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IRELAND ON THE ROCKY ROAD TO BREXIT

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The Border on Killeen School Road © geograph.org.uk, Oliver Dixon

SUMMARY

It is arguably in Ireland that the consequences of the United Kingdom's decision to leave the European Union are thrown into sharpest relief. Brexit raises a series of very complex and interconnected questions affecting, not only the relationship between Ireland and Britain, but relations between the Republic of Ireland and Northern Ireland, as well as very delicate social, political and emotional balances within Northern Ireland. This unique set of challenges has been embraced by the 27 EU Member States as one of a few priorities requiring "sufficient progress" towards a resolution during the first phase of the Article 50 negotiations, before talks are allowed to move on to the future trading relationship between the UK and the block. The three main concerns structuring the EU common position as regards Ireland comprise (1) the maintenance of the Common Travel Area between the UK and Ireland, (2) the protection of the peace process and its legislative and political bedrock, the Good Friday Agreement, and (3) the imperative of avoiding a hard border between the Republic of Ireland and Northern Ireland. This policy paper looks at each of these three issues in turn, in an attempt to clarify the terms of the debate, provide the necessary elements of historical context, and identify areas where agreement is within reach, as well as those in which serious difficulties have arisen.

Particular attention is given to the issue of the Irish border, which has emerged as the thorniest question over the whole Article 50 divorce talks. After March 2019, this winding, 500km long boundary, which cuts across highways, country roads, villages and farms is set to become an external EU border, and the only land border between Britain and the Union. Any hardening of this border is likely to have profoundly unsettling economic, political and social ramifications. Not only, it is feared, would it inflame the antagonism between nationalists and unionists – between those whose political horizon is a United Ireland and those who are viscerally attached to Northern Ireland's place within the United Kingdom – but it would disrupt the many areas of cooperation now flourishing between the North and South of Ireland. Importantly, it would also cut through the very fabric of daily life in border communities which were often on the frontline of political violence throughout the latter decades of the 20th century. A "hard border" on the island of Ireland does, in other words, have the potential to jeopardise two decades of painstaking peace building in the North of Ireland. Ultimately, this paper argues, the political risk is as serious for Ireland as it is for Britain – for the stability, and possibly even the integrity, of that "Union" the Brexiteers intend to make Great again.

Both sides in the negotiations are very conscious of those risks, and both want to avoid a return to "the hard border of the past", so that people and goods can continue to flow seamlessly between the North and South of the island. The question is – how is this reconcilable with Britain's pledge to withdraw from the EU single market and customs union? Eighteen months after the fateful referendum of 23rd June 2016, the British government's failure to formulate credible solutions to the Irish border predicament has only given more weight to the alternative suggestion that a special status might be granted to Northern Ireland and the future EU customs border be shifted to the Irish Sea. There are, however, very compelling economic and political objections to the special status scenario and the associated gambit of a maritime border. On the eve of the European Council crunch summit of 14th-15th December 2017, the Irish border conundrum therefore acts as a "reality check" for Britain, calling as it does on the Tory government to make a clear, and necessarily painful, choice between the contradictory ambitions of its Brexit plan.

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INTRODUCTION

T he debate on Brexit is full of weasel words – misleading and ambiguous claims that are put forward in the deceptive guise of clarity and authority. "Sovereignty", "free trade", "frictionless and seamless border" are but a few examples of notions which would greatly benefit from a hermeneutic of realism. Surprisingly perhaps, one such word requiring meticulous unpacking – and one which has been at the centre of the first phase of negotiations on the United Kingdom's withdrawal from the European Union under Article 50 TEU – is the name of a country: Ireland. Indeed the word "Ireland" does not assume the same certainty and simplicity as to its extent and content as, say, "Portugal" or "Sweden." When speaking of Ireland, one may refer to the Irish state, Éire in Irish, also known as the Republic of Ireland (*Poblacht na hÉireann*). Or one may allude to the island of Ireland, a partitioned island which encompasses, not just the Republic of Ireland, but also Northern Ireland, a constituent part of the United Kingdom comprising six of the nine counties of the old Irish Province of Ulster. Thus Brexit raises a series of very complex and interconnected questions affecting, not only the relationship between Ireland and Britain ("East-West relations"), but relations between the Republic of Ireland and Northern Ireland (also customarily called "North-South relations"), as well as very delicate social, political and emotional balances within Northern Ireland.

It is no exaggeration to say, therefore, that the consequences of Britain's decision to leave the European Union are more profound and serious for Ireland as a whole than they are for any other region or country of the block. Those consequences are manifold. The announced British withdrawal from the single market and the customs union has, of course, very damaging implications for the trading relationship between Britain and the Republic of Ireland. Even though the share of Irish exports going to the United Kingdom has declined dramatically, from 50% in 1973, when the two countries joined the European Economic Community, to 17% nowadays, Ireland remains heavily reliant on the United Kingdom as a commercial partner. Key areas of the Irish economy stand to suffer the most from the fallout of Brexit, notably the agri-food sector, 40% of whose products are exported to the UK, while 47% are sourced from the UK. The stakes are also high for Ireland's base of small and medium-sized indigenous enterprises, which are crucial providers of jobs, including in rural areas, and would not easily navigate new markets, more distant geographically and culturally. Then too, the eventuality of the Irish land border becoming an external border of the European Union – through an inexorable logic that even all the tricks and artifices of British political speech cannot ward off – would have highly disruptive effects on cross-border trade between the Republic of Ireland and Northern Ireland.

That border is the Gordian knot of the Brexit process as it affects Ireland. And that is because the Irish border conundrum entails so much more than issues of trade, customs tariffs and product regulation. The economic challenge may be significantly greater in scale for Irish businesses, but it is certainly no different in nature from that facing, for example, French farmers, or the German car industry. What really distinguishes Ireland's Brexit predicament is that any hardening of the land border between the North and South of the island is likely to have profoundly unsettling political and social ramifications. Not only, it is feared, would it crystallise the antagonism between nationalists and unionists – between those whose political horizon is a United Ireland and those who are viscerally attached to Northern Ireland's place within the United Kingdom – but it would also cut through the very fabric of daily life in border communities which were often on the frontline of political violence throughout the latter decades of the 20th century. A "hard border" on the island of Ireland does, in other words, have the potential to jeopardise two decades of painstaking peace building in the North of Ireland. Ultimately, the political risk is as great for Ireland as it is for Britain – for the stability, and possibly even the integrity, of that "Union" the Brexiteers intend to make Great again. Yet in the months leading up to the referendum of June 2016, the British public debate was astonishingly silent on the consequences of Brexit for Ireland. Indeed the fate of another part of the Union, Scotland, featured much more saliently in the pre-referendum debate, both inside and outside of Britain.

That unfortunate state of affairs has been largely rectified in the post-referendum phase. Ireland's unique circumstances have become a key concern of the divorce talks between Britain and Europe. The British government has repeatedly stated its commitment to finding solutions to the specific challenges that Brexit raises for Ireland and Northern Ireland. European institutions and Ireland's fellow Member States have embraced 'the Irish question' as one of a handful of priorities requiring "sufficient progress" towards a resolution during the first phase of the negotiations, before talks are allowed to move on to their second phase, focused on the future trading relationship between the UK and the EU. The European Council Guidelines adopted on 29th April 2017, the subsequent Directives aimed at guiding the European Commission in its work as official EU negotiator, as well as the European Parliament Resolution of 5th April 2017 all recognise the need to address the special circumstances confronting the island of Ireland. More recently, in its "Guiding Principles for the Dialogue on Ireland and Northern Ireland," prepared in view of the fourth round of negotiations, and published on 21st September 2017, the European Commission's Task Force endorsed all of the Irish government's main concerns as part of the EU common position, including (1) the maintenance of existing bilateral arrangements between Ireland and the UK (in particular the Common Travel Area), (2) "the protection of the gains of the peace process and of the Good Friday Agreement in all its parts", and (3) the imperative of avoiding a hard border between the Republic of Ireland and Northern Ireland.

