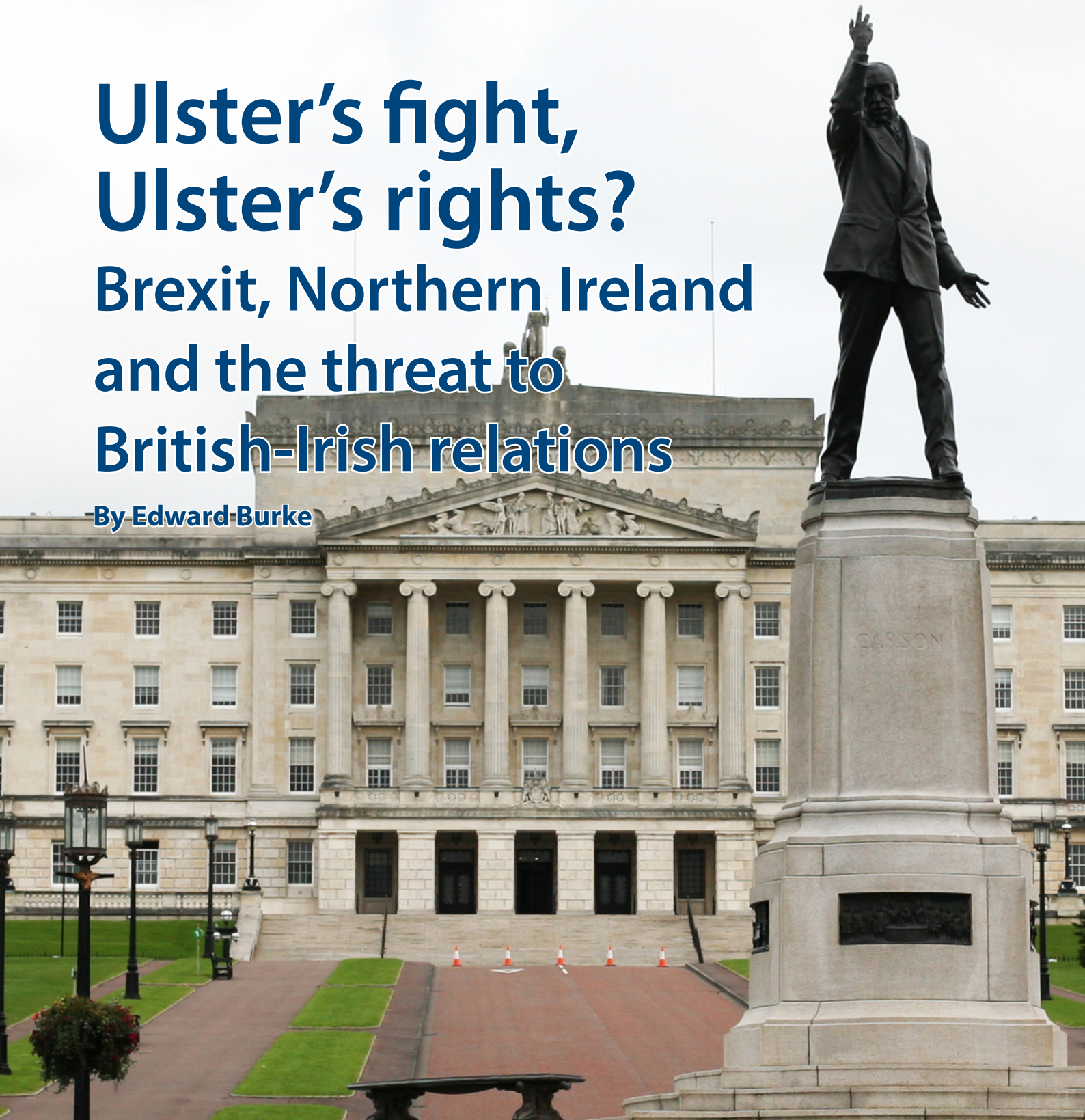


Ulster's fight, Ulster's rights? Brexit, Northern Ireland and the threat to British-Irish relations

By Edward Burke



Ulster's fight, Ulster's rights?:

Brexit, Northern Ireland and the threat to British-Irish relations

By Edward Burke

- ★ The failure of Prime Minister Theresa May to secure an overall majority for her Conservative Party on June 8th has given Northern Ireland's largest party, the Democratic Unionist Party (DUP), significant political leverage at Westminster. The DUP secured an additional £1 billion in public funding for Northern Ireland in return for supporting the government in parliament.
- ★ The DUP says that it wants Northern Ireland to leave the EU on the same terms as the rest of the UK. It also says that it does not want a 'hard border' with Republic of Ireland. If Theresa May sticks to her stated aim of leaving the single market and the customs union, there will have to be some sort of border; but it is unlikely that the DUP will withdraw its support for the Conservative government in that event.
- ★ Brexit has shaken the foundations of the peace process in Northern Ireland. The majority of Ulster's voters opposed Brexit, and Irish nationalists in the province believe that the constitutional changes it requires will reverse many of the gains of the Good Friday Agreement.
- ★ In the coming Brexit negotiations, London should acknowledge Northern Ireland's unique relationship with the EU. A distinctive EU status for Northern Ireland, committing London and the 27 to maintaining many of the EU's structural and Ulster-specific programmes would help to limit the fallout from the UK's exit.
- ★ In the event that the EU and the UK fail to agree quickly on a comprehensive free trade agreement, Brussels could work with London to create a specific regime for Irish and Northern Irish goods and services (including and beyond the exposed agri-food sector), exempting them from tariffs and most customs checks if they remain on the island of Ireland.
- ★ The Brexit-supporting DUP – always suspicious of any distinction or separation from the 'mainland' – needs to be persuaded, particularly by Dublin, that a tailored relationship between Northern Ireland and the EU is not a deliberate, disguised route to Irish unity. Meanwhile, Northern Ireland's nationalist community will remain deeply sceptical about the role of the British government as long as it is dependent on unionist votes for its majority at Westminster.
- ★ Existing sophisticated smuggling and terrorist networks will seize upon opportunities for criminality – particularly the evasion of tariffs – if a customs border is introduced. A swiftly negotiated joint EU-UK customs agreement would ease the bureaucratic pressures, costs and security risks.

- ★ The UK will have to work to persuade the Irish government to invest in its policing and intelligence structures if the Common Travel Area is to be secured. Brexit creates new pressures on previously excellent British-Irish security co-operation. It is likely that the UK will have limited access to many Justice and Home Affairs mechanisms, including the European Arrest Warrant (EAW), with serious consequences for cross-border security co-operation.
- ★ Freedom of movement on the island of Ireland is likely to continue as both countries are outside Schengen. There is little evidence to support claims that EU citizens will use Ireland as a back door to live illegally in the UK – potential EU migrants are unlikely to find such a prospect attractive.

