



The Centre for
Cross Border Studies

EU Referendum Briefing Papers

Briefing Paper 1

The UK Referendum on Membership of the EU: What does it mean for us?



Introduction

By the end of 2017 (but perhaps as early as June 2016) the people of the United Kingdom will have voted in a referendum that will decide whether the UK remains a member of the European Union. The decision that citizens in all parts of the UK make on that day will, among other things, determine whether the border between Ireland and Northern Ireland remains as an internal EU border allowing the free movement of goods, services, capital and people, or whether it becomes an external border marking the boundary between a state belonging to a club with another 26 members and a region of a UK seeking its future outside it. This decision will have consequences for future generations.

Given the importance of what is at stake and the range of complex issues the referendum raises, the Centre for Cross Border Studies with Cooperation Ireland decided to publish a series of Briefing Papers to help inform the debate.¹ This is the first in that series, and it outlines some of the central issues that will then be examined in more detail in subsequent editions. However, in view of the number and complexity of the range of interrelated issues raised by the question of whether to remain in or leave the European Union, we do not aim to be exhaustive, but rather to point to some that could have a more immediate impact on cross-border cooperation and peace and reconciliation on the island of Ireland.

Background

The Conservative Party's success in the 2015 UK General Election led to a majority Government pledged to enact its Manifesto commitment to "legislate in the first session of [...] Parliament for an in-out referendum to be held on Britain's membership of the EU before the end of 2017".² However, the referendum would be preceded by a negotiation between the UK Government and the other EU member states that would seek to achieve "a new settlement for Britain in the EU", and it would be then that the Government would "ask the British people whether they want to stay in on this basis, or leave".³

According to the Conservative Party, the underlying reason for this negotiation and the subsequent referendum to decide on the UK's future relationship with the European Union is that the consent of the British people for EU membership "has worn wafer-thin".⁴ In turn, this waning of popular consent is – in the view of the Conservative Party – due to an EU that is "too bureaucratic and too

¹ The Centre for Cross Border Studies has developed an area on its website dedicated to the EU referendum, with a number of useful resources and links to other sites: <http://crossborder.ie/research-policy/policy/uk-eu-referendum/>.

² Note that references to "Britain" or "British" that may be perceived to omit Northern Ireland are the responsibility of the original authors. *The Conservative Party Manifesto 2015*, <https://www.conservatives.com/manifesto>, p.73. Similarly, the Democratic Unionist Party in its Manifesto stated that the "DUP believes that the people of the United Kingdom should have a say on future membership of the European Union" (*DUP Westminster Manifesto 2015*, http://dev.mydup.com/images/uploads/publications/DUP_Manifesto_2015_LR.pdf, p.16). The Ulster Unionist Party declared in its Manifesto that although it "believes there could be a beneficial future for Great Britain and Northern Ireland within the European Union", this would be dependent on a review of how the EU impacts on citizens, a renegotiation of the UK's relationship with the EU, and "a **Referendum** allowing you, the people, to decide if you approve of the proposed new relationship" (*Ulster Unionist Party Westminster Manifesto 2015*, <http://uup.org/assets/images/uup%20ge%20manifesto.pdf>, p.18).

³ *The Conservative Party Manifesto 2015*, p.73.

⁴ *ibid*, p.72.

undemocratic”, which “interferes too much in our daily lives, and the scale of migration triggered by new members joining in recent years has had a real impact on local communities”.⁵

Following the 2015 General Election, the Prime Minister, David Cameron, has set out in a series of speeches and in a letter to the President of the European Council the UK’s proposals for reforms of its membership of the EU.⁶ There are four main areas in which the UK Government is looking for reform:⁷

