

# The long-term implications of Brexit for Northern Ireland

**Dr Przemysław Biskup** – Senior Analyst, Polish Institute of Foreign Affairs

The significance of Northern Ireland (NI) for the negotiations on both the UK's exit from, and negotiations on future relations with, the EU results from the province's violent history of sectarian, ethnic and socioeconomic conflict, and their implications for the present politics of the island of Ireland. The peace process to end 'The Troubles' (1968-1998) was originally based on the Good Friday Agreement (GFA, or Belfast Agreement; 1998), the St Andrews Agreement (2006), UK devolution legislation, and the deconstruction of physical land borders under the aegis of the EU's internal market.

Therefore, the UK's 2016 campaign and referendum on EU membership have challenged the peace process directly. Importantly, its UK-wide result was the reverse of NI's: EU membership was rejected by some 52% of UK voters (turnout: 72.2%) and upheld by some 56% of NI voters (turnout: 62.7%).<sup>1</sup>

This chapter will present and analyse NI's unique legal status under the GFA and Withdrawal Agreement (WA), as well as the political, social and economic implications of the Brexit process for the province.

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## Northern Ireland's legal status

NI's future status has already been regulated by the WA and its Ireland/Northern Ireland Protocol (the Protocol) extensively and was addressed in the Political Declaration. It has also been shaped by the GFA as an international treaty.

NI's position differs substantially from other parts of the UK which derive their autonomy (i.e. devolution) purely from domestic UK political settlements and the ensuing legislation. The aforementioned legal documents aim to protect the peace process while preserving the integrity of the internal market and legal autonomy/sovereignty of both the EU and UK, respectively. The Protocol constitutes a semi-permanent solution that is reliant on NI's continued consent. The Protocol could also be superseded in the future by a more favourable Future-Relations Agreement, should it be successfully concluded by the EU and UK.

Under the Protocol, the UK left the EU's Customs Union in its entirety. To prevent the creation of physical infrastructure on the EU's external land border by the end of the transition period, NI will continue to adopt the EU's standards on the Single Market and regulations on goods (including VAT and sanitary and phytosanitary rules; SPS) and remain a gateway to the Customs Union. This should result in the EU-UK customs border shifting effectively from land to the sea while legally preserving the unity of the UK's customs territory. NI would effectively constitute the intersection of both customs systems.

Under the Protocol, the UK would collect the EU tariffs on the Union's behalf and with its assistance. The tariffs would be levied on goods that are shipped from mainland Britain (Great Britain; GB) to NI and might be transported into the Union's market. NI entities would be entitled, however, to rebates based on the UK's lower tariffs if the goods were consumed in NI. The settlement has a precedent character.

The Northern Ireland Assembly will have to renew its support for the settlement regularly, with an absolute majority permitting a four-year extension, and a cross-community qualified majority voting an eight-year one. In the case of a negative

result, there would be a two-year 'reflection period', allowing the EU and UK to negotiate alternative arrangements. Should this fail, NI's status would merge with the UK's. Considering NI's political composition and demographics, the risk of the settlement not being renewed is limited.

The WA provides for the EU-UK Joint and Specialised Committees' administration of the NI settlement. Although the settlement should be implemented fully by the end of the transition period (i.e. by 31 December, should there be no extension), the working arrangements are still in their early stages.

In light of the UK's recently published positions, it must be emphasised that the EU and UK have substantially different understandings of the Protocol in this respect. Essentially, the EU's position is that an effective two-way maritime customs border, which would be subsequently de-dramatised using streamlined procedures and customs reimbursements for goods consumed in NI, should be established.<sup>2</sup>

The UK position, however, assumes a one-way (GB to NI) maritime customs border. There would be no substantial additional infrastructure involved, and EU customs duties would only be imposed on goods either officially destined for the Republic of Ireland (the Republic), or at a clear risk of crossing the land border illegally.<sup>3</sup>

Both sides agree on treating the island of Ireland as a single SPS unit. Considering a tight timeline which implies serious difficulties with the settlement's implementation, the introduction of the new border regime on the island of Ireland may serve as a litmus test for the Union to test the intentions and credibility of the UK government. As such, it may have a visible impact on the current negotiations on the future relations.

