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Houses of the  
Oireachtas**

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**Roghchoiste Speisialta an tSeanaid  
An Ríocht Aontaithe do Tharraingt Siar as an Aontas Eorpach**

**Brexit: Na hImpleachtaí agus na Réitigh Ionchasacha**

Meitheamh 2017

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**Seanad Special Select Committee  
Withdrawal of the United Kingdom from the European Union**

**Brexit: Implications and Potential Solutions**

June 2017

**32/SSSCWUKEU/01**





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## Chairman's Foreword

Put simply, for Ireland, the decision of the people of the United Kingdom to vote to withdraw from the European Union is a bad thing. Despite the assertions of some commentators there are very few, if any, positives to be gained for Ireland. Minimising and managing the impact on Ireland of this decision will be arguably the most significant challenge the State has faced in its short history.



In recognition of the potential consequences of the UK's decision the Seanad established a Special Select Committee to consider the implications for Ireland and to suggest some possible solutions to identifiable problems. In order to support its thinking and considerations, the Committee organised nine days of public hearings with former Taoisigh, former Ministers, sectoral experts, representative organisations, local authorities, all-Island bodies and many more.

In issuing invitations to witnesses, we specifically asked them to focus on the most significant challenges that they had identified and the potential solutions that they believed best addressed those challenges. Any relevant precedents and the manner in which those potential solutions might be implemented were also asked for. We are very grateful to all of those who appeared before the Committee and shared their expertise. A number of organisations also made important written submissions.

In looking at solutions, either presented by witnesses, contained in written submissions, or suggested by the Members of the Committee itself, the Committee was determined to remain open to all of them. There are many challenges ahead, and we need to be innovative when it comes to finding solutions. This Committee believes that all options should remain on the table, nothing should be ruled out.

As a result of the Committee's solutions-focused approach, this Report deliberately pays less attention to the background context. This is important, but the problems have been well documented elsewhere.

I commend this Report to Seanad Éireann with a request that the report be debated at an early date.

Finally, I would like to thank all the Committee's Members, substitute Members and Secretariat for their tireless work through this period.

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Senator Neale Richmond  
Chairman

Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union





## 1. Methodology

Seanad Éireann established a Special Select Committee to consider the issue of the United Kingdom's withdrawal from the European Union at the end of February 2017, recognising the potential consequences of the decision and in order to consider the **implications for Ireland**. The Committee was particularly asked to consider the implications under eight headings.

The work of the Seanad Special Select Committee was greatly assisted by previously completed and ongoing work by several **Joint Committees of the Oireachtas**, which have (and are) looking in depth at the impact on the sectors and areas within their remits. This work allowed the Seanad Special Select Committee to begin its work in sectoral areas with a great deal already done and already learnt. In particular the Reports of the Joint Committee on Agriculture, Food and the Marine, *Impact of the UK Referendum on Membership of the EU on the Irish Agri-Food and Fisheries Sectors* (February 2017) and the Joint Committee on Jobs, Enterprise and Innovation *The Likely Economic Impact of Brexit with Particular Emphasis on Jobs and Enterprise* (March 2017) were particularly useful. Other reports, currently underway, provided useful signposts.

In other areas, the Seanad Special Select Committee began considering issues in advance of Joint Committees and in those cases, it is hoped that the Joint Committees will, in turn, be able to build on the Select Committee's work.

Joint Committees are in a position to focus on one area and look at it in great depth. In light of the extremely technical and complex nature of the likely impact of Brexit on existing rules and standards this approach has significant value. But equally important is the need to take a more integrated, horizontal view that can attempt to come 'up to the balcony' and see how the different moving parts are impacting upon each other and are interconnected. The Seanad Committee, in considering a very broad range of topics, in an extremely short period of time, wanted to see how the different sectors of the economy would be impacted as well as the economy as a whole. The Committee considered how **the four freedoms** of the European internal market would be impacted as well as specific sectoral impacts, important to Ireland. Due to the time constraints, not all issues could be covered in great detail. Instead, the focus is on practical issues that attempt to mitigate the worst impacts of the multi-faceted challenges in front of us.

The Committee held several days of meetings that consisted of engagements in public and is grateful to all those who gave of their time, who prepared and worked on their areas of expertise and were willing to share with the Committee. Stakeholder engagements were held with a number of Former Taoisigh, Former Ministers for Foreign Affairs, a Former President of the European Parliament, a Former Speaker of the Northern Ireland Assembly, representatives of Local Authorities, academic experts, representative bodies and many more. While this Report attempts to bring all of that learning together, it is not possible to cover everything so the Committee would recommend that those interested read (or watch) the Opening Statements given and the background documents provided – all of which have been made available online.

For time reasons, the Committee was not able to engage with all of the individuals and organisations it would have liked to. Many others provided written submissions. These added significantly to the evidence presented to the Committee.

The Committee was given until the end of June to make a final report to the Seanad. With such a tight timeframe it was extremely challenging to consider all of the issues within the Terms of Reference. This Report cannot be therefore considered an absolute and final opinion on all of those issues. But the Committee hopes that it does provide useful signposts to areas and issues which require early and coordinated attention in the negotiations to mitigate, as much as is possible, the likely impact on Ireland.

In accordance with the Terms of Reference, the Committee will report to Seanad Éireann not later than the 30<sup>th</sup> June. Under Standing Order 77, the Committee requests that the Report be debated by Seanad Éireann thereafter.

## Stakeholders

Date	Stakeholders Present
23 March 2017	- Mr Noel Waters, Secretary General, <b>Department of Justice and Equality</b>
6 April 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Mr Bertie Ahern, <b>Taoiseach 1997-2008</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Mr Michael Gaynor, <b>Dundalk Chamber of Commerce</b></li> </ul>
27 April 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Mr John Bruton, <b>Taoiseach 1994-1997</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Mr Dermot Ahern, <b>Minister for Foreign Affairs 2004-2008</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Professor Colin Harvey, <b>Queen’s University, Belfast</b></li> <li>- Mr Michael Farrell</li> <li>- Mr Liam Herrick, Executive Director, <b>Irish Council for Civil Liberties</b></li> </ul>
4 May 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Dr Gabriel Fagan, Chief Economist, Mr Mark Cassidy, Head of Financial Stability, and Ms Mary-Elizabeth McMunn, Head of Risk Division, <b>Central Bank of Ireland</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Mr Kevin Sherry, Executive Director, Ms Anne Lanigan, Brexit Manager and Mr Garrett Murray, Manager of Policy and Government Relations, <b>Enterprise Ireland</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Mr Arnold Dillon, Brexit Campaign Lead and Mr Gerard Brady, Senior Economist, <b>Ibec</b></li> <li>- Ms Patricia Callan, Director, <b>Small Firms Association</b></li> <li>- Mr Ciarán Fitzgerald, Agri-Food Economist, <b>Alcohol Beverage Federation of Ireland</b></li> <li>- Mr Kevin Thompson, CEO, <b>Insurance Ireland</b></li> <li>- Mr John McGrane, Director General, <b>British-Irish Chamber of Commerce</b></li> </ul> <p><b>Session D</b></p>

	<ul style="list-style-type: none"> <li>- Mr Paul McGarry SC, Chairman of the Bar of Ireland and Chairman of the Working Group on Brexit and Mr Patrick Leonard SC, <b>Bar of Ireland</b></li> </ul>
11 May 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Ms Anne Graham, CEO <b>National Transport Authority</b></li> <li>- Mr Sean Kennedy, Senior Vice-President, <b>Airlines for America</b></li> <li>- Mr Barry Kenny, Manager Corporate Communications, <b>Irish Rail</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Mr Eamon Gilmore, <b>Tánaiste and Minister for Foreign Affairs 2011-2014</b></li> </ul>
18 May 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Mr Barclay Bell, President and Mr Wesley Aston, Chief Executive, <b>Ulster Farmers' Union</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Professor Gerry Boyle, Director, <b>Teagasc</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Mr Shane O'Dwyer, CEO, <b>Irish Thoroughbred Breeders Association (ITBA)</b></li> <li>- Ms Elizabeth Headon, Spokesperson, <b>Alliance for Racing and Breeding</b></li> </ul> <p><b>Session D</b></p> <ul style="list-style-type: none"> <li>- Mr James Healy, President, <b>Macra na Feirme</b></li> <li>- Mr Joe Healy, President, <b>Irish Farmers' Association</b></li> </ul> <p><b>Session E</b></p> <ul style="list-style-type: none"> <li>- Mr Paul Kelly, Director, <b>Food Drink Ireland</b></li> <li>- Mr Philip Carroll, <b>Meat Industry Ireland</b></li> </ul>
25 May 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- <b>Border Communities against Brexit</b> - Mr Damian McGenity, Mr JJ O'Hara and Mr John Sheridan.</li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Dr Duncan Morrow, Director of Community Engagement, <b>Ulster University</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Ms Gina McIntyre, CEO, <b>Special EU Programmes Body (SEUPB)</b></li> </ul> <p><b>Session D</b></p> <ul style="list-style-type: none"> <li>- Professor Christopher McCrudden, Professor of Human Rights and Equality Law, <b>Queen's University Belfast.</b></li> </ul>
1 June 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Ms Rosemary Steen, Executive Director External Affairs and Mr Rodney Doyle, Executive Director Market Operation, <b>Eirgrid</b></li> <li>- Mr Stephen Wheeler, Managing Director, <b>SSE Airtricity Ireland</b></li> <li>- Ms Claire Madden, Head of Legal and Regulation <b>Gas Networks Ireland</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Ms Noelle O'Connell, Executive Director, <b>European Movement Ireland</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Dr Mary Murphy, Jean Monnet Chair in European Integration, Department of Government, <b>University College Cork</b></li> </ul>

	<p><b>Session D</b></p> <ul style="list-style-type: none"> <li>- Professor Anthony Coughlan, Director, <b>The National Platform EU Research and Information Centre</b></li> </ul>
7 June 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Mr Pat Cox, <b>President of the European Parliament 2002-2004</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Mr Kevin Toland, CEO, <b>Dublin Airport Authority</b></li> <li>- Mr Aidan Flynn, General Manager, <b>Freight Transport Association of Ireland</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Mrs Sharon McMahon, Designated Officer and Mr Barry Fox, Director of Aquaculture and Shellfisheries, and Dr Patrick Boylan, Senior Biologist, <b>Loughs Agency</b></li> <li>- Mr Brian Kavanagh, CEO, <b>Horse Racing Ireland</b></li> <li>- Mr John Comer, President and Mr John Enright, General Secretary, <b>Irish Creamery and Milk Suppliers Association (ICMSA)</b></li> </ul> <p><b>Session D</b></p> <ul style="list-style-type: none"> <li>- <b>Ireland/Northern Ireland Border Corridor Local Authority Group:</b> Cllr PJ O’Hanlon, Cathaoirleach, <b>Monaghan County Council</b>, Mr John Kelpie, Chief Executive, <b>Derry City &amp; Strabane District Council</b>, Mrs Joan Martin, Chief Executive, <b>Louth County Council</b>, Cllr Stephen McCann, Chairman, <b>Fermanagh &amp; Omagh District Council</b>;</li> <li>- Cllr Paul McAuliffe, Former Chair of the Economic Development, Enterprise &amp; International Relations Strategic Policy Committee and Mr Greg Swift, Head of Enterprise and Economic Development, <b>Dublin City Council Dublin</b></li> </ul> <p><b>Session E</b></p> <ul style="list-style-type: none"> <li>- Mr Seán Ó Coinn, CEO and Mr Shane Ó hEidhin, Director of Corporate Services, <b>Foras na Gaeilge</b></li> </ul>
8 June 2017	<p><b>Session A</b></p> <ul style="list-style-type: none"> <li>- Ms Bríd O’Brien, Head of Policy and Media, <b>Irish National Organisation of the Unemployed (INO)</b></li> <li>- Mr Liam Doran, General Secretary, <b>Irish Nurses and Midwives Organisation (INMO)</b></li> </ul> <p><b>Session B</b></p> <ul style="list-style-type: none"> <li>- Professor Mark Ferguson, Director General, <b>Science Foundation Ireland</b> Chief Scientific Adviser to the Government of Ireland</li> <li>- Mr Tom Molloy, Director of Public Affairs and Communication for <b>Trinity College Dublin (TCD)</b></li> </ul> <p><b>Session C</b></p> <ul style="list-style-type: none"> <li>- Dr John D. Woods, Chair and Mr Paul Laffin, BMA EU Policy Manager <b>British Medical Association Northern Ireland Council</b></li> <li>- Dr Ann Hogan, President, <b>Irish Medical Organisation (IMO)</b> and Professor Trevor Duffy, Chair of the <b>IMO</b> International Affairs Committee</li> </ul> <p><b>Session D</b></p> <ul style="list-style-type: none"> <li>- Mr Niall Gibbons, CEO and Mr Shane Clark, Director of Corporate Service and Policy, <b>Tourism Ireland</b></li> </ul>

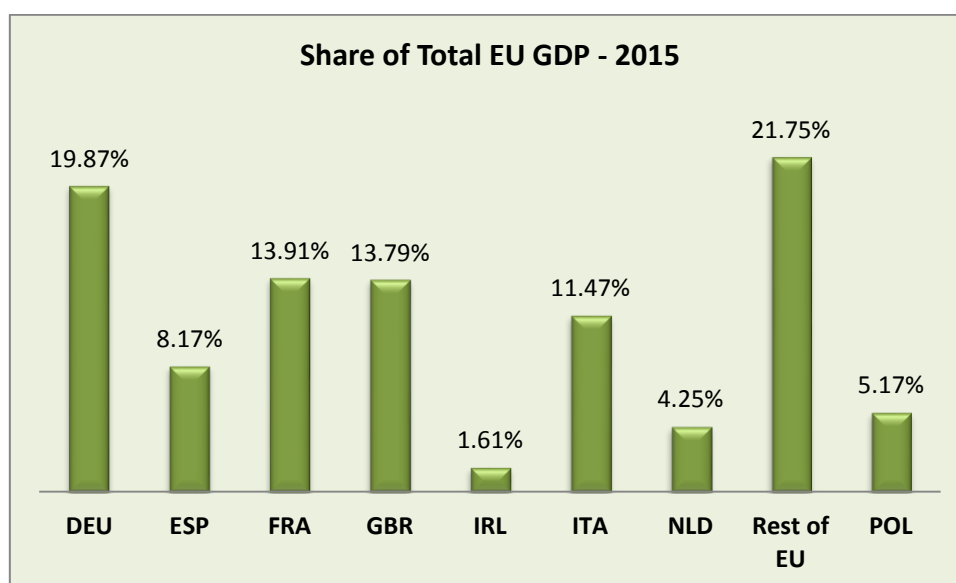
	<b>Session E</b> <ul style="list-style-type: none"><li>- Mr David Garrahy, Head of Policy and Advocacy, <b>European Youth Forum</b></li><li>- Ms Patricia King, General Secretary and Mr Peter Rigney, Industrial Officer, <b>Congress (ICTU)</b></li><li>- Ms Anne McHugh, Chief Executive, Donegal ETB and Mr Michael Moriarty, General Secretary, <b>Education and Training Boards Ireland (ETBI)</b></li></ul>
<b>22 June 2017</b>	Lord Alderdice, <b>Speaker of the Northern Ireland Assembly 1998-2004</b>

## 2. Implications for the Irish Economy

### Background

Even before the referendum result in June of last year, the implications on the Irish economy were discussed and debated at great length. In November 2015, the ESRI suggested that the overall impact was likely to be focused on the trade relationship.<sup>1</sup> This same report identified four key areas in which the implications were likely to be at their most significant; **Trade, Foreign Direct Investment, Energy and Migration**. Professor Alan Barrett, Director of the ESRI, highlighted these areas further in his address to the Dáil Symposium on European Union Affairs on 22 September 2016, adding that the UK's withdrawal from the EU may also have an impact on the EU's centre of gravity and overall economic policy potentially shifting to more protectionist positions advocated by France and Germany.<sup>2</sup>

Based on 2015 data, the United Kingdom represents 13.79% of the total GDP of the EU and is thus its third largest economy.<sup>3</sup> On a wider scale, the UK was the fifth largest economy in the OECD at a value of 5.19% of the OECD's total GDP, with the three largest economies in the EU only surpassed by the United States and Japan. Ireland's economy is, by comparison, valued at 1.61% of the Total EU GDP and 0.61% of the OECD's.<sup>4</sup> The table below shows the position of the United Kingdom relative to other selected EU economies.