- Economic Governance: the Government wants “legally binding principles” that ensure the European Union is governed for the equal benefit of all member states, and not for the prime benefit of the Eurozone countries, which would be detrimental to those outside the Eurozone, like the UK. It also wants those principles to recognise that “non-Euro countries should never be financially liable for operations to support the Eurozone as a currency”.
- Competitiveness: in order for the EU to do more to boost jobs and economic growth and to reduce the burden of legislation, among other things the UK Government wants “a target to cut the total burden on business”, and for the EU to “fulfil its commitment to the free flow of capital, goods and services”.
- Sovereignty: in this area the Government wants three principle reforms: to “end Britain’s obligation to work towards an ‘ever closer union’ as set out in the Treaty [...] in a formal, legally-binding and irreversible way”; “to enhance the role of national parliaments, by proposing a new arrangement where groups of national parliaments, acting together, can stop unwanted [European] legislative proposals”; and “to see the EU’s commitments to subsidiarity fully implemented”.⁸
- Immigration: here the UK Government has proposed that “people coming to Britain from the EU must live here and contribute for four years before they qualify for in-work benefits or social housing”, and that the “practice of sending child benefit overseas” should be ended. It also proposes that the principle of free movement will not apply to any new EU members “until their economies have converged much more closely with existing Member States”, “tougher and longer re-entry bans for fraudsters and people who collude in sham

⁵ *ibid*, p.72.

⁶ One of these speeches – the “Bloomberg Speech” (<https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>) – was actually given by David Cameron in 2013 as Prime Minister of the previous coalition government. Other speeches by the Prime Minister on this topic include those given at the World Economic Forum in Davos in January 2016 (<https://www.gov.uk/government/speeches/davos-2016-prime-ministers-speech-to-the-world-economic-forum>), and at Chatham House in November 2015 (<https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>).

⁷ The quotations in the following bullet points are from the Prime Minister’s letter to Donald Tusk, President of the European Council, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf.

⁸ According to the Treaty on European Union, its signatories are “Resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity”. Article 5 of this Treaty states that “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level” (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M%2FTXT>).

marriages”, and “addressing the fact that it is easier for an EU citizen to bring a non-EU spouse to Britain than it is for a British citizen to do the same”.

While other Member States and EU institutions have voiced varying degrees of opposition to some or all of the UK Government’s proposed reforms, those relating to immigration are the most contested.⁹ The strength of opposition to the UK’s proposals in this area stems from the view that they discriminate between UK and other EU citizens, and would appear to be in contradiction with one of the fundamental principles of the European Union – the free movement of persons.¹⁰

The success or otherwise of the negotiations over the UK Government’s proposals will dictate whether the Prime Minister will recommend to its citizens that the UK remains in or leaves the European Union. However, whatever his recommendation, the decision will ultimately be in the hands of the people of England, Wales, Scotland and – of course – Northern Ireland on the day of the referendum.

Brexit: possible consequences for Northern Ireland

If the people of the United Kingdom were to vote in favour of leaving the European Union (the so-called “Brexit”), what might this mean for Northern Ireland?¹¹ To some extent it is difficult to answer this question with certainty, as this will depend on what alternative trading and other relationships the UK would be able to put in place following its departure from the EU.¹² Nevertheless, we can identify some key areas that may impact more directly on Northern Ireland and that need careful consideration. These will be briefly outlined below, and will then be analysed individually and in greater detail in subsequent Briefing Papers.

⁹ In its “Submission to the House of Lords European Union Select Committee Call for Evidence: Visions of EU Reform”, the Centre for Cross Border Studies offered its views on the UK Government’s proposals, <http://crossborder.ie/site2015/wp-content/uploads/2015/11/CCBS-Response-to-House-of-Lords-EU-Committee-Inquiry.pdf>.

¹⁰ The signatories to the Treaty on European Union declared that they were “Resolved to facilitate the free movement of persons”. Article 2 of the 2007 Treaty of Lisbon states that “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured”, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT>. At the time of writing a counter-proposal is being considered, which would institute the possibility of triggering an “emergency brake”. This mechanism would be available to all Member States (thereby addressing the issue of discrimination), and would allow a Member State to halt certain benefit payments to EU immigrants for a period of up to four years. However, the Member State in question would have to show that EU migration was placing its welfare system and public services under excessive pressure, and a majority of the other EU member states would have to vote in favour.

