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**The EU's influence on the peace process and Agreement in Northern Ireland in light of Brexit**

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# **The EU's influence on the peace process and Agreement in Northern Ireland in light of Brexit**

The UK's withdrawal from the European Union has enormous implications for Northern Ireland. All sides to the Brexit negotiations quickly agreed that it was vitally important to protect the peace process and to uphold the 1998 Good Friday (Belfast) Agreement. However, the question of how this was to be done quickly became a point over which there were very apparent differences between the two sides; such differences are manifest within Northern Ireland in differing political views regarding European integration and national sovereignty. This paper explores the effects of EU membership on the peace process and the Agreement in light of the Brexit process. It provides an overview of the difficulties and frictions in finding a common approach from Northern Ireland to the European Union and explains how this is manifest in the response to the Brexit referendum of June 2016. It concludes by considering the ways in which the Agreement itself offers means of navigating some of the more thorny issues for Northern Ireland as a result of the UK's withdrawal from the EU.

Keywords: 1998 Good Friday (Belfast) Agreement; Brexit; British-Irish relations; European Union; Northern Ireland

## **Introduction**

The 1998 Good Friday (Belfast) Agreement has been far more significant than making the Irish border less visible – it has redefined relations across these islands in a way that has defused the border as a cause for political conflict and violence. Crucial to this was the context provided by the UK and Ireland's membership of the European Union (EU). For common membership of the EU meant that both states were, essentially, heading in the same direction, especially in areas that relate to cross-border movement.

On 4 September 2017, the Irish Minister for Foreign Affairs, Simon Coveney, and

Michel Barnier, the Chief Brexit Negotiator for the European Union, held a joint press conference in Brussels. At it, Barnier made efforts to emphasise the significance of the outcome of the Brexit negotiations to the peace process in Northern Ireland. He stated:

Our aim is to ensure that the Common Travel Area and Good Friday Agreement (of which the UK has a special responsibility as co-guarantor) are not affected by the UK's decision to leave the Union.<sup>1</sup>

As there was a lack of progress in the Brexit negotiations, so the European Union's rhetoric regarding the protection of Northern Ireland/Ireland appeared to grow in forcefulness and determination. In the same press conference, Barnier's description of 'Ireland's concerns' as 'the Union's concerns' effectively positioned the European Union as a defender and guarantor of the Agreement, even as it was conducting negotiations with the UK.

The process of making the European Union a protector of the Agreement is a fascinating one – and one that was surely not envisioned when the referendum on the UK's withdrawal from the European Union was first posited. As many commentators have pointed out, the European Union plays, at best, a bit part in the text of the Agreement. It was not a contributor to the negotiations behind the Agreement, nor was EU membership given particular significance in the outworking of its tenets. That said, the fact that relations across Britain and Ireland have become so much closer and more intertwined as a result of common membership of the EU means that the ambition of ensuring the Agreement will be 'unaffected' by Brexit is only realisable if there is a very narrow interpretation of the Agreement itself. Indeed, it was by design that both British and Irish states formally expressed their joint commitment to the 1998 Agreement as 'friendly neighbours and as partners in the European Union'.<sup>2</sup> Common membership of the EU meant that both states, essentially, shared a common vision for

their respective futures, and this meant agreement on objectives and actions across a wide array of public policy. Both states were effectively bound together by a shared future within the EU; thus cross-border cooperation enabled Irish and British nationalisms to be entangled without either one being eroded. In light of this broad and complex context, this paper assesses the implications of Brexit for the Agreement, and the relevance of the Agreement for Brexit. It begins by summarising the importance of the European Union for Northern Ireland and the peace process itself.

### **The EU and Northern Ireland: Historical roots of tentative engagement**

Northern Ireland was experiencing profound political instability during the early years of UK and Irish accession to the EU in 1973. Membership coincided with the introduction of direct rule from Westminster in Northern Ireland and the intensification of violence. As a consequence, the prospects of membership were only minimally discussed and considered. The early years of being part of the then European Economic Community (EEC) were marked by similarly low levels of interest and engagement. In the Stormont debating chambers, there was some discussion of matters European prior to UK accession, but these were invariably coloured by domestic political considerations or ‘channelled into traditional arguments’ (Hainsworth 1983, p. 56). The SDLP was the only Northern Ireland political party to engage positively with the prospects of EEC membership from an early stage (see McLoughlin, 2009), partly on the grounds that it offered the chance to place the conflict on the international stage. In contrast, the then-dominant Ulster Unionist Party (UUP) largely ignored the new European context, making only scant reference to the EEC in their 1973 election manifesto (Murphy, 2009, p. 594). This indifference was also apparent beyond party politics. Guelke (1988, p. 155) has concluded that ‘there was a relatively muted reaction

in the province to actual entry to the Community'. Instead, political positions on Europe were filtered through long-held views on sovereignty and national identity.

