



The Centre for
Cross Border Studies

This Briefing Paper forms part of the Centre for Cross Border Studies' ongoing work on Brexit, which has included a series of Briefing Papers published in collaboration with Cooperation Ireland prior to the June 2016 referendum, as well as additional Briefing Papers and submissions to various relevant inquiries following its outcome. All our work on this topic, as well as reports and other relevant material produced by others can be found on our dedicated webpage at <http://crossborder.ie/research-policy/research/uk-eu-referendum/>

BRIEFING PAPER

JUNE 2017

“Flexible and imaginative solutions”:

The 1998 Belfast/Good Friday Agreement as a framework for post-Brexit relations within and between these islands

THE UK ELECTORATE voted on 23 June 2016 to leave the European Union, and on 29 March 2017 Prime Minister Theresa May formally notified the President of the European Council, Donald Tusk, of the United Kingdom's intention to withdraw. Negotiations between the UK Government and the European Union began on 19 June 2017. Their outcome is likely to determine future relations between the two jurisdictions on the island of Ireland, between the island of Ireland and Great Britain, and between these islands and the European Union.

In this Briefing Paper, we argue 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, but also as a potential “flexible and imaginative” solution to the maintenance of post-Brexit relations.

We recommend that the 1998 Agreement should become a framework enabling the post-Brexit flow of people, goods and services between the two jurisdictions on the island of Ireland, and between the island of Ireland and Great Britain, avoiding the hardening of existing borders or the creation of new ones.

We offer here an *outline proposal for a framework* – not currently populated by technical solutions or legal arguments relevant to a post-Brexit environment. Undoubtedly there will be arguments put forward why such a framework is technically and/or legally unfeasible; nevertheless, flexibility and imagination could and should be employed in finding technical solutions

and interpreting existing legislation, as called for by the main actors in the negotiations and by the Centre for Cross Border Studies on previous occasions.¹ It is of course possible that this framework's purpose will be exceeded by an outcome to the negotiations that both secures the relationships it supports and also relationships that go beyond the island of Ireland and Great Britain. However, **the framework provided for by the 1998 Belfast/Good Friday Agreement must be a *minimum* conclusion to the negotiations.**

Existing provisions of the Treaty on European Union allow for the development of relations between the EU and third countries, as was

highlighted by the European Parliament in its resolution on the negotiations for the UK's withdrawal. Article 8(1) of the Treaty states:

The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

A consensus on protecting the 1998 Agreement

All sides in the negotiations have recognised their obligations in protecting the 1998 Belfast/Good Friday Agreement, and included this as one of their negotiating priorities. The UK Government, the EU and the Irish Government have all identified the specific circumstances pertaining to the island of Ireland, the border between Northern Ireland and the Republic of Ireland*, the peace process in Northern Ireland, and the 1998 Belfast/Good Friday Agreement as issues requiring resolution during the negotiations.

All sides involved in the negotiations agree that the integrity of the Agreement must be protected and the Irish Government, one of its co-guarantors will of course continue to be a Member State of the European Union.

The 1998 Agreement is an ideal vehicle for maintaining the current socio-economic relations between Northern Ireland and Ireland, and between the island of Ireland and Great Britain following the UK's exit from the European Union.

* For reasons of clarity, in this Briefing Paper we use the term "Republic of Ireland" in reference to the jurisdiction officially known as "Ireland" or the Irish State, represented by the Government of Ireland.

From the EU's side, the final version of the European Commission's negotiating directives make it clear that any agreement on the UK's withdrawal should not undermine the 1998 Agreement:

Nothing in the [withdrawal] Agreement should undermine the objectives and commitments set out in the Good Friday Agreement in all its parts and its related implementing agreements (para. 14).

The addition of the phrase "in all its parts" which was absent from the draft directives could be interpreted as relating specifically to a statement added to the minutes of the European Council's meeting of 29 April 2017. Reproduced in the Irish Government's document outlining its approach to the negotiations, the statement reads:

The European Council acknowledges that the Good Friday Agreement expressly provides for an agreed mechanism whereby a united Ireland may be brought about through peaceful and democratic means; and, in this regard, the European Council acknowledges that, in accordance with international law, the entire territory of such a united Ireland would thus be part of the European Union.²

While it is important to specify the 1998 Agreement's provision for a future constitutional possibility, it is also important to ensure that all other provisions contained within the Agreement are safeguarded.