This policy paper will look at each of these three issues in turn, in an attempt to clarify the terms of the debate, provide the necessary elements of historical context, and – without risking to predict the outcome of negotiations that are still underway as this paper is being written – identify areas where agreement is within reach, as well as those in which serious difficulties have arisen. Indeed, the European Union and the United Kingdom may be "singing off the same hymn sheet" on Ireland, as one Irish diplomat put it, yet some of the issues at stake are extremely complex, if not intractable. It is arguably in Ireland that the challenge of Brexit, in the fullness of its diplomatic, political, social, economic, security, as well as symbolic, dimensions, is thrown into sharpest relief. As many commentators have noted, the Irish entanglement acts as a "reality check" for Britain – one that calls on the British people to come to terms with the most disturbing implications of the decision they took on 23rd June 2016. The prism of Ireland thus offers an enlightening entry point into the intricacies of Britain's withdrawal from the European Union, and an excellent way indeed for the Jacques Delors Institute to open its studies series on "the rocky road to Brexit."
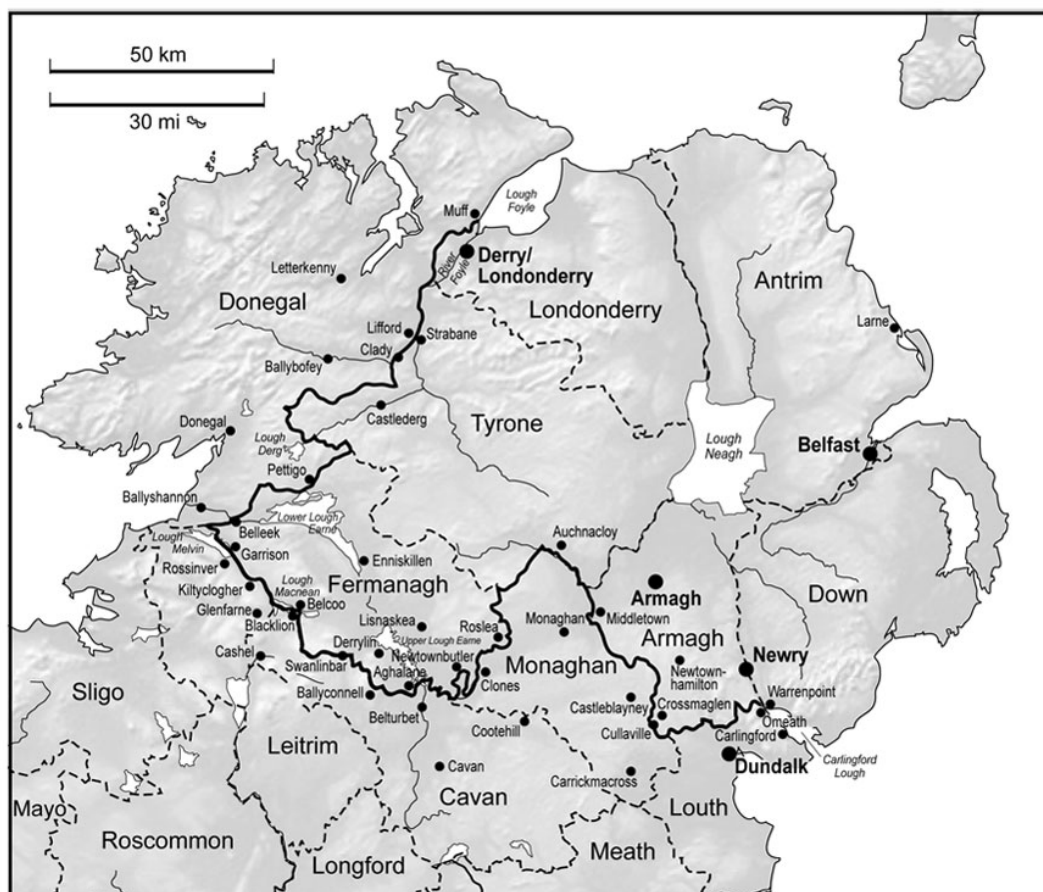
1. Maintaining the Common Travel Area and associated rights

Brexit cuts through the interconnectedness of everything between the islands of Ireland and Britain – history and geography, societies and economies, legislation and institutions. For the purpose of clarity, this paper examines separately the questions of the Common Travel Area, of the land border between the North and South of Ireland and of the Northern Irish peace process, however it is essential to bear in mind how deeply entangled those three dimensions of the Irish equation are. The Common Travel Area considered in this section does not simply exist alongside the provisions of the Good Friday Agreement; its role in facilitating the interaction and mobility of people both across the island of Ireland and between Ireland and Britain makes it a crucial foundation to the overall architecture of the peace process.

1.1. History and overview

The Common Travel Area (CTA) is a border-free space which comprises Ireland, the United Kingdom and the "Crown Dependencies" of the Isle of Man and the Channel Islands. It took shape in the wake of the creation of the Irish Free State, in 1922[1], through the development of administrative practices aimed at easing the movement of British and Irish citizens to each other's state. Within the Area, nationals of CTA countries and territories are subject to some immigration restrictions, but to no, or only minimal, border controls.[2] Discounting the exceptional period of WWII, during which controls were applied to travel across the Irish Sea, the free circulation of people between Ireland and Britain thus has a history of its own, which long predates both countries' membership of the European Community.

The Common Travel Area can be described as a bilateral "arrangement" largely defined by its reciprocal application across a number of measures relating principally, but not exclusively, to the movement of people both within and from outside the area. This arrangement is reflected in both Ireland's and Britain's application of their national immigration policy. The special treatment of Irish citizens in British immigration law was embedded in the Immigration Act 1971, which put the CTA (in its current form) on a statutory footing, while British citizens in Ireland are exempt from immigration law as a result of their falling outside the category of 'non-national'. The two states are also committed to cooperating in securing the external border of the CTA. This includes a high degree of coordination of visa policy,[3] with each state making provision in its immigration laws for refusal of entry to persons who intend to travel to the other jurisdiction and who would not be admitted there.

Importantly, the benefits enjoyed by British and Irish citizens within the CTA go well beyond the realm of travel and immigration. The CTA is fleshed out by a set of social, economic and political rights and privileges – usually designated as "associated rights" – which come near to a recognition by Ireland and Britain of each other's citizenship. The status of Irish citizens in the UK was first codified in the Ireland Act 1949,[4] shortly after Ireland left the Commonwealth to become a Republic. Meant to ensure that Irish citizens would retain the same legal position as Commonwealth nationals (but also to rectify a "mistake" in the British Nationality Act 1948 as regards the position of a specific category of Northern Irish residents), this Act declared that "notwithstanding that the Republic of Ireland is not part of His Majesty's dominions, the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the United Kingdom." The clearest illustration of that 'non-foreign' understanding of the status of Irish citizens in Britain is the legislation relating to political rights: Irish citizens who are 'ordinarily resident' in the UK have the right to vote in all elections, stand for election to the House of Commons and be members of the House of Lords. Resident Irish citizens also have access to British social welfare entitlements and benefits, healthcare provision, as well as to education and housing support services. In a reciprocal manner, the Irish Citizenship Rights Order of 1949 provides for the rights and privileges of British citizens residing in Ireland.

Although somewhat perplexing for continental Europe's civil law minds, the legal basis for the Common Travel Area was thus established through longstanding provisions in both British and Irish domestic laws.

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1. The Common Travel Area was formed following Irish independence, in 1922, with separate legislative provisions for the Crown Dependencies in 1919 and 1920.
2. CTA citizens and residents travelling by sea or air from Ireland – including Northern Ireland – to the UK 'mainland' have to show official identification, be it a passport or a driving licence.
3. 103 countries are currently subject to visa requirements in both the UK and Ireland, while a mere 6 countries are subject to those requirements in the UK alone, and another 7 in Ireland alone.
4. The provisions made in this Ireland Act 1949 were confirmed in the British Nationality Act 1981.

The bilateral arrangements pertaining to the CTA were recognised in EU law in 1997, when the Treaty of Amsterdam incorporated the Schengen acquis into the EU Treaties, and as Ireland, committed as it was to preserving an open border with Northern Ireland, opted to follow Britain in remaining outside of the Schengen Area. Non participation in the Schengen Convention is provided for in what is now Protocol 19 to the Treaty on European Union and the Treaty on the Functioning of the EU, while Protocol 20 allows the United Kingdom and the Republic of Ireland to "continue to make arrangements between themselves relating to the movement of persons between their territories."[5]

1.2. The implications of Brexit for the future of the Common Travel Area

The future of the Common Travel Area is arguably one of the most tractable issues on the Brexit negotiating table. Throughout the talks, the Irish and British governments have converged in clearly and repeatedly stating their commitment to the continuation of the CTA after Britain's withdrawal from the European Union. The UK Prime Minister's Article 50 Letter from 29th March 2017, the Irish government's May 2017 position paper, the British government's position paper on Ireland of 16th August 2017, as well as numerous political declarations on both sides, have all pledged to uphold the CTA and the longstanding reciprocal arrangements and rights associated with it. This shared priority of the two governments was acknowledged in paragraph 11 of the European Council's April 2017 Guidelines,[6] in the 22nd May 2017 Negotiating Directives and in all subsequent relevant EU documents. Given such alignment of positions, and considering Ireland's expressed wish to remain outside of the Schengen Area in the foreseeable future, it is improbable that any serious legal or political barrier will arise to the CTA being maintained on a bilateral basis, or to Protocols 19, 20 and 21 TFEU continuing to apply to the Republic of Ireland in a manner consistent with EU law. Indeed Ireland's non participation in Schengen means that security checks are already performed by Irish authorities on all entrants to Ireland's territory (and hence to the CTA), including those arriving from EU countries. In light of all the above, it was unsurprisingly, therefore, that the EU and the UK managed to secure agreement, during the 5th round of negotiations held in Brussels on 9-12 October 2017, if not on the full detail, at least on the joint principles that shall guide the operation of the CTA beyond March 2019.