### **1998-2018: Northern Ireland's limited engagement with the EU**

Despite the significance of the EU for the peace process, ideological divides on the constitutional status of Northern Ireland hindered deeper engagement with the EU. The pattern of viewing European integration through the prism of nation-state focused discourses has persisted throughout EU membership. Indeed, the Brexit referendum debate encapsulated this, with the gradual polarisation of unionist and nationalist positions on the matter (Gormley-Heenan and Aughey, 2017). More generally, the predominance of nationalist/unionist ideological positions in discourse on European integration has meant that the nuances and detail of EU membership have tended to be overlooked, under-considered and even downplayed in Northern Ireland. Added to this, the legacy of the conflict and fractious community relations have shaped the engagement of the political classes with the subject of EU membership. It is therefore understandable as to why the very topic of Brexit – let alone the process of withdrawal – is highly problematic as well as contentious in post-Agreement Northern Ireland.

Public knowledge of the EU in Northern Ireland and attitudes towards membership have also tended to reflect those of the largely disinterested political classes. A 2003 survey revealed that only one tenth of respondents professed to have an interest in the EU; of these, the largest proportion had such interest purely on the grounds of EU finances/grants/funding (McGowan and O'Connor, 2004, p. 34). The tone and content of media coverage of the EU is also a factor in shaping public attitudes. Murphy (2014, p. 189) notes that when it comes to the transmission of EU information in Northern Ireland: 'An information deficit exists and this is exacerbated

by press and media coverage which often reinforces misinformation'. The biased anti-EU stance of much of the British tabloid media is a factor in that it has infiltrated the Northern Ireland market, contributing to a skewed public conversation. The overall quality of EU discussion and dialogue in Northern Ireland, therefore, lacked substance and reliability.

Perhaps exacerbated by this lack of information, the persistent fact is that attitudes towards European integration have traditionally followed the communal divide in Northern Ireland – unionists have always been more Eurosceptic than nationalists (although Sinn Féin's position has vacillated, in line with leftist critiques and the traditional nationalist argument that sovereignty is eroded by EU membership) (see Hayward and Murphy, 2010). In the past, this difference of opinion has not tended to be problematic because it did not demand deeper consideration of complex political questions related to UK sovereignty, the unity of the UK, and constitutional issues. Moreover, despite this ambivalence, the EU had an impact on the peace process in Northern Ireland.

### **Significance of the EU for the peace process**

#### *British-Irish Intergovernmental Cooperation and EU Membership*

Even as the EU had a low profile in Northern Ireland and was seen by the majority as irrelevant to the conflict, it acted as a unique catalyst for bilateral discussions between the UK and Irish governments. The European Parliament (EP) produced an interesting analysis of the Northern Ireland conflict in its Haagerup Report (1984), emphasising the importance of both British and Irish dimensions in the conflict and in any quest for resolution (Hayward, 2006). Accordingly, following the signing of the Anglo-Irish Agreement in 1985, the EU pledged both economic and political support to the process.

As Tannam notes (this issue), the practice and the EU provided a model of intergovernmental relations in the EU that helped strengthen British-Irish relations to the benefit of peace in Northern Ireland. Notwithstanding public disagreements, British-Irish relations moved towards a shared acceptance of a consensual approach to matters of common concern, and shared EU membership was important for this. The 1985 Anglo-Irish Agreement itself noted the ‘determination of both governments to develop close cooperation as partners in the European Community’. Nowadays it is entirely normal and expected that Irish ministers and officials will play a major role in negotiations and talks on the peace and future of Northern Ireland. The fact that common EU membership has been crucial in securing the legitimacy and respect for an input from the Irish state into the peace process has new relevance in light of Brexit.

Related to this, perhaps the most crucial influence the EU has had on the resolution of the conflict in Northern Ireland has been ‘constructive’ but indirect, affecting the structures, context and language of conflict resolution amongst regional level actors (Hayward, 2007; Hayward and Diez, 2008). This reflects the nature of the EU as a diverse organisation whose substantial effects are determined at the level of the recipient. It also reflects the nature of the conflict in Northern Ireland itself, which required a peace process that works at various levels in order to achieve common interests through political cooperation. Ultimately, it appears that it is not so much the actors or structures of the European Union but *the actual process of European integration itself* that has served to facilitate cooperation across ideological, political and territorial borders.

*The material impact of the EU on the peace process*



In addition to changing the environment and means for British-Irish cooperation, the EU has been successful in forging change in cross-border economic relationships in Ireland in very practical ways. This has most clearly come through its structural impact on the significance of the border as an economic and customs divide. For example, the introduction of EEC regulations on customs declarations in 1987 had immediate effect on the ease with which goods could be transported between north and south. Furthermore, the creation of the Single Market on 1 January 1993 erased many obstacles to cross-border trade and economic development. Added to this, the EU helped create, support and fund networks and programmes across and through the border region, helping to ameliorate some of the negative legacy of the border whilst facilitating closer integration of economies on either side.