¹¹ EU Debate NI has also published a useful briefing paper compiled by academics from Queen’s University Belfast and University College Cork, “To Remain or Leave? Northern Ireland and the EU Referendum”, which sets out some of the issues and a number of related questions, <http://eudebateni.org/wp-content/uploads/2015/11/To-Remain-or-Leave-Northern-Ireland-and-the-EU-Referendum.pdf>.

¹² It is important to note that a vote to leave the EU would trigger Article 50 of the Treaty on European Union, which states: “A Member State which decides to withdraw shall notify the European Council of its intention. In light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union”.

Constitutional Issues

In the event of a Brexit it is quite possible that there will be pressure to revisit the 1998 Belfast/Good Friday Agreement and perhaps to revise the 1998 Northern Ireland Act. The Belfast/Good Friday Agreement includes an Agreement between the Governments of the United Kingdom and Ireland as co-guarantors of the settlement reached by the parties in Northern Ireland. According to the Agreement, the two Governments do so “Wishing to develop still further the unique relationship between their peoples and the close cooperation between their countries as friendly neighbours and **as partners in the European Union**”.¹³ A vote by the UK to leave the EU would mean that one of the co-guarantors of the 1998 Agreement could no longer be considered a partner in the European Union.

However, although common membership of the EU could be seen as an important enabler of the Agreement and providing a forum for improving relations on an East-West basis, the fact that one of its co-guarantors may no longer be an EU Member State should not of itself undermine the status of the 1998 settlement. The difficulty may arise if combined with other constitutional issues identified as arising from a Brexit.

The 1998 Agreement also sets out the roles and responsibilities of the institutions created as a result of the Agreement, some of which would become redundant following a UK exit from the EU. These include the North South Ministerial Council and the British Irish Council, both of which were tasked by the Agreement among their other responsibilities to consider matters related to the European Union. Additionally, a Brexit could lead to the dissolution of the Joint Ministerial Committee on Europe, a separate inter-governmental forum that brings together Ministers from the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive to discuss EU business. Nevertheless, although it may be decided that the Joint Ministerial Committee on Europe should be dissolved, this should not affect the Joint Ministerial Committee in its other formats – Domestic and Plenary.¹⁴ Likewise, the possible cessation of EU-related functions of the North South Ministerial Council and the British Irish Council should not imply that these bodies would not carry on with their other roles and responsibilities. Indeed, it is also possible that the terms of reference of all these bodies could simply be changed in order to reflect the UK’s new circumstances, still allowing them to consider matters related to the EU that would affect the UK even as a non-member. Again, in isolation these issues should not threaten the 1998 Agreement.

The 1998 Northern Ireland Act makes repeated reference to European Community Law in relation to the legislative powers of the Northern Ireland Assembly.¹⁵ A UK withdrawal from the European Union and its associated laws established under the relevant Treaties and cases in EU courts could imply that the limits imposed on the legislative powers of the Northern Ireland Assembly would have to be redrawn within different parameters. This should not necessarily impact on the functioning of the Assembly, especially if there is political agreement on any revisions made to the Act.

However, it should be noted that a more pressing reason to revisit the Northern Ireland Act is only indirectly related to the UK’s membership of the European Union. This is the UK Government’s

¹³ <https://www.gov.uk/government/publications/the-belfast-agreement>; emphasis added.

¹⁴ See, for example, <http://www.gov.scot/About/Government/Inter-Governmental/Joint-Ministerial-Committee>.