The prospect of Brexit lends renewed pertinence to the Common Travel Area arrangements. These will indeed become all the more crucial to both Irish and British nationals from the day London puts an end, as it has announced it would do, to the rights currently enjoyed by all EU citizens to settle, study and work on British territory – rights that have, over the last four decades, subsumed many of the privileges granted to British citizens in Ireland and to Irish citizens in Britain. The continued operation of the CTA is also important to the consolidation of the Irish peace process and to the preservation of a seamless circulation of people across the border between the North and the Republic. London has given reassurance that it will not seek to hinder the movement of the approximately 35,000 people who cross that border everyday[7] (nor is there any evidence that it could effectively do so). This, of course, raises the so-called 'backdoor' issue. An open border would, some fear, enable European Economic Area (EEA) nationals to enter the UK via Ireland – a prospect which does not sit comfortably with the British public's craving to "take back control of our borders." However, not only does this risk of Ireland being used as a backdoor into the UK already exist for third country nationals, with very low numbers of unlawful cases detected over the years, but there is also wide agreement amongst commentators to say that EEA (and Swiss) citizens are unlikely to line up in the droves to work on the British black market. Furthermore, as London already acknowledged in its 16th August 2017 position paper, "when considering the nature of the CTA as a border-free zone, it is important to note that immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK's physical border." Building on this position, the British government has since given guarantees that it will not restrain the movement of EEA nationals to the UK from within the CTA, but will seek, instead, to control access to its labour market and social security.

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5. Cf. Protocol (No 20) on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland.
6. The European Council's endorsement of the CTA is derived from the overarching aim of protecting the peace process and avoiding a hard border on the island of Ireland. It is "in this context", paragraph 11 states, that "the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law."
7. On page 11 of the British government's position paper on Ireland and Northern Ireland (August 2017), it is said that "the development of our future immigration system will not impact on the ability to enter the UK from within the CTA free from routine border controls ….The UK can provide a clear assurance that the CTA can continue to operate in the current form and can do so without compromising in any way Ireland's ability to honour its obligations as an EU Member State, including in relation to free movement for EEA nationals in Ireland."

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IRELAND ON THE ROCKY ROAD TO BREXIT

As highlighted by Edward Burke in a paper published by the Centre for European Reform,[8] Brexit nevertheless raises significant challenges for the future of British-Irish cooperation in the fields of security and counter-terrorism. Access to the European Union's Justice and Home Affairs (JHA) agencies and instruments – such as Europol, Eurojust, the European Arrest Warrant or the European Criminal Information System – have become increasingly important to Britain and Ireland's joint securing of the CTA. For all its stated resolve to maintain a strong security cooperation with the EU after Brexit, London may not easily continue to access the full range of JHA mechanisms, particularly if it persists in bombastically rejecting the jurisdiction of the European Court of Justice (ECJ). The risk, then, is that Brexit will create new pressures on the ability of British and Irish security agencies to ward off, for instance, dissident Irish Republican groups, or loyalist ones, or indeed Islamist terrorist networks, all of which may operate beyond the CTA as well as within it. Britain may need to persuade its Irish counterparts of the need to invest in their policing and intelligence infrastructure, which could prove difficult, given the financial and capability constraints affecting Ireland's Garda Síochána, but also because Ireland's membership of the EU might impose restrictions on, for example, the data it can formally share with the UK. Particular complications would arise in the event of a future divergence between British and EU data protection laws. This issue of policy and legislative divergence, and the underlying question of the ECJ's jurisdiction, is one that runs through the whole Brexit conundrum, from trade arbitration to the implementation of EU peace programmes in Northern Ireland.

2. Protecting the peace process and the Good Friday Agreement

2.1. The Troubles in historical perspective

2.1.1. The wounds of partition

In order to fully grasp the significance of the Northern Irish peace process – and its legislative and political bedrock, the Good Friday Agreement of 1998 – it is important to describe briefly the cycle of political violence to which that peace process put an end, and, even further back, the particular demographic, religious, socio-economic and political nexus which underpinned the outburst of violence in the late 1960s. As Shane Connaughton, writing during the war years, captured it in a vivid leap, "It's funny the way we talk about a bomb being 'planted'. Like it's a vegetable. Ulster was 'planted' in the seventeenth century. And because of that bombs are 'planted' in the twentieth …. Along the Border language is a double-edged sword."[9] Indeed the so-called "Troubles" which tore apart the North of Ireland during the last three decades of the twentieth century have as their background the partition of Ireland, effectuated in the wake of the Irish War of Independence (1919-1921) so as to secure the maintenance within the United Kingdom of the island's northeast corner, home to a majority population of Protestants fiercely hostile to incorporation into an Irish state. Those "Unionists", who emerged as a political force in opposition to Gladstone's Irish Home Rule Bill of 1886, were largely descended from the Anglo-Scottish 'planters' (or settlers) who were imported to Ulster after the unity of British Crowns in 1603 and the flight of the great Gaelic chieftains, in 1607. The North-East of Ireland can therefore be described as a 'frontier' brought about by conquest and the Reformation, with political and socio-economic reverberations that run up to the present day.

Partition is a landmark in the history of Ireland and of Irish politics – it is the issue over which the Irish Civil War was fought in the wake of Independence, and it was, for long, the defining controversy between Ireland's two dominant political parties, the (pro-Treaty) Fine Gael and the (anti-Treaty) Fianna Fáil. But partition was also a formative event in the development of British politics. The decades preceding the Anglo-Irish Treaty of December 1921, which put an end to the War of Independence and confirmed the existence of a separate Northern Irish entity,[10] had already seen "the Irish question" act as a profoundly disruptive force in British politics. The successive Home Rule Bill crises of 1886, 1893, 1912 and 1920 fuelled bitter rows between the

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8. Edward Burke, *Ulster's Fight, Ulster's Rights? Brexit, Northern Ireland and the Threat to British-Irish Relations*, Policy brief published by the Centre for European Reform, 7th July 2017.
9. Shane Connaughton, "Border Diary," *in* M. Anderson and E. Bort (eds), *The Irish Border: History, Politics, Culture*. Liverpool University Press, 1998, p.12.
10. Partition has come to be associated with the Anglo-Irish Treaty of 6th December 1921. Yet it was, in effect, completed before the Treaty or the Irish Free State to which it gave birth (in December 1922). The Government of Ireland Act 1920 had already created a Northern Irish State, whose Parliament opened in June 1921. Under the Treaty, Northern Ireland would form a home rule state within the new Irish Free State, unless it opted out, which its Unionist majority immediately did.

Liberals and the Tories, but within the Liberal Party too.[11] By the early 1910s, the British government was losing control of the Irish situation, faced as it was by gun-running by both the (Unionist) Ulster Volunteer Force and the (separatist) Irish Volunteers, as well as reluctance within its own officer corps to confront Northern Unionists' preparations for an insurrection. The spectre of civil war in Ireland was eclipsed only by the outbreak of the great European War in 1914 – a war which lent the slaughter of the 36th Ulster Division at the Battle of the Somme, in July 1916, the aura of a blood Covenant sealing the Northern Protestants' loyalty to the Union. The eclipse, however, was but temporary. In Churchill's famous words, "as the deluge subsides and the waters fall short we see the dreary steeples of Fermanagh and Tyrone emerging again."

Partition did not solve Northern Irish problems. It did no more than buy a half-century of time, before its intrin- fault lines re-emerged in the late 1960s to sit insolubly as a central issue in British politics and in British-Irish relations (and it has now surfaced again, one may remark, as an awkward issue also involving the European Union). The most blatant injustices in the Northern Irish system as it was run between 1921 and 1972 were the discrimination suffered by Catholics in housing and employment, as well as the operation of a ratepayer suf- frage which left a disproportionate number of Catholics disenfranchised in local elections. The Unionist party did not just exercise permanent rule during the first five decades of the Northern Irish (Stormont) Parliament, it also enjoyed significant influence in Westminster, often giving the British Conservatives a net gain of 10-12 seats, until the alliance was interrupted, in 1973, following the suspension of the Stormont Parliament and the imposition of direct rule by London. By contrast, while there were some Irish Nationalist MPs in Westminster over the years,[12] Sinn Féin, which has now become the dominant force of Northern Irish nationalism, has con- sistently refused, since 1918 and right up to the present day, to sit in Westminster, adhering as it does to the indivisibility of Ireland's 32 counties and the right of the entire Irish people to self-determination. Those con- flicting political aspirations, as well as a long history of sectarian violence and mistrust, are the backdrop to "the Troubles" of the years 1968-1998. The phrase is a euphemism indeed to describe the terror and grief spread by the armed campaigns of Republican paramilitary groups (notably the Provisional IRA) in Northern Ireland and England and of loyalist paramilitary groups (such as the UVF and UDA) North and – occasionally - South of the border. Those three decades were also marked by the sectarian cleansing of some urban and rural areas, disappearances and summary executions, acts of violence perpetrated by British security forces on civil- ians and political prisoners, as well as the breakdown of trust and neighbourly relations and the reinforcement of mistrust amongst the (mostly Catholic) Nationalist population towards British institutions and agents.