From the late 1980s, Northern Ireland became a beneficiary of new opportunities for EU financial assistance. Northern Ireland was long regarded as a priority region for EU structural fund assistance (see Trimble, 1990). The 1988 reform of the structural funds confirmed this by classifying the region as an 'Objective 1' region, a title it retained until 1999. In an unusual move, the EU reacted to the paramilitary ceasefires of 1994 by committing the 'carrot' of additional targeted financial aid to the region. The PEACE programme was created in 1995 and linked economic support to peace-building. As such, the PEACE programmes can be regarded as 'specifically designed conflict transformation tool[s]' (Buchanan, 2008, p. 387). They have financed a range of measures including economic regeneration, social inclusion and cross-community cooperation, and they are rooted in local and regional partnership arrangements. The Special EU Programmes Body (SEUPB) was a cross-border implementation body created under the terms of the 1998 Agreement to oversee this work.

More broadly, across the Irish border and the Irish Sea, freedom of movement of labour, goods, services and capital have been dramatically expanded; these have been grounded in the legal realities of EU membership and manifest in the processes of regulatory harmonisation, standardisation and mutual recognition that affect business on the ground. Added to this, EU investment in border regions and cross-border programmes benefitted the Irish border region in tangible ways. This is why EU membership has meant so much more for the peace process than simply its economic support, or the removal of customs posts along the border. That said, the EU has rarely been credited for the course of the peace process. This is in no small part due to the fact that the Northern Ireland political classes and administration have held the EU at arm's length. And the 1998 Agreement did not alter this situation significantly.

The introduction of devolution in 1999 changed Northern Ireland's constitutional status within the UK. The region was granted advanced decentralised powers managed by a directly elected cross-community Assembly and Executive. This move demanded much of Northern Ireland's political parties and personnel. It required the new administration to engage more robustly with a 'normal' policy agenda, and less with constitutional and security issues. For the first time in generations, Northern Ireland politicians began to grapple with a range of pressing socio-economic challenges across policy portfolios including health, education, welfare, the environment, and more. The governance arrangements which pertained until the signing of the 1998 Belfast Agreement did not facilitate a high degree of regional autonomy vis-à-vis the EU. Nonetheless, the newly created institutions and the revised structure of administrative units required some engagement with the EU dimension to Northern Ireland public policy responsibilities. This was slow to materialise and initially focused heavily on establishing a Northern Ireland presence in Brussels.

The Office of the Northern Ireland Executive (ONIEB) opened in Brussels in the early 2000s. This was supported by the work of what was then the European Policy Coordination Unit (EPCU) in the Executive Office and the Northern Ireland Assembly's Committee of the Centre which in 2002 conducted a European Inquiry and produced a Report. The latter included important prescriptions for the development of a Northern Ireland-EU strategy. Murphy (2007, p. 311) notes that during this period there were 'subtle degrees of institutional adaptation, the gradual evolution of formal and informal linkages and changes to the process of policy making and decision making'. Importantly, these developments were elite led – awareness and engagement did not typically extend beyond political and administrative elites.

The Northern Ireland-EU relationship entered a new era following the re-establishment of devolved institutions in 2007, after a protracted five-year period of suspension. The period is marked by two contradictory themes – dynamism and discord (see Murphy, forthcoming 2018). The dynamism is evident in terms of increased engagement between the Northern Ireland administration and the EU authorities in Brussels. Another significant dynamic was in the development of constructive relations between the ONIEB and the Irish Permanent Representation (Perm Rep) in Brussels (Murphy, 2011, p. 562). The ability of the Northern Ireland Executive to draw on two Permanent Representatives for at least informal support exemplifies the unique position of Northern Ireland, and the immense goodwill it enjoyed even a decade after the Agreement.

The re-establishment of the devolved institutions in 2007 prompted the European Commission to create the Northern Ireland-EU Taskforce (NITF). The NITF created a strategic partnership between Northern Ireland and the Brussels based institution. The initiative was an express attempt, on the part of the Commission, to

support and help consolidate the return to devolved power in Northern Ireland (Hayward and Murphy, 2012). By strategically connecting Northern Ireland interests and Commission officials, the NITF facilitates improved engagement with the EU by prompting agreement on a series of Northern Ireland-EU actions, strategies and forward-planning exercises. During this period too, the scope of Northern Ireland's external relations has expanded, particularly with respect to the Republic of Ireland. On EU issues, there now exists a culture of information sharing, regular political contact, and the emergence of shared all-island positions between the two jurisdictions. However, although there is a more pro-active approach to the EU in Northern Ireland, there are also limits. Input by Northern Ireland political parties to the UK government's policy in advance of the Brexit referendum, and following it, was highly limited, and this was despite the significance of a UK withdrawal from the EU for the Irish border and Northern Ireland.

