



The Centre for
Cross Border Studies

Response to the UK Government position paper: Northern Ireland and Ireland

18 August 2017

THE CENTRE FOR CROSS BORDER STUDIES welcomes the UK Government's position paper on Northern Ireland and Ireland¹ which recognises the unique circumstances of the island of Ireland. The paper sets out the Government's 'high level objectives' encompassing some of the key issues that need to be addressed in the first stage of negotiations to shape the UK's withdrawal from the EU. The EU has made clear that sufficient progress must be achieved on issues related to Ireland, resolution of the UK's financial obligations and citizens' rights before negotiations on the future relationship between the UK and the EU can begin.

In particular, we appreciate that throughout the document, there are references to upholding the Belfast/Good Friday Agreement, avoiding a 'hard border', maintaining the Common Travel Area (CTA), and continued North-South and East-West cooperation. **We are concerned, however, that the UK position is that the realisation of many of these 'high level objectives' will depend upon the Government achieving a 'bold and ambitious Free Trade Agreement'.** The UK proposes that it should "work intensively with the EU *over the coming months* [our emphasis] to address the issues set out in this paper. ..." (para 74) and that focused engagement on issues related to Northern Ireland and Ireland will be required "throughout the course of the UK's exit negotiations and not simply in the initial phases of discussions"(para 75).

Delivering our shared objective will require detailed joint work and can only properly be finalised in the context of the new, deep and special partnership that the UK wishes to build with the EU (para 43).

Ensuring that the full spectrum of North-South and East-West co-operation can continue will require the type of bold and ambitious Free Trade Agreement that the UK has committed to, and will need a sustained focus on the interests of Northern Ireland and Ireland throughout the negotiations (para 65).

The UK Government's paper does set out a number of proposals (para 75) that it suggests *can* be agreed in the negotiations before October 2017:

“The scope of the issues arising from the Belfast (‘Good Friday’) Agreement”

Throughout the position paper, there are multiple references to the principle of “upholding the Belfast (‘Good Friday’) Agreement in all its parts”; noting that this is a commitment shared by the EU and the Irish Government.

Support for the 1998 Agreement, the totality of socio-economic relations, and the related structures it encompasses should not be placed in any doubt almost twenty years later. The scope of the issues arising from the Agreement is not something for negotiation as part of the exit process. Indeed, in addressing a number of the issues presented here, the parties to the negotiation must be “... mindful of the full breadth of commitments made in the Belfast (‘Good Friday’) Agreement. Ensuring that nothing is done to undermine it...” (para 4).

Again, the Centre is concerned at any implication that the outcome of the exit negotiation process (or indeed agreement on the future relationship between the UK and the EU) could threaten “the full breadth of commitments” in the 1998 Agreement. CCBS has recently published outline proposals for how the Belfast/Good Friday Agreement can be a useful framework to resolve some of the challenges arising from the UK's decision to withdraw from the EU. The framework provided for by the 1998 Belfast/Good Friday Agreement must be a **minimum** conclusion to the negotiations.²

“the UK and EU could aim by October to have [...] reached agreement on the scope of the issues arising from the Belfast (‘Good Friday’) Agreement, and specifically agreed to confirm our continued support for the Agreement” (para 24).

... the UK is clear that it [the Belfast/Good Friday Agreement] must be considered and safeguarded throughout the exit process, as a whole and in all its parts (para 9).

The Peace IV programme

The UK Government proposes that by October, there should be agreement on the continuation of Peace funding to Northern Ireland and the Border Counties of Ireland (para 11). The Centre welcomes this proposal. Indeed, CCBS has previously argued that *additional* funds should be allocated to the PEACE IV Programme and that a new PEACE Programme should be agreed to address the challenges of inter-community conflict

and cross-border relationships in the context of instability resulting from the withdrawal process.³

It is not immediately clear, however, why there should be a question over funding PEACE IV for the duration of the current programme. Indeed, on 13 August 2016, UK Chancellor Philip Hammond announced that the UK Treasury were guaranteeing “billions of pounds of UK government investment after Brexit for projects currently funded by the EU, including science grants and agricultural subsidies” until at least 2020 (the current programme period is 2014-2020).⁴ The UK’s position paper proposes, however, that agreement should be reached on the continuation of the PEACE IV Programme early in the negotiations.

We must therefore wait for a future UK paper outlining its position on its financial obligations resulting from its membership of the EU. It is perhaps helpful to acknowledge also that the EU’s *Essential Principles on the Financial Settlement* states that “the United Kingdom should continue to benefit from all programmes as before the withdrawal until their closure under the condition that it respects the applicable Union legal rules.”⁵ The Centre has also previously recommended that agreement should be reached to ensure the continued eligibility of Northern Ireland in the European Territorial Cooperation Programmes (i.e. PEACE and INTERREG) and transnational programmes e.g. Horizon 2020 (Framework Programme 9 post-2020), Erasmus+, Life and Europe for Citizens.⁶ Along with the PEACE programme, these funding streams have provided vital support to Northern Ireland. Among them, we would highlight INTERREG as a vital means of supporting the UK Government’s stated aim of preserving North-South and East-West cooperation. We have also expressed our concerns elsewhere about the Conservative Party’s plans to replace the mainstream Structural Funds – of which Northern Ireland is currently a net beneficiary – with the Shared Prosperity Fund, but that is not directly relevant to the UK-EU negotiations.