On April 10th 1998, representatives of the British and Irish governments and most of the political parties in Northern Ireland met in Belfast to sign what became known as the Good Friday Agreement. This paved the way for an end to ‘the Troubles’, thirty years of conflict in Northern Ireland. Does Brexit now threaten the fragile compromises that have (mostly) kept the peace for almost 20 years?

The fundamental principle running through the Good Friday Agreement is consent, between the unionist and nationalist communities in Northern Ireland and between Dublin and London. London continued to exercise sovereignty in Northern Ireland, but it was careful to consult and almost never contradicted Dublin when it came to the implementation of the agreement. When the UK voted on June 23rd 2016 to leave the EU, however, it imposed a far-reaching constitutional change on Northern Ireland without the consent of its people (56 per cent of whom voted to remain in the EU), and directly against the expressed wishes and interests of the Irish government.

The announcement by Prime Minister Theresa May on January 17th 2017 that Britain would leave the EU’s single market and customs union did not come as a surprise to the Irish government – Irish diplomats had long predicted such an outcome.¹ But Irish nationalist leaders in Northern Ireland were profoundly shocked. Some had hoped that Northern Ireland’s political and trade relationship with the Republic of Ireland and the rest of the EU would remain largely unchanged.

The prospect of a return of border controls on the island of Ireland is a bitter reminder that two fundamental pillars of the Good Friday Agreement are under threat: the significant EU funds spent in Northern Ireland; and ever closer economic and cultural integration with the Republic. Irish diplomats are alive to the threat to the peace process and have ensured that Northern Ireland’s “unique circumstances” are a priority for the European Commission’s negotiators. Meanwhile, former Taoiseach Enda Kenny secured a declaration by the EU-27 that paves the way for Northern Ireland’s automatic re-entry into the EU if it votes to leave the United Kingdom in favour

of a united Ireland in the future.² The *Irish Times* cited the ‘Kenny text’, as it is known in Brussels, as the strongest assertion of Irish nationalism in more than 30 years.³

Previously submerged, uncomfortable questions have returned to trouble relations between London and Dublin. The prospect of Brexit brings with it a requirement to delineate a border between the UK and the EU-27. Secretary of State for Northern Ireland James Brokenshire has restated Britain’s claim to all the waters of Lough Foyle – the stretch of water that divides County Londonderry (on the UK side) from County Donegal in the Republic. Such a claim would deny Dublin sovereignty over any of the waters of Lough Foyle.

The UK’s claim over Lough Foyle can be traced back to the ‘Irish Company’ or society that was established in London to ‘plant’ settlers from England and Scotland in rebellious Ulster in the 17th century. The British government later converted the Irish Company’s claim of ownership to one of sovereignty after partition in 1921. Historical grievance is still keenly felt in Ireland – the Irish Department of Foreign Affairs and Trade swiftly rejected Brokenshire’s renewed claims of sovereignty and those made over Carlingford Lough at the other extreme of the disputed maritime border. UK and Irish common membership of the EU had made such maritime disputes almost irrelevant.⁴

Of all the UK’s nations or regions, Northern Ireland faces the biggest political, security and economic problems as a consequence of the UK leaving the EU. The nationalist, largely catholic, community view the unionist and predominantly protestant Democratic Unionist Party’s (DUP) support for Brexit as a breach of trust. Nationalists (and some unionists) are appalled by the potential return of tariffs and border checks.

1: Interview with Irish diplomats, November 8th 2016.

2: Minutes of the Special meeting of the European Council (Art.50) held on April 29th 2017; European Council document EUCO XT 20010/17, June 23rd 2017.

3: Harry McGee, ‘Brexit challenge played to Kenny’s strengths with EU influence to call on’, *Irish Times*, May 1st 2017.

4: ‘The British claim Foyle – Again’, *Derry Journal*, November 16th 2016; Peter Leary, ‘Unapproved routes: Histories of the Irish border, 1922-1972 (Oxford: Oxford University Press, 2016), 60-94.

The Brexit vote was another hole in a Northern Irish power-sharing executive that was already listing badly. The Sinn Féin leader, Gerry Adams, has described Brexit as a “hostile action”, inflicted by London on Northern Ireland with no concern for the political and economic damage it would cause.⁵ DUP leader Arlene Foster’s backing of the UK’s exit from the EU added to a long list of Sinn Féin grievances over perceived “DUP arrogance” – even if the ultimate catalyst for the collapse of the executive at Stormont was a dispute over the mounting costs of a renewable energy scheme.⁶ Sinn Féin, the largest nationalist party in Northern Ireland, withdrew from government in January 2017, calling for new elections. These in turn led to prolonged deadlock in forming a new executive.⁷

“A return of border controls to Ireland is a reminder that two fundamental pillars of the Good Friday Agreement are under threat.”

The timing of the political vacuum in Belfast was unfortunate, coming just as London was about to begin negotiations over future UK-EU relations. Ironically – given the DUP’s support for Brexit and long-held suspicion of Dublin’s influence in Ulster – it will now fall to the Irish government to play a leading role in protecting

Northern Ireland’s interests in Brussels. For Dublin the stakes are very high – Brexit is deeply resented south of the border and will come at a significant cost to a country that had no say in its making.

The Irish government will work hard to avoid an acrimonious Brexit. But Irish officials say that if Ireland is forced to take sides in a dispute between Brussels and London, then Ireland’s EU’s membership will always take precedence over bilateral relations with the UK. The EU is a much more important trading partner for Ireland. Dublin values the international trade agreements negotiated by Brussels and highlights Ireland’s access to the single market to attract overseas investment. The Irish public also strongly support continued membership of the EU.⁸

This policy brief argues that two conditions are required to avoid a significant deterioration in British-Irish relations: first, a special EU status for Northern Ireland would help to limit the fallout from the UK’s protracted exit. The EU has been a constant and generous supporter of Northern Ireland’s peace process. Despite disagreements with London, Brussels should not stand aside as that work unravels. Second, London needs to quickly negotiate an advanced trade agreement with the remaining EU-27, one that reduces the impact of the UK’s exit from the single market and the customs union by waiving or limiting tariffs.

Foyled Again? Northern Ireland’s political landscape after Brexit

The EU drained some of the poison of partition in Ireland. The advent of the customs union and common market erased physical signs of the border, easing tensions that had brought Northern Ireland’s future in the United Kingdom into question. EU programmes helped to rebuild ties between cross-border communities that had been broken by thirty years of conflict.