However, before setting out our proposal it is important to note calls made prior to the triggering of Article 50 by the Centre for Cross Border Studies along with a number of other organisations involved in cross-border cooperation.³ Those calls were contained in the Centre for Cross Border Studies

submission to the House of Lords European Union Select Committee inquiry on Brexit and UK-Irish relations:

We are concerned [...] to ensure that the interests of the border region remain central to the deliberations of both the UK and Irish Governments and the Northern Ireland Executive prior to and following the notification of Article 50. In particular, it is essential that:

- measures be taken to ensure the sustainability of cross-border and transnational projects that are currently funded under EU 2014-2020 programmes. It is important that project promoters and participants be reassured that projects will continue to be financially supported until 2020;
- existing EU directives and regulations that have been transposed into UK/Northern Ireland law should remain in place until such time as any proposed changes have been subject to comprehensive territorial, equality and environmental impact assessments;
- means should be found to ensure the eligibility of continued participation by Northern Ireland (and those parts of Wales and Scotland currently involved in INTERREG programmes with Ireland) in the European Territorial Cooperation Programmes and transnational programmes such as Horizon 2020, Erasmus+, Life and Europe for Citizens (which would require a financial commitment from the UK Government);
- whether or not the UK is excluded from EU programmes and projects, the Irish and UK Governments must take steps to ensure new and sufficient resources are available for the social and economic development of the border region, including local authority and civic society-led projects. On the UK side, additional funding allocations should be derived from the UK's current contribution to the EU budget that will revert to HM Treasury post-withdrawal from the EU, and not from the "block grant";
- additional funding be allocated by the UK and Irish Governments to the PEACE IV programme specifically to address the challenges of inter-community conflict and cross-border relationships in the context of political and economic uncertainty and instability arising in the post-referendum context; and
- a "PEACE V" programme, funded by the UK and Irish Governments should be developed – in consultation with civil society organisations and local authorities – specifically to address the challenges of inter-community conflict and cross-border relationships in the context of uncertainty and instability arising in the post-Brexit context.

Noting that the first of the above has been addressed by the UK Government,⁴ we consider that the framework we are proposing is capable of accommodating the other points raised, which would be essential to maintaining and developing the relations within and between these islands.

The Architecture of the Belfast/Good Friday Agreement		
Strand	Geographical scope	Institutions
I		<ul style="list-style-type: none"> • The Northern Ireland Executive • The Northern Ireland Assembly
II		<ul style="list-style-type: none"> • The North South Ministerial Council
III		<ul style="list-style-type: none"> • The British-Irish Council • The British-Irish Intergovernmental Conference

Crucially, as illustrated in the box above, the 1998 Agreement is comprised of three strands, to the protection of which all parties to the withdrawal negotiations are committed. By avoiding a selective interpretation – **rather than the 1998 Agreement being regarded simply as a problem to be solved during the negotiations – it can become a potential solution to the challenges posed by Brexit to future relations within and between these islands.**

The 1998 Agreement, as a framework with the capacity to support the current socio-economic relations between Northern Ireland and the Republic of Ireland and between the island of Ireland and Great Britain following Brexit, needs to be seen in its three interdependent strands, the geographical spaces they encompass, and their respective institutions.

As noted above, the European Commission’s negotiating directive states that nothing in the withdrawal Agreement should undermine the Good Friday Agreement *“in all its parts”*. This

commitment should encompass the entire geographical scope of the 1998 Agreement. **To reach a negotiating outcome that undermines any one of the strands of the Belfast/Good Friday Agreement and the geographical spaces they represent would be to undermine the entire Agreement given that they are all interdependent.**

Protecting the integrity of the Agreement requires more than simply ensuring the continued existence of the institutions established to underpin the Agreement. It is essential that the social and economic relations between both jurisdictions on the island of Ireland, and between the island of Ireland and Great Britain, are not interrupted. This means not only ensuring the continuing free movement of Irish and UK citizens between their jurisdictions, but also the free movement of goods and services; requiring maximum application of all parties' flexibility and imagination as they negotiate the UK's withdrawal.

