Inquiry: Dispute Resolution and Enforcement in the draft Withdrawal Agreement, 8 June 2018.

- **If the backstop is triggered, should Northern Ireland maintain some representation on EU bodies in recognition of the fact it would be subject to a greater level of EU supervision and control?**

Yes, given the need to influence future EU legislation that will apply to Northern Ireland under the terms of the Withdrawal Agreement (or may need to apply under another deal). One way of achieving this would be by retaining Northern Ireland's current positions on the EU Committee of the Regions. It is also vital that the Northern Ireland Executive Office in Brussels is maintained. In addition, it would be important to continue Northern Ireland's membership in those professional and special interest networks (such as the European Anti-Poverty network) that feed into EU policy. All avenues should be explored to identify where the European Commission and the remaining member states would welcome representation from Northern Ireland.

(III) Securing an overall EU-UK relationship which supersedes the Withdrawal Agreement and obviates the need to enter the backstop

- **How can the future UK-EU relationship protect integrated supply chains across the island of Ireland?**

The 'backstop' as proposed by the draft Withdrawal Agreement of November 14th, 2018 protects integrated supply chains across the island of Ireland. It is a legally binding guarantee that regulatory divergence between the two jurisdictions on the island is avoided and that cross-border cooperation is maintained. In the absence of such a backstop, the only full guarantee for the protection of integrated supply chains on the island is to retain membership of the EU customs union and single market.

- **What does the mapping exercise, which identifies protected areas of North-South cooperation, tell us about the future shape of the UK-EU deal in respect of Northern Ireland?**

The mapping exercise does not reflect either the extent and depth or the dynamic nature of cross-border co-operation which needs to be supported by structures ensuring its dynamic growth in the future. Neither is the full mapping exercise freely available in the public domain, making its proper consideration and analysis difficult.

(IV) No deal

- **In a no deal scenario, what are the key actions the Government must take in advance of 29 March 2019 to prepare Northern Ireland?**

A series of additional (to the already announced Shared Prosperity Fund) funds must be allocated and more detailed guidance (further to the Government's Technical Notes) issued to prepare businesses, public services, local councils and third sector organisations with respect to specific changes in trade law, regulations, citizen's rights and cross-border cooperation, and the specific practical difference these will have at the level of everyday life.

- **In a no deal scenario, what scope is there for the UK to make a series of mini-deals with Ireland to manage cross-border issues?**

- The existing cross-border co-operation strands (II and III) of the 1998 Belfast/Good Friday Agreement, and the associated bodies, must be fully utilised to enhance conversations around maintaining cross-border co-operation and to replace with bilateral arrangements those aspects of cross-border co-operation not covered by the Agreement. This could include expanding and enhancing the role of the North-South Joint Secretariat, the British-Irish Council and the North-South Inter-Parliamentary association as well as the development of equivalent structures supportive of North-South and East-West dialogue at the civil society level.

The UK Government has maintained that after Brexit 'arrangements for North-South cooperation remain a matter for the Northern Ireland Executive and the Government of Ireland' and that 'Cooperation will remain a matter for two sovereign jurisdictions on the island of Ireland to decide in accordance with their respective legal regimes.'⁵ However, it is worth remembering the Northern Ireland Assembly and Executive *do not* constitute a sovereign government and as such *do not* have control over the legal regime on the island of Ireland on which such cooperation will continue to rely.

We stress therefore, that North-South bilateral arrangements cannot by themselves constitute a sufficient basis for protecting cross-border cooperation, in all of its guises, after Brexit. For example, the Northern Ireland devolved administration's capacity to legislate for integrated all-island supply chains (which are essential to the agriculture and fisheries sectors in the region) will potentially be reduced. Neither can the Republic of Ireland commit to agreements that contradict EU law. Similarly, the extensive cooperation that has developed between the two jurisdictions on the island on environmental issues and policy will, as a result of Brexit, be subject to pressures for divergence, making cross-border cooperation more difficult. In the sphere of criminal justice, at the same time, removing Northern Ireland's access to EU agencies and alignment with EU law will effectively diminish the structured framework for effective North-South cooperation and may result, in practice, in a heightened security risk at the land border. We stress, therefore, that the legal instruments to secure cross-border cooperation must be put in place by the UK and the EU in the context of both a withdrawal and a future relationship agreement.

- **What would trade under World Trade Organisation terms mean for Northern Ireland?**

It would mean that both the EU and the UK will be obliged to impose on each other customs controls on all trade in goods and under a schedule of tariffs, requiring the fullest extent of border checks. This will create significant barriers to trade, effectively resulting in a 'hard' border. The extra cost and delays would have a devastating effect for the Northern Ireland economy, particularly for small and agri-food businesses that rely extensively on just-in-time supply chains or whose business facilities are situated on both sides of the border. It is important to also understand the knock-on social effects of such economic circumstances. Rural communities in particular would be hard-hit with potential mass emigration / displacement of rural populations.

⁵ Department for Exiting the European Union, UK Government (7 December 2018) '[Technical Explanatory Note: North-South Cooperation Mapping Exercise](#)', p. 2.

- **How could the lives of ordinary citizens in Northern Ireland be affected during the first three months of a “managed no deal”?**

What steps, if any, should Northern Ireland citizens take to prepare?