At the beginning of 2016, after almost twenty years of peace, Ulster unionism found itself confronted by a painful choice in the lead up to the Brexit referendum. Some unionists, including Mike Nesbitt, the former leader of Northern Ireland’s second-largest unionist party, the Ulster Unionist Party (UUP), argued that the union was safe as long as the border was “less obvious and less important” (not an aggravation to nationalists) than it had been in the past. This meant keeping the UK in the EU.⁹

Arlene Foster supported the Leave campaign, but she is aware of the potential damage to Northern Ireland from an acrimonious Brexit. Foster represents the

border constituency of Fermanagh and South Tyrone. And she won praise in Northern Ireland, including from nationalists, for securing EU funding in her previous job as minister for enterprise, trade and investment. She has spoken of the importance of the EU to the Northern Irish economy, including the ability of people and goods to move freely across the border with the Republic. She does not see why that should change after the UK leaves the EU; she appears to have been wrong-footed by Prime Minister Theresa May’s decision to leave the single market and the customs union.¹⁰

Since December 2016 the DUP has failed to extricate itself from a scandal over a mismanaged, possibly corrupt, renewable energy scheme – approved by Alene Foster when she was minister for enterprise, trade and investment. The fallout from the scandal saw the collapse of the executive and new assembly elections on March 2nd. Nationalists turned out in unusually high numbers, eager to punish the DUP for their apparent indifference to Brexit and its record in government, including the executive’s

5: Adams, ‘McGuinness Relationship Unmatched’, *RTÉ News*, January 22nd 2017.

6: Michelle O’Neill, ‘DUP arrogance has failed’, *Belfast Telegraph*, February 23rd 2017.

7: Elaine Edwards, ‘Sinn Féin TD accuses the DUP of “arrogance”’, *Irish Times*, January 10th 2017.

8: ‘Poll suggested that 88 per cent of Irish people want Ireland in the EU’, *RTÉ News*, May 9th 2017.

9: House of Lords, European Union Committee Inquiry, ‘Brexit: UK-Irish Relations’, December 16th 2016.

10: Arlene Foster, ‘No one wants a hard Brexit border’, *Irish News*, April 27th 2017.

withdrawal of funding for the promotion of Irish culture in Northern Ireland. Sinn Féin was the big winner, coming within a whisker of overtaking the DUP's share of seats in the assembly. For the first time in Northern Ireland's history, nationalists outnumbered unionists in a Belfast parliament.

The shock of the March assembly elections meant that in the general election held on June 8th many UUP supporters voted tactically for the DUP. This prevented the 'vote wastage' that could have otherwise favoured Sinn Féin. At the same time, nationalist voters shifted from the moderate Social Democratic and Labour Party (SDLP) to Sinn Féin. The DUP and Sinn Féin made gains, while the more moderate UUP and the SDLP now have no representation at Westminster. In newly uncertain times, the orange and green wagons are circling again. Because Sinn Féin does not take up seats in the British Parliament, no Irish nationalist MP will sit at Westminster; that is likely to deepen feelings of alienation from London within the nationalist community. And no unionist MP was elected in any of the five Westminster constituencies bordering the Republic of Ireland. All are now held by Sinn Féin, while the ten Unionist seats are clustered in the north-east of the province.

“Brexit is deeply resented south of the border. Ireland's EU's membership will always take precedence over relations with the UK.”

Theresa May's failure to secure a majority in the June general elections presents the DUP with a rare opportunity of holding meaningful power in Westminster. But Arlene Foster is now faced with a difficult decision. Though the DUP's agreement with the Conservatives obliges DUP MPs to vote in favour of Brexit-related legislation, she could demand that the Conservatives look again at the option of staying in the single market and customs union as part of a 'soft Brexit' that safeguards Ulster's economic interests. Such a course would, however, risk pitting her and the more moderate wing of the DUP – mostly members of the Northern Irish assembly – against more entrenched Brexit supporters who have their seats in Westminster.

Explaining why the DUP should urge the rest of the UK to cede some of its powers to Brussels requires nuance and persuasive rhetoric – while the DUP is better known for its undiluted commitment to maximising British sovereignty, and its unwavering patriotism. Arlene Foster is unlikely

to opt for such a perilous path, one that would likely see her challenged within her party if not deposed from the leadership. The DUP will continue to take a back seat in Westminster when it comes to setting policies for Brexit negotiations.

Following its recent electoral successes Sinn Féin is now under pressure to deliver a softer Brexit for Northern Ireland. It has little influence over the UK as a whole, especially during periods when the executive at Stormont is suspended. Theresa May's Downing Street is seen as a cold place for Northern Irish nationalists. Naomi Long, leader of Ulster's liberal Alliance Party (neither unionist nor nationalist) has condemned Number 10 for its "indifference" to Northern Ireland.¹¹ For their part, senior EU officials have warned that it will be impossible to get into the details of future border arrangements and Belfast's post-Brexit relations with the EU until a new Northern Irish executive is able to negotiate (and take an agreed position) on behalf of the province.¹²

The DUP claim that that they have secured real gains for Northern Ireland in their June 26th pact to support the Conservative government at Westminster. Whitehall is now committed to spending an additional £1 billion of funds on infrastructure, health and education in the province from 2017-19 (in addition to the £500 million already allocated).¹³ Nevertheless, Theresa May's government will be viewed with increased suspicion by Northern Ireland's nationalist community, as long as it is dependent on DUP support. Dublin will also be more circumspect in its relationship with London in future negotiations over Northern Ireland.¹⁴ Before the general election Sinn Féin had criticised Secretary of State for Northern Ireland James Brokenshire for being too close to the DUP.¹⁵ It will be now be even more difficult for the British government to mediate in political disputes between the two sides.

Although Sinn Féin is in opposition in the south, its leadership has found that the Irish government is now more open to their concerns than was previously the case (Taoiseach Leo Varadkar's Fine Gael party does not contest elections in the north).¹⁶ Meanwhile, recent polls show there are signs that southern ambivalence towards unification might be shifting.¹⁷ The main opposition party, Fianna Fáil – eager to capitalise on the resurgence, albeit limited, of nationalist sentiment in Ireland post-Brexit – is drafting a policy document that sets out its vision for a united Ireland. Not to be outdone, the Fine Gael party also announced plans to extend the franchise for Irish presidential elections to Northern Ireland for the first time.¹⁸

11: 'Theresa May "indifferent" towards Northern Ireland, says Alliance leader Naomi Long', *New Statesman*, April 26th 2017.

12: 'NI stalemate could hinder Ireland's Brexit interests', *RTÉ News*, May 3rd 2017.

13: 'Agreement between the Conservative and Unionist Party and the Democratic Unionist Party: UK financial support for Northern Ireland', June 26th 2017.

14: 'DUP deal condemned by Sinn Féin', *Belfast Telegraph*, June 26th 2017.

15: Stephen Bush, 'Favouritism for the DUP', *New Statesman*, February 9th 2017.