Source: OECD

This highlights the importance of the UK as a known ally. Accordingly, the identification and development of new alliances is now of critical importance to Ireland as the UK leaves.

<sup>1</sup> Barrett et al, *Scoping the Possible Economic Implications of Brexit on Ireland*, Economic Social and Research Institute, November 2015 at p.60

<sup>2</sup> The potential impacts are explored further in the ESRI Report, *Scoping the Possible Economic Implications of Brexit on Ireland*, November 2015. See also Prof Alan Barrett, ESRI, Dáil Symposium on European Union Affairs, 22 September 2016

<sup>3</sup> OECD, Domestic product 2015, measured in US Dollars.

<sup>4</sup> However, Ireland has the second largest GDP per capita in the EU.

## Hard Brexit versus Soft Brexit

The Committee set out to examine the implications on the economy in the contexts of a “hard Brexit” and a “soft Brexit”. What these terms actually mean and the impact of the UK’s withdrawal is the subject of much debate. The UK’s withdrawal could have an impact of up to 3.5% of Ireland’s GDP, which the Committee heard could amount to €9 billion. At previous events, Members of the Oireachtas heard that a drop of one to three percentage points could be worth €7 billion to the Irish economy, with the economic models used for forecasting generally underestimating.<sup>5</sup>

### Hardest Brexit

- **The withdrawal of the UK from the EU without any agreement on withdrawal, the future EU-UK relationship or trade;**
- **No membership of the European Single Market or Customs Union;**
- **No agreement on citizens’ rights; and**
- **The forfeiture of commitments made to the current Multiannual Financial Framework (the EU Budget) and other programmes and projects.**

The hardest Brexit of all would be the UK leaving the EU without any formal agreements, with such a result generally accepted as having a potentially **adverse impact on Ireland**. The absence of a trade agreement would mean the application of WTO (World Trade Organisation) rules, which the Committee was told could lead to tariffs of up to 50% on some products. This would most likely involve the application of customs posts and border checks on goods in and out of the UK. Still extremely difficult would be the UK leaving, with a formal agreement that stipulated withdrawal from membership of the Single Market and the Customs Union.

A hard Brexit seems to involve the establishment of a hard border and the application of tariffs in such a way as to adversely impact particular sectors and cross-border trade. It may not necessarily be one involving an impact on the CTA (Common Travel Area), which applies to travel and social rights of UK and Irish citizens. Therefore, maintaining the CTA will not mitigate the impact of a hard Brexit in terms of trade as the CTA only concerns the movement of people and not of goods.

### Soft Brexit

Even if there is an agreement on citizens’ rights and the financial commitments of the UK to current EU programmes, the removal of trade and economic barriers through a comprehensive trade agreement is still very important. While this should be balanced, ambitious and far-reaching, it should not amount to access to the Single Market and should take a sector-by-sector approach and to include a transition period of a number of years.<sup>6</sup>

### Softest Brexit

- **An agreement on withdrawal and the future relationship with minimal impacts on the Common Travel Area and trade flows.**
- **The UK retaining membership of the Single Market**
- **The UK remaining as a Member of the Customs Union**

<sup>5</sup> Prof Alan Ahearne, NUI Galway, Dáil Symposium on European Union Affairs, 22 September 2016

<sup>6</sup> Bertie Ahern, Former Taoiseach, Evidence to the Committee, 6 April 2017

- **The British Government maintaining contributions to the EU Budget**
- **Allowing a compromise on freedom of movement and safeguarding acquired rights**

A number of models for a soft Brexit have been described by experts, policy makers and the media:

#### Possible Models for a Soft Brexit

1. **‘Norwegian model’ – This involves EEA (European Economic Area) membership, membership of the Single Market, allowing freedom of movement and maintaining contributions to the EU Budget. It also involves the application of EU rules and laws**
2. **‘Turkish model’ – This involves membership of the Customs Union and applying a common external tariff except for certain goods.**
3. **‘Swiss model’ – This involves the negotiation of a number of agreements depending on which areas of cooperation the UK wants to keep, noting that this approach has been discontinued between the EU and Switzerland.**
4. **‘Canadian model’ – This approach involves the conclusion of a comprehensive trade agreement similar to the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU.**

EEA membership allows for access to the Single Market, with the acceptance of the principles of freedom of movement of persons is clearly problematic for the UK as control of movement of people was a key issue in the UK referendum. To bear in mind, the EEA model does not cover agricultural products. EEA members are obliged to apply the *acquis communautaire*; that is the body of European legislation, case law and common policies, such as transport, competition and company law.<sup>7</sup> This model excludes agriculture and fisheries, but there is a commitment to the liberalisation of agricultural trade subject to separate agreements.

Membership of the EU Customs Union, i.e. the ‘Turkish model’, may also offer a solution, but again, this does not apply to agricultural products, services and public procurement.<sup>8</sup> While the EU has indicated a preference for a framework agreement, some elements of the Swiss model could be adapted to ensure a sector-by-sector approach including agriculture.<sup>9</sup>

Under the ‘Canadian model’, CETA eliminates nearly all tariffs between Canada and the EU, with restrictions on some food items. as CETA does not cover the “passporting” of financial services and, if a mixed agreement, any agreement would have to be ratified by all Member States as per their own requirements.<sup>10</sup>

A soft Brexit is currently considered unlikely by some as control on immigration is thought to be a red line issue for the UK. The Conservative-led Government has indicated a wish to negotiate trade agreements with third countries, which could mean full withdrawal from the Single Market and the

<sup>7</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/countries/norway/>, accessed 16 June 2017

<sup>8</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/countries/turkey/>, accessed 16 June 2017

<sup>9</sup> *The European Economic Area (EEA), Switzerland and the North*, European Parliament, available at [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_6.5.3.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_6.5.3.pdf), accessed 16 June 2017, p.4

<sup>10</sup> Under Article 13.7.6 of the Comprehensive Economic and Trade Agreement, the provision of cross-border services is permitted, but there is no requirement for a state party to allow the provision of that service in its territory.



Customs Union.<sup>11</sup> Without a new free trade agreement in place between the EU and the UK then trade between the UK and the EU would be subject to WTO rules. Under this, the UK could not offer a 0% tariff to the EU without offering it to other third countries.

But negotiations could last 2 years, positions can change as the practical implications emerge and the results of the UK General Election on 8 June may result in a greater potential for a softer Brexit, or at least the UK remaining a member of the EU Customs Union.

### **Visible and Potential Impacts on Business**

Currency fluctuations have impacted some sectors more than others. In the immediate aftermath of the election result, the Pound Sterling plummeted in value, falling from €1.30 on 23 June 2016 to just under €1.20 on 24 June. Currently, the value of Sterling is in the region of €1.15 to €1.20, falling to as low as €1.1068 in October 2016.<sup>12</sup> This had a significant impact on those sectors relying on fixed costs for the sale of goods to the United Kingdom, particularly businesses in the agri-food sector.

The Committee heard of the many services available to businesses in Ireland to prepare for Brexit. Enterprise Ireland (EI) and the Small Firms Association focused particularly on this point. Concerns were raised about the number of businesses that are not EI clients and may not have prepared in any way yet. The Committee heard that a number of firms have **no** Brexit contingency plans in place and the Committee recommends that all Brexit tools and resources formulated by state agencies be rolled out to all small and medium enterprises registered in Ireland and a communications campaign be undertaken.

The Committee has concerns regarding the economic impacts on Irish businesses and heard a number of possible effects, including:

- UK-Ireland trade could decline by as much as 20%;
- As many as 40,000 jobs could be lost;
- The decline in Irish GDP could be as much as 3.5% in subsequent years;
- WTO tariffs could have the greatest impact on food and agri-business and have the effect of increasing the cost to consumers. The Committee heard that the cumulative value of trade in the food and drink sector between Ireland and the UK is valued at as much as €12 billion;
- The number of visitors from the UK to Ireland has declined by 4% in 2017, which is equivalent to approximately 141,000 visitors (this is possibly linked to currency fluctuation).

Central to economic concerns were serious worries over the establishment of a hard customs border between Ireland and Northern Ireland, which the Committee heard, has the potential for major economic and logistical disruption. This could result in Irish food companies moving operations to the UK simply to avoid tariffs and make their supply chains work.

The Committee heard that there is a potential negative impact on the tourism sector, as well as the retail and hospitality sectors. The current decline in tourism numbers is already further impacted by

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<sup>11</sup> One of the key requirements of the Customs Union is agreement to apply a common external tariff.

<sup>12</sup> European Central Bank,  
[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html)

visitors reducing their length of stay, spending less, changing accommodation type and reconsidering travel options following the referendum result. In retail, the Committee heard some Irish-based retailers are already substituting cheaper imports from the UK for Irish products and that campaigns to encourage the purchase of Irish goods will be critically important.<sup>13</sup>

The imposition of customs posts and duties is likely to affect some sectors more than others. As stated above, the agri-food sector is a key concern. This is particularly in light of the possibility that the UK will conclude trade agreements with third countries that could undercut Irish products in terms of price and in standards. It has been suggested that if a customs regime cannot be avoided, it would be extremely difficult to protect Irish exports of agricultural products.<sup>14</sup> As a solution, a free trade agreement between the EU and the UK for vulnerable sectors, including agricultural products, should be a primary consideration.

### **Revenue and Customs**

While the Committee was unable to cover the area of customs in depth it does note the engagement of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach (JCFPERT) on the issue on 25 May 2017.

Following the withdrawal of the UK from the EU, including from the Customs Union, the UK will be considered a third country for customs purposes, requiring a number of additional procedures for any export and import of goods. The customs process involves the completion of an import or export declaration, which must be lodged either by a clearance agent employed by the business, or by the business itself if it has authorisation.<sup>15</sup>

While the JCFPERT heard that planning is very important to make the process operate smoothly, there are a number of challenges and changes to the current practices, including:<sup>16</sup>

- A requirement to lodge customs declarations on all imports from and exports to the UK;
- Declarations lodged must be correct to ensure compliance, minimise risk of delays and avoid additional charges;
- Streamlining customs processes, particularly for areas such as the agri-food sector;
- Building cash flow considerations into any future business model; and
- Customs tariffs will depend on whether a free trade agreement is concluded.

Customs is a competence of the EU under the Treaties and is governed by the Union Customs Code<sup>17</sup>, and any tailored approaches for EU-UK trade would need to be negotiated between the EU and the UK.

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<sup>13</sup> Patricia Callan, Small Firms Association, Evidence to the Committee, 4 May 2017.

<sup>14</sup> *The Elements of a New EU-UK Relationship*, John Temple Lang, 12 June 2016, IIEA at p.5. The concern relates to the possibility the UK will pursue cheap food imports from countries such as Brazil, Argentina, Australia and New Zealand.

<sup>15</sup> Ms Carol Lynch, BDO, Joint Committee on Finance, Public Expenditure and Reform and Taoiseach, 25 May 2017,

<sup>16</sup> Ibid.

<sup>17</sup> Regulation (EU) No 952/2013, which entered into force on 30 October 2013, although most substantive provisions entered into force on 1 May 2016.

The volume of trade is one of the most significant challenges. At the hearing of the JCFPERT, the Chairman of the Office of the Revenue Commissioners, Mr Niall Cody, stated that 1 million roll-on roll-off units arrive at our ports each year, over 90% of them from the United Kingdom and that 1 million HGVs and 1.3 million LGVs move in each direction between Ireland and Northern Ireland annually.<sup>18</sup>

Many small companies in Ireland whose only export activity is to Northern Ireland or other parts of the UK will be unfamiliar with any of these procedures and will have to learn how to interact with complicated customs procedures for the first time.

As noted in Chapter 8, significant infrastructural challenges arise concerning the management of trade and possible reorientation of transit routes towards the continent post-Brexit. This could involve catering for a higher number of services.

## Potential Solutions

### Trade

- The establishment of a Common Trading Area on the island of Ireland as part of a future EU/UK Agreement.
- That Ireland does not sign up to any EU/UK transitional agreement post-Brexit that does not include a lengthy period of phasing in any new customs and tariff arrangements on the Island of Ireland that may occur.
- The conclusion of a far reaching, comprehensive trade deal, with minimal trade barriers.

### Foreign Direct Investment

- Ensuring that the Central Bank of Ireland is competitive with other EU and Eurozone Central Banks in assisting regulated institutions seeking to locate in Ireland with well-resourced support and information on Ireland's financial regulatory regime. The Committee also recommend that the Central Bank of Ireland consider how, without jeopardising its independent regulatory function, it could assist the IDA in their role of attracting foreign direct investment into Ireland arising from Brexit.
- The provision of further capital projects, including in the areas of transport, education and housing, in order to equip Ireland to compete for new opportunities resulting from and after Brexit.

### State Aid / Fiscal Solutions

- Ireland should seek to work with other affected EU partners to negotiate an enlargement of the General Block Exemption Regulations in the area of state aid to assist those sectors likely to be most adversely affected by Brexit due to both proximity and trade reliance. In certain sectors, this could include a large state aid exemption regime of the form undertaken during the 2008 Financial Crisis.
- A derogation from fiscal rule requirements could also be explored to allow for the required capital expenditure on adapting and expanding infrastructure, housing and support services.
- The utilisation of funding from the European Investment Bank to alleviate the need for additional fiscal space for capital projects.

<sup>18</sup> Mr Niall Cody, Office of the Revenue Commissioners, Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, 25 May 2017

### **Financial Services**

- The Committee recommends that the Department of Finance commission an independent review on the opportunities and disadvantages of the UK losing its passporting rights within the Single Financial Markets with particular focus on the potential impact and opportunity for professional services in Ireland. This review should form the basis for a renewing and amending the “Strategy for Ireland’s International Financial Services sector 2015-2020.”
- It is essential that Ireland supports a lengthy transitioning period post-Brexit for the UK’s potential loss of passporting and access to the Financial Single Market.

### **Supports for Businesses**

- Campaign to increase awareness of services that state agencies provide to all businesses.
- The supports and tools provided by state agencies should continue to be rolled out to all businesses and efforts should be made to make all relevant businesses aware of supports.
- There is a need for an aid package for businesses already impacted by Brexit, particularly those businesses with low profit margins impacted by currency fluctuations.
- Funding to allow exporters who are not EI clients to prepare a Brexit plan should be explored.

### **Transit and Movement of Goods**

- A pre-clearance model for goods may function as part of a solution, whereby trucks and drivers can pass through the UK land-bridge without incurring duties or checks.
- A system of pre-registering loads online and tracking using GPS or number plate recognition is a possible solution for trade with Britain and Northern Ireland.
- Anti-abuse measures need to be put in place, including mobile spot-checks of goods.

### **Strategy**

- The Department of the Taoiseach Interdepartmental Brexit group should include officials from the Central Bank of Ireland, as was the case during the Financial Crisis when similar interdepartmental groups existed.
- The interdepartmental group needs to be sufficiently resourced so that it can shadow the UK Government’s Department of Exiting the European Union in ensuring that Ireland take the challenges and opportunities posed by Brexit as seriously as our nearest and most important trading partner.
- The interdepartmental group should work more closely with a wider consultative group of stakeholders’ right across the industry and society sectors concerned about Brexit.
- This group should be mandated to publish a post-Brexit Ireland White Paper before the end of 2017, so that citizens, businesses and future investors in Ireland would see precisely how it intends to manage its economy no matter what the outcome of the EU/Brexit negotiations.”.