¹⁵ <http://www.legislation.gov.uk/ukpga/1998/47/contents>

proposal to repeal the 1998 Human Rights Act and to withdraw from the European Convention on Human Rights. The latter is not related to the European Union, but rather to the Council of Europe, although there may be indirect consequences for the UK's membership of the EU.¹⁶

Although agreements such as the 1998 Belfast/Good Friday Agreement need not be seen as immutable and incapable of reflecting changing circumstances, a Brexit could lead to the possibility of an unpicking of the Agreement and political divisions in Northern Ireland on how the UK's withdrawal from the EU should be reflected in a revised Agreement, particularly in regards to Strands II (dealing with North-South relations) and III (dealing with inter-governmental relations).¹⁷ The UK's withdrawal from the EU would also precipitate a revision of the institutional relations between Ireland and the UK's constituent nations, as well as between the UK Government and the devolved UK institutions.¹⁸

A vote to leave the European Union could also lead to a reconfiguration of the United Kingdom itself, particularly if the results show that a majority of citizens in Scotland, Wales and Northern Ireland voted to remain. The Scottish Government in particular has repeatedly voiced its desire for the UK to remain within the European Union, and a Brexit could prompt another referendum on Scottish independence.

Citizen Mobility

With Northern Ireland having the UK's only land border with another EU Member State, and with EU workers already present in the regions' economy, particularly in the agri-food sector, restrictions to the mobility of EU citizens could have significant implications for Northern Ireland. There are also a number of cross-border workers who live in one jurisdiction of the island of Ireland, but work in the other. However, without knowing at this point the results of the negotiations between the UK and the EU following a Brexit and the nature of any post-Brexit relationship, it is difficult to predict with certainty what the precise consequences for Northern Ireland would be.

Nevertheless, a Brexit would imply that citizens from Northern Ireland and the rest of the UK would no longer have the same ability to live, work or study in the EU as they do now. They would no longer be able to access healthcare or welfare services in EU countries as easily as it is possible under the existing EU Treaties and regulations. Common rules and rights facilitating the movement of EU citizens would no longer be available to citizens of the UK.

¹⁶ This issue will be addressed in a subsequent Briefing Paper, although the Centre for Cross Border Studies has already published a Policy Briefing Paper on the implications of repealing the Human Rights Act, http://crossborder.ie/site2015/wp-content/uploads/2016/01/Briefing-Report_Implications-of-HRA-Repeal.pdf.

¹⁷ The 2006 St Andrew's Agreement can be seen as a review of the mechanisms established under the 1998 Agreement, and current moves to create an official opposition in the Northern Ireland Assembly could equally imply a revision to the Agreement and the Northern Ireland Act.

¹⁸ Withdrawal from the European Union would also mean the termination of the European Commission's Northern Ireland Task Force (also known as the Barroso Task Force), and possibly the closure of the Northern Ireland Executive Brussels Office. For an assessment of the value of the Northern Ireland Task Force, see the Centre for Cross Border Studies' "Written Evidence to the Committee for the Office of the First and Deputy First Minister: Inquiry into the Barroso Task Force", <http://www.crossborder.ie/site2015/wp-content/uploads/Response-to-inquiry-on-the-Barroso-Task-Force.pdf>.

The mobility of UK and Irish citizens between their two countries, however, needs to be considered separately. There is a Common Travel Area agreement between the UK and Ireland that predates their entry into the EU. This agreement means that UK and Irish citizens enjoy free movement between their respective jurisdictions, and also, for example, that Irish citizens are deemed to be “habitual residents” in the UK for benefits purposes and have a right to reside. As both the UK and Ireland are currently members of the European Union, the Common Travel Area is recognised in protocols attached to EU Treaties.

Although both Ireland and the UK would wish to continue the arrangements under the Common Travel Area post-Brexit, it is possible that it would no longer be recognised under EU law since the UK would no longer be a signatory to the relevant EU Treaties. Such an outcome could present considerable difficulties for those moving between Ireland and Northern Ireland.

Peace-building

Political accommodation in Northern Ireland has been underpinned by the opening up of the border with Ireland – driven in large part by the creation of the European Single Market – and the institutionalisation of North-South political relations under the Belfast/Good Friday Agreement. However, a UK withdrawal from the EU would have fundamental implications for the future of cross-border relations and their role in cementing peace and reconciliation. Post-Brexit, the viability of the progressive development of North-South ties could be in doubt as policies and regulations in both jurisdictions diverge. It is not difficult in these circumstances to foresee calls for the 1998 accommodation to be re-opened and a renewed debate on the merits of Irish re-unification among republicans and nationalists. This could pose a challenge to the stability of the power-sharing institutions and to cross-community relations, including a return to increased levels of politically-motivated violence.