2.1.2. European support to the peace process

The sealing of the Good Friday Agreement, in Belfast on 10th April 1998, marked a historic turning point in creating the conditions for a durable peace in Northern Ireland. The Agreement was signed by the Irish and British governments as well as eight of the Northern Irish political parties; it was endorsed by an international treaty between Ireland and Britain, and confirmed by two referendums held on the same day (22nd May 1998) in Northern Ireland and the Republic of Ireland. This referendum marked the end of official Irish 'irreden- tism', as Irish voters simultaneously agreed to Ireland's territorial claim over Northern Ireland – enshrined in Articles 2 and 3 of the Irish Constitution – being amended to include the prerequisite of democratic consent in both jurisdictions in the island.[13] This principle of consent is a key element of the Belfast Agreement, which recognised the current wish of the majority in Northern Ireland to remain in the United Kingdom, while at the same time affirming the legitimacy of the aspiration to a United Ireland, subject to consent being given freely and concurrently by voters North and South.[14] The Agreement also confirmed the birthright of all the people of Northern Ireland to identify themselves as Irish or British, or both, as well as proclaiming the right of both communities in Northern Ireland to be treated on the basis of equality. Importantly, the Good Friday Agreement also paved the way for power-sharing within a devolved Northern Irish government (in its Strand 1) and for the establishment of a set of interlocking institutions that provide frameworks for cooperation between both parts of the island (Strand 2) and between Ireland and Britain (Strand 3).

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11. The first Home Rule bill split the Liberal party, when Joseph Chamberlain included a separate assembly for Ulster in what Henry Labouchère called his "ultimatumest of ultimatums" to Gladstone.
12. Notably those of the Nationalist Party and, from the 1970s onwards, those of the Social Democratic and Labour Party (SDLP), under the influential leadership of John Hume.
13. Article 3 of the Irish Constitution now reads: "It is the firm will of the Irish Nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island."
14. Art. 1 (ii) of the Belfast agreement recognises that "it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland."

EU Programme for Peace and Reconciliation
- Eligible Area -
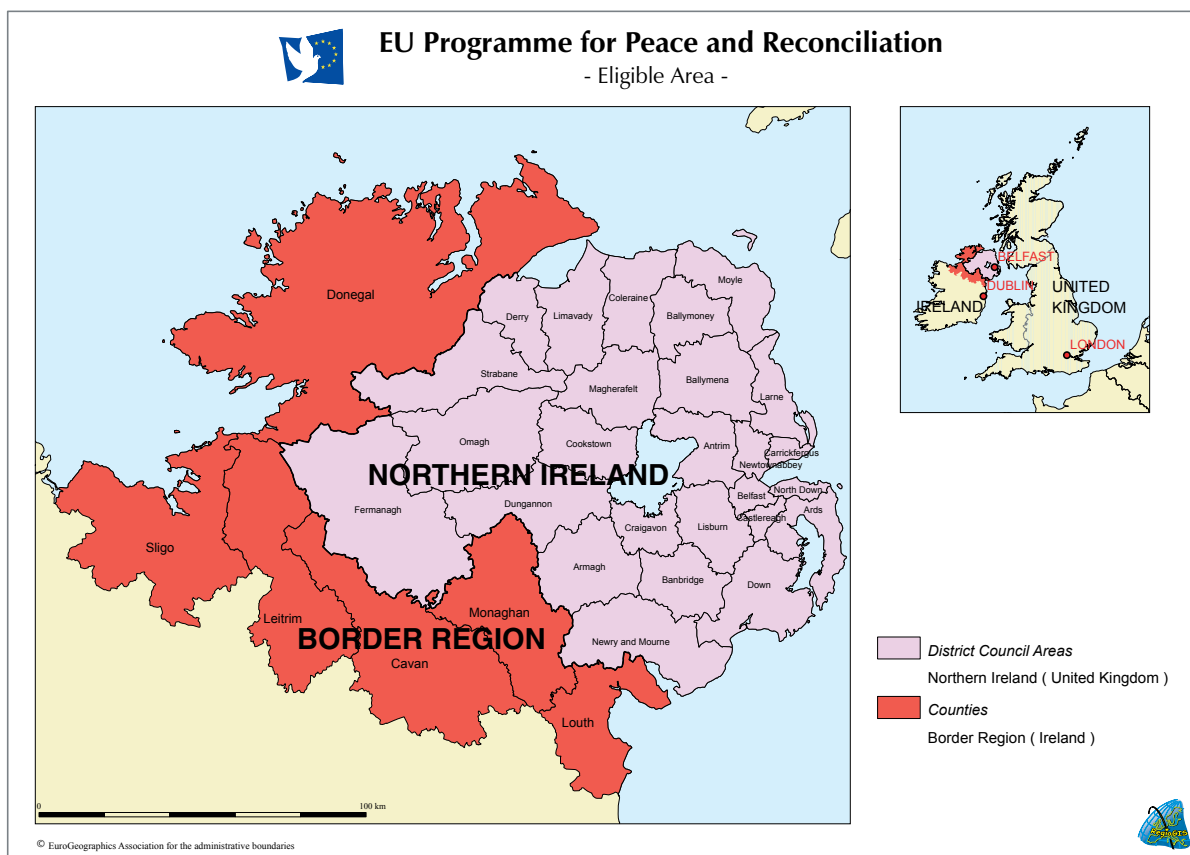
The European Union's unwavering support for the deepening of peace and cooperation in Northern Ireland has been at once moral, economic, political and normative. In order to avoid any teleological claims, it is important to note, however, that Britain and Ireland's joint accession to the EEC, in 1973, did not in the short-term reverse the trend of conflict. In fact, that accession coincided with one of the worst periods of strife in the North, between Bloody Sunday, on 30th January 1972 in Derry[15] – which was followed by the burning of the British Embassy in Dublin – and the failure of the Sunningdale power-sharing executive, brought down by the loyalist workers' strike in 1974. Furthermore, European integration, and more particularly the cross-border programmes funded under the auspices of the EU, were initially met by Northern Ireland's various constituencies through the prism of their respective ideologies. Nationalists have generally approved of cross-border cooperation because it appeared to support their aim of achieving a United Ireland. Conversely, when, shortly after the IRA ceasefire of August 1994, the European Commission President, Jacques Delors, initiated the first Peace and Reconciliation programme, aimed at the six Northern Irish counties and the six border counties of the Republic, this "Delors Package"[16] was decried by UK Unionist MP Robert McCartney as creating "a United Ireland by instalments", while Presbyterian preacher and founder of the Democratic Unionist Party (DUP), Ian Paisley, routinely railed against "the evil genius of political and economic integration that motivates the Common Market." Indeed for Paisley, whose inflamed speeches invoked a God stripped of Romanism and Southern Irish superstition, European integration (established by the Treaty of Rome!) was an endeavour pre-figured in the apocalyptic parts of the Bible.

Overtime, however, most parties in Northern Ireland have come to accept, and even support, the assistance offered by the EU through its regional policy – including the successive PEACE programmes – as an important lever of economic prosperity and social inclusion. The European Union has also provided a supporting legal framework that reflects and reinforces the human rights and equality provisions of the Good Friday Agreement. Not only has the EU (and the European Court of Justice) played a crucial role in furthering protections in such

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15. When British soldiers shot dead 13 unarmed civilians and wounded many others in the Bogside area of Derry, during what was a peaceful protest march against internment without trial.
16. Based on the findings of a European Commission Task Force set up by Jacques Delors in the wake of the IRA ceasefire, the "Special Support Programme for Peace and Reconciliation in Northern Ireland" made available 300 million ECU over a three-year period (1995-1997) and targeted primarily projects generating employment and combating poverty and social exclusion.

areas as equality rights and employment law, but these protections were also developed through the parallel incorporation of the European Convention on Human Rights (ECHR) in the domestic legal systems of both Ireland and Northern Ireland. Less tangibly perhaps, but nonetheless crucially, the wider context of the European Union has enabled both East-West and North-South cooperation to flourish outside the narrow frame of bilateral relations, while the maturation of a shared sense of European identity has made it easier, for the Northern nationalist community in particular, to evade the constricting and abrasive binarism of previous decades.