... without prejudice to the wider discussions [including on regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures] on the financial settlement and Structural and Investment Funds, the UK and the EU should agree the continuation of funding for PEACE IV for the duration of the existing programme and, with the Northern Ireland Executive and the Irish Government, explore a potential future programme post 2020.

The Common Travel Area

The UK Government suggests that agreement can likewise be reached by October on the preservation of the Common Travel Area (CTA) and its associated rights (para 75). Others have already raised questions about some of the assumptions in the paper about the legality of the provisions for continued reciprocity of citizens' rights after the UK's withdrawal from the EU.⁷

CCBS agrees with the UK Government's objective of maintaining the Common Travel Area and its associated rights, but it is our view that this matter should not be completely disassociated from the issue of the rights of EU citizens in the UK and of UK nationals in the EU. It is of some concern that the UK Government hopes to achieve agreement on acceptance by the EU of these bilateral arrangements between the Irish and UK Governments (although nothing is agreed until everything is agreed), without reference to other issues related to citizens' rights – which have been designated by the EU Commission as one of the three priority areas of the exit negotiations. We have repeatedly noted that the rights associated with the CTA apply to UK and Irish citizens only, and this is clear in the section of the position paper (paras 18-30).

We have no comment on the issues related to UK citizens' rights in the EU post-Brexit, except to note that there will be a significant section of the Northern Ireland population who will not choose to exercise their rights derived from the Belfast/Good Friday Agreement to claim Irish nationality, and thereby continue to have rights as EU citizens. It is easy to anticipate that there could be a myriad of difficulties encountered among the small population of Northern Ireland as a result of different citizenship rights and entitlements for those who choose to identify as British or Irish.

We would also suggest that as a guarantor of the Belfast/Good Friday Agreement, the UK Government has a responsibility to protect the rights and entitlements of Irish/EU citizens (and other EU citizens resident in Northern Ireland) in other EU member states, e.g. access to healthcare may be dependent on

reciprocal arrangements. Given the special circumstances of Northern Ireland – and we refer again to the potential for increased tensions related to citizens’ rights arising from the Brexit process – discussion of the rights of EU citizens in Northern Ireland needs to be included as part of this phase of the exit negotiations.

The Border

There is a consensus, reflected in the document, that the land border should be “seamless and frictionless”, “invisible and open” and that the special commitment in the Belfast/Good Friday Agreement for the removal of security installations should be respected (paras 34-36). Much discussion has already focussed on the various proposals in the UK Government’s position paper for management of the Irish land border.

It is clear that issues related to the border are perhaps among the most pressing of those given priority by the EU Commission when it designated Northern Ireland and Ireland as one of the three priority areas for significant progress before discussions can begin on future relationships. It is disappointing, therefore, that the UK Government continues to subordinate its proposed principles and technical suggestions in respect of the land border to its objectives for new customs partnership arrangement with the EU.

Summary

The UK Government’s stated high level objectives are of course welcome. However, it would appear that the UK intends that only the *existing arrangements* of the Common Travel Area and the *existing* Peace IV (2014-2020) Programme will be agreed by October. The many other issues related to Northern Ireland/Ireland such as the rights of citizens (beyond those covered by the CTA), the physical presence of border controls and management of movement of people, goods and services, remain subordinate to the determination of the UK Government to pursue its ‘bold and ambitious’ Free Trade Agreement.

Some of the specific facilitations set out in Future customs arrangements: a future partnership paper ... would be essential to enable a Northern Ireland border under the model of a highly streamlined customs arrangement that is as seamless as possible (para 47).

The option of a new customs partnership arrangement with the EU, outlined in our customs paper ... would enable the border between Northern Ireland and Ireland to continue to be seamless in relation to customs, and operate largely in the same way it does today (para 50).

The customs paper sets out the importance of an interim period, linked to the implementation of the arrangements, to allow a smooth and orderly transition. ... The principles outlined above reflect the importance of agreeing this interim period as part of our dialogue on Northern Ireland and Ireland (para 54).

¹ HM Government, “Northern and Ireland Position Paper” (16 August 2017), <https://www.gov.uk/government/publications/northern-ireland-and-ireland-a-position-paper> [last accessed 17/08/2017].

² 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” (July 2017), <http://crossborder.ie/the-centre-for-cross-border-studies-publishes-brexit-briefing-paper-flexible-and-imaginative-solutions/>.

³ See for example, <http://crossborder.ie/site2015/wp-content/uploads/2017/07/Presentation.pdf>

⁴ <https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu>

⁵ https://ec.europa.eu/commission/sites/beta-political/files/essential-principles-financial_settlement_en_0.pdf

⁶ <http://crossborder.ie/site2015/wp-content/uploads/2017/07/Presentation.pdf>

⁷ <https://www.thetimes.co.uk/article/irish-nationals-in-uk-have-no-protection-hlggfczwc>