16: 'Gerry Adams: Hard border inevitable unless NI given special status', *Irish Independent*, February 17th 2017.

17: 'Poll: Voters divided on united Ireland over costs', *RTÉ News*, March 5th 2017.

18: 'Fianna Fáil to publish plans for United Ireland', *RTÉ News*, March 13th 2017.

If Northern Ireland leaves the EU on similar terms to the rest of the UK, without a comprehensive free trade agreement, then the Sinn Féin leadership will be forced to take its most important decision since signing the Good Friday Agreement. It has two options to choose from. First, it could accept that Brexit will pull the two parts of the island of Ireland further apart. Adams or his successor could implicitly confirm that Sinn Féin is effectively two parties on one island. In Northern Ireland, Sinn Féin would represent the nationalist community within a devolved UK administration outside of the EU. South of the border, the party would seek to enter government in Dublin through a political programme focused on reducing inequality, improving public services and reforming the institutions in Brussels.

“The DUP will continue to take a back seat in Westminster when it comes to the Brexit negotiations.”

By focusing predominantly on local issues, north and south, Sinn Féin would aim to strengthen its grip on power in Belfast and Dublin. Despite a slight surge in nationalist sentiment since the EU referendum in the UK, ‘northern issues’ south of the border are unlikely to hold the attention of an electorate focused on more pressing questions such as the delivery of public services and economic growth.¹⁹ A united Ireland would remain a long-term aspiration for the party, unlikely to occur for generations, if at all, because of unionist opposition in the north, the economic case for continued union with Great Britain (quietly acknowledged by many Catholic voters) and popular indifference or concern about the potential for northern violence in the south.²⁰

The enduring threat of violence by loyalist paramilitaries is an implicit, if seldom acknowledged brake on republican populism. The emotional appeal of loyalism, and the long history of violence within that tradition, will not be easily overwhelmed by arguments about trade and prosperity in a united Ireland. But there is also a very compelling economic case for Northern Ireland staying in the UK, one that Sinn Féin will struggle to counter. Even before Brexit, more of Northern Ireland’s goods and services went to Great Britain than the rest of the EU (including the Republic of Ireland) combined.²¹

Option two would involve Sinn Féin walking away from power sharing in Northern Ireland. In doing so Sinn

Féin could benefit from rising popular anger among nationalists towards the DUP and resentment over economic hardship following Brexit. The Sinn Féin leadership could then argue that the status quo was unacceptable and only Irish unity or a unique status for Northern Ireland – linked to, but outside the United Kingdom – would suffice. More militant members of Sinn Féin traditionally view policy through the lens of ‘England’s difficulty is Ireland’s opportunity’. Brexit is no exception. And recent policy documents produced by Sinn Féin suggest that this second option is still very much on the table and may be adopted at some point in the future.²²

It is more likely, but not inevitable, that Gerry Adams and the Sinn Féin leadership will choose the first option. In doing so they would maintain Sinn Féin’s vote among those middle-class Catholics who are fearful of more instability and violence in the province. But they would risk losing the support of Sinn Féin’s grassroots, and giving political oxygen to violent dissident republicans. The reappearance of border controls will be an enticing target for dissident republicans, either for harassment or violent assault. The Police Service of Northern Ireland (PSNI) has observed that dissident republicans and criminal gangs will also seek to tap into the sizeable smuggling opportunity presented by a customs border.²³

For now violent republicans lack a charismatic political leadership able to take advantage of Brexit. The appeal of dissident republicans has been damaged by their ties to the drugs trade, highlighted by the New Irish Republican Army’s involvement in a bloody gangland feud in Dublin. But republican clubs and societies – broadly supportive of armed violence against the British state and not directly controlled by the Sinn Féin leadership – are increasingly active in border communities, drawing energy from the anger that has swelled in these areas since the Brexit vote.

Successive governments in Dublin have always treated keeping open the possibility of a united Ireland as a constitutional duty. But even moderate unionists have interpreted the ‘Kenny text’ agreed at the European Council as an unwelcome attempt by Dublin to exploit Brexit as a means to a united Ireland. The Fine Gael-led government’s preoccupation with events in London and Brussels meant that it had not reassured unionists in the North about its future thinking on a united Ireland. Enda Kenny later talked down suggestions of a unity poll north or south of the border, claiming that a united Ireland was unlikely in the near future.²⁴

19: ‘Reunification Costs Divide Voters on United Ireland, poll suggests’, *RTÉ News*, March 5th 2017.

20: Mark Devenport, ‘Irish border poll unlikely, but possible’, *BBC News*, March 14th 2017.

21: Northern Ireland Statistics and Research Agency, ‘Broad Economy Sales and Exports Statistics’, May 2017.

22: ‘Securing special status for the North within the EU’, Sinn Féin policy paper, April 2017.

23: House of Lords, European Union Committee Inquiry, ‘Brexit: UK-Irish relations’, December 16th 2016.

24: Chris McCullough, ‘Keep your nose out of Northern Ireland, Nicholson tells EU after Kenny seeks assurances’, *Belfast Telegraph*, May 1st 2017.

Fine Gael has not set out any policies on what such a union of the north and south of the island might look like and what accommodation, if any, would be made for unionist traditions (talk of a renewed Irish membership of the Commonwealth has been dismissed by the main

Irish political parties). The DUP pointedly refused to come to the Irish government's all-island forum on Brexit; more sustained political and diplomatic dialogue between Dublin and Arlene Foster's DUP is required in order to agree common interests and ease unionist fears.²⁵

The importance of EU funds to Northern Ireland

Between 2014 and 2020 Northern Ireland expected to draw more than €3.5 billion from the EU, including approximately €2.5 billion in Common Agricultural Policy (CAP) payments – larger than any other comparably-sized UK region.²⁶ More than 8 per cent of Northern Ireland's GDP is dependent upon EU funded programmes. After Brexit, these will have to be replaced by funding from London, or a recession in Northern Ireland will be inevitable.²⁷ The public sector remains disproportionately important to Northern Ireland's economy compared with the rest of the UK, accounting for 28 per cent of employment in 2015 (ten points higher than in England). And Northern Ireland already has the highest unemployment rate of any UK region.²⁸

“Northern Ireland already has the highest unemployment rate of any UK region.”