#### *Limited Action and Capacity*

Beyond utilitarian motivations to avail of EU funding, the Northern Ireland administration has often been characterised by inaction on some key EU issues and initiatives. This has in part been a consequence of an incapacity to recognise opportunities/threats from outside the UK context and, secondly, as a result of home-grown political disputes and disagreements between the two largest political parties, the Democratic Unionist Party (DUP) and Sinn Féin. This sporadic inability to agree common actions and approaches to EU matters has constantly hindered Northern Ireland from feeding effectively into wider UK-EU discussion and debates. The UK government's decision to overlook the Northern Ireland issue during and after the EU referendum exacerbated the situation.

This lack of Northern Ireland input is notably evident in the *Balance of Competences Review* (2014) which examined the balance of competences between the UK and the EU. The UK government review was an analytical exercise which investigates how the EU affects British life in 32 areas, from health and education to the economy. The government's laudable aim in this review (of deepening public and parliamentary understanding of the nature of the UK-EU relationship and contributing constructively and seriously to the national debate concerning possible reform of the EU) was manifestly not met. Even where parts of the review do form a more robust component of the wider debate around UK EU membership, a Northern Ireland voice is hardly present. This is because the contribution of the Northern Ireland administration to the *Balance of Competence Review* was at best limited, at worst non-existent. For example, the Northern Ireland Executive did not contribute to the 'Subsidiarity and Proportionality' consultation exercise, despite its clear relevance and applicability to the devolved region.<sup>3</sup> Where submissions had been made, they tended to be short, narrow in their analysis and guided by Northern Ireland economic concerns. Their tone was also largely pro-EU (even when delivered by a DUP Minister), favouring either a continuation of the status quo or refinement of existing practices. Clear support for withdrawal from the EU was certainly not in evidence from Northern Ireland at the time.

The contents of the review may have informed Prime Minister David Cameron's attempts to renegotiate the terms of UK-EU membership in 2015. The extent to which the devolved administrations contributed to or influenced the national UK negotiating position is unclear. Avenues for regional input have existed for some time, most notable among these are intergovernmental structures, especially the Joint Ministerial Committee on Europe JMC[E]. This connects the centre of UK government with the

devolved regions and has included means by which Welsh, Scottish and Northern Ireland devolved administrations contribute to discussions on EU matters. The weight and import of these discussions in deciding the national position are less easy to trace. What is clear is that in the past, the forum has not always operated satisfactorily. For instance, the then Prime Minister was heavily criticised in 2012 for failing to use established links to discuss the UK approach to the Fiscal Treaty negotiations. More recently, Prime Minister Theresa May was criticised for failing to advise the devolved administrations of her intention to trigger Article 50 in March 2017.

### **The 2016 EU Referendum in Northern Ireland: the context, the campaign and the fallout**

The decision by the former UK Prime Minister David Cameron to hold a referendum on UK membership of the EU in 2016 kick-started a debate on the merits and otherwise of the UK's relationship with the EU. It was an ill-tempered and divisive referendum campaign. Slow to develop and lacking in energy and dynamism, the Northern Ireland referendum campaign produced only a low level of public debate and largely failed to engage the general public. The situation was further antagonised by the position of the Northern Ireland Secretary of State, Theresa Villiers, who opposed the Remain position adopted by the Prime Minister and supported Brexit. This also exposed a division on the island between north and south, where the British government's representative in Northern Ireland was at variance with the majority of parties in Northern Ireland and with the position being pursued by the Irish state, which had been proactive in pushing for the UK to remain in the EU. Overall, the 2016 UK referendum on EU membership highlighted divisions between the Northern Ireland parties and the

low priority of Northern Ireland for the UK government's campaign and the British electorate.

Even with a suitable forum for constructive input from the Northern Ireland administration, and even with implicit agreement among the parties that the UK should remain in the EU, a clear Northern Ireland position on vital EU matters was never forthcoming due to the lack of internal agreement. Unlike Scotland or Wales, *the cross-party nature of the Northern Ireland Executive has severely limited the articulation of a single Northern Ireland position*. For example in 2014, even before the Prime Minister conducted negotiations with the EU prior to the Brexit referendum, the Scottish government strongly endorsed continued UK membership of the EU and published *Scotland's Agenda for EU Reform* by way of input to the broader UK debate. In contrast, the Northern Ireland administration did not articulate a position on the negotiations or the referendum question. Across a host of EU-related policy issues, from the single currency to migration to social Europe, the parties to the Northern Ireland Executive were left to express differing views and perspectives. Sporadic internal political crises further undermined any prospects for even minimal cross-party consensus on the EU question.