Importantly, the dispute between the UK and EU concerning the implementation

of the border settlement is legal, as the UK does not refuse to implement the settlement, but rather presents a radically different interpretation of it. This may test the whole WA governance system. Should the UK implement the new border regime according to its own interpretation, the EU will most probably interpret it as a serious breach of confidence.

The NI's unique status also stems from the GFA, as an international treaty and a cross-community political agreement. The GFA *acquis* is based on the principles of power-sharing between the Unionist and Nationalist communities, the social/public recognition of both identities in NI, the devolution of power in the UK (leading to the NI autonomous governance), and the development of North-South cooperation and elements of the all-island economy. The GFA provides treaty basis for a democratic change of NI's constitutional status through parallel referenda in NI and the Republic.<sup>4</sup> Moreover, all NI-born persons are entitled to Irish citizenship, and thereby to the Union's. Consequently, one of the possible outcomes of, and solutions to, Brexit in the NI context could be Irish unification, leading to NI's automatic incorporation into the EU's Single Market and Customs Union (à la East Germany).<sup>5</sup>

## Political implications

Brexit is detrimental to NI politics, as it undermines the GFA's institutional and political framework and weakens power-sharing and devolution.

Firstly, the GFA's success has always been highly dependent on a depoliticised land border. Brexit reopened the question on where re-emerging controls should fall. Reinforcing the land border would suit radical Unionists (as a restoration of UK sovereignty) and Nationalists (as a catalyst for unification) while alienating moderate Nationalists and impeding the all-island economy. Hence, the Protocol compromise.

However, important aspects of the Protocol settlement are still to be defined and implemented, such as the nature of the EU's representation in Northern Ireland. While the Protocol explicitly provides for the Union to be represented during the necessary customs and border checks by its observers, the document does not regulate EU's diplomatic presence.<sup>6</sup> Consequently, the UK rejected the EU's recent proposal to create its permanent representation as an attempt to create a diplomatic post in Belfast.<sup>7</sup>

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Secondly, NI's devolution governance is based on compulsory power-sharing. However, between 2015 and 2019, NI voters shifted their support towards the radical parties – the Democratic Unionist Party (DUP) and Sinn Féin (SF) – at the cost of their moderate counterparts. While this complicated the politics of NI devolution even before the 2016 Brexit vote, the referendum campaign positioned the SF and DUP at opposite positions.

The SF's refusal to continue a Northern Ireland Executive coalition with the DUP between February 2017 and January 2020, combined with the DUP's effective House of Commons parliamentary coalition with the Conservatives between June 2017 and October 2019, led to the three-year suspension of NI devolution politics. By eliminating Boris Johnson's need to rely on the 'confidence and supply' agreement with the Democratic Unionists and shifting electoral support towards NI's more moderate parties,<sup>8</sup> the 2019 UK general election allowed for a broader spectrum of

Unionists and Nationalists to be involved in the new Executive created in January 2020. However, the SF's victory in the February 2020 Dáil Éireann election has potentially recreated the 2017 challenge.

Thirdly, the perspectives of the sponsors of the peace process vary considerably. The EU-wide interests focus on protecting the internal market, the related issue of the adequacy of a UK-administered maritime border, and the wider issue of trust. Border politics strongly influence the Republic's perspective, its natural position as a representative of NI in the EU forum (exemplified by the Protocol's clauses concerning EU certificates), and NI's membership in the internal market. The UK's perspective has shifted the most. Between 2016 and 2019, NI was instrumental in convincing both the EU and the British public to have close EU-UK relations after the exit. However, since July 2019, Johnson's government is seeking a free trade agreement outside of the Single Market and Customs Union. As such, accommodating NI's unique needs have become more challenging.