Before the general election London had announced its intention to reduce fiscal transfers to Belfast incrementally. Theresa May's government – dependent upon the support of the DUP – has now jettisoned these plans. But the Conservative party's generosity to Ulster will only endure as long as they require DUP votes. The so-called Barnett formula – the system used by the Treasury to calculate the distribution of revenue (or cuts) to each UK nation, which disproportionately benefits Scotland and Northern Ireland – is deeply unpopular with Conservative MPs, who argue that English taxpayers provide excessive subsidies to Belfast.²⁹ In recent years per capita public spending in Northern Ireland has been approximately £2,500 more than in England.³⁰

The UK government has yet to indicate which EU budget programmes it will replace after 2020 (Chancellor of the

Exchequer Philip Hammond has guaranteed EU levels of funding for one year after 2019, the year Britain will probably leave the EU). But some EU funds – apart from programmes already agreed by the end of 2016 – may be in jeopardy between now and 2019. The chief executive of the special EU programmes body for Northern Ireland – the institution established by former European Commission President José Manuel Barroso to support the peace process – has warned that he cannot plan effectively for post-2020 spending in Northern Ireland because of uncertainty over whether the UK will give money to EU programmes in the province after it leaves the Union.³¹

Cross-border public services funded by an array of EU programmes – such as the Co-operation and Working Together (CAWT) programme, aimed at delivering cross-border health services – are under threat. The UK government is considering whether to replace the EU's PEACE programme, through which the EU has spent close to €1.5 billion on activities that support the peace process in Northern Ireland. These include providing skills training to former paramilitaries and residents of areas most affected by violence in the past. The EU has also paid for trauma counselling for more than 5,000 people in Northern Ireland.³²

In the past the British and Irish governments have balked at funding community projects run by former terrorists (some of them with enduring ties to paramilitary organisations).³³ The EU has filled the gap. It is difficult to see how these EU initiatives could be replaced in future. The impact of the PEACE programme is difficult to quantify, but the enrolment of former terrorists in EU training and employment initiatives suggests some positive outcomes. Its absence will create considerable uncertainty among those communities that relied upon such funds in the past.³⁴

25: 'DUP will not participate in all-Ireland talks', *RTÉ News*, September 27th 2016.

26: European Commission, 'EU funds in Northern Ireland'.

27: Leslie Budd, 'The Consequences for the Northern Ireland economy from a United Kingdom exit from the European Union', March 2015.

28: 'Compulsory job losses in public sector not ruled out', *Belfast Newsletter*, January 21st 2016; Leslie Budd, 'The consequences for the Northern Ireland economy from a United Kingdom exit from the European Union', March 2015.

29: Jack Doyle, 'Scots and Northern Irish "Let off £800m cuts" after flaws in formula used to calculate how much they should receive', *Daily Mail*, November 12th 2014.

30: 'Devolution: The Barnett Formula' *BBC News*, October 30th 2014.

31: Northern Ireland Assembly and Houses of the Oireachtas Research Services, 'Briefing paper for the eighth meeting of the North/South Inter-Parliamentary Association', November 18th 2016, 45.

32: Northern Ireland in Europe: Report of the European Commission's Northern Ireland Task Force 2007-14, October 2014.

33: Department of Foreign Affairs and Trade of Ireland, 'The Reconciliation Fund Strategy 2014-17', Dublin, 2014; Mohamed Aly Sergie, 'The Northern Ireland peace process', Council on Foreign Relations, February 3rd 2014.

34: Mary Murphy, *Northern Ireland and the European Union*, (Manchester: Manchester University Press, 2015), 185.

The threat to North-South trade

Even with common EU membership, North-South trade in goods is lower than expected for two small jurisdictions sharing the same island. Around a quarter of the North's goods exports go to the South, but less than 2 per cent of the Republic of Ireland's goods exports go to Northern Ireland. An exit from the EU without a free trade agreement between the UK and the EU would severely damage cross-border trade in goods, as these would be subject to tariffs.³⁵

North-South trade in services is reasonably robust. Cross-border shopping and the bulk of other trade in services is likely to endure as long as freedom of movement is guaranteed by both London and Dublin. Northern Ireland's small financial sector will be particularly exposed to Brexit, but it makes up only a relatively small part of this trade.

“The reappearance of border controls will be an enticing target for dissident republicans.”

Larger problems stem from a UK exit from the customs union. North-South agriculture and food and drink supply chains are often highly integrated. Northern Ireland's agri-food sector, 3.5 per cent of the region's GDP, is a disproportionately important part of the province's

economy compared with the rest of the UK – agricultural products make up 35 per cent of Ulster's exports compared with 10 per cent for the rest of the UK.³⁶ And 87 per cent of Northern Irish farm income is derived from EU subsidies (compared to 53 per cent for the UK as a whole).³⁷ The sector accounts for 70,000 jobs, or 12 per cent of the total work force.³⁸ Leading figures in Ulster's agri-food sector are alarmed at statements made by government ministers that suggest that the UK might fall back on World Trade Organisation tariffs upon leaving the EU. The EU trade weighted average tariff for agricultural products is 22.5 per cent.³⁹

Any significant costs or tariffs applied to trade in agricultural products would deal a devastating blow to farmers on both sides of the Irish border. More than 40 per cent of agri-food and drink exports from the Republic of Ireland go to the UK market. Intricately woven supply chains would be severely disrupted, if not broken, if tariffs were introduced. Even if tariffs were avoided, UK agricultural products would still have to comply with EU regulations in order to be processed south of the border. Over a quarter of Northern Irish milk production is sent to the Republic of Ireland for processing. Ulster is also heavily dependent on EU labour to maintain competitiveness – 60 per cent of workers in agri-food factories and 90 per cent of seasonal labours are non-UK nationals, mostly from other EU countries. Leading employers in the province claim that they can ill-afford a hike in labour costs.⁴⁰

Maintaining the Common Travel Area and policing a customs border

The Common Travel Area (CTA) between Ireland, the UK, the Isle of Man and the Channel Islands pre-dates the EU. Many of the rights of Irish citizens in the UK were also established before the UK's EU accession, including the entitlement to automatic residency, the right to vote, stand in all British elections and gain access to public services. Ireland, like the UK, has not signed up to the Schengen Treaty on freedom of movement in Europe. Importantly the EU also recognises the CTA in Protocol 20 of the Lisbon Treaty – Ireland's participation in the CTA should not be affected post-Brexit.⁴¹

London appears willing to concede that it cannot police the movement of the approximately 35,000 people who cross the Irish border every day.⁴² And establishing

border checks for the movement of people would be unacceptable to those UK citizens who depend on access to and from the south for their economic livelihood. It is also likely that visa free travel from the Republic to Northern Ireland will continue for EU citizens, without the automatic right to residency. All persons, UK citizens and other nationals alike, flying from Northern Ireland to the 'UK mainland' have to show official identification, normally passports or (for CTA citizens and residents) at least a driving licence. People traveling by ferry from Northern Ireland to the rest of the UK also generally produce a passport or a driving licence (although other forms of ID such as citizenship or residency cards may be accepted). Meanwhile, 'Operation Gull' targets the illegal movement of non-EU citizens to Britain from Ulster – 775

35: ESRI, 'Scoping the Possible Implications of Brexit on Northern Ireland', November 2015; ESRI, 'Brexit and the UK in Numbers', December 2016.