2.2. The implications of Brexit for the future of the peace process

Notwithstanding the shocking omission by UK Prime Minister, Theresa May, of the Irish peace process in her Lancaster House speech of 17th January 2017, there is strong political will on the part of all sides in the negotiations to ensure that Brexit does not undermine the future of peace and social cohesion in Northern Ireland. The six rounds of talks completed thus far have enabled some progress on a number of key issues relating to the peace process, but not quite as much as is required for discussions between Britain and the EU to move on to their second phase.

2.2.1. Citizenship rights and peace funding

Agreement appears in reach, at least in principle, on the important question of citizenship in Northern Ireland. In its August 2017 position paper already, the UK government acknowledged that "issues of identity go to the heart of the divisions in Northern Ireland," and proposed that the withdrawal agreement confirm the permanent birthright of the people of Northern Ireland to identify as British or Irish, or both, and to be treated equally, irrespective of Northern Ireland's constitutional status [i.e. irrespective of whether the relevant sovereign is the UK or, possibly in the future, Ireland]. In the same paper, London recognised that "as long as Ireland remains a member of the EU [sic], Irish citizenship also confers EU citizenship, with all the rights that go with it." The recognition of this awkward situation – whereby there will continue to be EU citizens in a territory that shall, after March 2019, lie outside the European Union – was a key demand of the Dublin government, endorsed by the European Commission's Task Force in its September 2017 Guiding Principles for the Dialogue on Ireland and Northern Ireland. As for the parallel issue of those rights and equality Safeguards that are protected under the European Convention on Human Rights, it seems secure, in the medium term, by the assurance contained in the Conservative Party 2017 manifesto that Britain will not withdraw from the ECHR "for the duration of the next parliament." The UK has also met another key Irish/EU requirement, by pledging to honour its commitment to fund the current PEACE IV programme, which runs from 2014 to 2020 for a total value of €270 million,[17] and to explore a successor programme post-2020, in conjunction with the Northern Irish Executive and the Irish government. It remains to be seen, of course, how the issue of the ongoing programme's implementation, and the role of the Special EU Programmes Body in that regard, can be settled in practice.

2.2.2. The threats to North-South cooperation and to political stability

The two serious bones of contention between Britain and the EU as regards the preservation of the Irish peace process relate to the fate of the Irish border, which we will examine in the next section, and to the complex issue of North-South cooperation. The 5th round of talks did succeed in securing agreement on the six principles proposed by the EU Task Force in its September roadmap to protect the Good Friday Agreement after Brexit. However "more work" is required, as EU chief negotiator, Michel Barnier, put it in his 12th October press statement, in order to identify effective solutions to the challenges posed by Brexit to cooperation between Ireland and Northern Ireland. Indeed, to borrow an image used by Pascal Lamy, however complex it may prove "to remove the UK egg from the EU omelette", it surely is even more difficult to settle the future of the myriad of joint endeavours that bind together the North and South of Ireland – endeavours which were developed in accordance with the Good Friday Agreement, but also within the common framework of EU law and policies. The 6th round of talks held in Brussels on 9th-10th November brought no breakthrough on a matter that includes, not just the twelve areas listed in the Belfast Agreement (ranging from education to the management of sea loughs and lighthouses), but also other fora of cooperation developed in parallel

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17. This is, as the British government August 2017 position paper specified, "without prejudice to the wider discussions on the financial settlement and Structural and Investment Funds."

to the letter of that Belfast Agreement. Brussels has undertaken a very comprehensive review exercise, still underway, to identify those of the 142 cooperation areas listed so far that are dependent on EU support. These include, notably, the fields of agriculture, transport and the environment, as well as cooperation on security and policing, which has direct implications for the future of the CTA, as described in the previous section, while also being an integral part of the peace process. The Single Energy Market (SEM) between Ireland and Northern Ireland is another crucial area of cooperation for which Brexit raises particular concern. Not only is this SEM tied to the electricity market in Great Britain through two interconnectors, but electricity generation in the island of Ireland is also heavily reliant on natural gas supplies from Great Britain. The implications are serious, then, for Ireland's small and isolated energy market, and, very tangibly, for Irish consumers and businesses. Besides, political passions being much more volatile than pipelines, there is an obvious strategic edge to this issue. The recent history of some of the Central European member states' has shown how perilous indeed energy dependence on a powerful Eastern neighbour can be.

Beyond the negotiating room, the prospect of Brexit is already having alarmingly poisonous effects on political relations in Northern Ireland. As Edward Burke put it in the aforementioned paper, "in newly uncertain times, the orange and green wagons are circling again".[18] The Brexit referendum divided political constituencies in Northern Ireland. All the main Northern Irish parties, including the historically dominant Ulster Unionist Party (UUP) campaigned to remain in the EU, except for the DUP, whose call for a 'Leave' vote predominated in the Presbyterian/loyalist strongholds of Antrim, East Belfast, Lagan Valley, Strangford and Upper Bann. Overall, the people of Northern Ireland voted to *remain* in the EU by a clear majority of 56%. This means that Northern Ireland is now on a path to leave the European Union, against the majority will of the Northern Irish electorate, but also against the official position of the Irish government, and in obvious contradiction with the principle of consent that is so central to the Good Friday Agreement. Although a semblance of consensus on priorities for the future of the province was expressed in the joint letter sent by (DUP) First Minister Arlene Foster and (Sinn Féin) Deputy First Minister Martin McGuinness[19] to Theresa May on 10th August 2016, Brexit has put at odds Northern Ireland's two main political parties. The correlation promptly established by Sinn Féin between Brexit and the need for a "border poll" on United Ireland has inflamed binary political antagonism in the North. Then too, the deal struck by the British Conservatives with the DUP[20] (so as to prop up the Tories' position in Westminster after their relative failure in the 8th June 2017 general elections) puts strain on the impartiality required of the British government as co-guarantor of the Belfast Agreement, and further fuels mistrust on the part of Northern nationalist opinion. To make matters even worse, all this comes at a time when Northern Ireland does not have a distinct voice in the Brexit negotiations. The failure to re-establish a power-sharing government since the collapse of the Northern Irish Executive in January last also means that it has fallen upon Ireland to represent the interests of Northern Ireland in Brussels, which serves to reinforce the DUP's suspicion of Dublin's interference in Northern Irish affairs. It is unclear, at this stage, how the poison of Brexit can be drained from the vulnerable post-conflict society that Northern Ireland still is, in a context where the prefigured solutions on the crucial and highly contentious issue of the Irish border are bound to hurt either one or the other of the dominant political sensitivities in the North of Ireland.

3. Avoiding a hard border between Ireland and Northern Ireland

The Irish border has emerged as possibly the thorniest question over the whole Article 50 divorce talks. After Brexit, this winding, 500km long boundary, which cuts across highways, country roads, villages and farms will become an external EU border, and the only land border between Britain and the Union. Both sides in the negotiations have said that they want to avoid a return to "the hard border of the past", so that people and goods can continue to flow seamlessly between the North and South of Ireland and – above all – so as to preserve the benefits and achievements of the peace process. The question is – how is this reconcilable with Britain's pledge to withdraw from the EU single market and customs union?

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18. Edward Burke, *Op.cit.*, p.4.
19. Martin McGuinness has since died from illness, in March 2017. His funeral, which was attended by political and religious leaders from both communities in Northern Ireland, but also by former US President Bill Clinton, can be seen to symbolise the closure of a chapter in Northern Ireland's history. This history is now entering a new chapter, overhung by Brexit.
20. Officially called "Confidence and Supply Agreement between the Conservative and Unionist Party and the Democratic Unionist Party" (26th June 2017).