In all eventualities the rights of many citizens in Northern Ireland, whilst in the UK and/or in Europe, will change and, likely, begin to diverge, depending on their existing citizenship and residence status. This will apply not only to different categories of EU citizens but between British and Irish citizens, between generations, and within families. Analysts have strongly stressed the risk of diminution of rights in Northern Ireland for all categories of citizens, as well as how various new checks will be required to verify entitlement to rights.

As we have stressed repeatedly, point-of-contact checks will be damaging to individuals’ privacy, while any differentiation of rights within Northern Ireland may undermine the equivalence of a rights regime north and south of the UK-Ireland border and will be directly damaging to social cohesion. On a more practical note, it will lead to tensions around the distribution of cross-border services (see some figures below regarding cross-border travel and healthcare) and, relatedly, to stress on public finances.

Among ordinary citizens, the minutiae of how their rights may be diminished and what border controls will likely be exercised through points-of-contact, rather than through checks at the geographical borderline, are easily lost. There is, therefore, dire need for information on the specific aspects of the imminent changes in the law with respect to immigration and citizens’ rights so that appropriate and qualified legal advice can be made available to ordinary citizens. It is only on the basis of such advice that further decisions and practical steps can be taken by individuals with respect to issues such as the EU Settlement Scheme and cross-border workers.

Below, we outline specific practical questions that citizens will require immediate clarification on in the event of a no deal scenario. These questions apply particularly to the daily lives of the thousands of citizens crossing the border each day as they go about their daily lives - taking children to school, using the closest airport, going to work, visiting family, attending sporting events, buying the weekly groceries, etc.

Right to enter

- Which citizens will have the automatic right to cross the border?
 - Will checks on persons be carried out?
 - Which organisation will carry out checks?
 - Where will checks take place?
 - What paperwork will be required?
 - How to complain when the procedure is not carried out properly?
- Commuters will need clarification as to the documents required should they be stopped or questioned as a result of being in the border region or crossing the border.

Crossing the border by train and bus

- Will public transport services be available?
- Will checks on persons be carried out?
- Which organisation is responsible?

- What paper work is required?
- What is the procedure?
- How to complain when the procedure is not carried out properly?

Crossing the border in a truck or other commercial vehicle

- Will there be restrictions on approved routes across the border?
- Will checks on drivers be carried out? If yes, then
- Which organisation is responsible?
- What paper work is required?
- What is the procedure?
- How to complain when the procedure is not carried out properly?

Crossing the border by car

Motorists will need clarification on the validity of their car insurance and driving licence.

Right to study

Students will need clarification on their right to enter, reside, study and work while studying.

Right to work

Workers will need clarification on their right to enter, work, equal treatment, social security entitlements, etc.

Consumer rights

Shoppers will need clarification on their consumer rights and on whether or not there will be restrictions on importing goods for personal use

Healthcare

A wide range of individuals currently have EU rights to access healthcare across the border including private individuals, cross-border workers, retired cross-border workers and students. Will these rights continue? How will they be replaced?

Social security co-ordination

The right to export social security payments and social insurance contributions is a significant benefit for cross-border mobility. For example illness benefit payment is linked to place of work not place of residence. Immediate clarification will be required.

- How will workers' pay their cross-border social insurance contributions?
- Will benefits continue to be exported?
- How will EU social security coordination will be replaced.

Diverging rights

In any scenario citizens' rights will begin to diverge. Members of the same family, work colleagues, friends and neighbours may have very different rights. It is essential that citizens understand which category they fall into and whether or not they are within the scope of Withdrawal Agreement (should there be one).

The Belfast / Good Friday Agreement enshrines equality for Irish and British citizens in Northern Ireland so diverging rights may well conflict with both the letter and the spirit of the peace agreement. It will be essential that citizens understand their right to redress should their rights begin to be infringed.

Relevant statistics - 2015/2016 figures unless stated.

NI – IE Border

110 million vehicle crossings a year
14% of these HGV/LGV – 15.4 million
19600 HGV/LGV crossings in a 12 hour period

Students

2200 students from Ireland in Higher Education in Northern Ireland
1900 students from Ireland in Further Education in Northern Ireland
8100 students from Ireland in Higher Education in Great Britain

800 students from Northern Ireland in Higher Education in Ireland
1800 students from Great Britain in Higher Education in Ireland

Travel

1 million Northern Irish passengers using airports in Ireland
6.6 million passengers from Great Britain using airports in Ireland
700000 business trips from Great Britain to Ireland

300,000 passengers from Ireland using airports in Northern Ireland
500000 business trips from Ireland to Great Britain
456000 overnight trips by people from Ireland to Northern Ireland with an estimated spend of £70 million to local economy

Shopping (2010 figures)

Over 400 million euro spent by consumers from Ireland in Northern Ireland
Equated to £72.2 million boost from Northern Ireland retail industry
Equates to 2300 jobs.

Healthcare

Daisy Hill Hospital, Newry, Co. Down, Northern Ireland
885 patients from Ireland
708 A&E attendees from Ireland
2011-2015 there were 280 children born in Northern Ireland with mothers resident in Ireland

Public Transport (2016/2017 figures)

900000 journeys by bus
86853 journeys by train

Sources:

Department of the Economy, Northern Ireland – Background evidence on the movement of people across the Northern Ireland / Ireland Border, March 2018 - <https://www.economy-ni.gov.uk/publications/background-evidence-movement-people-across-northern-ireland-ireland-border>

HMG – Additional Data Paper: Common Travel Area Data and Statistics, as of August 2017 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638137/Additional_Data_Paper_-_Northern_Ireland_Common_Travel_Area.pdf