These difficulties are further evident in the Northern Ireland Assembly. The 2014/2015 strategic priorities of the Committee of the Office of First Minister and Deputy First Minister (OFMDFM) did not reference the EU, even in the shadow of the impending Brexit referendum. The Northern Ireland Assembly also hosted the biannual meeting of the European Committee Chairs UK forum where topics of mutual interest including EU reform and the referendum on EU membership were discussed. The Northern Ireland Assembly Enterprise Committee did commission research on the

economic implications for Northern Ireland of a Brexit. The Briefing Note (produced by the Open University) estimated that economic output in Northern Ireland would be 3% lower in the event of a UK departure from the EU. However, no Assembly inquiry was initiated and no opportunities for widespread consultation and debate were taken up. Instead, this task was assumed by the Northern Ireland Affairs Committee of the House of Commons, which launched a wide ranging inquiry into the issues affecting Northern Ireland in the context of the Brexit referendum. Its report concluded (2016, paragraph 86):

The peace process has ultimately been successful because of the commitment of successive UK and Irish governments and the willingness of politicians and the communities they represent to put aside past differences sufficiently to allow Northern Ireland to be governed peacefully.

Unfortunately, setting aside differences in order to articulate the interests of Northern Ireland itself proved to be an extremely difficult ‘ask’ in the shadow of Brexit.

The referendum campaign in Northern Ireland focused predominantly on the implications of Brexit for the border between Northern Ireland and the Republic of Ireland, free movement of people and trade, and the impact of a UK exit on the fragile peace process. The question of EU funding, particularly future access to structural funds, the PEACE Programme and the Common Agricultural Policy (CAP), also featured in campaign debates (McCann and Hainsworth, 2017). The issue of immigration – which so animated the campaign across England – was not a key talking point in Northern Ireland. Overall, the EU referendum campaign in Northern Ireland was very much grounded in voters’ traditional political and constitutional allegiances (Carmichael, 2016, p. 87):



Ultimately, therefore, the majority of the electorate in Northern Ireland behaved largely by reference to the issue which defines politics here, namely, the constitutional question and the border with the Republic of Ireland.

### ***The referendum result***

From the early days, there was an expectation that the Vote Remain camp would win the plebiscite, and probably do so decisively. The referendum result, however, delivered an unexpected outcome. By a slim margin of 51.9 per cent, the UK voted to leave the EU. In contrast to the UK as whole, however, Northern Ireland returned a 55.8 per cent majority vote to remain.

The Northern Ireland result was in fact lower than had been anticipated by pollsters, and so too was the turnout figure. At 62.7 per cent, the Northern Ireland turnout rate was almost ten percentage points lower than for the UK as a whole. The breakdown of the result demonstrates, however, that the profile of voters who supported Remain was similar for other parts of the UK. Those who supported the UK staying in the EU tended to be younger, better educated and in better paid jobs. In terms of party political preferences, Northern Ireland voters appear to have heeded the cues from local political parties. DUP voters were strongly in favour of Leave while nationalist voters were strongly in favour of Remain. All constituencies represented by a nationalist or independent MP returned a vote in favour of continued EU membership. The Ulster Unionist Party (UUP), unlike the larger DUP, advised voters to vote in favour of continued EU membership but not all UUP supporters heeded this advice. The seven constituencies which voted Leave were those with Unionist majorities and represented by Unionist MPs.

The EU referendum result in Northern Ireland is interesting because although political persuasion was broadly an indicator of voter choice, it did not produce evidence of a stark communal divide on the question of continued EU membership. Research by Mills and Colvin (2016) and Garry (2017) notes that possibly one-third of Unionists chose Remain which suggests that in terms of political preference, there existed some shared perspective between unionist and nationalists. In the aftermath of the referendum outcome, however, nationalists, and Sinn Féin in particular, railed against the decision, demanding that the will of the Northern Ireland electorate be respected. In contrast, Unionists, including the UUP that had campaigned for Remain, accepted the result as the sovereign decision of the entire UK. We thus saw the cementing of polarisation in political discourse towards the EU that had always been present in Northern Ireland.

### ***The referendum fallout***

Overall, Northern Ireland was wholly unprepared for the challenges of Brexit. In particular, the ability of the Northern Ireland administration to respond swiftly and constructively to a potentially serious economic threat has been limited. The Northern Ireland Executive failed to produce a comprehensive assessment of the impact of Brexit on Northern Ireland, and the administration was also unable to agree a clear Northern Ireland negotiating position. Acknowledgement of Brexit is also absent in terms of future regional economic planning, for example, Economy 2030 (2016), the Industrial Strategy for Northern Ireland consultation document, contains little or no assessment of the risks associated with Brexit. The most significant contribution from the Northern Ireland Executive to the Brexit process took the form of a two page letter from the First

and deputy First Ministers (Arlene Foster and Martin McGuinness) to the Prime Minister in August 2016. In it they stated their:

wish to play a part in the engagement between the two Governments on the unique aspects of the negotiations that arise from the border, recognising the possibility that it cannot be guaranteed that outcomes that suit our common interests are ultimately deliverable. We wish to have full access to that intergovernmental process as the border issues affecting trade, employment, energy and potential criminality are of such high significance for us.<sup>4</sup>

Unfortunately, the collapse of the Executive in early 2017, the subsequent hindrance of the North South Ministerial Council, the limited role of the Joint Ministerial Committee on EU negotiations, and the caution regarding British-Irish contact through the process of the EU negotiations made such objectives quite unrealisable from an early stage. Moreover, the common ground found for this letter quickly evaporated as the Brexit debate in the UK as a whole became increasingly characterised by patriotic rhetoric rather than constructive detail – an environment that would only ever add toxicity to political discourse within Northern Ireland.