3.1. The soft and hard challenges of Brexit

3.1.1. Regressive symbolism

The last two decades have seen the Irish border transform from a cultural and security buffer into a largely "invisible" boundary (all the more so as the Irish border is not marked by any natural barrier, whether big river or mountain range). The significance of that transformation cannot be underestimated. In the pocket of evangelical Protestantism that Northern Ireland is, the border had long been perceived as an instrument of cultural defence and the borderlands as a 'buffer zone' insulating the North from the earthly plots of the southern Irish state – construed by many Unionists as a hostile country, with a constitution laying claim to their land, political parties prone to exhibit their republican credentials and a territory providing a relatively safe haven from which the IRA could launch its attacks. While customs controls were operated at the Irish border from 1923 until their abolition on 1st January 1993, following the completion of the European single market, the CTA arrangements between Britain and Ireland mean that there were historically only minimal immigration controls at the border between Ireland and Northern Ireland. The descent into political violence, however, resulted in the upgrading of the border as a security 'frontier.' Security checks were implemented on both sides from 1968 until the late 1990s,. The observation posts, checkpoints, transmitters and other British army and Royal Ulster Constabulary installations were targets of choice for the IRA during its border campaign of 1956-1962, and then again throughout the Troubles. In his depiction of the Lackey Bridge checkpoint, near the family farm in Clones, Co. Monaghan, Irish writer Eugene McCabe described how that security infrastructure, which tore apart inextricably mixed communities on both sides of the border, focused attention during the decades of war: "American senators have come to take a look, along with taoisigh, tánaistí, prayer groups, Sinn Féin jazz festivals, a persistent road-opening committee and TV crews from all over Europe."[21]

The joints effects of the peace process and of European integration have helped to rebuild ties between cross-border communities torn by three decades of conflict, as well as enabling the physical, as much as the symbolic and emotional weight, of the border to gently wither away. "The 27 concrete bollards at Lackey Bridge are smashed", wrote Eugene McCabe in 1996, "and foundations are being poured for the new bridge. There is a feeling that it will never again be closed. That chapter is finished. Things are returning to normal."[22] One can easily grasp, then, the psychological shock and symbolic regression that the current prospect of a restored physical border across the island of Ireland represents for Irish people. After so many years of efforts geared at removing barriers and bringing people together, Brexit does indeed appear to be going against the grain of history.

3.1.2. Expanding cost of doing business

The risk of a possible return to systematic controls at the Irish border does not just carry negative psychological and social effects, but also very tangible consequences for the future of trade on the island of Ireland. All participants in the Article 50 negotiations, and a flurry of commentators, have emphasised the need to avoid a restoration of "the border of the past," often alluding to the hard border of the conflict years. Some have also pointed to the fact that the new border infrastructure would swiftly become a target for radical Republican elements uncontrolled by the Sinn Féin leadership. Yet all of this is somewhat misleading. Brexit is not about re-instating the militarised border of the past in Ireland; it is about performing such checks as are necessary to ensure that adequate tariffs are applied on products crossing the border, as well as controlling the origin, labelling and conformity of those products to EU regulatory standards in numerous areas. Instruments of customs control – whatever their form – are unlikely to attract the same hostility as did symbols of coercive statehood, such as army checkpoints or police stations, during the Troubles. Without ruling out the risk of occasional acts of violence by dissident Republican groups, who do have deep roots in the border counties,[23] the bigger issue raised by Brexit, therefore, is the increase it is expected to generate in the cost of doing business on the island of Ireland. The announced British withdrawal from the EU single market and customs union is bound to disrupt, not just local cross-border trade, but also complex supply chains that stretch across Ireland and further afield.

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21. Eugene McCabe, "Borderlands", *in* M. Anderson and E. Bort (eds), *The Irish Border: History, Politics, Culture*. Liverpool University Press, 1998, p.3.
22. *Ibidem*, p.4.
23. It is important to remember, for example, that the impulse within the IRA to end the 1994 ceasefire, as well as the men who planted the bomb (at London's Canary Wharf), came from the Republican strongholds of the Monaghan, South Armagh, Louth border region.

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IRELAND ON THE ROCKY ROAD TO BREXIT

The volume of North-South trade may be relatively small in comparison to that between Northern Ireland and Great Britain – indeed more of Northern Ireland's goods and services go to Britain than to the rest of the EU (including the Republic of Ireland) combined – yet the disturbance resulting from the introduction of new trade barriers would arguably have deeply negative reverberations across the whole Northern Irish economy. It would also, by extension, affect social cohesion and employment, in a region which is already one of the most deprived in the UK. Low wages, poor labour productivity rates, a strong dependence on the public sector and a private sector still reeling from decades of conflict and the decline of the (Belfast-based) shipyard industry, are features that do not bode well for the capacity of Northern Ireland to withstand the upheaval of Brexit. Furthermore, Brexit also poses a serious challenge to the heavy reliance of the small and weak Northern Irish private sector on EU labour, and notably on workers from the Eastern and Central European member states.

The stakes are especially high for the agri-food sector, often described as 'the backbone' of Northern Ireland's economy. Agricultural products make up a vital 35% of the region's exports (compared with only 10% for the rest of the UK), while 87% of Northern Irish farm income is derived from EU subsidies (compared to 53% for the UK as a whole).[24] Then too, 60% of the workers in Northern Ireland's agri-food factories, and 90% of the seasonal labourers, are non-UK nationals, most of them hailing from the European continent. Crucially, North-South trade in agri-food products also involves highly integrated supply chains and a significant amount of co-production. For example, 75% of the dairy processing facilities North of the border are fully or jointly owned by Irish cooperatives, while huge volumes of raw milk cross the border from the UK every day to be processed in Ireland - amounting to about 800 million litres over 2016. Once processed, whether transformed into butter or into milk powder for baby formula or ice cream, those products may go back to the North to be packaged there, and then be sent to Dublin Port to be shipped across the Irish Sea. Ireland's transborder agri-food chains therefore stand to be very badly affected by the imposition of tariff and/or non-tariff barriers – such as veterinary and plant health certification - not to mention customs-related paperwork and additional transportation costs and delays.[25] In the worst-case scenario where Britain would leave the EU without a trade deal and thus fall back on the World Trade Organisation (WTO) regime, agricultural products are also those which would attract the highest tariffs. Besides, even in the event of a zero-for-zero tariff agreement, agricultural and food and drink products would still have to comply with EU regulations in order to travel south of the border. Finally, it is important to highlight that the reappearance of a customs border in Ireland would present criminal networks and smugglers with new opportunities to exploit trade differentials, in a region where the smuggling of fuel, alcohol, tobacco, but also livestock,[26] has a long and colourful history (and where the exploitation of "Common Market subsidies" by moving animals over the border is even celebrated in song).[27]

3.2. What solutions to the Irish border conundrum?

3.2.1. The fiction of a frictionless land border

As with the other two dimensions of Ireland's Brexit predicament – *i.e.* the Common Travel Area and the peace process – there is agreement in principle between the UK and the EU on the delicate issue of the Irish border. Both sides are very conscious of the challenges set out above, and both have said in unison, since the beginning of the withdrawal negotiations, that they do not want a hard border in Ireland. Yet, in round after round of talks, profound divergences have emerged on the effective conditions required for this overall objective to be fulfilled. The (limited) aim of this first phase of the negotiations is to reach agreement, not on actual solutions to the Irish border quandary, but on a set of parameters within which it will be possible for an acceptable solution to be found. The Irish government and its EU partners have made it clear that the onus to clearly articulate those parameters is on the British government. This was expressed very plainly by the new Irish Prime Minister, Leo Varadkar, at a media briefing on 28th July 2017, when he said: "It's the British and the Brexiteers who are leaving…We are not going to be helping them to design some sort of border that we do not believe should exist in the first place. So let *them* put forward their proposals as to how they think a border

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24. Figures taken from the report of the House of Lords' European Union Select Committee on "Brexit: UK-Irish Relations" (12th December 2016).
25. At present, a truck travelling on the main road, between Monaghan to Dundalk for example, may cross the meandering Irish border four times without being required to stop.
26. In the Spring of 1996, Dublin had to deploy 800 extra *Gardaí* at the Northern Irish border to guard the Republic against 'mad cow disease' (BSE) spreading from Britain, and hundreds of smuggled cattle were seized on the border. Border controls were reintroduced in 2001 to ward off the foot and mouth disease and sheep smugglers were blamed for introducing the virus from England into Ireland.
27. See, for example, "The Transit Van", by Seamus Moore.

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should operate and then we'll ask them if they really think this is such a good idea." The injunction was reiterated by the EU Task Force in its September 2017 Guiding Principles, which state that "It is the responsibility of the United Kingdom to ensure that its approach to the challenges of the Irish border in the context of its withdrawal from the European Union takes into account and protects the very specific and interwoven political, economic, security, societal and agricultural context and frameworks on the island of Ireland."

There is political will on the EU side, if not to bend the Union legal order, at least to accept that special rules might apply at the border between Ireland and the UK, different from those applying to the rest of the new EU-UK external border. The European Council Guidelines from 29th April 2017 thus called for "imaginative and flexible solutions" to be crafted, so as to provide for "the unique circumstances on the island of Ireland, and in order to protect the Good Friday Agreement in all its parts." Britain's response to that call has essentially consisted of a suggestion that a "frictionless" Irish land border could be achieved through the smart use of technological solutions. The British Secretary of State for Northern Ireland, James Brokenshire, has argued, for example, that measures currently in place to collect excise duties could be expanded to combat customs evasion. He has also proposed using electronic tag controls, whereby the licence plates of vehicles having fulfilled prior online declarations would be automatically recognised, thus avoiding delays at the border. Others have invoked existing light-touch models of customs enforcement – such as that in place between Norway and Sweden – as possible templates for the Irish border. Those models usually involve the electronic filing of customs documentation, limited spot checks and unsystematic inspections carried out at traders' premises. This effectively means that goods in transit between Ireland and the UK would need to be physically controlled at the point of importation, or else travel under seal to the trader's premises for subsequent examination by customs authorities, as opposed to being systematically inspected at the border. The practical benefits offered by the Authorised Economic Operator (AEO) and the "trusted trader" status have also featured in the debate, alongside possible customs exemption arrangements for smaller firms,[28] as a means to facilitate the free flow of goods across the Irish border.