36: Northern Ireland Assembly Research Service, 'Northern Ireland's agri-food sector', September 22nd 2016; Pádraig Belton, 'How Northern Ireland lost its unionist majority', *The Spectator*, March 4th 2017.

37: 'CAP reform 2014-20: EU agreement and implementation in the UK and Ireland', Research and Information Service Paper, October 30th 2014; Gerry Moriarty, 'CAP payments vital to the NI economy', *Irish Times*, May 9th 2016.

38: 'Northern Ireland's agri-food sector', September 22nd 2016.

39: 'Brexit: UK-Irish Relations', December 12th 2016, 8.

40: 'Brexit: UK-Irish Relations', December 12th 2016: Testimony of Declan Billington, Chair, Northern Ireland Food and Drink Association, October 18th 2016.

41: 'Briefing Paper for the Eighth Meeting of the North/South Inter-Parliamentary Association', 32.

42: 'Brexit: UK-Irish Relations', 42.

immigration offenders were identified between 2015 and 2016. British officials anticipate that this operation, involving close co-operation between UK and Irish border agencies, will be expanded post-Brexit.⁴³

Policing a customs border will not be easy and will require a significant investment in resources north and south of the border. James Brokenshire has argued that current excise duty collection measures can be expanded in the future to combat customs evasion. He has also proposed introducing electronic tag controls – technology used to read licence plates and identify vehicles that have already made online declarations – to avoid lengthy delays at the border. Brokenshire suggests that the border between Norway and Sweden offers a working template for the UK and Ireland.⁴⁴ Both Scandinavian countries operate a single customs check at the border, an online system to declare the movement of goods in advance, the

electronic recognition of vehicles and the right of each customs authority to carry out checks on warehouses and other locations in the partner country.⁴⁵

Others are more sceptical – David Ford, a former Alliance Party leader and justice minister, has dismissed talk of electronic controls on the border as ‘utterly meaningless’. The border counties of Armagh and Monaghan are not Scandinavia – the violent history, and the scale and sophistication of criminal activity (including by dissident republicans, who already evade excise duties on a large scale) cannot be compared to Norway or Sweden. Former Taoiseach Bertie Ahern believes that Dublin is also unlikely to permit UK officials to carry out checks south of the border. David Davis, the Secretary of State for Exiting the EU, has accepted that a significant loss of revenue due to smuggling may be the price paid to keep the border open.⁴⁶

A soft under-belly? British-Irish security co-operation

The future of the Irish border is not only a trade and migration issue. It is also a big counter-terrorism and serious crime challenge for both countries. After decades of mistrust during the Troubles, bilateral security co-operation between London and Dublin has been transformed.⁴⁷

“It appears likely that the UK will no longer be able to access the EAW once it completes the process of leaving the EU.”

If the UK is unable or unwilling to retain the European Arrest Warrant (EAW) or a comparable extradition arrangement with the EU in future, this would herald a return to complex bilateralism. Co-operation might also be more difficult if the UK redrafted the Human Rights Act or even withdrew from the European Convention on Human Rights – something which Theresa May has said in the past she would favour.⁴⁸ Given the complexity of previous negotiations with non-EU member-states seeking arrangements comparable to the EAW, including Norway and Iceland – and the determination of the British government to remove its courts from direct ECJ oversight – it appears certain that extradition will become more complicated once the UK completes the process of leaving the EU.⁴⁹

In securing the border, UK security, customs and national crime agencies rely heavily on the co-operation and capabilities of their counterparts south of the border.

Traditionally, cross-border security arrangements were informally organised – UK officials, police and intelligence officers carefully cultivated relationships with their Irish counterparts, particularly in the crime and security branch of the Irish police, an Garda Síochána. But in the years immediately preceding the Brexit vote British-Irish security co-operation showed signs of becoming more institutionalised. Political sensitivities over security co-operation had largely disappeared. In 2015 a memorandum of understanding in defence was signed between the two countries.

Since 2010 both governments have agreed a new cross-border policing strategy and established a new cross-border joint agency anti-crime task force – comprised of respective police, revenue and serious crime agencies. Such bilateral structures are a response to an increasingly sophisticated threat along the border: 43 per cent of organised crime gangs currently operating in Northern Ireland have a cross-border dimension.⁵⁰

The UK’s exit from the EU threatens to undermine years of steady progress in cross-border policing. Profound resentment towards Brexit in the Republic of Ireland, combined with a sizeable Irish public debt, make the needed investment in Ireland’s security infrastructure a hard sell. Ireland’s police service is overburdened. In addition to managing day-to-day community policing, an Garda Síochána is also responsible for the procurement and analysis of intelligence, counter-terrorism and serious crime investigation.

43: ‘Brexit: UK-Irish Relations’: PSNI Evidence.

44: Norway is outside the customs union and the European Union but is a member of the European Economic Area.

45: ‘Brexit: UK-Irish Relations’: Evidence of the Right Honourable James Brokenshire MP, Secretary of State for Northern Ireland.

46: ‘Brexit: UK-Irish Relations’, 26.

47: Interview with a senior Northern Irish official, Belfast, January 27th 2017.

48: Henry McDonald, ‘Human Rights Within Good Friday Deal “Must Get Brexit Protection”’, *The Guardian*, February 13th 2017.

49: ‘Outcome of proceedings COPEN meeting’, Council of the European Union, December 16th 2016.

50: ‘Brexit: UK-Irish Relations’: PSNI Evidence.

In recent months senior Irish government ministers have questioned the competence of the Garda leadership. And, for the first time in its history, the Garda rank and file has threatened to go on strike. Leading figures in the Garda Representative Association have claimed that there are currently no plans to cope with the “huge problem” that Brexit will impose on Irish policing – a customs border would require at a minimum a doubling of Garda resources along much of the border.

In the years prior to 2016 Irish police were already significantly under-manned along parts of the border, particularly with respect to specialist capabilities such as armed response and surveillance.⁵¹ And due to a lack of available resources, Ireland lags behind other EU countries in contributing information and gaining access to EU databases. It is not yet connected to Europol’s critical Secure Information Exchange Network Application (SIENA) system.⁵² Additional pressures will be hard to bear.

“A customs border would require at a minimum a doubling of Garda resources along much of the border.”