## Social implications

The most important long-term consequence of Brexit for NI seems to be a new consensus on strengthening the probability of Ireland's unification in a long perspective.<sup>9</sup> It will undoubtedly be influenced, however, by the medium-term feasibility of the Protocol settlement (or the Future-Relations Agreement) once it is implemented. This trend has been indicated by both the NI results of the 2016 referendum, 2019 European Parliament election and 2019 UK general election; and demographic changes.<sup>10</sup>

The social attitudes to Brexit seem more nuanced and flexible than those presented by NI's political parties, however. For

instance, while the reconstruction of any land border infrastructure is perceived negatively by the majority of the public, the willingness to oppose it depends on its potential model. Surveillance cameras could be considered a necessary evil, and border posts as instigating acts of aggression.<sup>11</sup> Importantly, Brexit has not broken basic cross-community support for the GFA system, with the Ulster Unionist Party adopting a consistent anti-Brexit stance (in contrast to the DUP's rejection of the WA).<sup>12</sup>

However, both NI communities have their share of uncompromising minority groups (i.e. those supporting a hard border, or a unification referendum) and extremist

fringes that are prone to violence.<sup>13</sup> Paramilitary activities were highly visible in 2019 due to changing EU-UK dynamics. For instance, in April 2019 journalist and activist Lyra McKay was shot dead during an ambush against officers of the Police Service of Northern Ireland in Derry/Londonderry, most probably by a member of the Nationalist paramilitary.<sup>14</sup>

Moreover, potential new border infrastructure, however limited, is highly problematic due to the dominance of Nationalists in the transborder communities.<sup>15</sup> Thus, the use of surveillance cameras will be limited, while that of drones and other solutions that are immune to vandalism will be necessary, as will intense public information campaigns. This indicates the need for the EU to continue its Northern Ireland PEACE programme and thus assist the socioeconomic integration of NI's communities.

The WA provides for the continuation of the Common Travel Area (CTA) by the Republic and UK. The CTA has always been limited to the two countries. It provides the citizens of both countries with a full set of political and civil rights on the other country's territory. Consequently, it enables the smooth operation of the GFA without invoking the sovereignty issue.

However, in the absence of harmonised public health policies on both sides of the 'invisible' border, the CTA strengthens the epidemiological challenges connected to intense cross-border movements. The problem has been exemplified by diverging COVID-19 lockdown rules on both sides of the border in March 2020. When the Irish government decided to pre-emptively introduce lockdown measures on 15 March to reduce high infection rates due to the public festivities of St. Patrick's Day (17 March), the Northern Ireland Executive chose not to reciprocate. This led to an unusually intense movement from the Republic to NI during the holiday, to the detriment of the Republic's public health policy.

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## Economic implications

NI's economy is highly dependent on public sector spending funded from UK government grants, with local taxes (i.e. rates) constituting only 3% of the NI budget.<sup>16</sup> NI has the highest annual net fiscal deficit per capita in the UK (i.e. £4,978). The UK central government's net input to the NI budget is 34% (i.e. £8.82 billion), which roughly amounts to the British net input into the EU budget. This results in the highest level of

public spending per capita in the UK (i.e. £14,821).<sup>17</sup>

The land border impacts the all-island sectors (primarily agriculture, transport, energy and tourism) and transborder communities. Nevertheless, it has limited impact on the dominant east-west stream of the Irish-UK trade, or on the Republic's connections to the other EU member states (EU26).

About 49% (£10.6 billion) of NI external sales in goods and services are directed to GB, 19% (£4.2 billion) to the Republic, and 11% (£2.5 billion) to the EU26. However, 46% of NI sales to the GB are generated by 117 large enterprises (i.e. over 250 employees), while 46% of NI exports to the Republic are from 8,059 micro and small businesses (i.e. between 0 and 49 employees). The latter group mostly represents the agri-food sector and – in case of problems with implementing the Protocol settlement – would be strongly affected by problems emerging on the land border. Moreover, the UK provides 65% (£13.3 billion) of NI's external purchases. However, the EU's combined share in NI's external trade has been increasing in the last years.<sup>18</sup>

In the short term, NI will be more dependent on the UK's fiscal policies (and their impact on devolution and dedicated NI programmes) than on its trade with the EU. In the long term, if NI is to be more dependent on its real economy and less

on UK budgetary transfers, the successful implementation of the Protocol settlement is of fundamental importance. However, from the current NI's economic perspective, unless the Republic and EU are willing to offer NI budgetary transfers that are comparable to the British ones, post-Brexit success will be dependent on maintaining unfettered access to the UK market.