More materially, the EU has contributed in excess of €1 billion between 1995 and 2013 for post-conflict social and economic development in the region through the PEACE Programme. In this period, the EU has become integral to the funding of cross-community and cross-border peace building in Northern Ireland and the Border Region. In the absence of further EU funding, it is an open question whether or not the Irish and UK governments would have the capacity and willingness to make similar levels of support available in future.

Regional Development and Cross-Border Cooperation

As well as the PEACE programme, which was developed specifically for Northern Ireland and the border counties of Ireland, the UK’s membership of the EU has allowed Northern Ireland to benefit from the EU’s INTERREG programme. Like the PEACE programme, INTERREG supports cross-border projects, but also encompasses Western Scotland within its eligible area.

EU programmes such as INTERREG enable regional development through cross-border cooperation and contribute to the European Union’s policy of social, economic and territorial cohesion. This policy aims at “reducing disparities between the levels of development of the various regions and to reducing the backwardness of the least favoured regions, among which particular attention is to be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and

permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions”.¹⁹

Through EU programmes such as INTERREG a range of actors, including governmental agencies, local authorities, private enterprises, and community and voluntary sector organisations in Northern Ireland have been able to engage in a variety of cross-border projects for the mutual benefit of communities on both sides of the border. In the absence of central government funding to support such activities, a UK withdrawal from the EU would damage Northern Ireland’s ability to engage to the same extent in such cross-border cooperation, and therefore to address regional development where a cross-border approach would be the most appropriate.

Economic Development

The issue of economic development in a post-Brexit context is perhaps the most contested, with radically contradictory arguments on the fortunes of the UK economy outside the EU and its Single Market. These contradictions are due in large part to not knowing what arrangements would be put in place as a result of the negotiations between the UK Government and the EU following a formal declaration to the European Council of the UK’s departure. Various models for the UK’s future relationship with the EU have been suggested (and these will be analysed in a later Briefing Paper) that would frame its economic and trading relations with the remaining members of the European Single Market. In the event of a Brexit, the trading model adopted by the UK will inevitably impact on Northern Ireland’s future economic development.

In 2014 sales of Northern Ireland manufactured goods to the EU represented 16% of total sales worth almost £3 billion,²⁰ while in 2013 almost 28% of sales from the agri-food sector worth over £1 billion were to EU countries.²¹ In both cases over half of Northern Ireland exports to the EU were to Ireland. Currently Northern Ireland exporters benefit from access to the European Single Market, but this would inevitably cease in its current form if the UK were to leave the EU.

EU funding has also assisted economic activity in Northern Ireland, especially within the farming and wider agri-food sector. Regarded as Northern Ireland’s most successful industry, and representing a greater proportion of the total economy than in other parts of the UK, the loss of EU funding would have serious consequences unless alternative support were to be guaranteed by Government.

Conclusion

These are only some of the headline issues raised by the possibility of a UK withdrawal from the European Union, and they have only been outlined in this initial Briefing Paper. Over the next few months we will be publishing further Briefing Papers as part of this series, each one analysing in

¹⁹ Regulation (EU) No 1299/2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1299&from=EN>.

²⁰ Northern Ireland Statistics and Research Agency, “Northern Ireland Manufacturing Sales & Exports – Headline Results 2014”, https://www.detini.gov.uk/sites/default/files/publications/deti/BEE%20Manufacturing%20Publication%202014%20-%20Headline%20results_2.pdf.

²¹ Department of Agriculture and Rural Development, “Size and Performance of the NI food and drinks processing sector – subsector statistics 2013 with provisional estimates for 2014”, <https://www.dardni.gov.uk/sites/default/files/publications/dard/size-performance-ni-food-drink-2013-14.pdf>.

greater detail the issues listed above. This is our contribution to the debate leading up to the referendum that will do much to determine how Northern Ireland relates to its neighbours on this island, these islands, and Europe.