Addressing the economic consequences for Ireland

The EU institutions recognise that the Republic of Ireland, as a Member State, *"will be particularly affected by the withdrawal of the United Kingdom from the European Union"*.⁵ This means that accommodations will have to be reached to meet the Republic of Ireland's specific needs: taking into account not only the Irish Government's continuing responsibilities as a co-guarantor of the 1998 Belfast/Good Friday Agreement, but also the potential economic consequences faced by the Republic of Ireland. Those consequences are explicitly assumed by the Irish Government in its approach to the Brexit negotiations, declaring that it will be *"making a strong case at EU level that the UK's withdrawal represents a serious disturbance*

to the Irish economy overall and that we will require support".⁶

Achieving an outcome over the UK's withdrawal from the EU that ensured cross-border trade on the island of Ireland, but not between the Republic of Ireland and Great Britain, would not significantly reduce the disturbance to the Irish economy and would require Ireland receiving greater support from the EU. This is because the Republic of Ireland's volume of trade with Great Britain is far greater than that with Northern Ireland.

The Centre for Cross Border Studies proposes here two models for consideration; both of these models rely on the 1998 Agreement framework and address the potential economic consequences of Brexit. Each of these models assumes that the United Kingdom will be outside both the Single Market and the Customs Union. In the first, the Republic of Ireland occupies two distinct areas; in the second, Northern Ireland and the Republic of Ireland share an area that is linked to two others. However, it should be understood that the use of terms such as 'area' or 'membership' is simply meant to communicate conceptual spaces and should not be taken as implying that these would become formal entities.

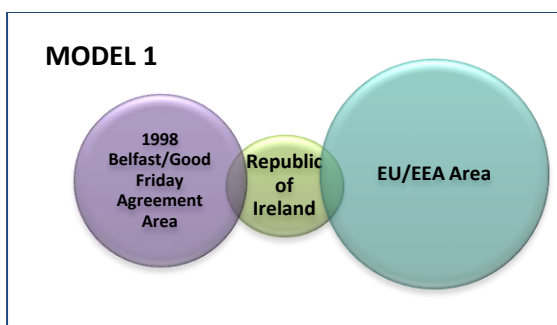
Model 1

In the first model, the Republic of Ireland is within the EU/EEA area through its membership of the European Union, but is also within another area as a co-guarantor of the 1998 Belfast/Good Friday Agreement and its membership of the institutions under Strands II and III of that Agreement. The two areas do not themselves overlap.

The 1998 Agreement area comprises the two sovereign governments of the United Kingdom and the Republic of Ireland, as well

as the devolved administrations of Northern Ireland, Scotland and Wales. The other area comprises the Republic of Ireland and all other Member States of the European Union and those EFTA countries within the EEA, and is governed by the relevant institutions according to the Treaties in force. Neither the United Kingdom or any of the devolved administrations would be within this area.

Remaining acutely conscious that the EU's institutions and its Member States – including the Republic of Ireland – have repeatedly asserted the need to safeguard the integrity of the Single Market, nevertheless **in this model we propose that goods, services and people should be able to flow freely between the Republic of Ireland and the United Kingdom.** Goods and services from the United Kingdom would not, however, be able to travel further than the Republic of Ireland, and they would have to adhere to all relevant EU regulations and standards. That adherence would, of course, be more easily achieved if, in the wake of the Great Repeal Bill, the UK were not to introduce legislation that resulted in lower standards or protections or in regulatory divergence.



Crucially, however, **the UK would have to impose certain restraints on its approach to Free Trade Agreements** with what would be 'third countries' from an EU perspective. If the UK were to reach agreements with other countries that included a significant reduction or elimination of tariffs, the introduction of goods from such countries into the Irish

market could threaten indigenous businesses and in many cases, such as the agri-food sector, could also damage enterprises in Northern Ireland. To prevent this, the UK must continue to largely mirror EU tariffs with third countries (which would not prevent it from striking Free Trade Agreements). Otherwise, customs controls would have to be put in place between the UK and the Republic of Ireland, including between the two jurisdictions on the island of Ireland, which would make this model unviable.

Under this model, Strands II and III institutions would gain greater prominence as coordinating bodies and spaces for significant dialogue between the UK and Irish Governments, as well as between the two governments and the devolved administrations. It is also important to recall that the Republic of Ireland, as a Member State of the European Union and within the jurisdiction of the Court of Justice of the European Union, would have to continue to discharge its responsibilities to ensure the integrity of the Single Market and to uphold the values of the EU.

The British-Irish Council and the North South Ministerial Council, for example, were created by the 1998 Belfast/Good Friday Agreement with remits that could allow the Irish Government to ensure that its obligations as a Member State of the European Union are being discharged satisfactorily. Specifically, article 5 of Strand III of the 1998 Agreement states that the British-Irish Council will:

... exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant Administrations. Suitable issues for early discussion in the BIC could include

transport links, agricultural issues, environmental issues, cultural issues, health issues, education issues and approaches to EU issues.