The lack of common ground among the political parties in Northern Ireland on Brexit was only worsened by the collapse of the Executive in the wake of the scandal around the Renewable Heating Initiative. The results of the subsequent Assembly election on 2 March 2017 saw two major changes to the makeup of the Northern Ireland Assembly: unionist parties no longer in the majority in Stormont and MLAs from Remain parties outnumber those from pro-Leave parties with a margin that better reflects the 56% Remain outcome in the Brexit referendum. However, the predominant effect of Brexit has been to deepen antagonism between the parties, not least because of the grassroots differences between their supporters (around 85% of

Catholic/Irish/Nationalist voters supported Remain compared to 38% of Protestant/British/Unionist voters) (Garry, 2017).

These divisions were further exacerbated by the snap General Election in June 2017, which saw the eradication of the SDLP and UUP from representation in Westminster, meaning that the only seats taken up by Northern Ireland MPs in the House of Commons were from the DUP (alongside the independent MP Lady Sylvia Hermon). The confidence and supply deal between the DUP and Conservative Party required to give the governing party a Commons majority commits the DUP to supporting any emerging agreement with the EU. The most immediate effect of this deal was to see very close links between the DUP and the Tory party, especially in a strong pro-Brexit approach, and the subsequent weakening of trust from nationalists in Northern Ireland regarding the potential outcome of the Brexit process. The failure to restore the Executive was particularly serious in the light of Brexit's potential implications for the Agreement.

### **The Agreement and Brexit**

The impact of Brexit is such that two states will now diverge, leaving Northern Ireland in the awkward place between. After Brexit, without a careful arrangement for managing UK/EU (and British-Irish) relations, divergence will happen in law, trade, security, values, the fundamental rights of citizens, and politics – all such areas reach to the very core of the Good Friday Agreement and put it at risk of deep fissures.

Within months of the Brexit referendum, a legal case was made (led by Raymond McCord) regarding the implications of Brexit for the terms of the 1998 Agreement.<sup>5</sup> It argued that readjusting or revising the Agreement (and the attendant Northern Ireland Act of 1998) in order to purge references to EU law and policy

(specifically for North-South relations on the island) could potentially unravel what is arguably an ambiguous and tactical toleration between political protagonists. The case was unsuccessful because the matter was seen as not a legal problem in and of itself, and the need for consent for changes to the constitutional status of Northern Ireland as only having effect in relation to its relationship to the Republic of Ireland (not the EU).

Yet, a narrow legal interpretation of the role of the EU in the Agreement does not properly represent the full significance of the EU for the post-Agreement social, political and institutional environment of Northern Ireland. The EU is quite so important for the Agreement because it created the context within which such cross-border cooperation was normalised and depoliticised. The fact that nationalists felt themselves equal and protected as Irish citizens in Northern Ireland has been in no small part connected to the broader framework of common EU citizenship. At its most general, the division present in nationalist and unionist interpretations of EU membership is reflected in their diverging approaches to Brexit – a divergence that has only become more pronounced as the negotiations continued. A year after the Brexit referendum result, there was even less common ground between (pro-Leave) unionists and (pro-Remain) nationalists than before it. It was in the use of the EU as a point of deepening divergence between the two communities that the risk posed to the Agreement by Brexit was most direct and most acute.

#### *Official positions on the Agreement and Brexit*

In recognition of the dangers of Brexit for the Agreement – and in response to the proactive efforts of the Irish Government to raise the profile of the matter of the Irish border and Northern Ireland in Brussels – the matter of Northern Ireland/Ireland was made one of the three top priorities for the first phase of the Brexit negotiations

(alongside citizens' rights and financial liabilities). The European Council elaborated on this in its Guidelines for the Brexit negotiations (2017, paragraph 11):

The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement in all its parts, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance.

The European Parliament has done likewise, expressing concern for the consequences of Brexit on Northern Ireland and relations with Ireland, and stating that: it is crucial to safeguard peace and therefore to preserve the Good Friday Agreement 'in all its parts'.<sup>6</sup>

The UK Government's White Paper on leaving the EU published in February 2017 (see Hm Government, 2017a), and a position paper on Northern Ireland/Ireland in the negotiations issued in August 2017 (see Hm Government, 2017b), were criticised by the EU for being limited in scope and depth and presenting little in the way of a definitive strategy. The government's position paper on Northern Ireland/Ireland stated (paragraph 10):

The UK believes that the UK Government, the Irish Government and the EU share a strong desire to continue to safeguard the Belfast ('Good Friday') Agreement, and to ensure that nothing agreed as part of the UK's exit in any way undermines the Agreement.