Garda representatives have also pointed to a lack of capabilities and training within their organisation when it comes to countering Islamist terrorism, a mounting Irish security threat and concern when it comes to policing the CTA (between 30 to 40 Irish citizens or residents have travelled to fight in Syria in recent years). And a number of Irish Islamist extremists – including Khalid Kelly who became an Islamic State suicide bomber in 2016 – have received support from Islamist networks operating simultaneously in both the UK and Ireland, frequently moving between the two jurisdictions.⁵³ Rachid Redouane, one of the three men involved in a terrorist attack in London on June 3rd, was an Irish resident for a number of years but appears to have been unknown to Irish police (unlike the other two attackers, Khuram Butt and Youssef Zaghba, who were known to European police and intelligence services even if they were regarded as ‘low priorities’).⁵⁴

In order to allay fears over Brexit, the British government has pointed to the strength of British-Irish bilateral

security co-operation. But much will also depend on the UK’s future relationship with the EU, including whether it continues to access EU Justice and Home Affairs (JHA) agencies and instruments. For now, at least, London is making all the right noises – “maintaining the strong security co-operation we have with the EU” is one of the government’s four negotiating priorities. In 2014 then Home Secretary Theresa May made the case for opting back into 35 of the pre-Lisbon Treaty JHA measures from which the UK had previously opted out.⁵⁵

In 2014 the Northern Irish executive was seriously alarmed at losing access to JHA agencies and mechanisms, raising its concerns repeatedly with Whitehall.⁵⁶ In 2016 police leaders in Northern Ireland (the PSNI) also sounded the alarm over the potential damage to Northern Ireland’s security if the UK found itself without access to critical intelligence and policing tools. These include Europol, Eurojust, the EAW, the European Criminal Record Information System (ECRIS), the second generation Schengen Information System (SIS II) – essentially a database of wanted criminals, or people or objects sought as part of investigations – and the Prüm convention, which provides access to DNA, fingerprints and vehicle information across Europe.⁵⁷

JHA agencies and mechanisms are increasingly important to British-Irish security interests, especially when it comes to pursuing organised crime and republican or Islamist terrorist networks, both of which may operate beyond the CTA as well as within it (dissident republicans are involved in European smuggling rings and have attempted to import weapons from EU member-states such as Lithuania).⁵⁸ London knows from partners like the US and Norway what an EU ‘operational partnership’ with non-EU member-states currently looks like – some access to information but exclusion from most JHA databases. For the UK that is not good enough.

It is difficult to see how the UK will continue to access the full range of JHA, police, intelligence and prosecution tools if London insists on removing itself entirely from the jurisdiction of the European Court of Justice and oversight by the Commission and European Parliament.⁵⁹ On May 1st 2017 the EU introduced a new Europol regulation. One of its stipulations is that a European Commission representative will be appointed to the Europol Management Board. There will also be a joint parliamentary scrutiny group convened by the European

51: Francesca Comyn, Michael Brennan and Hugh O’Connell, ‘Garda crisis: Crossing the thin blue line’, *Sunday Business Post*, February 12th 2017; ‘Concern gardai will become targets for terrorists at post-Brexit border posts’, *The Journal*, April 29th 2017; ‘The Armed Garda Unit Must Stay in this Area’, *Dundalk Democrat*, February 19th 2016.

52: Irish officials claim this will be remedied in the near future. Communication from the European Commission to the European Parliament on Borders and Security, April 4th 2016.

53: ‘AGSI seeks information on threat level from Islamic extremism’, *RTÉ News*, April 13th 2016; ‘Waterford man charged with funding Islamic terrorism’, *Irish Times*, April 28th 2017.

54: Conor Lally, ‘Man arrested in Limerick over documents link to London attacker’, *Irish Times*, June 6th 2017.

55: ‘Brexit: Future UK-EU security and police co-operation’, December 16th 2016.

56: Briefing Paper for the Eighth Meeting of the North/South Inter-Parliamentary Association, 37.

57: House of Lords, European Union Committee Inquiry, ‘Brexit: UK-Irish relations’, December 16th 2016.

58: Nick Hopkins, ‘How Michael Campbell was caught in a sting by Lithuania and MIS’, *The Guardian*, October 21st 2011.

59: Camino Mortera Martinez, ‘Good cop, bad cop: How to keep Britain inside Europol’, *CER insight*, May 16th 2017

Parliament with input from member-state legislatures to monitor and regulate Europol's activities.

Even more complicated will be the requirement for the UK to harmonise its data protection laws with those of the EU-27. In December 2016 the European Court of Justice ruled that the UK's investigatory powers act was illegal and violated EU citizens' fundamental rights. Any post-Brexit deviation by the UK from the ECJ's interpretation of the law when it comes to protecting EU citizens' rights could lead to the ECJ restricting the type of information the EU shares with the UK and possibly

suspending London's participation in some or all of the JHA structures.⁶⁰

Comparable problems have arisen in relation to the proposed EU-Canada Passenger Name Record (PNR) sharing agreement. Because the EU and Canada have different legal standards relating to privacy, intelligence and investigation, there are obstacles to sharing data on the movements of EU citizens.⁶¹ Ireland will be bound to observe any future ECJ rulings, which could in turn affect the data it can formally share with its UK partners.

Minimising the damage of Brexit

Of all the nations and regions of the UK, Northern Ireland has the most compelling case to establish a separate, privileged relationship with the EU in the post-Brexit era. Northern Ireland has already enjoyed a special status in the EU since the Good Friday Agreement. And EU citizenship will remain an automatic right for many people born in Northern Ireland after Brexit (under the Irish constitution, reaffirmed by the Good Friday Agreement, citizenship extends to anybody born on the island of Ireland as long as one parent is already an Irish citizen). Thanks in no small part to persistent pressure from Dublin, EU leaders increasingly view Northern Ireland as a priority in the coming Brexit talks. There are a number of specific steps that the two governments and the EU should consider taking to mitigate the effects of Brexit on the island of Ireland. Only the first is relatively straightforward – the others will be difficult to implement but could avert the worst effects of the UK leaving the EU.

“Of all the regions of the UK, Northern Ireland has the most compelling case to establish a separate relationship with the EU.”

The EU has at least one near-unilateral option available to it – to maintain funding for special peace programmes in Northern Ireland regardless of future UK contributions to the EU budget. Winning agreement from London for a sustained future EU engagement in the province should be straightforward. Brussels had invested heavily, and long trumpeted, the peace process in Northern Ireland. The EU should strive to limit the negative impact of disagreements with London on that legacy.

Brussels appears to be keenly aware of its new 'Irish problem'. European Commission Vice-President Frans

Timmermans has spoken of the EU's "political and moral" duty to limit the damage caused to the Northern Irish peace process by Brexit.⁶² Continued support for Northern Ireland is in the EU's interests – such programmes will assist European citizens and Ireland, which would suffer from any reversal of the peace process.