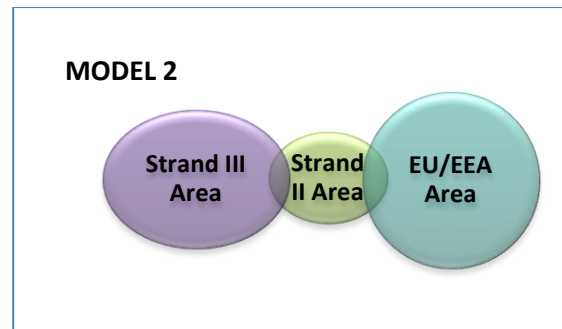
Article 17 of Strand II includes amongst the North South Ministerial Council's responsibilities the coordination of EU matters between the Irish Government and the Northern Ireland administration in relation to policy areas within both their competence:

The Council to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings.

The British-Irish Council and/or the British-Irish Intergovernmental Conference could become useful vehicles to enable the continuation of EU cross-border cooperation programmes involving Scotland, Wales and both jurisdictions on the island of Ireland. This would necessitate either the required financial contribution from the UK Government directly to the relevant EU budget, or indirectly through the Irish Government, which is a member of both the British-Irish Council and the British-Irish Intergovernmental Conference.

Model 2

These institutions would also serve the same roles in the second model we are outlining here. **In this model, goods from Northern Ireland would have access to the EU/EEA area, but without establishing any disruption to the flow of goods between Northern Ireland and the rest of the United Kingdom or undermining its constitutional position.**



While both Northern Ireland and the Republic of Ireland are the only members of the 'Strand II Area' in this model, they nevertheless remain separate jurisdictions. The 'Strand III Area' comprises the members of the 'Strand II Area', along with Great Britain. This brings the two sovereign governments of the United Kingdom and the Republic of Ireland together with the devolved administrations of Northern Ireland, Scotland and Wales. As in the first model, the Republic of Ireland occupies both these areas given its role as a co-guarantor of the 1998 Belfast/Good Friday Agreement and its membership of the institutions under Strands II and III of that Agreement.

Also similarly to the previous model, the 'EU/EEA Area' comprises the Republic of Ireland and all other Member States of the European Union and those EFTA countries within the EEA, and is governed by the relevant institutions according to the Treaties in force. Neither the United Kingdom or any of the devolved administrations would be within this area, although unlike the first model, Northern Ireland would have access to it through its position within the 'Strand II Area'.

Within this model, as in the first, goods and services should be able to flow freely between the Republic of Ireland and the United Kingdom, and the UK would have to adhere to all relevant EU regulations and standards. It would also have to impose certain restraints on its approach to Free Trade Agreements with third countries and largely mirror EU

tariffs in order not to prejudice Irish businesses. However, in order for Northern Ireland goods to have access to the 'EU/EEA Area', an additional mechanism would have to be put in place in order to distinguish them from goods originating from elsewhere in the UK.

Implementing Models 1 and 2

Both the proposed models require UK adherence to relevant EU regulations and standards and, likewise, the devolved UK administrations in relation to policy areas within their competence; particularly as certain powers are 'repatriated' from the EU to the UK. The harmonisation of regulations and standards would not only support the continued flow of goods and services between the Republic of Ireland and the UK, but it would also facilitate the operation of the cross-border implementation bodies created under Strand II of the 1998 Belfast/Good Friday Agreement.

One of those bodies, the Special EU Programmes Body (SEUPB), would be ideally placed to continue to manage European Territorial Cooperation programmes that have contributed so significantly to the ongoing peace and reconciliation process on the island of Ireland. The EU's support for that process has already shown its capacity for flexibility in order to accommodate specific circumstances. Illustrating this is the EU's regulation 1299/2013 on European Territorial Cooperation programmes, which contains derogations applicable to the island of Ireland, as in article 18:

Within the thematic objective of promoting social inclusion and combating poverty and taking into account its practical importance, it is necessary to ensure that, in the case of the PEACE cross-border programme

between Northern Ireland and the border counties of Ireland in support of peace and reconciliation, the ERDF should also contribute to promoting social and economic stability in the regions concerned, in particular through actions to promote cohesion between communities. Given the specificities of that cross-border programme, certain rules on selection of operations in this Regulation should not apply to that cross-border programme.⁷

It could do so again to avoid undermining the 1998 Belfast/Good Friday Agreement in all its parts as the UK withdraws from the EU.