The solutions put forward by London up to the most recent round of negotiations, on 9th-10th November, have been rejected by the EU/Irish side as offering too little clarity and certainty. Right from the start, discrepancies have been blatant between the two sides. The ambition at the heart of Theresa May's programmatic Lancaster House speech – which asserted Britain's decision to leave the EU customs union and single market while at the same time affirming London's desire to keep "as seamless and frictionless a border as possible between Northern Ireland and Ireland" – was described by many European commentators as inherently contradictory. As Oxford-based economist Kevin O'Rourke described it in a short and incisive blog post, "the UK seems to most outsiders to be talking out of both corners of its mouth, claiming it doesn't want an Irish border, while preparing to do things that will require one."[29] The very concept of "a frictionless border" was dismissed by EU officials as "magical thinking." They have pointed out that any customs border inevitably entails frictions, stemming, not just from the application of tariffs aimed at protecting producers, but also, increasingly, from the policing of product standards and regulations aimed at protecting consumers. Indeed the implementation of the EU system of precaution is not one that can dispense with policing. No current technology or hypothetical "tracking mechanism" will eradicate the need to physically enforce some checks, be it at the border or elsewhere (which, according to Ireland's Office of the Revenue Commissioners, would come at an onerous financial and human resources cost).[30] As already highlighted, this holds particular consequences for agri-food products, which are bound to require sanitary and phytosanitary controls, and all the more so in the event of future regulatory divergences between the EU and the UK. Nor has London convincingly demonstrated that it can seamlessly control a potential spurt of cross-border smuggling by loyalist and dissident Republican groups.[31]

3.2.2. Sea border and 'special status' for Northern Ireland

28. The British government's position paper on Ireland and Northern Ireland (16th August 2017) thus suggests customs exemption for firms with fewer than 250 employees, but fails to give adequate detail as to how the new system would be monitored and enforced.
29. Kevin O'Rourke, "What could the UK say on the border before getting to the second stage?", *The Irish Economy*, 7th October 2017:
30. Cf. https://www.revenue.ie/en/corporate/documents/research/brexit-and-the-consequences-for-irish-customs.pdf
31. In the oral evidence he provided to the House of Lords' Select Committee on the European Union, the outgoing leader of the Alliance Party, and former Northern Ireland Justice Minister, David Ford MLA, reckoned that it was "utterly meaningless" to talk of electronic controls as a preventative tool against cross-border smuggling, while the Leader of the Ulster Unionist Party (UUP), Mike Nesbitt MLA, agreed that electronic monitoring of the movement of goods "just will not cut it."

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The Irish government has consistently reiterated the view asserted in its May 2017 position paper, that the preservation of an invisible border on the island of Ireland requires "a political solution", and not just an *ad hoc* assemblage of technical solutions. In the speech she gave in Florence on 22nd September 2017, Theresa May clearly expressed her government's political commitment to ensuring that there would be "no physical infrastructure" at the Irish border. Those words were welcomed in Dublin and Brussels; yet the British pledge was deemed insufficiently precise to allow talks to move on to their second phase. Britain's failure to formulate clear and credible parameters within which an acceptable solution can be found to the Irish land border issue has only given more weight to the alternative suggestion that the future EU customs border might be shifted to the Irish Sea. In this scenario, "special status" would be granted to Northern Ireland, enabling it to remain part of the United Kingdom while also staying in an equivalent of the EU customs union and single market.

There is a strong economic and political case for such a scenario. Economically, placing the future EU customs and regulatory border in the Irish Sea would mean less delay, less costs and thus less trade frictions on the island of Ireland. Trade in goods between Northern Ireland and Britain already involves the physical disturbance of sea (and, to a much lesser extent, air) travel and the associated logistics of loading and unloading. Hence any additional disruption created by the new customs regime between the UK and the EU would be less acutely felt at a maritime border than at the land border between the North and South of Ireland. Also, a special status for Northern Ireland would surely help limit the economic downfall that Brexit involves for both the Irish and Northern Irish agri-food sectors in particular. By curtailing the risk of future regulatory divergence on such issues as animal health and food standards, it would make it possible for the island's interwoven supply chains and markets to continue to function relatively unaltered. It would also, however, put an extra burden on Northern Irish producers, who would potentially have to comply with two distinct sets of regulations in order to continue to export to both the British and European markets. Those additional constraints might be outweighed by the possibility for Northern Ireland to opt back into the Common Agricultural Policy after Brexit, which would enable Northern Irish farmers to continue to access a crucial source of revenue, as well as preserving the "level playing field" without which a zero tariffs policy for agricultural goods would be inconceivable.[32] While it is unclear whether a solution along those lines might be acceptable to London, the treatment of agriculture on an all-island basis beyond March 2019 has been on the EU/Irish agenda for some time.[33]

Politically, a special status enabling Northern Ireland to remain closely aligned to the present status quo also has obvious merits. Of all the constituent parts of the United Kingdom, Northern Ireland is arguably the one for which the maintenance of a close relationship with the European Union is most vital – vital to the future of the peace process, to the preservation of the manifold areas of North-South cooperation, to the continuation of European structural funding, and also vital to the daily lives of border communities. A special status for Northern Ireland would make all the more sense as the people of Northern Ireland will continue, by virtue of their birthright, to be entitled to EU citizenship after Brexit. Moreover, beyond the specific case of agriculture, there appears to be sufficient European political goodwill towards Ireland and Northern Ireland for the option of a 'whole island' trade zone to be deemed admissible by Brussels. This was manifest, for example, in the Resolution passed on 3rd October 2017 by the European Parliament, in support of a special status for Northern Ireland. More recently, in an attempt to break the deadlock over the Irish border issue during the sixth round of negotiations, the EU team reportedly circulated a paper outlining the need there may be for Northern Ireland to remain inside the customs union and the internal market.[34]

The technical implications of such an option are, admittedly, far from simple. In this regard, the suggestion put forward by Pascal Lamy during a visit to Dublin on 26th-27th October 2017 opens interesting perspectives. The former Director General of the World Trade Organisation pointed out that membership of the WTO is not confined to sovereign states but open to any autonomous customs territory. Thus, provided the relevant competences are devolved to Stormont, it would be perfectly possible for Northern Ireland to become a member of the WTO in its own right. As a special autonomous customs region within the UK, Northern Ireland could then decide to implement the current EU customs rules and, going even further, chose to mirror single market regulations. This would effectively enable products and services labelled as Northern Irish to freely flow backwards and forwards across the Irish land border. As observed by Pascal Lamy, an instructive precedent

32. Systems of public support need to be the same in order for agricultural goods to be traded without tariffs.
33. In February 2017, the Irish national broadcaster, RTÉ, reported that the European Union had signified to the Irish government its openness to treating agriculture on an all-island basis. On 4th October, RTÉ again made mention of an internal European Commission memo to that effect.
34. See, for example, "Ireland dispute stokes concerns about no deal on Brexit", *The Financial Times*, 12th November 2017.

is provided by the former "British Dependent Territory" of Hong Kong and the former Portuguese colony of Macau, which are both part of China, yet also individual members of the WTO, and, as such, are able to operate distinct customs and trade regimes. Mr. Lamy's suggestion attracted much interest in Dublin, and, according to a report published by *The Guardian* in the aftermath of the November round of talks,[35] a solution akin to Hong Kong's and Macau's "one country – two systems" arrangements would now feature amongst those under consideration in Brussels to respond to the Irish border problem.