Second, it may be possible for Northern Ireland to opt back into the Common Agricultural Policy after Brexit. Agriculture is already a devolved responsibility of the Northern Ireland executive. Taoiseach Leo Varadkar has indicated his support for such a proposal. Varadkar has also urged London to consider negotiating access for Northern Ireland to EU structural funds, such as INTERREG, that support economically vital programmes in the border region. Theresa May has insisted that she will not necessarily devolve powers over agriculture from Brussels to Edinburgh or Belfast. And the UK would have to agree to pay a reduced, but still substantial part of any EU structural funds that benefit Northern Ireland. But Northern Ireland's political leaders and the Irish government should point out how difficult it is to disentangle agriculture on the island of Ireland, where supply chains and markets are heavily interwoven.⁶³

Third, in the event of a failure to quickly agree a comprehensive free trade agreement with the UK, the EU could work with London to create a specific regime for Irish and Northern Irish goods and services (including and beyond agri-food), essentially exempting them from tariffs and most customs checks if they remain on the island of Ireland. Northern Irish labelled products and services would be exported to the Republic of Ireland tariff-free as long as they continue to meet EU regulations and standards. Irish products and services could also be exported tariff-free north of the border (but not to the rest of the UK) as long as these did not deviate from Northern Irish standards.

60: 'Camino Mortera Martinez, 'Hard Brexit, soft data: How to keep Britain plugged into EU databases', CER insight, June 23rd 2017.

61: 'Brexit: Future UK-EU security and police co-operation', 18.

62: Colm Kelpie, 'The European Commission will be at Ireland's side', *Irish Independent*, February 21st 2017.

63: 'NI could avail of EU programmes after Brexit – Varadkar', *RTÉ News*, February 6th 2017; 'Ruth Davidson: Foolhardy to devolve agriculture powers to Scotland', *Daily Telegraph*, February 6th 2017.

There is a precedent for such an arrangement – prior to reunification in 1989, West Germany previously negotiated an ‘inner German trade’ agreement, which enabled tariff-free trade between West and East Germany even though only the former was a member of the European Economic Community (EEC). However, the German agreement was controversial in that it allowed East German goods full tariff-free access to the wider EEC.⁶⁴ Such a benefit for Northern Ireland might be rejected by London on the basis that it would disadvantage the rest of the UK when it comes to attracting foreign investment. However, the case for an ‘island of Ireland’ free trade zone, administered by the EU and the UK, should be examined in the absence of a wider agreement.

A ‘whole island’ trade zone may be acceptable to the EU – there appears to be sufficient goodwill towards Ireland and Northern Ireland within the institutions. But Northern Irish producers would have to be willing to subject themselves to two distinct standards – those of the UK and those of the EU if they wished to export to the latter (with the potential for divergent rules in the future). And Ulster unionists – always vigilant when it comes to Dublin’s ‘meddling’ to erode the union between Britain and Northern Ireland – may balk at agreeing to a status that further marks out Northern Ireland as being distinct from the rest of the UK (the ‘inner German’ precedent may also be an unhappy one for Unionists; Germany was, after all, ultimately unified). Persuading

“Dublin may be limited by ECJ judgements when it come to sharing data with the UK.”

unionists that such a deal is in their interests – and crucially not a long-term threat to their British identity – will be difficult but not impossible.

Fourth, a swiftly negotiated joint EU-UK customs agreement would ease the bureaucratic pressures and costs. As with the border between Norway and Sweden, much of the necessary clearance could be done online. Road-side cameras could capture lorry number plates and match them with customs declarations. Physical checks by customs officials would only be necessary for vehicles that raised red flags, and could be conducted at lorry parks away from the border.⁶⁵ Once the UK has signed free trade agreements with third countries that differ from those of the EU, goods from these countries arriving tariff-free at the port of Belfast which were then shipped

to the Republic (or elsewhere in the EU) would be liable for tariffs and other checks once they crossed the EU’s customs border. But UK customs officials could process EU paperwork and collect tariffs, passing them to the EU, so that the goods could cross the Irish border without further checks or form filling.

Fifth, an already stretched security infrastructure – particularly south of the border – will require significant investment. Both governments must expect increased criminality and an escalated security threat along the border. London will need to further deepen its bilateral security arrangements with Dublin so that UK and Irish officials can engage in joint planning and respond to security, customs and immigration requirements – particularly if the UK is unable to rejoin various JHA measures after it leaves the EU.

A strengthened British-Irish Council – an institution set up under the Good Friday Agreement to promote joint policy initiatives and programmes between the Irish, British governments and devolved administrations – could offer a forum for working groups and joint bodies in the absence of access to EU institutions or tools such as the EAW. There are some grounds for optimism that the administration and policing of the movement of people under the auspices of the CTA can be worked out to both parties’ satisfaction. London and Dublin have already agreed joint visa arrangements allowing visitors to one country to freely travel to the other.⁶⁶ But Dublin may be limited by ECJ judgments when it comes to sharing data with the UK.

After the collapse of the Northern Irish executive, Belfast lost its voice – a single articulated view of how to mitigate the dangers of Brexit. The British government has been distracted – its energies too consumed of late by eve-of-negotiations brinkmanship with Brussels and the failed effort to win a larger Conservative majority. Until the general election Theresa May’s government had not focused on Northern Ireland’s political disputes, but will now have to – dependent as it is on the DUP’s support. But Irish nationalists north and south of the border perceive London as compromised and unable to mediate successfully in Ulster’s affairs.

The DUP itself is split and uncertain when it comes to Brexit – the party will not be able to make a coherent argument to stay in the single market and the customs union. But the DUP could still listen to, and possibly endorse, proposals emanating from Brussels that aim to soften the Brexit blow to Northern Ireland, especially if the pain of a poorly negotiated UK exit becomes more apparent to its supporters.

64: Hans Joachim-Braun, *The German Economy in the 20th Century* (London: Routledge, 2010), 175.

65: Richard Milne, ‘Norway model offers Britain food for thought on post-Brexit trade’, *Financial Times*, October 28th 2016.

66: ‘British Irish Joint Visa’, *BBC News*, October 4th 2016.

Post-Brexit relations between Dublin and London are delicately poised. Poorly phrased statements or a breakdown in negotiations in Brussels have the potential to damage years of productive diplomacy and excellent relations. A return to a more overt, less compromising Irish nationalism on both sides of the border appears likely. Should EU-UK negotiations end badly – with few or no exemptions or a special status for Ulster – then Northern Ireland will tip into a maelstrom of political recrimination, and, potentially, economic recession. In such a scenario Sinn Féin may opt for a populist approach

– a united Ireland as the only solution. Loyalists would respond in turn, possibly with violence. The potential for dangerous escalation is obvious. So far there are few signs that London is willing to make the difficult compromises required to stabilise its ailing province.

Edward Burke

Lecturer in Strategic Studies, The University of Portsmouth

July 2017