Using the type of 'constructive ambiguity' that the 1998 Good Friday (Belfast) Agreement is famed for, the UK Government's Position Paper on Northern Ireland and Ireland does acknowledge the need for some form of bespoke arrangements for Northern Ireland after Brexit. Furthermore, it openly engages with the EU's language of finding 'flexible and imaginative solutions', even if only with direct reference to avoiding a 'hard border'.

On the preservation of the Agreement, the emphasis seemed to be on the right of Irish citizens in Northern Ireland to continue to enjoy full rights as European citizens. In the absence of agreement with the EU on the rights of citizens after Brexit, and of any detail on the Common Travel Area arrangements for Irish citizens in the UK, such reassurances had little clout. More broadly, the British government's core principles: the preservation of the peace process; no return to the borders of the past; seamless and frictionless borders, were rehearsed and repeated in various statements, position papers and speeches, but there remained a lack of clarity as to how these principles can find expression in the final UK-EU 'divorce settlement'. The Irish government also managed to have agreement from both the EU Council and from the UK government that the possibility of Irish reunification (secured in the 1998 Agreement) will not be undermined by Brexit and that Northern Ireland would become part of the EU if this occurred. Such agreements point to the uniqueness of Northern Ireland but they also serve to further stimulate expressions of opposing political opinion regarding the constitutional future of Northern Ireland. The joint report agreed between the UK government and EU negotiators in December 2017, which facilitated movement to the second phase of withdrawal negotiations, constituted a concrete statement of support for the Good Friday Agreement.<sup>7</sup> It explicitly noted the importance of the 1998 Agreement and the need to protect its practical operation both now and in the future. It interpreted the implementation of the Agreement in broad terms, including north/south cooperation, east/west cooperation, reconciliation, the all-island economy, majority consent (to reassure unionists) and the rights of Irish citizens in Northern Ireland (to reassure nationalists). By placing the Agreement in such a central position, the EU was able to emphasise that any bespoke arrangements for Northern Ireland are unique and do not set

a precedent for elsewhere; it also served to remind the UK of its role as co-guarantor of the Agreement.

### ***The Agreement as a foundation for solutions***

Taking a lesson from the Agreement itself, constructive ambiguity may be a way of facilitating some sort of creative agreement between the two parties where neither side is seen to either win or lose, and where key unionist and nationalist principles can be maintained according to their own interpretation. In this way, achieving and implementing an agreement in relation to some form of specific arrangements for Northern Ireland may be possible. For all parties to agree, any such arrangements would have to differ from the proposals put forward by Sinn Féin and the SDLP for Northern Ireland holding special status within the EU after the UK's withdrawal. Nonetheless, the political parties in Northern Ireland share some common perspectives regarding the most favourable outcomes from Brexit. The OFMDFM letter of August 2016 reflects the fact that all parties in Northern Ireland want to avoid a hard border, want to see the free movement of people, want to safeguard the agri-business sector, and want to protect the integrated electricity market. Where nationalists favour special status for Northern Ireland, unionists (including those who voted Leave) wish to see continued cooperation with the Republic of Ireland based on: 'common aims such as a seamless, frictionless border and maintenance of the common travel area' (DUP, 2017, p. 4). There is some potential overlap between these two positions.

More broadly, there is a great deal in the Agreement that creates the conditions for flexible and imaginative solutions, including those relating to citizenship, rights, equality of opportunity. Indeed, twenty years on, several promises of the Agreement remain unrealised: a Northern Ireland Civic Forum, a north/south Consultative Forum,



and a joint north/south Parliamentary Forum – plus the possibility of bilateral or multilateral arrangements between members of the British-Irish Council. Some argued that such initiatives – already agreed in principle – offered the means of safely navigating the changes made by Brexit across these islands (Hayward and Phinnemore, 2017). The Joint Oireachtas Committee on the Implementation of the Good Friday Agreement (2017) also touched on these issues in its report examining the impact of Brexit and called for ‘renewed impetus’ in relation to the continued implementation of aspects of the Agreement.