### **Continued EU Membership**

Although considered unlikely, the UK could revoke its notification to withdraw from the EU. The Committee heard from Former Taoiseach, Mr John Bruton, that Article 6.8 of the Vienna Convention should be considered and that the EU negotiating team should keep the door open for the United Kingdom to change its mind.<sup>19</sup> The Committee heard that the UK public may see merit in this as it could demonstrate differences or potentially provide an alternative to any final agreement..

## Trade

The Committee heard that the risks and uncertainties associated with Brexit highlight the importance of stability-orientated policies, most notably in the area of public finances and financial system stability.

Given the cultural and economic connectedness of the UK and Ireland, the importance of a free trade agreement was highlighted and the Committee heard that a free trade agreement with minimal trade barriers is the goal and that competition must underpin any new relationship.<sup>20</sup> The Committee also heard that arrangements between the EU and the UK that accommodate either no tariffs, a minimal number or a low level of tariffs would mitigate the negative impact.

A number of possible solutions were discussed during hearings and in documents considered by the Committee. These include the establishment of a Common Trading Area, a slower introduction of tariffs along the border and a phasing-in arrangement of the final agreement between the UK and Ireland. Expanding trade links with other EU and non-EU countries was also put forward as a means of mitigating the impact of Brexit.

Following the United Kingdom's withdrawal, a transitional arrangement could apply, in order to allow the EU and UK economies to adjust to the agreement. The Committee heard that a different phasing-in or differentiated transitional arrangement could apply to Ireland, i.e. phasing-in at a slower rate.

## Foreign Direct Investment

In September 2016, Members of the Oireachtas heard of the benefits of Foreign Direct Investment (FDI) to Ireland, with the following figures highlighted:<sup>21</sup>

- FDI contributes €130 billion in exports from Ireland;
- FDI also contributes €9 billion in payroll per annum in Ireland;
- The majority of corporation tax comes from FDI;
- Multinationals directly employ 187,000 people; and
- With the multiplier effect, at least 318,000 jobs are dependent on FDI.

FDI has increased in recent years with some 19,000 jobs created in 2015.

It seems that **infrastructure** in Ireland is a key concern for UK-based companies considering relocation. The Committee heard that there is a need for public investment to be significantly increased in transport, education and housing if demand from relocating companies is to be met.

On the issue of investment, the Government has indicated preparations for a ten-year capital plan. At his speech to the Institute of International and European Affairs, then Taoiseach Enda Kenny TD highlighted this, stating that the Government is:

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<sup>20</sup> Ibec, Evidence to the Committee, 4 May 2017

<sup>21</sup> Martin Shanahan, Dáil Symposium on European Union Affairs, 22 September 2016

“already in active discussions with the European Investment Bank, which recently opened an office here in Dublin. I am confident those discussions will lead to significant further EIB investments in Ireland.”<sup>22</sup>

In the same speech, the then Taoiseach highlighted the need for **investment in roads, public transport, energy, water, schools, higher education, hospitals and health services**. Reference was also made to Ireland’s ports and airports.<sup>23</sup> The Committee believes that availing of funding through the European Investment Bank may alleviate the need for additional fiscal space to support capital projects.

### **State Aid and Fiscal Rules**

In the event that further infrastructure and supports are needed, it may be necessary for the Government to explore ways in which businesses may be supported. The Government has outlined a number of measures in its 2017 Budget document.<sup>24</sup> However, these measures must conform to existing state aid rules. In addition to state aids, infrastructural projects, such as transportation and educational supports, may require additional derogations from EU fiscal rules. This issue, in the context of housing, is detailed further in the Report of the Dáil Committee on Housing and Homelessness in June 2016.<sup>25</sup>

A **separate arrangement for Ireland on the application of State Aid rules** following the United Kingdom’s withdrawal could serve to aid those companies that are most affected.<sup>26</sup> The Committee heard that the state aid rules are built upon the good functioning of the Single Market, but it was noted by the Committee that Brexit represents a fracture in the Single Market and that an element of additional expenditure may be required to help Ireland adapt.<sup>27</sup> For example, this may include tax breaks to companies involved in capital expenditure or providing additional supports to those whose operations have been disrupted by Brexit such as training and new market advice.

With Ireland recognised as the Member State likely to be most affected by Brexit, the potential effects should be explored with a view to making a case for a temporary derogation from state aid rules. Similarly, a temporary derogation from the Stability Support Mechanism, as the withdrawal of the UK and its impact on Ireland is an *exceptional circumstance*, could serve to provide additional capital and current expenditure, particularly for infrastructural projects such as adapting ports and providing serviced land for housing. However, this would impact on the amount of borrowing the State would need to make.

### **Financial Services**

The Committee heard that a key impact of Brexit is that providers of financial services into and out of the UK could lose what are known as “passporting” rights. This essentially means that a provider

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<sup>22</sup> *Ireland at the heart of a changing European Union*, address by the then Taoiseach, Enda Kenny, to the IIEA, 15 February 2017

<sup>23</sup> Ibid.

<sup>24</sup> *Getting Ireland Brexit Ready*, Department of Finance, October 2017

<sup>25</sup> Report of the Dáil Committee on Housing and Homelessness, June 2016 at pp.84-85.

<sup>26</sup> Ibec and Small Firms Association, Evidence to the Committee, 4 May 2017

<sup>27</sup> Alcohol Beverage Federation of Ireland (ABFI), Evidence to the Committee, 4 May 2017

of financial services licensed in one Member State can, under certain conditions, provide those services in all EU Member States.<sup>28</sup>

The Committee heard that in the financial services sector, the Central Bank maintains a supervisory and regulatory role.<sup>29</sup> The promotion of Ireland (as a possible alternative to the UK) is within the remit of IDA Ireland. The Committee believes that an element of coordination and involvement from the regulator and IDA Ireland could assist in ensuring that Ireland is in the best possible position to attract FDI in the area of financial services.

In the area of insurance, the Committee heard of the need for Irish companies to access the UK market in a similar manner to the agri-food sector. Insurance Ireland suggested an approach based on approval in principle, referred to as grandfathering, which is based on the good standing of a regulatory authority.<sup>30</sup> Grandfathering, or regulatory grandfathering, is a mechanism that recognises a business' record in a comparable regulatory jurisdiction, and the approval process that would have applied to that business in that jurisdiction. The Committee heard that a joint grandfathering arrangement between the UK and Ireland could facilitate a regulatory corridor that would allow for rapid approval of Irish entities seeking to export their services to the UK.

### **Supports and Expenditure**

The Committee heard that businesses should prepare for a hard-Brexit but also heard that while companies are alerted to the challenges posed by Brexit, not all of them have taken action and some witnesses expressed worry that many businesses have not prepared at all. The need for companies to put resources into markets outside the UK has been highlighted previously and that point was made again.<sup>31</sup>

The Committee heard that toolkits and advice notes have been prepared for businesses to help with preparations for Brexit. A scorecard has been produced by Enterprise Ireland and the Committee encourages businesses to avail of this in order to aid their own understanding of the level of preparations required.<sup>32</sup> The Committee also heard that funding was made available to Enterprise Ireland clients to prepare Brexit plans and that providing similar funding to businesses not represented by EI should be explored. The Committee heard that companies should now move to Brexit-proofing their business.

The impact of Brexit is differentiated by sector. Some sectors rely almost exclusively on trade with the United Kingdom, most notably the agri-food sector. For others, it is a minor part of their businesses. The Committee heard that aid packages to assist businesses in adjusting to Brexit should be considered and the Committee believes this should be explored.<sup>33</sup>

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<sup>28</sup> Paul McGarry SC, Evidence to the Committee, 4 May 2017

<sup>29</sup> Central Bank of Ireland, Evidence to the Committee, 4 May 2017. A submission to the Committee from the Governor of the Central Bank, Professor Philip Lane, confirmed this approach and highlighted the possibility of conflict between a promotional and regulatory function.

<sup>30</sup> Kevin Thompson, Insurance Ireland, Evidence to the Committee, 4 May 2017

<sup>31</sup> Julie Sinnamon, Enterprise Ireland, Dáil Symposium on European Union Affairs, 22 September 2016

<sup>32</sup> Enterprise Ireland, Evidence to the Committee, 4 May 2017. The scorecard is available following registration at [www.prepareforbrexit.ie](http://www.prepareforbrexit.ie). This service is available to all businesses.

<sup>33</sup> Small Firms Association, Evidence to the Committee, 4 May 2017.

## Competitiveness

A number of witnesses underlined the importance of making Ireland more competitive. This does not just relate to access to the EU markets, language, education and so forth, but also to cost competitiveness, the ability to enforce a contract and the ability to obtain construction permits.

The Committee heard that initial reforms could be focused on the cost of doing business in Ireland.<sup>34</sup> Taxation and regulation were identified as matters of national competence. The Committee heard that any measures introduced should not result in additional increases to the cost of doing business and the Government should also examine current legislation to reduce business costs. The Committee heard that one example that could be explored is Ireland's excise duties, which are among the highest in the EU.<sup>35</sup>

## Transit and Movement of Goods

While a number of possible options in the context of Free Movement of Goods between the UK and Ireland are considered below, a number of practical arrangements for border controls and transit were also put forward. The ideal would be the UK remaining within the Customs Union and the full preservation of the CTA. A comprehensive free trade agreement that eliminates most, if not all, tariffs and customs could minimise damage. However, the Committee also heard some solutions for supporting customs controls if they need to be imposed, including<sup>36</sup>:

- A pre-clearance model for goods travelling as through-traffic via the UK land-bridge;
- A pre-registration system for loads;
- Mobile spot checking for the origin of goods; and
- The use of number-plate recognition and GPS tracking of vehicles all offer possible solutions.

On 25 May 2017, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach heard that Revenue is "looking at the latest technology to provide us with a system that can clear goods in seconds and facilitate their free flow",<sup>37</sup>

## Strategy

The Committee heard a proposal from one of the business representative groups, (Mr John McGrane from the British Irish Chamber of Commerce) that there may be merit in forming a tight, well-resourced collective of business representation.<sup>38</sup> The Committee believes that an expanded joined-up approach that involves the relevant stakeholders has merit and suggests that the relevant Departments will know how best to engage.

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<sup>34</sup> Ciarán Fitzgerald, ABFI, Evidence to the Committee, 4 May 2017.

<sup>35</sup> Ibid. This was also raised in the submission of the National Off-Licence Association (NOffLA), where a reduction of 15% to excise duty was proposed as a solution.

<sup>36</sup> John McGrane, British Irish Chamber of Commerce Evidence to the Committee, 4 May 2017.

<sup>37</sup> Niall Cody, Office of the Revenue Commissioners, Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, 25 May 2017.

<sup>38</sup> John McGrane, Director General of the British Irish Chamber of Commerce proposed this model before the Committee on 4 May 2017.



## Trade Solutions specific to Northern Ireland

Earlier in this chapter, the consequence of a hard versus soft Brexit is discussed for all EU-UK Trade and the Single Market. The following scenarios, which are specific to Northern Ireland, could mitigate the impact of Brexit for trade between Ireland and Northern Ireland.

### Summary and Potential Solutions - Trade

#### EEA+ Model

- This option involves Northern Ireland joining the EEA, with additional agreements covering areas not covered by the EEA Agreement, e.g. agriculture. This has been discussed in detail by the European Policy Centre.

#### Common Trading Area

- This could take the form of a formal trading area that is put in place between the United Kingdom and Ireland, but if a free trade agreement is put in place between the EU and the UK this may not be necessary.

#### An Enhanced Role for the British-Irish Intergovernmental Conference

- The Committee believes an enhanced role for British-Irish Intergovernmental Conference (in considering and identifying regulatory changes that could create barriers to trade between Ireland and the UK) could be developed. This could focus on barriers to trade not related to tariffs and customs and strengthen the East-West component of the Good Friday Agreement.

#### German Model – Protocol allowing all-island trade

- This solution is based on a trade arrangement between East and West Germany before its reunification in 1990 and referenced in the Treaty of Rome. Under the ‘German model’ trade on the island of Ireland would be considered as all-island trade and within the one economy. This would correspond to the all-island economy currently in place across a number of sectors but how this would comply with subsequent treaties to the Treaty of Rome will need to be further explored.

### ***Solution 1: EEA+ Model***

The Committee considered a number of examples concerning the free movement of goods. In relation to Northern Ireland, the Committee heard that there is some potential in the EEA+ model.<sup>39</sup> This is an enhanced version of EEA membership for Northern Ireland only, with additional agreements to cover integral sectors such as agriculture and fisheries, which is not already comprehended by the EEA *acquis*.<sup>40</sup>

In his appearance before the Committee, Professor Christopher McCrudden suggested that the EEA agreement is a good base upon which to build the remaining agreements considered necessary. The Committee believes this arrangement has potential, particularly during any transition period, if not

<sup>39</sup> The name EEA+ was suggested by Professor Christopher McCrudden, Evidence to the Committee, 1 June 2017.

<sup>40</sup> See Discussion Paper, *Northern Ireland and Brexit: the European Economic Area option*, Doherty et al, 7 April 2017, European Policy Centre, where the EEA option for Northern Ireland is discussed in some detail.

feasible in the longer-term. This arrangement functioning as a transitional arrangement was also suggested by Lord Alderdice in his appearance before the Committee.<sup>41</sup>

A disadvantage to this option is that Northern Ireland would have to make a choice on where border checks would take place and whether they would be east-west checks (i.e. undertaken when crossing the Irish Sea) or north-south checks (i.e. undertaken when crossing the land border). The Committee heard that a digital border may be difficult to enforce unless it is in the Irish Sea.<sup>42</sup>

### ***Solution 2: Common Trading Area***

Former Taoiseach, Mr Bertie Ahern suggested a Common Trading Area for the UK and Ireland. While a Common Trading Area may result in a customs control being avoided between Ireland and Northern Ireland (North-South) or Ireland and the UK (East-West), it is important that a full analysis is carried out on both sides of the border, in order to determine if this is mutually advantageous. In keeping with the principles underpinning the Single Market, this could be confined to closed markets, where the production, manufacture and consumption occur entirely on the island of Ireland.

A common arrangement for goods where the UK and Ireland operate under different rules than the rest of the European Union was presented as a possible solution. While this may be more difficult to agree and enforce, this arrangement could be restricted to goods that are not re-traded to the rest of the European Union and *vice-versa*. The Committee heard that this scenario is unlikely to be favoured by the other Member States. Additionally, if a free trade agreement is put in place, this approach may not be necessary.

### ***Solution 3: Trade Role for the British-Irish Intergovernmental Conference***

The British-Irish Intergovernmental Conference (BIIC) may have a function in addressing non-tariff barriers and identifying possible issues in regulatory divergence between Ireland and the UK that may impact UK-Irish trade.

The Committee heard that the BIIC could meet monthly to consider the possible impacts of proposed changes to UK or Irish law. This would allow an opportunity to respond to possible changes to standards, for example, that could adversely impact trade between Ireland, Northern Ireland and the rest of the United Kingdom. In cases of national competence, issues could be developed and solved by the UK, devolved administrations and the Irish Government. In areas of EU competence, Ireland could recommend that the EU consider the issues. The Committee heard that such a role would also strengthen the East-West elements of the Good Friday Agreement.