NI's post-Brexit opportunities concentrate on its unique intersection status. When combined with NI's strengths – a high-quality education and university sector, research and development potential, the considerable number of highly-skilled workers, and lower operational costs for business in comparison to both the GB and Republic<sup>19</sup> – this status could turn the province into an investment hub. However, dysfunctional border regimes may undermine these opportunities and redirect incoming investment to the EU's and UK's economic centres of gravity.

The European Green Deal and its impact on the all-island energy sector might prove a powerful factor of cooperation across the island, and source of NI's differentiation from the GB. However, the fisheries sector might play the opposite role, especially if the UK's present position on the issue prevails, giving the UK-registered fleet considerable advantages in access to British fishing grounds.

## Conclusions and recommendations

In the long-term perspective, NI will most probably continue the trend towards Irish unification, socially and politically. A peaceful outcome is dependent on a well-structured dialogue on the future constitutional settlement in the Republic, and on building up support for it among the Unionists. The merits of NI's direct

incorporation would need to be compared to its continued devolution within the Republic.

The feasibility of this approach can be assessed in the coming months by observing the debate on the unification agenda, and timeframe the SF adopts in the aftermath

of the Republic's 2020 general elections. Nonetheless, changes in the NI communities' demography and moderate Unionist politicians' growing engagement in the political processes across the border, including the All-Island Civic Dialogue on Brexit, seem to confirm this long-term trend.

However, the NI economy has considerable potential for disruption. Its present structure makes uninterrupted access to the UK internal market a priority, while the scale of transfers from GB effectively sets the limits of NI's independence. It will not be possible for NI to integrate with the EU constructively, neither as an associated partner nor part of a united Ireland, without addressing the budgetary and economic issues.

This leads to the fundamental dilemma concerning the Republic and NI for intra-EU politics. The Republic remains the Union's border member state that is responsible for securing the Single Market. In light of the fundamental differences in the EU and UK's interpretations of the Protocol as regards the nature of the GB-NI maritime border, the border regime the UK will implement once the transition period is over will probably be judged as inadequate by the European Union. In such an instance, the question on where to implement the missing controls, necessary for the continued protection of the Single Market (i.e. land versus maritime border between the Republic and the EU26), will arise.

The UK's present posture implies that, as per its interpretation, the Protocol sets the maximum of British concessions in respect of NI's status. While from the Union's point of view, this could be interpreted as a breach of law, the UK would consider this a lawful action. The ensuing legal dispute would test WA governance. Moreover, the Union would need not only to confront legal arguments about the unity of the UK's customs territory but also face the economic reality of NI's dependence on UK subsidies and trade.

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1. *The Electoral Commission*, "[Results and turnout at the EU referendum](#)" (accessed 12 May 2020).
  2. Task Force for Relations with the United Kingdom (2020), [Technical note on the implementation of the Protocol on Ireland / Northern Ireland](#), UKTF (2020) 16, European Commission.
  3. UK Government (2020), "[The UK's approach to the Northern Ireland Protocol](#)".
  4. The Agreement provides that "it is for the people of the island 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, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland". [Northern Ireland Peace Agreement \(The Good Friday Agreement\) of 10 April 1998](#), p.3. Consequently, the Northern Ireland Act 1998 provides that Northern Ireland will remain within the UK, unless a majority of its people support a united Ireland. To this end, the Secretary of State for Northern Ireland "shall exercise the power [to hold a referendum] if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland." [Northern Ireland Act 1998](#), Schedule 1, para.2.
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  16. Northern Ireland Department of Finance (2020), "[Budget 2020-21](#)", Belfast.
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  18. Northern Ireland Research and Statistics Agency (2020b), "[Overview of Northern Ireland Trade](#)", Belfast.
  19. *Invest NI*, "[Key facts and figures](#)" (accessed 12 May 2020).