The Agreement explicitly recognises that the political aspirations and identities and rights of Irish and British residents in Northern Ireland are formally recognised as equal and with parity. This is an important point of relevance for the Brexit discussions: the opinions and preferences of one grouping should not trounce those of the other. The question then comes into play: how best to preserve the equality of Irish people in Northern Ireland after Brexit? This is not just about citizenship; there are many more in Northern Ireland who claim an Irish identity than who hold Irish passports. Moreover, those born in Northern Ireland have a birth-right to be Irish. The territory of Northern Ireland has a unique standing in that regard – one that looks directly threatened by growing divergence between Britain and Ireland. How can it be protected? By considering it as a meeting point between the two. Facilitating this ‘British-Irish meeting point’ would mean nurturing the Agreement’s institutions, and in particular preserving and enhancing the capacity of the British-Irish and North/South bodies. This would allow the institutions to develop into vital places for communication, strategy-creation and policy coordination between the various constituencies. Crucially, this would represent a strengthening, rather than an undermining of Northern Ireland’s novel power-sharing arrangements. It would cement existing cross-border and cross-national

relationships so essential to the peace process.<sup>8</sup> To some extent, the joint report agreed between the UK government and EU negotiators offers the potential for this type of dynamic to emerge. The document makes a common commitment to ‘the practical application of the 1998 Agreement on the island of Ireland and to the totality of the relationships set out in the Agreement’ (paragraph 42). This offers an opportunity for strengthening and enhancing key facets of the Agreement, even as Northern Ireland is extracted from the context of EU membership which made the multilevel nature of the Agreement conceivable in the first place.

## **Conclusion**

Within the context of European integration, Irish/Northern Ireland cross-border cooperation was depoliticised and normalised. Outside of this context, such cooperation is not only more difficult in practical terms, it becomes symbolically and politically more sensitive. Indeed, because cross-border cooperation will then require political will and action at several levels on both sides of the border, it can both be (a) less likely to happen and (b) subject to misinterpretation or over-egging by political opponents and political friends. This carries particular risks in a divided society such as Northern Ireland, where political capital still rests on emphasizing adherence to a particular view of the Irish border. Drawing attention to the border – and making it subject to politicking in this way – is something that only critics of the peace process are keen to do. The Agreement itself has been sustained by British and Irish involvement in its implementation, and by the incentives offered by joint EU membership. Brexit challenges and potentially undermines key tenets of that settlement. The EU will no longer provide a context for dialogue, cooperation and support. Consensus must be built to navigate the uncertainty and the changes entailed in the process of Brexit. This will

no doubt require the type of flexibility and compromise that have had to be found in earlier periods of crisis in Northern Ireland. Whilst the short-term temptation is to seek a recourse to unionist/nationalist ideology and rhetoric, the long-term consequences of the decision that are taken now could not be greater for post-Agreement Northern Ireland. The joint UK-EU report agreed in December 2017 sets the stage for Phase two of the withdrawal negotiations, which will determine whether Northern Ireland will enjoy ‘distinct arrangements’ after Brexit. If this were to happen, it would require more devolution, more competence, more complex decision making, more advanced policy-formation, and more international standing for Northern Ireland’s policymakers and public administrators. Twenty years on from the 1998 Agreement, Northern Ireland faces its most challenging test to date – and one that comes, quite unexpectedly, from political machinations outside Northern Ireland.

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## Notes

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<sup>1</sup> ‘Barnier and Coveney hold press conference in Brussels (04/09/2017)’, *Mikk Media News Network*. Retrieved October 18, 2017, from [https://www.youtube.com/watch?v=fZq\\_HIDTeXg](https://www.youtube.com/watch?v=fZq_HIDTeXg).

<sup>2</sup> This explicit reference to the European Union is contained in the ‘Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland’ which forms part of the Good Friday Agreement, signed 10 April 1998. Retrieved October 20, 2017, from <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>.

<sup>3</sup> The Scottish government, Welsh government and National Assembly of Wales all submitted evidence to the consultation. In its contribution, the Scottish government noted: ‘We consider that the Call for Evidence issued by the Foreign & Commonwealth Office in respect of subsidiarity and proportionality is one of the most important aspects of any review of the balance of competences between the EU and its Member States’. Retrieved December 8, 2017, from <https://www.gov.uk/government/consultations/subsidiarity-and-proportionality-review-of-the-balance-of-competences>.

<sup>4</sup> The letter is available on the website of the Northern Ireland Executive. Retrieved October 19, 2017, from <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp>.

<sup>5</sup> The details of the two applications for judicial review are available here: [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/%5B2016%5D%20NIQB%2085/j\\_j\\_MAG10076Final.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/%5B2016%5D%20NIQB%2085/j_j_MAG10076Final.htm).

<sup>6</sup> This reference is contained in Paragraph E of the European Parliament resolution of 3 October 2017 on the state of play of negotiations with the United Kingdom (2017/2847(RSP)). Retrieved December 8, 2017, from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0361+0+DOC+XML+V0//EN&language=EN>.

<sup>7</sup> The joint report was published on December 8, 2017. Retrieved December 8, 2017, from [https://ec.europa.eu/commission/sites/beta-political/files/joint\\_report.pdf](https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf).

<sup>8</sup> For comparison, this has worked well for the Nordic Council, which has some members who are in and others who are out of a range of different supranational blocs such as NATO, the EU, the EEA.