### ***Solution 4: Protocol to the EU Treaties allowing All-Island Trade (German Precedent)***

A precedent set by West Germany<sup>43</sup> and East Germany prior to reunification was explored by the Committee. Following the agreement of the Treaty of Rome in 1957, the then West German government negotiated a protocol to this Treaty which treated trade between East and West

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<sup>41</sup> Lord Alderdice, Evidence to the Committee, 22 June 2017.

<sup>42</sup> John Sheridan, Border Communities Against Brexit, Evidence to the Committee, 25 May 2017.

<sup>43</sup> Federal Republic of Germany

Germany as ‘internal’ trade.<sup>44</sup> This status remained in place following the establishment of the European Customs Union and the Basic Treaty between East and West Germany in 1972.<sup>45</sup> However, following reunification, the need for the protocol was obsolete as all German territories were subject to the Basic Law of the Federal Republic of Germany.

The Committee considers this precedent to be a potential solution for Northern Ireland following the United Kingdom’s withdrawal. Such a designation could be adapted to make reference to Northern Ireland as the territory not subject to Bunreacht na hÉireann, being the equivalent document to the Basic Law of the Federal Republic of Germany. The Committee also notes that this arrangement was in place before the creation of the Single Market, which dismantled many barriers to EU trade and put in place a significant number of harmonising, health and safety and other rules and before the creation of the Customs Union. It would therefore be necessary to explore in some detail how elements of this proposal could operate and be viable with these new structures in place. The Committee believes that elements of this approach could be adopted in any solution that safeguards all-island trade and believes that this should be explored.

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<sup>44</sup> *Protocol Concerning Internal German Trade and Connected Problems*, Treaty of Rome, 1957. This in effect gave East Germany, referred to in the Protocol as the territory not subject to the Basic Law, a much closer economic status with the West, but did present some difficulties, such as third countries importing goods through East Germany to avoid paying tariffs to enter the EEC. To counter this, Member States were allowed to prevent imports if it was believed that they infringed the integrity of their economies.

<sup>45</sup> The Basic Treaty followed the “one nation, two states” policy, where West and East Germany recognised each other and opened diplomatic missions (called permanent missions) in each other’s state.

### 3. The Common Travel Area

#### Background

Since the establishment of the Irish Free State in 1922, both the Irish and British governments have operated what is known as the Common Travel Area (CTA). Its origins can be traced in the mutual recognition of each other's immigration laws, which were largely based on pre-independence immigration policy. The CTA has no connection to trade or customs duties, instead focusing on travel to/from and the right to reside in each other's jurisdiction.

The CTA allows for British and Irish citizens to the right to enter and remain in each other's country, without the need for a visa, residence permit or proof of resources. Many of the original CTA rights were superseded by European rights of free movement of persons. Following the UK's withdrawal from the EU, the right of entry and residence may be restricted for nationals of EU Member States. In the case of Ireland, the right of entry and to remain deriving from the Ireland Act 1949 and Immigration Act 1971 (United Kingdom) and the Aliens Act 1935 (Ireland) would still be in place. The Committee heard that the CTA can be described as a "mini-Schengen" area. It should be noted however, that technically the CTA does not confer a right to work.<sup>46</sup> The CTA is based on reciprocity, meaning the UK and Irish governments do not treat each other's citizens as foreigners.

The Committee notes that the Joint Committee on the Implementation of the Good Friday Agreement is also considering this issue. The CTA has been identified by the Government as one of its four key negotiating priorities and the Committee heard from numerous stakeholders on the potential impacts. In its *Brexit, Ireland's Priorities* publication, the Government outlined the following key statistics which highlight the importance of the CTA. It further emphasises the focus on air and sea routes between the two islands.

#### The CTA and the Movement of People in numbers<sup>47</sup>

- There are 87 air routes, operated by 8 airlines, between Ireland and Great Britain.
- There are 9 passenger ferry routes in operation between Ireland and Great Britain.
- There are 841 flights from Dublin Airport to Great Britain per week.
- The Dublin-London air route is the busiest in Europe and second busiest in the world, with 368 flights per week during the 2016/2017 winter schedule.
- 41% of tourists to Ireland came from Britain and 32% of trips to the UK in 2015 came from Ireland.
- In 2011, the Central Statistics Office (CSO) found that in the region of 14,500 people crossed the border to work every day, with most of those crossing the border into Northern Ireland.<sup>48</sup>
- 1,852,000 cars cross the land border with Northern Ireland every month
- There are almost 300 crossings on the border with Northern Ireland

By contrast, many Members of the European Union, along with Norway, Iceland, Liechtenstein and Switzerland, operate the Schengen Area, a free travel zone and common external border operated

<sup>46</sup> *Brexit: A Status Report*, O'Ceallaigh et al, IIEA, 2<sup>nd</sup> ed. at p.31

<sup>47</sup> Ireland and the negotiations on the United Kingdom's withdrawal from the European Union, Government Publication, May 2017

<sup>48</sup> Central Statistics Office, *Brexit by Numbers*

under the terms of the Schengen Agreement of 1986. The Schengen Area, in a similar way to the CTA, allows passport-free travel and common visa requirements. In his opening remarks to the Committee on 23 March 2017, Mr Noel Waters, Secretary General of the Department of Justice and Equality stated that:

“Of the 27.9 million passenger journeys through Dublin Airport in 2016, 9.9 million were from the UK to Ireland or from Ireland to the UK, which is 36% of the total. Averaged out over the year, it means 27,000 passengers have their journey facilitated by the common travel area every day. In 2015, 1.2 million residents of Northern Ireland used Dublin Airport, which averaged almost 25,000 people per week crossing the Border to catch flights, and 1 million visitors to Northern Ireland came into this State via Dublin Airport. All of these journeys, and the economic activity generated, are made possible by the common travel area arrangements so much so that it is taken for granted in facilitating movement of people North-South and east-west. The picture at other entry points to the State is the same. Cork Airport has over a dozen routes to the UK, with almost 1 million passengers, or 50% of the total, in 2016 taking a journey in either direction. The number of passenger journeys by sea through our ferry ports is also significant at approximately 2.8 million per year. It is estimated there are an average of 2.2 million monthly vehicular crossings on the North-South land Border.”

### **Free Movement of Persons**

Neither the United Kingdom nor Ireland is a member of the Schengen Area, choosing instead to operate outside the Schengen *acquis*. While passports are not required to travel within the CTA for Irish and UK nationals, some airlines require proof of identification when flying between the UK and Ireland. This is reflective of their own individual policies and not a legal requirement.

The exact provisions of special travel arrangements under EU law for the UK and Ireland are set out in **Protocol 20 to the Treaty on the Functioning of the European Union**. Article 2 of this Protocol makes explicit reference to the CTA, setting out a requirement to fully respect the rights of persons as set out in Union law. Ireland participates in some European Schengen measures, such as the Schengen Information System, and requirements on visas etc are mirrored in Irish law and regulations to ensure cohesion with other Member States.

Following the UK’s withdrawal, EU rules will no longer apply between both jurisdictions. One of the key issues raised was whether the position of Irish nationals in the UK (and *vice versa*) would be in any way limited. The Committee heard that this may create numerous issues in the area of civil justice, which could give rise to uncertainty for the conduct of commerce between the EU and the UK in addition to free movement of workers. The Committee also heard of the possible impact of the UK withdrawing from the jurisdiction of the European Court of Justice.

### **Visa and Immigration Policies**

Since its origins, a central feature of the CTA is the coordination of visa and immigration policies. Ireland has broadly mirrored British requirements on immigration, for example enacting the Aliens (Amendment) Order 1962 to account for changes in the UK regarding the status of immigrants from Commonwealth countries.<sup>49</sup> More recently, the UK and Ireland have cooperated on some common

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<sup>49</sup> S.I. No. 112/1962

short-stay visa arrangements which allows visitors from participating countries to apply for one visa and be able to visit both countries.

Between 1939 and 1952, the CTA was suspended. This suspension mostly arose from a divergence in Irish and UK immigration policy, with parliamentary records in the UK from the time suggesting that the CTA would only resume if both countries resumed the pre-war arrangement to coordinate policies. During this period, a border control was operated at the Irish Sea. In 1950, the House of Commons was told that there were “17 or 18 Customs posts” and that controlling the Border effectively would require “an army of immigration officers”.<sup>50</sup>

In recent years, “Operation Gull” is believed to have operated to address the alleged use of the CTA to circumvent relaxed immigration controls between Ireland and the UK.<sup>51</sup> This involved the operation of enhanced immigration checks conducted at air and sea ports on individuals travelling between Ireland and the UK.

Under the Aliens (Amendment) Order 1975, it is also possible for Irish immigration officials to prevent a non-UK or non-Irish national from entering Ireland if there is an intention to travel to Northern Ireland or the United Kingdom.<sup>52</sup> After Brexit it is not clear if this could or would have to be applied to EU Member State nationals not from Ireland.

### **Land Border**

There is a concern that any changes or alterations to the present CTA arrangements could:

- Have a significant impact on the daily cross-border movements in border regions;
- Destabilise the peace process; and
- Impact North-South relations.

Both the British and Irish Governments have reiterated a desire to maintain the CTA and not return to the “borders of the past”. As the CTA mirrors the Schengen Area in a lot of ways, there is the suggestion both could co-exist insofar as travel is concerned.

The main effects of the CTA between both jurisdictions are that they:

- Maintain an open border between their territories;
- Allow free movement and related rights to each other’s citizens; and
- Co-ordinate their immigration policies in relation to other countries.

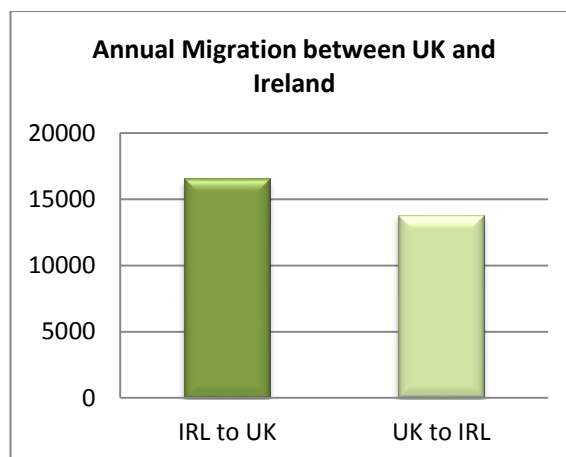
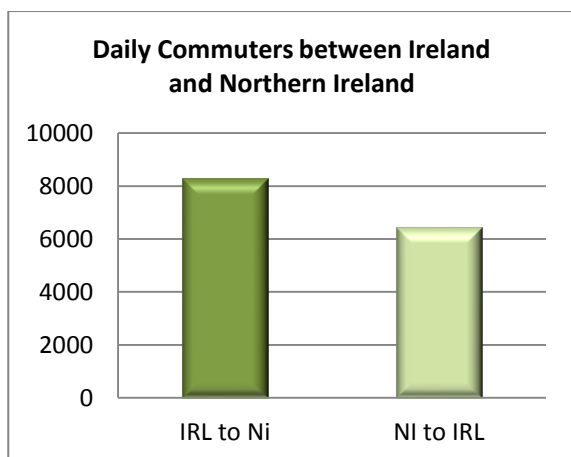
According to the CSO, there is a clear inter-dependence between Ireland and Northern Ireland, and to a wider extent, Ireland and the UK in terms of migration and working in each jurisdiction. These figures are outside travel conducted for other purposes such as business, tourism and connecting travel. Additionally, there is a slightly higher number of daily commuters travelling from Ireland to Northern Ireland and annual migrants travelling from Ireland to the United Kingdom, as the diagrams below illustrate.

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<sup>50</sup> Harford Hyde MP, House of Commons, 28 July 1950

<sup>51</sup> Irish Times, 11 September 2006

<sup>52</sup> S.I. No. 128/1975, s. 5(2)(j)



Source: CSO

The Government has set out its position as securing “acknowledgment from EU partners and institutions that the long-standing bilateral CTA arrangements with the UK will be maintained (in conformity with EU law)”. In addition to this position, the Government has identified specific implications for Northern Ireland, the movement of people and access to services. These arrangements are particularly important in the context of the Good Friday Agreement.

A key aspect of CTA provisions is that Irish citizens are not treated as foreigners under British law. The Government’s document also notes the CTA’s role in providing access for the citizens of Ireland and the United Kingdom to each other’s social welfare benefits, housing supports, healthcare and education.<sup>53</sup> They also retain certain voting rights. Many of these benefits are implicit and not defined by any express agreement or instrument, but rather derive from the treatment of Irish and British citizens under British law and the common law that survived independence.

During hearings, the CTA was described as a “mini-Schengen” area by officials from the Department of Justice and Equality, and it was further highlighted that a border control exists between the CTA and the Schengen Area through passport checks. This position is also stated in the Government’s Brexit Priorities.

In its Negotiating Strategy, the Government has noted the following:

“The status of Irish citizens in the UK is provided for in the Ireland Act 1949 which states that Ireland “is not a foreign country for the purposes of any law in force in any part of the United Kingdom”. The status of Irish nationals was maintained under the Immigration Act 1971 and the British Nationality Act 1981. The Irish Government made an order (Citizens of the United Kingdom and Colonies (Irish Citizenship Rights) Order 1949, which provides that UK citizens enjoy in Ireland similar rights and privileges to those enjoyed by Irish citizens in the UK.”

The operation of the CTA is also vital to Ireland’s relationship with Northern Ireland. In the business context, the Committee heard that many businesses in border regions are reliant on cross-border flows of labour, trade and customers.<sup>54</sup> The Committee also heard that for tourism, if there is an impediment to freedom of movement and delays at border crossing, then visitors may be discouraged from travelling between both jurisdictions, while tour operators may also be

<sup>53</sup> *Ireland and the negotiations on the UK’s withdrawal from the European Union*, Government Publication, 2 May 2017. Many of these rights also derive, or are facilitated by, EU rules.

<sup>54</sup> Michael Gaynor, Dundalk Chamber of Commerce, Evidence to the Committee, 6 April 2017

discouraged from including Northern Ireland and the border regions in tours.<sup>55</sup> There is also concern regarding the manner in which cross-border partnerships and reconciliation may be impacted by the return of any symbols of division, such as customs posts, as well as the queues and delays a hard border may cause. Again, this issue is separately considered by the Joint Committee on the Implementation of the Good Friday Agreement.

## Potential Solutions

### Maintaining Border Controls between the CTA and Schengen Area

- As neither Ireland nor the United Kingdom is part of the Schengen Area, the imposition of border controls with the Schengen Area could remain in place. This is the preservation of the *status quo*.

### Common Visa Scheme

- The Committee recommends the common visa scheme, where it exists, be continued.

### ***Schengen Visa Model – Common Visa Schemes***

The approach in Schengen Member States is that if one Member State grants a visa to a third country national, that third country national can travel throughout all Schengen Member States within the terms of that visa.

This is a model which is replicated in Ireland and the UK, through the British-Irish Visa Scheme and which currently applies to India and China. These visas generally relate to entry into a state only and not necessarily for work. The scheme should be protected and enhanced. The Committee heard that arrangements between Ireland and the UK, in effect, mirror the arrangements between members of the Schengen Area. It was further noted by the Department that Ireland cannot be in both the Schengen Area and the CTA, and that while Ireland might be interested in becoming a Member of Schengen, the current arrangements are to Ireland's advantage.

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<sup>55</sup> Niall Gibbons, Tourism Ireland, Evidence to the Committee, 8 June 2017.



## 4. Northern Ireland

### Background

Northern Ireland and the Good Friday Agreement have been recognised in the Guidelines adopted by the European Council:

“The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement in all its parts, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance. In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order. In this context, the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law.”<sup>56</sup>

The British Prime Minister, Theresa May, has further highlighted the importance of avoiding a hard border, stating in her speech at Lancaster House that “[n]obody wants to return to the borders of the past, so we will make it a priority to deliver a practical solution as soon as we can”.<sup>57</sup> The British priorities focus more on the Common Travel Area, but the importance of a seamless border and its impact on North-South relations has been acknowledged by many.