Such existing flexibility within the regulation should enable the post-Brexit continuation of EU cross-border programmes on the island of Ireland; especially since the 'specificities' referred to are applicable to Ireland as a continuing Member State. This should enable the UK to make the necessary financial contributions either directly to the relevant EU budget, or indirectly through the Irish Government, which is a member of the North South Ministerial Council and with joint responsibility along with the Northern Ireland Executive over the SEUPB.

Conclusion

The 1998 Belfast/Good Friday Agreement should not be regarded simply as an issue to be resolved during the negotiations over the UK's withdrawal from the EU, but also as a potential solution to at least part of the problems raised by Brexit. Specifically, it offers the means to safeguard relations between Northern Ireland and the Republic of Ireland, and between the island of Ireland and Great Britain.

Our proposal employs the 1998 Agreement as a framework receptive to the flexible and

imaginative solutions required for the post-Brexit context – and a framework that has been identified as a priority in the negotiations by all the parties involved. It is also a framework that already contains institutions with representation from the administrations and governments of all parts of these islands, one of which continues to be a Member State of the European Union.

- **Where the EU expresses its intent not to undermine the 1998 Agreement in any of its parts, this should be interpreted as relating to its three interconnected strands, with the Governments of the UK and the Republic of Ireland as its co-guarantors.**
- **Those strands represent geographical areas with institutions with the potential to maintain post-Brexit relations between the Republic of Ireland and Northern Ireland, and between the island of Ireland and Great Britain.**
- **The Republic of Ireland, a Member State of the European Union and under the jurisdiction of the Court of Justice of the European Union, will continue to participate in the institutions created under the 1998 Agreement.**
- **One possible model under this framework maintains current flows of goods and services between the**

UK and the Republic of Ireland, but that no goods or services from the UK enter further into the EU.

- **A second possible model maintains current flows of goods and services between the UK and the Republic of Ireland and also allows for the flow of goods and services from Northern Ireland into the Republic of Ireland and the rest of the EU.**

Using this framework, we have proposed two conceptual models that facilitate the movement of people, goods and services within and between the island of Ireland and Great Britain; avoiding the creation of new or hardening of existing borders between any part of these islands.

Our proposal does not cover every possibility – not least that of some or all of the devolved administrations in the UK being given powers that would allow immigration from EU Member States other than the Republic of Ireland – nor does it detail the technical or legal arrangements that would make it a reality. We will, of course, work to provide some of that detail, but we also hope that others will apply some of their creative energies to imagining technical and legal solutions appropriate to the 1998 Belfast/Good Friday Agreement as it enters a post-Brexit reality.

¹ In its October 2016 submission to the Northern Ireland Affairs Committee, for example, the Centre for Cross Border Studies stated that to achieve the objective of “retaining (at least to the greatest extent possible) the free movement of people, goods and services, avenues should be explored to obtain flexible arrangements that could simultaneously accommodate the specific needs of Northern Ireland and of the Republic of Ireland”; <http://crossborder.ie/site2015/wp-content/uploads/2016/11/2016-10-21-Submission-NI-Affairs-Committee-Inquiry-on-the-land-border-with-the-Republic-of-Ireland.pdf>.

² *Ireland and the negotiations on the UK’s withdrawal from the European Union: The Government’s approach*, p.21. It should be noted that, as outlined by the European Parliamentary Research Service, “Two statements,

the texts of which were not made public, were added to the minutes. Following a request from the Irish Government, the European Council agreed on Northern Ireland's membership of the EU in the event of reunification with the rest of Ireland"; <https://epthinktank.eu/2017/05/10/outcome-of-the-special-european-council-article-50-meeting-of-29-april-2017/> [last accessed 22/06/2017].

³ The other organisations were: Cooperation and Working Together (CAWT), Cooperation Ireland, Derry and Strabane District Council, Donegal County Council, East Border Region, Irish Central Border Area Network, and the North West Regional Working Group.

⁴ See *The United Kingdom's exit from and new partnership with the European Union*, p12.

⁵ "European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union", paragraph 8.

⁶ *Ireland and the negotiations on the UK's withdrawal from the European Union: The Government's approach*, p.9.

⁷ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0259:0280:EN:PDF> [last accessed 23/06/2013].