



Centre for Cross Border Studies Statement on draft Agreement on the withdrawal of the United Kingdom from the European Union

20 November 2018

Following the publication on the 14th of November of the draft Agreement on the UK's withdrawal from the EU,¹ and in light of its Protocol on Ireland/Northern Ireland, the Centre for Cross Border Studies (CCBS) notes the following:²

- **'No deal' must not be an option.** Failure to reach agreement on the UK's orderly withdrawal from the EU will have the most adverse negative impacts on socio-economic relations within and between these islands, on the operability of the 1998 Belfast/Good Friday Agreement in all its parts, and on the nature of the UK's borders. No deal will lead to physical border infrastructure, with serious consequences for the social and economic stability of the island of Ireland.
- **The Protocol on Ireland/Northern Ireland contained in the draft Withdrawal Agreement comes closest to providing a legally binding framework that can "maintain the necessary conditions for continued North-South cooperation" and "avoid a hard border" on the island of Ireland.** No other existing proposal or agreement achieves this.

¹ European Commission and HM Government, "Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community" (14 November 2018), https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756374/14_November_Draft_Agreement_on_the_Withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_from_the_European_Union.pdf [last accessed 19/11/2018].

² What follows is a summary position, with more detailed responses to follow on specific areas of the draft Withdrawal Agreement and the Protocol on Ireland/Northern Ireland as necessary.

- **The Protocol upholds Northern Ireland’s constitutional status.** Article 1 affirms that the Protocol is “without prejudice to the provisions of the 1998 Agreement regarding the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people”.
- **The commitment in Article 4 of the Protocol to no diminution of individual rights is unduly limited to rights as they are “set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity”.** For there to be full and adequate protection of the rights of individuals, it is necessary to detail what obligations arise on the UK government in the case of rights and safeguards not listed in this part of the 1998 Agreement. Failure to do so raises questions regarding the Protocol’s provisions for the overall protection of the 1998 Belfast/Good Friday Agreement, in all of its parts.
- **We welcome the commitment in Article 13(1) “to maintain the necessary conditions for continued North-South cooperation”, which must be seen as protecting the *full breadth* of North-South cooperation.** To ensure protection is afforded for the *full* range of North-South cooperation, there must not be any scope to misinterpret Article 13(1) as providing only for the areas of cooperation listed as examples. Moreover, whereas Article 13(1) is specifically linked to “the arrangements set out in Article 6(2) and Articles 7 to 12 of this Protocol”, it is imperative to be aware of the human dimensions of cross-border and North-South cooperation. In this sense, proper protection of individual rights, as referred to in the previous point, is needed to maintain the necessary conditions for successful cooperation.
- **We are concerned that, whereas Article 13(1) states the UK and Ireland “may continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation”, responsibility for maintaining the necessary conditions may not be sufficiently robust.** In this respect paragraph 211 of the UK Government’s explainer for the draft Withdrawal Agreement sees the devolution framework as the “primary basis for ensuring the continued operation of North-South cooperation”.³ It further notes how the “majority of areas of North-South cooperation are devolved matters in Northern Ireland, which will mean the Northern Ireland Executive and Assembly will have full powers in those areas to maintain necessary conditions for cooperation to continue”. There must be absolute clarity on who will take on the responsibility for maintaining the necessary conditions for North-South cooperation relating to devolved matters when – as is currently the case – there is no functioning Northern Ireland Assembly or Executive.

³ HM Government, “Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union” (14 November 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756376/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_1.pdf [last accessed 20/11/18].

- Article 16 outlines the responsibilities of the Specialised Committee set up under Article 165 of the Withdrawal Agreement. These include the examination of proposals concerning the implementation and application of the Protocol submitted to it by the North-South Ministerial Council and the implementation bodies set up by the 1998 Belfast/Good Friday Agreement. However, **in order to fully guarantee the proper implementation of the Protocol in relation to North-South cooperation it is vital that provisions should be made for the Specialised Committee to receive proposals or engage more directly with other organisations and institutions involved in such cooperation**, particularly at times when the devolved institutions in Northern Ireland are not functioning.
- **The provisions of Article 5 on the Common Travel Area do not obviate the need for it to be placed on a statutory footing within respective national legislation after withdrawal.** It is also vital to remember that the CTA does not apply to citizens who are neither Irish nor British, nor does it apply to any other type of movement, beyond that of people. In this sense, it represents one narrow aspect of the broader issues covered by the Protocol.
- 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.
- Finally, **we note that the Protocol’s preamble recalls “the Union’s and United Kingdom’s commitments to the North-South PEACE and INTERREG funding programmes”, and we welcome the commitment to “maintaining of the current funding proportions for the future [PEACE PLUS] programme”.** In addition, we urge that any future EU-UK Relationship Agreement should include a commitment that the future PEACE PLUS programme replaces (at minimum) the totality of current PEACE and INTERREG levels of expenditure, and that it should include an additional allocation to address the specific impacts of Brexit in Northern Ireland and the border region.