The Committee believes it is important to note that in the UK’s EU Referendum, a majority of the people who voted in Northern Ireland, voted to remain in the EU: 55.77% of the valid votes or 440, 707 votes to remain, out of a total of 790,149 valid votes. This represented a 62.7% turnout.

### Citizenship

#### Good Friday Agreement

**In the Good Friday Agreement, both the British and Irish Governments committed to:**

- recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.<sup>58</sup>
- The Agreement defines the people of Northern Ireland as “all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence”.

Under the Good Friday Agreement, those born in Northern Ireland are entitled to British citizenship and / or Irish citizenship. This creates a unique situation where after the UK’s withdrawal, around 1.8

<sup>56</sup> Guidelines for the negotiations on the withdrawal of the United Kingdom from the European Union, European Council, 29 April 2017, as confirmed by the negotiating directives of the General Affairs Council, 22 May 2017.

<sup>57</sup> Theresa May MP, Prime Minister of the United Kingdom, 17 January 2017, Lancaster House

<sup>58</sup> Good Friday Agreement, 10 April 1998, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Article 1(vi)

million residents of a third country would either hold, or be entitled to, EU citizenship. Exercising that right to dual citizenship in Ireland has already seen a spike in applications for Irish passports, resulting in the hiring of additional staff to address the increased demand.

The Good Friday Agreement also confers the right on the people of Northern Ireland to self-determination **on the issue of reunification**:

The economic situation in Northern Ireland presents additional challenges. Northern Ireland could be described as a net beneficiary of EU funds in its own right. In sectors such as agriculture, withdrawal from the EU will mean the end of payments to farmers under the Common Agricultural Policy. An all-island economy has developed in certain sectors, most notably in the areas of energy and tourism. The withdrawal of the UK will have significant implications for developments built on work done on promoting all island cooperation.

### Summary and Potential Solutions – Funding and the Border

The provisions of the Good Friday Agreement are the bedrock for peace and stability in Northern Ireland and the wider island. It is imperative that any agreement respects this and ensures the continuance of its provisions.

The PEACE and INTERREG programmes should be retained to support the continuance of cross-border and cross-community initiatives following Brexit. This is vital to the peace process and ensuring political stability in Northern Ireland. A continued financial support for the two schemes will have to be explored with the UK along the model that already exists for INTERREG programmes with third countries.

Some witnesses and Members of the Committee suggested that no border poll under the Good Friday Agreement should occur until it is clear that a respectable or sizeable number of all communities are in favour and such a poll follows the principle of consent.

Other witnesses and Members of the Committee were clear in their desire to ultimately see Irish reunification, and for the principle of consent, contained in the Good Friday Agreement, to be respected and that a poll be held when it is likely that ‘a majority of those voting would express a wish that Northern Ireland should cease to be a part of the United Kingdom and form part of a united Ireland’.

Environmental legislation and mechanisms may diverge post-Brexit. To address this, effective mechanisms and minimum common standards should be explored, including the treatment of the island of Ireland as a single bio-geographic area.

### Unique Arrangements for Northern Ireland

At the time of the Committee’s work, the Northern Ireland Assembly was not in a position to engage and neither were elected representatives in Westminster. This absence was disappointing. A number of Northern Ireland’s political parties and many others have endorsed a special status for Northern Ireland. Different parties have different solutions in mind when they consider how to structure such a unique status.

Former Taoiseach, Mr Bertie Ahern proposed the establishment of a Common Trading Area (discussed in Chapter 3 concerning the Common Travel Area). While Trade is an EU competence, there may be a willingness to make special arrangements for Northern Ireland.

In his appearance before the Committee, Professor Colin Harvey of Queen’s University Belfast made the following observation:

“[W]e have the habit of talking about some outlandish or suggested special status that is somehow odd but from a constitutional legal position with regard to Northern Ireland, what we are asking the guarantors<sup>59</sup> to do is recognise what is supposed to be an existing special status already”.<sup>60</sup>

The Committee believes this is a very important point. Northern Ireland already has special provisions which apply to it, examples of which include its unique position on citizenship (discussed above and in Chapter 5 concerning citizens’ rights)<sup>61</sup> or the unique PEACE programmes established by the EU, which only concern Northern Ireland.

The Committee heard that while there may be difficulty in referring to a special status in broad terms, if the discussions focused on practicalities, it may be possible to develop a shared understanding and agreement.<sup>62</sup> The Committee also heard that a special status would not have to extend to every area, but to areas where it is practical, e.g. disease control and the economy.

### **Border Poll and Re-joining the EU**

As has been noted by the Joint Committee on the Implementation of the Good Friday Agreement<sup>63</sup>, Brexit has implications for the principle of consent.

On the issue of a border poll, the Committee heard that the UK’s withdrawal from the European Union should not in and of itself be a catalyst for a border poll by some witnesses, including Former Taoiseach, Mr Bertie Ahern who suggested:

“The only time we should have a border poll ... is when we are in a situation where the Nationalists and republicans and a respectable or sizeable number of Unionists and loyalists are in favour, and on the basis of consent.”<sup>64</sup>

At the same time other witnesses and Members of the Committee were clear in their desire to ultimately see Irish reunification, and for the principle of consent, contained in the Good Friday Agreement, to be respected and that a poll be held when it is likely that ‘a majority of those voting would express a wish that Northern Ireland should cease to be a part of the United Kingdom and form part of a united Ireland’. Members of the Committee welcomed the declaration of the European Council in April 2017 on the possibility of a future united Ireland being entitled to full automatic EU membership.

The Committee considered suggestions it is very important to depoliticise Brexit discussions, this was noted by Dr Mary Murphy:

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<sup>59</sup> The British and Irish governments are co-guarantors of the Good Friday Agreement.

<sup>60</sup> Prof Colin Harvey, Evidence to the Committee, 27 April 2017

<sup>61</sup> People born in Northern Ireland to an Irish or British parent, or legally resident in Northern Ireland, are entitled to Irish citizenship.

<sup>62</sup> Lord Alderdice, Former Speaker of the Northern Ireland Assembly, Evidence to the Committee, 22 June 2017

<sup>63</sup> Joint Committee on the Implementation of the Good Friday Agreement, The Implications of Brexit for the Good Friday Agreement: Key Findings Report, June 2017

<sup>64</sup> Bertie Ahern, former Taoiseach, Evidence to the Committee, 6 April 2017

“To some extent it can be unhelpful to talk consistently about the possibility of having a Border poll. It is very unhelpful to the process because it politicises the Brexit issue. In order to achieve some kind of solution to the Brexit issue, depoliticising the issue is imperative.”<sup>65</sup>

Solutions predicated on the German precedent, where reunification led to automatic membership of the EU, may also be possible. The Committee considers it important to ensure the possibility of this scenario forms part of the negotiated agreement.

In relation to all of the issues contained in the Good Friday Agreement, the Committee noted its importance in underpinning the Northern Irish Peace Process, and the Committee is concerned at suggestions contained in the recent study<sup>66</sup> for the European Parliament’s Constitutional Affairs’ (AFCO) Committee suggesting that the Good Friday Agreement “will need alteration” as a result of the UK’s withdrawal.

### **The Environment**

The Committee was told that there has been little discussion of the environment, environmental protection or sustainable development in the context of Brexit to date.<sup>67</sup> As Ireland and Northern Ireland share a land border and that following Brexit, UK and EU regulation may fall out-of-sync, this may be problematic.<sup>68</sup>

As solutions, the Committee believes the following should be explored:<sup>69</sup>

- That the Government, Northern Ireland Executive, UK Government and EU partners work together to enable effective long-term management of the environment;
- That the island of Ireland be considered a single bio-geographic unit post-Brexit;
- That effective mechanisms are put in place to resolve and manage cross-border environmental issues post-Brexit;
- That minimum common standards and approaches are sought between England, Scotland, Wales and Northern Ireland and in the context of Northern Ireland, those standards are aligned as closely as possible to Ireland;
- That new funding arrangements should be established to replace current sources of EU funding.

Central to this, the Committee considers that a mechanism should be put in place to ensure the environmental regulation is aligned between Ireland and Northern Ireland and that post-Brexit, common minimum standards are maintained. This could be reinforced by, for example, access to the Single Market could be dependent on adhering to environmental law standards.<sup>70</sup>

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<sup>65</sup> Dr Mary Murphy, UCC, Evidence to the Committee, 1 June 2017

<sup>66</sup> P. 41, Brexit and the European Union: General Institutional and Legal Considerations, Study requested by the AFCO Committee, January 2017

<sup>67</sup> Submission to the Committee from Northern Ireland Environment Link.

<sup>68</sup> Ms Sharon McMahon, Loughs Agency, Evidence to the Committee, 7 June 2017

<sup>69</sup> Submission to the Committee from Northern Ireland Environment Link.

<sup>70</sup> Dr Patrick Boylan, Loughs Agency, Evidence to the Committee, 7 June 2017

## Special EU Programmes Body (SEUPB) and EU Funding

The Committee heard that the current cross-border EU funding programmes are PEACE IV and INTERREG VA, which follow on from previous programmes completed over the last two decades. These programmes are critical to fostering cross-border partnerships and understanding, which are, in turn, key in developing the peace process.

As outlined in the below table, the PEACE Programme has contributed a total of over €2.2 billion to initiatives in the border region, with over €1.5 billion of this figure coming from the EU: The PEACE Programme is only operated in the border region of Ireland and Northern Ireland and the Committee was told it was a unique solution in itself. Similarly, the INTERREG Programmes have contributed over €1.1 billion to projects, with €810 million contributed by the EU.

Funding through the PEACE Programme has played an important role in addressing the trauma and legacy mental health issues that have remained as a result of the conflict. These effects can be long-standing and enduring if not adequately addressed. Representing the Special EU Programmes Body (SEUPB), Ms. Gina McIntyre noted that as part of the PEACE III (2007-2013) round of funding, thousands of people received direct support related to post-conflict recovery. This included events aimed at assisting victims and survivors, conflict resolution workshops, trauma counselling, and initiatives designed to address barriers (physical and non-physical) to fully acknowledging and dealing with past trauma.

In total, 6,999 people received trauma counselling, and 189,007 people attended events focused on sectarianism, racism or conflict resolution.<sup>71</sup> This highlights the importance of EU funding for cross-border reconciliation, support and empowerment post-conflict. Given the uncertainty already generated by Brexit, the Committee feels that such supports must be maintained for individuals, families and communities once the UK leaves the EU.

With regard to INTERREG funding across the EU, the Committee heard that there are examples of cases where projects are engaged in by an EU Member State and a non-EU state. Representing the Special EU Programmes Body (SEUPB), Ms Gina McIntyre highlighted that expenditure on the INTERREG Programme comprises a 60% contribution from the UK side and 40% from Ireland (as detailed below), with each Government's contributions including the EU element. The Committee heard that the SEUPB will seek continued funding from the UK post-withdrawal from the EU. If models used in other programmes with non-EU Member States were to be followed the funding for the UK contribution would have to come entirely from UK funds, as the UK could no longer rely on EU funding.

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<sup>71</sup> Ms. Gina McIntyre, Evidence to the Committee, 25 May 2017

## PEACE Programme 1995 – 2020

Programme	Period	EU Contribution (€m)	National Contribution (€m)	Total Contribution (€m)
PEACE I	1995-1999	500	167	667
PEACE II	2000-2004	531	304	835
PEACE II ext	2005-2006	78	82	160
PEACE III	2007-2013	225	108	333
PEACE IV	2014-2020	229	41	270
		1563	702	2265

The Irish and Northern Irish contributions for the PEACE Programmes are summarised as follows:

The EU and National Contributions for each PEACE programme are summarised as follows: Programme	Period	EU Contribution (€m)	National Contribution (€m)	Total Contribution (€m)
PEACE I	1995-1999	500	167	667
PEACE II	2000-2004	531	304	835
PEACE II ext	2005-2006	78	82	160
PEACE III	2007-2013	225	108	333
PEACE IV	2014-2020	229	41	270
Total		1563	702	2265

## INTERREG Programme 1991 - 2020

Programme	Period	EU Contribution (€m)	National Contribution (€m)	Total Contribution (€m)
INTERREG IA	1991-1993	82.1	67.9	150
INTERREG IIA	1994-1999	159	103	262
INTERREG IIIA	2000-2006	137	46	183
INTERREG IVA	2007-2013	192	64	256
INTERREG VA	2014-2020	240	43	283
		810.1	323.9	1134

The Irish and Northern Irish contributions for the INTERREG Programmes are summarised as follows:

Programme	EU Contribution (€ Million)		National Contribution (€ Million)		Total Programme Value (€ Million)	
	Northern Ireland	Ireland	Northern Ireland	Ireland	Northern Ireland	Ireland
INTERREG IIIA	73.98 (54%)	63.02 (46%)	21.16 (46%)	24.84 (54%)	95.16 (52%)	87.84 (48%)
INTERREG IVA	123.7 (64%)	52.97 (28%)	41.23 (64%)	17.66 (28%)	164.93 (64%)	70.63 (28%)
INTERREG VA	146.52 (61%)	71.23 (29%)	26.00 (60%)	13.00 (30%)	172.38 (61%)	83.8 (30%)

In addition to the table, INTERREG IVA included a programme with **Scotland** which amounts to €20.47 million (€15.35 million of which came from EU funding) and INTERREG VA which costs €26.58 million (€22.59 million of which came from EU funding).

A more general issue highlighted to the Committee was the awareness of EU-funded programmes and the benefits they bring. The Committee heard that many of these projects permeate through the local communities. The PEACE IV Project has four core themes:

- 1) shared education;
- 2) children and young people;
- 3) shared spaces and capital (shared across eight areas including health and victims); and
- 4) building positive relations at regional level.

INTERREG is focused on four core objectives in the research and innovation area and includes environmental initiatives in the areas of protected habitats, water management and sustainable transport.

To date, such environmental initiatives and funding have aligned closely with the broad range of environmental protections and objectives established by EU legislation. Depending on the terms of any potential withdrawal, the possibility that the UK would no longer be bound by core EU environmental directives has introduced a degree of uncertainty regarding the continuity of environmental legislation, and therefore funding, in Northern Ireland and the border region.

A challenge therefore will be ensuring that environmental standards in Northern Ireland are maintained post-Brexit. To this end, the Committee welcomes the commitment from the British Prime Minister, Theresa May, that the UK intends to remain a “leading actor” on environmental policy and climate change and ensure that current EU environmental regulations are included in EU law after withdrawal.<sup>72</sup>

This is particularly important given the strong cross-border dimension to environmental issues, which by nature transcend boundaries. There is a big overlap on issues such as biodiversity loss, climate change and air and water quality and this requires a coordinated, consistent approach across the island of Ireland. Again, EU funding has played an important role in this regard. If an arrangement is put in place where the UK remains within the Single Market and maintains a contribution to the EU Budget, then arguably, the present funding arrangements could remain in place. However, in the event of a hard Brexit, the question of future EU funding needs to form a key part of the negotiation process.

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<sup>72</sup> UK Government Brexit White Paper published February 2<sup>nd</sup> 2017

## 5. Citizenship and Social Rights

Following the referendum result on 24 June 2016 and the notification of the United Kingdom to leave the European Union on 29 March 2017, there is significant concern regarding the rights of EU citizens resident in the UK, as well as the rights of UK citizens living in other EU Member States. According to the negotiating directives issued by the General Affairs Council of the EU, the negotiations should be focused on:

“safeguarding the status and rights of the EU27 citizens and their families in the United Kingdom and of the citizens of the United Kingdom and their families in the EU27 Member States is the first priority for the negotiations because of the number of people directly affected and of the seriousness of the consequences of the withdrawal for them. The Agreement should provide the necessary effective, enforceable, non-discriminatory and comprehensive guarantees for those citizens' rights, including the right to acquire permanent residence after a continuous period of five years of legal residence and the rights attached to it”.