3.2.3. Political deadlock

There are, however, very compelling economic and political objections to the special status scenario and the associated gambit of a maritime border. On the economic level, as already highlighted, Northern Irish trade with Britain by far outweighs North-South trade, thus lending little appeal (agriculture notwithstanding) to a solution that would entail additional controls at the Irish Sea. Yet one might observe that both European integration and – more importantly still in the Irish context – the peace process in Northern Ireland are first and foremost political projects, and ones whose protection should trump any mercantile considerations. After all, Brexit itself was a decision based on political passion rather than economic rationality. The trouble is that there is already more than enough political passion in Ulster. To assume that the Northern Irish Parliament and Executive will, for the best interest of the peace process, swiftly opt for whatever it takes to avoid a hard border in Ireland is too logical a proposition. Any solution marking out Northern Ireland's distinction from the rest of the United Kingdom is bound to unleash Unionist furore (in the same way that any hardening of the Irish land border would galvanise Nationalist opposition). The DUP's incensed rejection of the European Parliament's October Resolution offers but a flavour of the objection Northern Irish Unionists would undoubtedly raise to any design involving a "barrier" between Northern Ireland and the rest of the UK, and hence a "threat" to their British identity. The call by several Unionist political leaders[36] for a special status to be granted to the Republic of Ireland, rather than Northern Ireland, so as to solve the border issue – in blatant contradiction with the steady European commitment of the Irish government and the Irish people[37] – further demonstrates the extent to which the Unionist worldview revolves around London and the UK. To expect that Brexit might yield a shift in such entrenched mindsets would be somewhat fanciful.

It is important to note, moreover, that for any special customs status to be given to Northern Ireland it would require, not just agreement in Belfast (and, in the first place, a functioning power-sharing Executive and Assembly), but also legislation from the British Parliament. The current balance of power in Westminster does not bode well for the chances of an easy convergence of views between the UK and the EU. Even if the Tories were to be convinced that a maritime customs border between the UK and Northern Ireland is the lesser of two evils with regard to the foundational Good Friday Agreement, they would, in turn, need to persuade their DUP allies to accept that exorbitant concession. More broadly, such a move is hardly reconcilable with the sovereignty impulse which precipitated Brexit. It might be difficult for any British government to explain to the British electorate that one of the first consequences of the UK's withdrawal from the EU will be to bind one of the constituent parts of the Union, Northern Ireland, to EU rules and regulations which London will no longer be able to influence, having lost its seat at the European Council, its voice in the European Commission and its representatives in the European Parliament. Besides, it is unlikely that any decision to grant a special status to Northern Ireland would be lost on the Scottish National Party. Where would this leave Theresa May's promise to "put the preservation of our precious Union at the heart of everything we do"?

Eighteen months after the fateful referendum of 23rd June 2016, and in the aftermath of six rounds of talks in Brussels, no key has been found to the Irish border puzzle. If anything, its intricacies, pitfalls and many offshoots have become more conspicuous. Meanwhile, the gap has widened between the British and European negotiating teams, and the tone of the British-Irish political dialogue has soured. The Irish government's position has evolved from an acceptance, if reluctant and highly qualified, that the external EU border might cut across Ireland to a plain rejection of a land border of any sort. And whereas Dublin was initially cautious not to display an open preference for the "special status-cum-sea border" recourse, so as to avoid antagonising

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35. "EU gives UK two-week deadline on Brexit divorce bill," *The Guardian*, 10th November 2017.
36. This was suggested, for example, by the leader of the marginal (and radical) Traditional Unionist Voice party, Jim Allister, while such figures in the (more moderate) UUP as David Trimble, have gone so far as to call for Ireland to follow Britain in exiting the EU.
37. The Irish government May 2017 position paper reaffirmed the "unequivocal conclusion that Ireland's interests are best served by remaining a fully committed member of the EU." A poll conducted by RTÉ in the same month indicated that 88% of Irish people want Ireland in the EU.

Northern Unionists, recent declarations by senior Irish political figures have more pointedly alluded to that possibility. In a push to ensure that no future regulatory divergence will arise on the island of Ireland, the Irish Taoiseach, Leo Varadkar, now demands "specific assurances and written guarantees" from Britain before the talks are allowed to move on to their second phase. London's response to those pressures has consisted in invoking the UK's constitutional integrity to reject the sea border option,[38] and insisting that the border question can more easily be solved in the context of the future trade relationship between the EU and the UK. At a joint Press Conference with his Irish counterpart, in Dublin on 17th November, British Foreign Secretary Boris Johnson reiterated his government's eagerness to move on to the next phase of talks, arguing that any resolution of the Irish border issues is "intimately bound up" with the shape of the future British customs and trade relationship with the EU. There is reason in that argument. Yet, as observed by Martin Sandbu in a piece published by the *Financial Times*,[39] the British position "unquestioningly assumes that an Irish solution has to be a function of the future trade relationship." Perhaps it should be the other way around, lest peace in Ireland becomes a potential "balancing item" in the overall negotiations. If Britain truly wants to avoid jeopardising the peace process, then should it not agree to the tailoring of trade arrangements that can fit its commitment to no physical land border in Ireland? The EU/Irish side are quite justified in emphasising that Ireland's specific challenges require "a unique solution which cannot serve to preconfigure solutions in the context of the wider discussions on the future relationship."[40] Without such precaution, there would be a real risk of the Irish border being sidelined, or even worse, used as a bargaining chip, in the upcoming trade talks.

CONCLUSION

Britain's ambitions for a bold new beginning, freed from the burden of European complexities and obstructions, have quickly become entangled in the (no less obstructive) complications of Northern Irish politics. The abiding Irish question has returned, once again, to disrupt political designs in Westminster. On the eve of the European Council crunch summit of 14th-15th December 2017, at which European leaders will decide whether or not the Brexit talks can move on to trade matters, the Irish border issue shines a glaring light on the web of contradictions at the heart of the British position. London is floundering to articulate solutions that can accommodate both the political imperatives flowing from the results of the Brexit referendum and the political imperatives deriving from the architecture of the peace process in Northern Ireland. The first set of imperatives was interpreted by the Tory government as requiring that the UK's withdrawal from the EU customs union and single market be made non-negotiable (and also that the formal integrity of the Union be preserved at all cost), while the second set of imperatives demands that any physical barrier between Ireland and Northern Ireland be avoided at all costs. This is a circle that simply cannot be squared. However flexible and imaginative diplomats may be, it is hard to see how a breakthrough in the negotiation deadlock could be achieved without a clear, and necessarily painful, choice between either one or the other of these priorities.

Brexit belies the old British Foreign Policy adage articulated by Henry Palmerston in 1848: "We have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual." It was a reliance on this alleged ability of the British people to always pursue their interests, rather than idealistic phantoms, which prompted many analysts to remain confident, until the very day of the referendum, that reason would ultimately prevail and Brexit be avoided (and, by the same token, a number of those rationalists continue to hope that Britain's decision to leave the EU will eventually be reversed). Yet, if nothing else, Brexit has demonstrated that few countries are possessed by such a heightened sense of their own exceptionalism that they can allow it to damage their interests to the extent that Britain has done in the last eighteen months. And nowhere else than in Ireland are the potential economic, social and political downsides of Brexit more pointed. By threatening to put an end to the propitiously confused entanglement of British, Irish and European institutions and cooperation mechanisms that has governed the fate of Northern Ireland since 1998, enabling all sides to find some reassurance that their particular position and identity could find its place, Brexit has opened a Pandora's box in Ireland which might not be shut again without some serious cracks to the United Kingdom of Great Britain and Northern Ireland. Stripped of the wider binding framework of the European Union, Northern

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38. "We will leave as one nation", said the State Secretary for Northern Ireland, James Brokenshire, in his speech at the Conservative Party Conference on 1st October 2017. The Secretary of State for Exiting the EU, David Davis, conveyed a similar view at the end of the latest round of talks in Brussels, when be agreed that there would need to be "specific solutions" for the unique position of Northern Ireland, yet reaffirmed that, "this cannot amount to creating a new border inside our United Kingdom."
39. Martin Sandbu, "How to solve the Irish Brexit problem", *The Financial Times*, 11th October 2017.
40. As stated in the "Guiding Principles for the dialogue on Ireland/Northern Ireland" published by the European Commission's Article 50 Task Force on 21st September 2017.

Ireland, the shattered fragment of the British-Irish state which broke apart between 1919 and 1922, risks being brought back to a rift. And the way out of that rift may well coalesce into another unexpected twist of history. By crystallising attention on the question of the Irish border, Brexit has already had one spectacular effect which very few expected on either side of the Irish Sea: it has breathed new life into old aspirations to a United Ireland. Admittedly, the prospect of Irish reunification still acts like more of a scarecrow than a workable solution in the eyes of most Irish people, although, or more accurately perhaps because, it is championed by Sinn Féin (who have now become the third largest political force in the Republic of Ireland), but also because narratives of economic prosperity and happy globalisation have largely displaced the previous nationalistic fixation on the question of Ireland's partition. To have made thinkable again what had become somewhat of a taboo amongst the Irish establishment is surely one of the most paradoxical consequences of Brexit – and it will be interesting to see how the issue of United Ireland plays out in Irish politics over the next few years, in the new political context carved out by Brexit. The path ahead might be a rocky one indeed, requiring more than a stout black thorn to banish old ghosts and the Sirens of political passion.

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