This is reflective of the key concern of Member States with regard to the UK decision to leave, i.e. the rights of their citizens living in the UK post-Brexit. The negotiating directives have already indicated that the rights of EU citizens, along with the financial obligations of the UK in light of Brexit, are to be negotiated as the first priority.

The European Parliament has highlighted the rights of EU citizens, including the need for reciprocity and non-discrimination. Unique provisions pertaining to Northern Ireland are also a consideration and have already been discussed in Chapter 4.

### EU Law on Citizenship

The supremacy of EU Law, coupled with the obligation in the Constitution to enact provisions which are necessitated by EU membership, mean that the rights of citizens are applied to citizens of all EU Member States, but are qualified as described above. There are similar, though differently defined rights to enter and reside in other EU Member States. The basis of these rights is set out as follows:

#### Treaty on the Functioning of the European Union

- Nationals of EU Member States hold EU citizenship as well as their national citizenship.
- Citizens are conferred with “the right to move and reside freely within the territory of the Member States” (Article 21 TFEU).

As an EU Member State, Ireland is obliged to adhere to the provisions of the EU Treaties. In addition to the EU Treaties. Directive 2004/38, which is more widely known as the Citizens’ Rights Directive, was enacted in 2004. This sets out the common rules for the movement of EU citizens between EU Member States. Under the Directive, EU citizens are defined as “any person having the nationality of a Member State”.<sup>73</sup>

#### Directive 2004/38 (The Citizens’ Rights Directive)

EU citizens and the members of their families, defined under Article 2(2) of the Directive, are conferred with the right to:

<sup>73</sup> Council Directive 2004/38, Article 2(2)(a)



- reside in any other Member State for up to three months subject only to holding valid identification such as a passport (Article 6);
- reside for longer periods if they are workers, self-employed or otherwise capable of supporting themselves and their families without relying on the host state's social assistance systems, or are registered students with appropriate financial resources and health insurance (Article 7);
- automatically acquire permanent residence in a host state after residing in it continuously for five years (Article 16).

### Irish Law on Citizenship

The basis of the rules governing Irish citizenship lies in Articles 2 and 9 of Bunreacht na hÉireann. While the right to Irish citizenship has been further elaborated on and clarified by the Irish Naturalisation and Citizenship Acts 1956 to 2004, Irish citizenship can be described as a diluted form of *jus soli*, i.e. citizenship by birthright, allowing citizenship to those born of at least one Irish or British parent, or a parent who is legally resident in the State.

Irish citizenship may also be acquired through a policy of naturalisation. There are circumstances where the Minister for Justice and Equality may allow a person to be naturalised if they have demonstrated Irish descent or Irish associations, have been resident abroad in the Irish public service or have been granted refugee status or declared to be stateless.

### Northern Ireland

Of direct concern to Ireland on the issue of citizenship is how it will pertain to Northern Ireland. The rights of Irish citizens in the rest of the UK would be broadly the same as citizens from the other Member States, notwithstanding any additional rights that arise through bilateral arrangements with the UK through the CTA (discussed in Chapter 3), as well as unique provisions on Citizenship pertaining to Northern Ireland (discussed in Chapter 4). However, issues concerning human rights protections arise from the withdrawal of the UK from the Charter of Fundamental Rights as part of the Brexit process, along with the potential of any changes to its membership and application of the European Convention on Human Rights (ECHR) in the future.

### Potential Solutions

- The equivalence of human rights protections in both Ireland and Northern Ireland, as provided for in the Good Friday Agreement, should be protected.
- An all-island approach to human rights should be explored, with possible solutions including a reimagined role for the Joint Committee on Human Rights and a Charter of Rights for the island of Ireland. Additionally, the Bill of Rights project in Northern Ireland should also be revisited.
- The Government should support all arrangements which allow for the free movement of EU citizens, either from Ireland or other EU27 states.
- In the event the right to permanent residence does not form part of the final withdrawal agreement for EU citizens, Ireland could adopt an approach of allowing residence in Northern Ireland to be reckonable for the purposes of naturalisation as an Irish citizen.
- In the context of social rights, the EU should promote the social pillar as a key facet of its work, and a Social Semester should be explored.

## **Human Rights and Equality**

Presently, the UK, like all other EU Member States, is subject to the Charter of Fundamental Rights of the EU. Through the Human Rights Act 1998, it is also subject to the ECHR. During hearings, the Committee heard of a possible long-term objective in the UK to replace the Human Rights Act 1998 with a UK Bill of Rights. A key concern is that this Bill of Rights may not be as far-reaching, with the protections it offers being somewhat diluted.

In the context of Northern Ireland, the Good Friday Agreement provides for the equivalence of human rights protections in Ireland as in Northern Ireland, which the Committee heard was aimed at requiring Ireland to incorporate the ECHR into Irish law. As Ireland is an EU Member State, it will continue to be bound by the Charter of Fundamental Rights, which is interpreted by the European Court of Justice, as well as the ECHR, to which Ireland and the EU are both parties. The Committee heard that Ireland should argue for the retention of current human rights protections, which would mean that Northern Ireland continues to be bound by the Charter of Fundamental Rights and the jurisdiction of the European Court of Justice and that the ECHR, through the Human Rights Act also continues to apply. The Committee notes that the ECHR, as opposed to the Charter of Fundamental Rights is expressly provided for in the Good Friday Agreement.

The Committee also heard of the possibility of all-island approach. This could take a number of forms, but the approach suggested was a reimagined role for the Joint Committee on Human Rights, which could have oversight on human rights on the island of Ireland.<sup>74</sup> This could extend as far as the Committee having an independent chair and being tasked with providing an annual statement on human rights and equality. Another approach suggested is for a separate Charter of Rights for the island of Ireland, which the Committee heard was previously considered. This could be linked to the work of the Fundamental Rights Agency at EU level, which the Committee heard would ensure that the people of Northern Ireland are not left out of the conversation of where the EU is going.

## **Permanent Residence and Naturalisation**

While the provisions of the Good Friday Agreement allow persons born to a British or Irish parent, or a parent permanently resident in Northern Ireland, to become Irish citizens, the Committee heard that residence in Northern Ireland was not reckonable for persons who wished to become naturalised citizens of Ireland, and that this led to situations where there are children who are entitled to become Irish, and thus EU citizens, but their parent or parents are not.

As noted above, the Citizens' Rights Directive provides that EU nationals have a right of residence after five years, and maintaining the right to permanent residence is stated as an objective in the negotiating directives. Depending on the final agreement, this right could be affected by the UK's withdrawal.

It was suggested to the Committee that allowing periods of residence in Northern Ireland to be reckonable for the purposes of naturalisation in Ireland would allow those in Northern Ireland who are anxious about their status post-Brexit the option of applying for Irish citizenship.<sup>75</sup> The

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<sup>74</sup> The Joint Committee on Human Rights consists of members of the Human Rights Commissions of Ireland and Northern Ireland.

<sup>75</sup> Michael Farrell, Evidence to the Committee, 27 April 2017

Committee heard that this could be achieved by changing Irish legislation and the Committee also observes that this may be a possible solution for EU citizens in Northern Ireland should their positions be affected post-Brexit.

## **Social Rights**

As part of his 2016 State of the Union address, the President of the European Commission, Mr Jean-Claude Juncker, proposed a Pillar of Social Rights. The subsequent documents from the European Commission set out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems.<sup>76</sup>

The Committee heard from the General Secretary of the Irish Congress of Trade Unions, Ms Patricia King, that its position on social rights in the EU context is clear. It is an EU that is “vital to the living standards, wages, public services and labour rights of workers and their families across the island”.<sup>77</sup> However, the need for the EU to change was also highlighted, as was the growing dissatisfaction with its policy direction in recent years. While the Future of the EU is discussed further in Chapter 7, the Committee believes the issue of social rights, while linked to the issue of citizens’ rights, is important for continuing the benefits of EU membership and that Ireland should focus on the Pillar of Social Rights as it develops.

The Committee heard that despite directives in areas such as equality that enhanced the rights of citizens, during the last 10 years new legislation was more focused on the impact on citizens during the recent financial crisis. This was particularly highlighted in the context of citizens of debtor countries within the EU which endured periods of austerity in order to solve economic and financial problems and the Committee heard that now, as a result, the European Union operating as an economic entity without any reference to citizens is no longer an option.<sup>78</sup>

Related to Brexit, two key issues were identified:

- 1) Increased costs from tariffs post-Brexit could result in pressure from companies to reduce terms and conditions of employment or face closure.
- 2) Companies may relocate entirely to the UK in order to avoid tariffs and customs.

A response suggested to the Committee involves a more robust civil dialogue between the Irish and UK Governments and the Northern Irish Executive, as well as at civil society level. The Committee heard that this could be enabled by adapting existing mechanisms established under the Good Friday Agreement.

During its engagement on social rights, the Committee heard of the differences that already exist between the UK and Ireland in relation to employment legislation:

“ We have spoken with the TUC in the UK, including its branches in Scotland and Wales. They hear and feel our pain but they are already suffering. They would like to have some of the employment

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<sup>76</sup> Establishing a European Pillar of Social Rights, Communication from the European Commission, COM(2017)250, 26 April 2017, p.2.

<sup>77</sup> Patricia King, Irish Congress of Trade Unions, Evidence to the Committee, 8 June 2017

<sup>78</sup> Ibid.

rights legislation we have, such as that relating to joint labour committees, even if all sectors do not involve themselves in it. They would like to have sectoral employment orders. We have far worse collective bargaining legislation here. Trade unions have no rights here; there is a right to join a union but it ends there.”<sup>79</sup>

A possible objective for the EU27 is a Social Semester, which would be similar to the European Semester.<sup>80</sup> This process would involve the annual assessment of Member States’ progress initially by the European Commission, and then considered by the Council of the European Union, with the aim of suggesting recommendations for improvement. It was suggested that the EU’s social principles should be enunciated as much as economic principles, the EU project promoted accordingly. The Committee believes such a model may serve to enhance the enthusiasm in Member States for the EU project.

In addition, the Committee heard that the EU has recommended that Ireland enhances social infrastructure, including social housing and quality childcare.<sup>81</sup> A possible solution, particularly in the context of any negative economic consequences from Brexit, is for job activation programmes to act as a real stepping stone. This should include further training and educational supports if required.<sup>82</sup>

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<sup>79</sup> Patricia King, Irish Congress of Trade Unions, Evidence to the Committee, 8 June 2017

<sup>80</sup> The European Semester process examines Member States’ economic policies and makes recommendations.

<sup>81</sup> Bríd O’Brien, Irish National Organisation for the Unemployed, Evidence to the Committee, 8 June 2017.

<sup>82</sup> Ibid.

## 6. Agriculture

Issues related to agriculture, farming and the food sector have already been thoroughly considered by the Joint Committee on Agriculture, Food and the Marine in their February 2017 Report *'Impact of the UK Referendum on Membership of the European Union on the Irish Agri-Food and Fisheries Sectors'*. But in order to consider any more recent thoughts and to consider the linkages with other policy areas, the Committee held a number of Sessions related to Agriculture.

The **importance of agriculture and agri-food businesses** to Ireland is well-known and as well as the sector's significant importance to the **rural economy**. It is clear that "Ireland is the EU economy that will be the most impacted by Brexit, and farming and agri-food will be the most impacted sector<sup>83</sup>".

The **UK is an important buyer** of much of Irish agricultural produce, both fresh and processed. Overall **40% of Irish agri-food exports go to the UK**: 50% of Irish beef, 33% of dairy products, 50 % of pigmeat products and 90% of mushrooms<sup>84</sup>.

For the UK, Ireland is an important supplier of food and the Committee heard that Ireland<sup>85</sup>:

- supplies 26.25% of the **beef** and **veal** consumed in the UK (nine times as much beef is sent to the UK from Ireland as to any other individual country);
- is largest supplier of **sheep** meat into the UK; and
- is an important supplier of dairy products.

Discussions around Brexit have brought into sharp focus the level and depth of the **integration of the supply chains** of many agricultural products, especially in border regions with products in different stages of development going across the border in both directions to be processed, packaged or further developed. Often the same product travels over the border and back before finally being sold.

Because of the importance of the sector to Ireland and the interconnectedness of the markets, the Committee heard, quite starkly that "Brexit could represent one of the largest competitiveness shocks that the Irish agri-food industry has faced<sup>86</sup>". The **challenges** for the agri-food and farming sector were identified as:

- the potential loss of access to the UK market for Irish products without facing very high tariff rates;
- ongoing currency volatility;
- massive disruption to the all-island supply chains;
- potential customs difficulties using the UK as a land-bridge to access other EU markets;
- potential future differences in standards or product rules (like packaging and labelling for example);
- knock-on impacts on farms and farming incomes; and
- a potential impact on CAP funding.

<sup>83</sup> IFA President, Mr Joe Healy, IFA Opening Statement, 18 May 2017

<sup>84</sup> Figures taken from IFA President, Mr Joe Healy, Opening Statement, 18 May 2017

<sup>85</sup> Figures taken from the Macra na Feirme Opening Statement, 18 May 2017

<sup>86</sup> Opening Statement by Professor Gerry Boyle, Teagasc, 18 May 2017

The Committee explored with a number of the stakeholders the impact of potential tariff barriers (should there not be a Free Trade Agreement with the UK), as the tariff rates that would apply under WTO Rules for the various food products are amongst the highest tariffs possible and were described to the Committee as “prohibitive and at plausible measures of the responsiveness of trade to prices (what economists call price elasticities) [to] destroy this trade flow”<sup>87</sup>.

The Committee heard of the particular concerns of the **thoroughbred** and **horse-racing** industries. Both industries are well-developed, highly successful and strongly interconnected, acting in many ways like single industries<sup>88</sup>, with no replacement market possible for the British market.

Many of the potential solutions put forward by stakeholders, were clearly developed to mitigate the potential impact of Brexit changes and to maintain the status quo or the closest possible relationship. More than any other sector that the Committee heard about, the impact on agriculture will depend on the nature of the final negotiated agreement and in particular whether the UK remains within the Customs Union and if a Free Trade Agreement (which includes agricultural products) is agreed between the EU and the UK.

Potential Solutions
<p><b>Customs Union/Single Market</b></p> <ul style="list-style-type: none"> <li>- The Government should advocate strongly for the UK to re-consider its original position and consider remaining a member of the Single Market and/or Customs Union.</li> <li>- Should the UK leave the Single Market and/or Customs Union, exploration of ways in which Northern Ireland could remain in the Customs Union completely, or solely for agricultural products is required.</li> </ul>
<p><b>Free Trade Agreement</b></p> <ul style="list-style-type: none"> <li>- Ireland should advocate for the EU to conclude a Free Trade Agreement between the EU and the UK, which includes an agricultural chapter in advance of the UK’s withdrawal. In the event that this is possible because of lack of time, transitional periods should be supported.</li> <li>- The Agreement should address the conditions and standards under which the UK imports food products from outside of the EU that do not meet similar high health and safety standards.</li> </ul>
<p><b>Transitional Arrangements</b></p> <ul style="list-style-type: none"> <li>- Consideration should be given to transitional arrangements. Negotiations to develop Free Trade Agreements are often long, detailed processes that cannot be rushed.</li> </ul>
<p><b>State Aids</b></p> <ul style="list-style-type: none"> <li>- Relaxation of state aids on farming and agri-food industry is required.</li> </ul>
<p><b>Legislative Equivalence</b></p> <ul style="list-style-type: none"> <li>- Efforts should be made to ensure that legislative equivalence is secured.</li> </ul>
<p><b>Competitiveness</b></p> <ul style="list-style-type: none"> <li>- Efforts to address cost competitiveness should be continued</li> </ul>
<p><b>Market Supports</b></p>

<sup>87</sup> Opening Statement by Professor Gerry Boyle, Teagasc

<sup>88</sup> For example, breeding has always run on an all-island basis, with foals being given an IRE suffix, including in Northern Ireland.

- In the event of important (Euro- Sterling) currency fluctuation, direct market supports should be considered.
- Employment subsidy schemes and enterprise stabilisation measures should be re-introduced.

#### **Support for Innovation, Market Diversification and increased capacity**

- The Government should consider increasing supports for the development of new products, addition of new attributes to existing products, and increasing knowledge transfer.
- Companies should continue to be assisted and supported in entering new markets as well as increasing their share of existing markets.
- Consideration given to increasing the budget of Bord Bia and other relevant bodies to support companies.
- The Irish Government should continue to review and improve supports aimed at increasing the capacity, efficiency and productivity of the sector.

#### **EU Budget**

- A strong CAP within the EU Budget after 2020 is required.

#### **Horse racing and thoroughbred**

- Maintain the Tripartite Agreement.

### **Customs Union/Single Market**

While the Committee respects the stated policy of the UK Government to leave the EU, the Single Market and the Customs Union, as the pragmatic implications of that decision become clearer, the Irish Government and EU partners should advocate for the UK to re-consider and remain within the Single Market and/or the Customs Union.

### **Free Trade Agreement**

Should the UK, in the final agreement, withdraw from the Single Market and the Customs Union, a Comprehensive Free Trade Agreement that includes food and agricultural products will be needed. Tariff rates on food and agricultural products need to be at 0% or at minimal rates.

Any Free Trade Agreement should include a commitment to match EU health and safety standards for UK products, and for products coming into the UK.

### **Transitional Arrangements**

Negotiations to develop Free Trade Agreements are often long, detailed processes that cannot be rushed. In the event that the EU-UK negotiators believe that a full and comprehensive free trade agreement cannot be reached within the timeframe of the UK's withdrawal, transitional arrangements should be agreed.

### **State Aids**

Relaxation of state aids on farming and agri-food industry. Consideration of re-classifying the thoroughbred sector as 'agriculture' for the purposes of state aid rules.

## **Legislative Equivalence**

Efforts should be made to ensure that legislative equivalence is secured at the moment of Brexit and beyond in areas of animal health and safety, zootechnical and equine identification certification and temporary admission of animals.

Particular attention needs to be given to those with farms with land that straddles the border. An all-Island approach to animal health issues has been successful and such cooperation needs to be continued and supported in the future.

## **Competitiveness**

There is a need to maintain a focus on cost competitiveness and the cost of doing business in Ireland, with a focus on the costs associated with energy, insurance, financing and legal costs.

## **Market Support**

The Agri-Food Industry and the farming community have already seen the immediate impact of strong currency fluctuations between the Euro and Sterling. In the event that markets are very unstable in advance, and immediately following, Brexit, the Government and the European Union should consider putting in place direct market supports for vulnerable sectors such as farmers, possibly through CAP Market Support.

During the financial crisis, an employment subsidy scheme was developed and enterprise stabilisation measures were applied. If the impact of Brexit is near the scale anticipated, these should both be re-introduced.

## **Support for Innovation and Market Diversification**

Irish Agricultural products can be complex and produced to the highest standards. In developing new products and new attributes to existing products, the Government should consider increasing supports to innovation and knowledge transfer.

Irish food companies need to continue to seek to diversify the markets in which they sell. The Committee heard that this was a long-term process which is complex, often reliant on:

- developing a keen understanding of the 'tastes' of different populations;
- guidance on market access; and
- promotion.

It may be necessary to increase the budgets of Bord Bia and other Agencies in order to support companies in exploring new markets.

Support for measures which can increase production capacity should be included in this increased support.



## **EU Budget**

As a large Member State, the UK contributes significantly to the EU Budget. The Common Agricultural Programme (CAP) is due to be reviewed for the period after 2020. It will be essential that a strong CAP is supported in the EU Budget after 2020.

## **Horse racing and thoroughbreds**

A tripartite agreement exists between the UK, Ireland and France for the free movement of thoroughbred horses. The Agreement predates EU law in the area and an assessment needs to be completed by the relevant authorities to ensure that it is fit for purpose after the UK withdraws from the EU. In the event that the UK does not join the Customs Union, clear and separate protocols for the movement of live animals, especially thoroughbred horses moving through customs checks need to be agreed. An additional fast-track for vehicles carrying sensitive thoroughbreds through customs checks should be considered. The Committee heard that consideration should be given to the creation of a new type of visa between the UK and Ireland for 'professional sportsperson' to permit jockeys to move easily through both jurisdictions.

## 7. The Future of the EU

This year the EU celebrated 60 years since its foundation, 44 of which Ireland has been a Member. The Committee heard that the European Union has been the “**world’s most successful peace process**”<sup>89</sup>, **with concrete financial advantages for Members**, and success in creating a Single Market, in creating uniform standards, in recognising shared values, in improving working conditions and rights for women, in promoting a solidarity that manifested itself by financially supporting regions that needed assistance to catch-up with average standards as well as many more benefits.

**Irish citizens continue to strongly endorse Ireland’s membership of the European Union.** The recent Red C opinion poll commissioned for European Movement Ireland<sup>90</sup> shows that 88% of all adults who were asked, agreed that ‘Ireland should remain a part of the EU’ and 87% agreed that ‘taking everything into consideration, Ireland has on balance, benefited from being a member of the EU’. The most recent Eurobarometer on Public Opinion in the European Union<sup>91</sup> asked citizens what kind of image they have of the EU<sup>92</sup>. Ireland was one of seven Member States where a positive image was predominant with 55% of those who answered believing that the EU was positive, 31% were neutral and only 13% had a negative image.

The Committee heard that Ireland is, and should be, **fully committed to its membership of the EU**; that Ireland is settled as a fully active Member State and that the EU is a central part of how Ireland interacts with the global stage and how Ireland has contributed to the world. The EU-level can be a more effective way of addressing some of the complex, cross-cutting challenges that present themselves in the modern world and Ireland recognises this.

In the immediate aftermath of the British referendum to leave the EU, many expressed a fear that it was the beginning of the EU slowly disintegrating. That potential seems to have waned more recently. Indeed both in Member States that have very recently had general elections, and others, **EU leaders are now defending the EU with greater passion.** The UK leaving the EU will of course change the Union, and most witnesses to the Committee who spoke on this issue, believed that the EU would be weakened by the departure of the UK. But, the Committee also heard that this is the time for Ireland to work “to make the EU more effective, and more visibly democratic.”<sup>93</sup>

Like all organisations and bodies, the EU needs to ensure that it has a shared vision for the future, it needs to renew itself and for Member States to re-commit to their active engagement in determining its future direction. In order to do that, the EU has begun a process to support an open debate across the EU to create a strong EU with a post-Brexit identity. **The process began with the publication of a White Paper on the Future of the EU**<sup>94</sup>, which is being followed by Reflection Papers on the Social Dimension of Europe<sup>95</sup>, Harnessing Globalisation<sup>96</sup>, Deepening of the Economic and

<sup>89</sup> Eamon Gilmore, former Tanaiste and Minister for Foreign Affairs, Evidence to the Committee, 11 May 2017

<sup>90</sup> *Ireland & the EU Poll 2017*, EM Ireland/Red C Pol, 9 May 2017.

<sup>91</sup> *Public opinion in the European Union*, Standard Eurobarometer, Autumn 2016

<sup>92</sup> Exact question asked was: “In general, does the EU conjure up for you a very positive, fairly positive, neutral, fairly negative or very negative image?”

<sup>93</sup> John Bruton, former Taoiseach, Evidence to the Committee, 27 April 2017

<sup>94</sup> *The White Paper on the Future of Europe* can be found at: [https://ec.europa.eu/commission/sites/beta-political/files/white\\_paper\\_on\\_the\\_future\\_of\\_europe\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf)

<sup>95</sup> *Reflection Paper on the Social Dimension of Europe* can be found at:

Monetary Union<sup>97</sup>, the Future of European Defence<sup>98</sup>, and the future of EU finances<sup>99</sup>. The process of engagement is due to take place across all Member States and take a number of months, with significant milestones in December 2017 and at the European Parliament General Elections in June 2019. The White Paper itself is reflective and in order to spark discussion, presents a number of different scenarios and ultimately asks “what future do we want for ourselves, for our children and for our Union?”

While the majority of Irish citizens support continued membership and strong engagement with the EU, the Committee also heard an **alternative view: that most of the problems “resulting from Brexit would be avoided if Ireland left the European Union at or around the same time as the UK<sup>100</sup>”**. The reasons given for this position were that leaving the EU would save the State money, give Ireland back control of valuable sea fisheries, give Ireland control of Irish law-making, give Ireland back a national currency, avoid implementing a new partition of Ireland and make eventual Irish reunification more difficult<sup>101</sup>.

### Potential Solutions

#### Future of Europe debate

- That all stakeholders in Ireland take full part in the ‘Future of Europe’ process.
- That the Government consider holding an All-Island Civic Dialogue on the Future of Europe as part of the engagement process following the White Paper.
- While Ireland should not advocate for any Treaty Reform, the possibility of Reform, even if it includes Treaty amendment, should remain possible.

#### Citizens involvement

- That the Government consider holding an All-Island Civic Dialogue on the Future of Europe every year so that citizens and stakeholders can increase their ongoing involvement and participation in Ireland’s EU involvement.

#### Prepare for a post-Brexit EU

- That the Government, through the Department of Foreign Affairs and Trade, continue to deepen existing alliances with like-minded Member States.
- The Houses of the Oireachtas should increase the level of engagement between national parliaments of Members States, initially focused on parliaments from like-minded Member States
- Continue to use Embassy network effectively

[https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe_en.pdf)  
Reflection Paper on the Future of European Defence

[https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence\\_en\\_1.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence_en_1.pdf)

<sup>96</sup> *The Reflection Paper on Harnessing Globalisation* can be found at:

[https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf)

<sup>97</sup> *The Reflection Paper on the deepening of the Economic and Monetary Union* can be found at:

[https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu\\_en\\_2.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en_2.pdf)

<sup>98</sup> *The Reflection Paper on the Future of European Defence* can be found at:

[https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence\\_en\\_1.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence_en_1.pdf)

<sup>99</sup> To be published at the end of June 2017

<sup>100</sup> Anthony Coughlan, Evidence to the Committee, 7 June 2017

<sup>101</sup> Ibid.

## Future of Europe Debate

The Committee agrees with a number of the speakers on **the positive and profound role that the EU has played in Ireland and in seeing Ireland's future as being a Member State of the EU**. But no organisation can live solely on past glories and cannot rely on looking backwards. The Committee welcomed the structured approach of the White Paper Future of Europe debate as an opportunity to ensure that the EU is 'future-proofed' and is relevant now and into the future. While the Committee shared the opinion of many Irish citizens that on balance the EU has been positive, the Committee believes that there have been a number of moments and issues where the EU's approach needed to be more effective and creative in seeking solutions.

The Committee believes that it is now an appropriate time to consider, in some depth, **what kind of EU Ireland and its citizens want to be part of**. While the debate and engagement considerations should be led by the European Commission, European Parliament and Governments of the Member States, this process needs to be open, frank and involve all stakeholders. The process needs to consider, in some substance, how the EU can best address the substantial, complex crises that are there now, that can predictably be seen to occur in the future and be capable of responding to those challenges which cannot be predicted at the moment. The EU that Ireland renews its commitment to needs to be relevant now and into the future, capable of being adaptive and planning for the very long-term. There are so many stakeholders and organisations that operate on a European basis, that interact with similar organisations abroad or that may believe that the EU is too distant and not relevant to their work. All of them have something to add and an important contribution to make to the debate.

The Committee heard about, and some Members of the Committee participated in, some of recently held **All-Island Civic Dialogues**. The Committee heard that they were a positive structure and way of supporting civic engagement and believes that it would be useful to hold an additional meeting to consider the Future of the EU.

It is too early to predict and pre-empt what will emerge from the Future of Europe debate, and what priorities Irish citizens will see for the future. The Committee heard that it is possible that some types of change and reform could necessitate amending the Treaties. While the Committee does not believe that this should be encouraged or sought; **if Treaty change is necessary, it should not be avoided**.

## Citizens Involvement

The Committee believes that the EU needs to be more visibly democratic, deliver for citizens and be seen to deliver for citizens. While Irish politicians, businesses, civil servants, and larger representative bodies are often comfortable with how the EU works, that level of confidence is not shared by many citizens. While there are pathways for citizens to engage with the EU, they are often not known or not understood and the Committee is of the opinion that there is a perception that the EU doesn't always listen to citizens and the depth of their concerns and when it does, it is not responsive. The EU of the future needs to be brought closer to citizens and needs to have real and responsive ways of engagement. The Committee believes that an All-Island Civic Dialogue should be held not just this year (as part of the engagement process), but on an annual basis, giving citizens and civic organisations an on-going opportunity to input in how Ireland engages with the EU.

Engagement on EU matters, whether specific or general, should not solely be part of campaigns (for example around Treaty Referenda), but there should be increased structural engagement with the public regularly.

### **Prepare for a post-Brexit EU**

The UK leaving will change the EU. The EU would need to be considering its future pathways in any event, but the withdrawal of the UK will itself change the nature of the EU. At the same time the EU will be considering its long-term future, pursuing further integration strategies and the ordinary work of the EU in updating existing legislation and developing support programmes will continue. All of this will be happening *alongside* the withdrawal negotiations.

Brexit can be considered a catalyst to strengthen strategies already developed, including:

- To deepen alliances with other Members States and explore any new synergies.
- To play a full, active role in the EU's development and work with partners on priority issues;  
and
- To engage on all issues of concern to other Member States, even if Ireland is less impacted.

The Houses of the Oireachtas itself can play a role in continuing to develop and strengthen relationships and links with other national parliaments.

The Committee believes that it is important that Ireland continues to use its Embassy network effectively. The Committee heard from a number of witnesses of the strength of the efforts made by Irish diplomats in engaging with European partners right across the European Union and support that work for the duration of the Brexit negotiations and beyond.

## 8. Transport

Brexit poses a number of challenges in the transportation sector affecting aviation, cross-border public transport and travel to and transit through the United Kingdom to the rest of the European Union. These issues also overlap to a significant level with matters pertaining to the CTA, Northern Ireland, trade and the future relationship of the UK with the EU.

This section is confined to the practical elements of transportation networks in the post-Brexit context, including:

- the operation of cross-border services;
- air routes and freight transportation; and
- infrastructural development.

### The Transport Sector in Numbers<sup>102</sup>

#### Air Travel

- 100,000 aircraft and 11 million passengers move between Ireland and the United Kingdom per annum.
- The London-Dublin air route is the busiest air route in Europe and the second-busiest in the world.
- The aviation sector is worth €4.1 billion to Irish GDP.

#### Commuting

- The CSO states that 14,751 people cross the border for work or study.<sup>103</sup>

#### Freight

- Seaborne freight accounts for 84% of Ireland's trade in volume and 62% in value.
- Dublin Port handles 46% of all seaborne trade in volume. Approximately 60% of trade at Dublin Port involves the UK.

#### Travel to / from UK

- There were over 3.5 million trips from the UK to Ireland in 2015.
- In 2015, there were over 1.9 million trips from Ireland to the UK and 336,000 trips to Northern Ireland.
- Visitors to Ireland from the UK spent an average of €274, while visitors from Ireland to the UK spent an average of €490.

During the first phase of the All-Island Civic Dialogue, the Department of Transport, Tourism and Sport held a session on All-Island Transport and Logistics. This consisted of over 110 participants from North and South representing Freight, Maritime, Aviation and Public Transport sectors, as well as representatives from Business Associations, Local Authorities and Government Departments.<sup>104</sup>

A number of challenges and opportunities were highlighted in the course of this dialogue. These included general issues such as currency exposure, access to labour and the impact on regional

<sup>102</sup> Minister for Transport, Tourism and Sport, Shane Ross TD, Dáil Éireann, 11 April 2017

<sup>103</sup> Brexit in Numbers, Central Statistics Office, December 2016, available at <http://www.cso.ie/en/media/csoie/releasespublications/documents/statisticalpublications/Brexit.pdf>, accessed 6 June 2016.

<sup>104</sup> An overview of Brexit issues and concerns raised at the Dialogues, Department of Transport, Tourism and Sport, available at <http://www.dttas.ie/sites/default/files/publications/corporate/english/brexit-reports-all-island-sectoral-dialogues-transport-logistics-and-tourism-hospitality/reports-all-island-sectoral-dialogues-transport-logistics-and-tourism-hospitality.pdf>, accessed 6 June 2017.

development. Challenges already identified include the rapid increase in used vehicle imports from Northern Ireland while in haulage services, some Eastern European drivers based in Northern Ireland have already relocated home. There are possible opportunities in establishing direct routes with continental Europe, but significant investment may be required to adapt Irish ports. There is also an issue of pressure to complete current North-South and East-West projects as a result of Brexit.

At European level, a number of arrangements are in place to facilitate international public transport within the European Union. Bus services are governed by Regulation 1073/2009, which sets out the conditions for intra-EU cross-border bus services. For rail services, the principles governing the interoperability of rail networks are set out in Directive 2008/57/EC (as amended).<sup>105</sup> Directive 2012/34/EU sets out the single European railway area.<sup>106</sup> This is the basis in EU Law for operating cross-border transport networks and services.

Overall, the transport infrastructure may require considerable investment. This could include modifying Irish ports to deal with customs checks and greater volumes of travel to the post-Brexit EU, for example direct routes to France. At a European level, funding is concentrated on infrastructural development under the trans-European transport infrastructure policy (TEN-T), which focuses on nine core, competitive freight network corridors.<sup>107</sup> Ireland is covered by the North Sea Mediterranean corridor.

### **Northern Ireland – Specific Concerns**

Under present arrangements transport matters, other than navigation and civil aviation, are devolved to the Northern Ireland Executive. This means that services can be aligned for public transport between Ireland and Northern Ireland with the agreement of the Government and the Northern Ireland Executive.

The shape of border controls is a significant concern and may result in a severe impact on service times and reliability, as well as impacting those who rely on these transport services to commute and access other services. However, challenges particular to each sector will require individual solutions.

#### **Summary and Potential Solutions**

##### **Common Travel Area**

- A preferred solution is maintaining the Common Travel Area on the island of Ireland to the closest possible extent and avoiding a situation where passport checks have to be completed along the border.

##### **Rail Services**

- While the ideal solution on the issue of border controls is the continuance of the Common Travel Area, in the event of a hard Brexit, a method of passport checks causing minimal disruption to cross-border rail services should be pursued.
- Agreements establishing the Enterprise rail service between Dublin and Belfast are expected to be unaffected, but this should be monitored closely.

<sup>105</sup> Amended by Directives 2009/131/EC and 2011/18/EU.

<sup>106</sup> S.I. No 234 of 2015 gives effect to this Directive and designates Iarnród Éireann / Irish Rail as the Infrastructure Manager for the purposes of the Directive.

<sup>107</sup> Regulation(EU) No 913/2010

### **Bus Services**

- Any post-Brexit regulation should reflect, as close as possible, the provisions of Regulation 1073/2009. The Committee does not believe the Inter-Bus Agreement is a viable alternative, as it applies only to occasional passenger travel, rather than the regular bus services which constantly operate.<sup>108</sup>

### **Other Public Transport Issues**

- Legislation on both sides of the border will be required for cross-border taxi services.
- There is no expected impact on free travel either side of the border.

### **Aviation**

- Separate EU-UK and US-UK Open Skies Agreements will need to be agreed to replace the current EU-US Open Skies arrangements, to which the UK will no longer be a party.
- The Committee recommends that a new agreement is put in place before Spring 2018, so air routes for 2018 / 2019 are not adversely impacted.
- The reintroduction of duty free for passengers to the UK could be positive.
- There is a need for Ireland to deepen connectivity, in particular long-haul connectivity.

### **Ports and Freight**

- Significant investment may be required to adapt Irish ports to cater for higher volumes of freight and increase capacity for direct links to continental Europe.
- Allowing private concessions to operate Ireland's ports in order to obtain investment for further development without impacting on group debts of current operators should be explored.
- Adding projects that develop Irish ports to the trans-European transport policy (TEN-T) should be explored.

### **Bus Services**

Bus services crossing the border are likely to face significant challenges as a result of the UK exit from the European Union. For example, the Bus Éireann service from Dublin/Monaghan to Letterkenny is required to cross the border twice, at the River Blackwater near Aughnacloy and again at Strabane / Lifford.<sup>109</sup> The imposition of a hard border may result in significant delays at either point if a hard border and passport controls are introduced.

It is important that any post-Brexit regulation should reflect, as close as possible, the provisions of Regulation EC No 1073/2009, allowing for regular cross-border passenger services conducive to an all-island economy.<sup>110</sup> The Committee heard that the Interbus Agreement was a suitable alternative. However, as this applies to occasional travel, it may not be suitable for public transport routes that must cross Northern Ireland, such as the Dublin-Letterkenny route, nor would it be suitable for local services.

### **Rail Services**

The Committee also heard that Irish Rail and Translink cooperate in running the Enterprise rail service between Dublin and Belfast. This service also stops at Drogheda, Dundalk, Newry and

<sup>108</sup> Interbus Agreement, OJ L 321 of 26.11.2002

<sup>109</sup> Timetable for Dublin-Letterkenny Service, available at [www.buseireann.ie](http://www.buseireann.ie).

<sup>110</sup> Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, OJ L 300, 14.11.2009, p. 88–105



Portadown, with connecting services within both Ireland and Northern Ireland.<sup>111</sup> It operates eight services in each direction per day and five services in each direction per day on Sundays. It is a partnership between Irish Rail and Translink and the Committee heard that it can continue to operate post-Brexit as the agreements establishing it are expected to be unaffected. Notwithstanding this positive viewpoint, two issues were identified by the Committee which could impact on services, i.e. border controls and connecting services.

While there is one land border between the EU and the UK, there are two rail borders, the Dublin-Belfast line and the Eurostar through the Channel Tunnel. With respect to the Channel Tunnel, border controls are applied in advance of boarding. This is due to the United Kingdom's non-participation in the Schengen Area and likewise, the non-participation of Belgium and France in the Common Travel Area. Accordingly, the UK, France and Belgium agreed to a tripartite arrangement providing for border controls to take place before passengers boarded services between these countries.<sup>112</sup>

The ideal solution on the issue of border controls is the continuance of the Common Travel Area, with no passport checks required for passengers. However, a procedure for performing customs checks at stations prior to boarding may have to be pursued, as is the case with the Eurostar service between London and continental Europe. In an Irish context, passengers on other transport services like air and sea which run directly from Ireland to continental Europe are already subject to border controls due to Irish non-participation in the Schengen Area.

During hearings, the Committee was told of the possible scenarios that may arise if a hard border is imposed. For example, border controls could take the form of leaving the train and going through a passport office at the frontier, as is the case between Bulgaria and Turkey. In another example, passport controls could be conducted when the train is moving, as is the case for the frontier between Finland and Russia. It seems the most viable option for train services is to complete passport checks while the train is moving or to impose border controls similar to airports at the relevant train stations prior to boarding. This would require significant expenditure to implement and significant dedication of resources to immigration and law enforcement functions.<sup>113</sup>

An additional complication is the number of railway stations between Belfast and Dublin. There are 36 such stations and the Committee heard that there is a concern that customers on other services, such as the DART, will be able to access the Enterprise simply by getting off at the same platform it calls at.<sup>114</sup> Adapting rail services to prevent this may involve infrastructural changes making it more difficult for those using local services to disembark and board the Enterprise service at the platform. Of course, the maintenance of the Common Travel Area would alleviate this as a possible issue.

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<sup>111</sup> Timetable for Enterprise Service, available at <http://www.translink.co.uk/Services/NI-Railways/Routes--Timetables/All-Timetables/>

<sup>112</sup> Agreement concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link with Protocol, Brussels, 15 December 1993, available at <http://treaties.fco.gov.uk/docs/pdf/1998/TS0023.pdf>, accessed 6 June 2017.

<sup>113</sup> Barry Kenny, Irish Rail, Evidence to the Committee, 11 May 2017.

<sup>114</sup> Ibid. Arrangements between the UK, France and Belgium concerning the UK's rail border with the Schengen Area allow for border checks to be carried out at intermittent stations.

## Taxi Services and Free Travel

Regulatory divergence between Ireland and Northern Ireland may impact the taxi service directly, leading to situations whereby a taxi driver licensed to operate in Ireland, may not be able to cross the border legally while operating a service. Following Brexit, it will be necessary for this issue to be resolved with primary legislation on both sides of the border, permitting taxi operators to take passengers from one side of the border to the other.<sup>115</sup> It is suggested that this is prioritised once the terms of the final withdrawal agreement and the agreement establishing a new EU-UK relationship are known.

The Committee heard from the National Transport Authority **that it does not believe the free travel scheme will be impacted by Brexit.**<sup>116</sup>

Ms Anne Graham, representing the National Transport Authority, described the all-island free travel scheme to the Committee:

“in April 2007 the all-Ireland free travel scheme for seniors resident in all parts of the island was introduced. The scheme enables seniors, 66 and over, resident in the republic to travel free of charge on all bus and rail services in Northern Ireland. Likewise, seniors, 65 and over, in the North can travel free of charge on bus, rail, air and ferry services participating in the free travel scheme in this State. The Northern Ireland authorities require that Department of Social Protection (DSP) customers wishing to avail of free travel in Northern Ireland should do so using a similar smartpass as used by their Northern counterparts.”

The Committee also heard that the arrangements are not expected to be impacted by Brexit. This is reassuring and the Committee noted the advice provided that those availing of free travel across the border should use a similar smart-pass to their Northern Irish counterparts.

## Aviation

The aviation sector is worth approximately €4 billion to the Irish economy.<sup>117</sup> The Committee heard that aviation is likely to be considered similar to agriculture, pharmaceuticals and automobiles, which are considered sectors that could still function in the absence of a final agreement, but this is not the case as airlines operating between the EU/US and the UK **cannot operate in the absence of a law or agreement.**

Civil aviation poses one of the most significant challenges identified by the Committee, with a high level of concern regarding the need to replace the Open Skies Agreement between the EU and the United States.<sup>118</sup> The Open Skies Agreement allows for airlines based in the European Union to operate transatlantic flights to the United States and vice versa. While it allows American airlines to operate intra-EU flights, it does not permit the same from EU airlines in the United States. Similar,

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<sup>115</sup> Anne Graham, National Transport Authority, Evidence to the Committee, 11 May 2017

<sup>116</sup> Ibid.

<sup>117</sup> *Ireland and the negotiations on the United Kingdom's withdrawal from the European Union*, Government Publication, 2 May 2017 at p.38.

<sup>118</sup> Official Journal, L 134/4, 25.05.2007

airline slots are allocated based on EU legislation.<sup>119</sup> There is a concern that a delay in agreeing new EU-UK-US arrangements will significantly impact the allocation of new slots, particularly for 2018-2019 as the UK is due to leave the EU in March 2019, and this creates a high level of uncertainty.

The Committee heard that following Brexit, a new Open Skies Agreement would have to be put in place between the USA and the UK, with a separate agreement between the UK and the EU. The Committee heard that the text used for the 121 open skies arrangements operating in the American context was similar.<sup>120</sup> These replacement agreements will be necessary to ensure that civil aviation continues undisrupted at the moment of Brexit and under similar arrangements to the present agreement.

The Committee heard that there may be some small positive developments following Brexit, for example the reintroduction of duty free for travellers between the UK and EU.<sup>121</sup> The need to continue to develop connectivity, especially long-haul connectivity was highlighted to the Committee, in particular the importance of completing projects such as the northern runway as soon as possible.<sup>122</sup>

### **Ports and Freight**

Navigation and merchant shipping remains a reserved competence of the UK Government, so cannot be determined in conjunction with Northern Ireland.<sup>123</sup> As freight arrangements are related to trade, negotiations will be between the United Kingdom and the European Union, so there is little scope for a bilateral agreement between Dublin and Belfast. There are a number of possible solutions to the impacts on the UK land bridge for freight travelling to continental Europe, relating to both air and sea travel, particularly in the context of goods and services.

Proposals to address this are addressed in Chapter 2, but there are some issues that relate more specifically to transport and the practical and infrastructural issues pertaining to Ireland's seaports, many of which account for roll-on, roll-off (RORO) services. The All-Island Civic Dialogue highlighted that a shift to load on, load off (LOLO) may result in a decreased demand for road haulage services, and there are possible opportunities in new direct shipping routes between Ireland and continental Europe, as well as direct air freight routes.<sup>124</sup> It is not clear if these are commercially viable and, in any event, while investment for increased traffic directly to continental Europe is needed, the use of the land-bridge is considered fundamental to Ireland's trading model in goods. Solutions need to be found for continued passage through the UK of goods meant for the EU market. The Committee heard that maintaining seamless transport links to the UK, including the land-bridge, and a seamless

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<sup>119</sup> Council Regulation (EEC) No 95/93 (as amended).

<sup>120</sup> Seán Kennedy, Airlines for America, Evidence to the Committee, 11 May 2017

<sup>121</sup> Kevin Toland, Dublin Airport Authority, Evidence to the Committee, 7 June 2017.

<sup>122</sup> Ibid.

<sup>123</sup> Northern Ireland Act 1998 (United Kingdom), Schedule 3

<sup>124</sup> An overview of Brexit issues and concerns raised at the Dialogues, Department of Transport, Tourism and Sport, available at <http://www.dttas.ie/sites/default/files/publications/corporate/english/brexit-reports-all-island-sectoral-dialogues-transport-logistics-and-tourism-hospitality/reports-all-island-sectoral-dialogues-transport-logistics-and-tourism-hospitality.pdf>, accessed 6 June 2017.

transition to new arrangements, including clarity on the future EU-UK relationship and avoiding a cliff-edge as a priority.<sup>125</sup>

Following Brexit, additional infrastructure and capital expenditure will likely be required to adapt Irish ports to deal with customs checks and cater for larger volumes of freight, as well as accounting for changes in ferry patterns to allow for more frequent ferry travel to the continent. For example, Irish Rail highlighted to the Committee that it (Irish Rail) is the port authority for Rosslare Europort and suggested that investment vehicles could be put in place to allow for additional development that does not impact on the debt levels of Irish semi-state companies that own the ports.<sup>126</sup> Similarly, the inclusion of Irish ports in the trans-European transport policy (TEN-T) may allow for additional infrastructural funding for the necessary modifications to Irish ports.

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<sup>125</sup> Aidan Flynn, Freight Transport Association, Evidence to the Committee, 7 June 2017

<sup>126</sup> Barry Kenny, Irish Rail, Evidence to the Committee, 11 May 2017

## 9. Energy

The production of energy, while not one of the primary issues discussed since the UK referendum, is an issue that the Committee considers to be extremely important. Ireland's energy needs are particularly dependent on the UK to maintain full security of supply through interconnection. At the same time, Northern Ireland has a particular reliance on Ireland for its energy needs and the establishment of the Single Electricity Market has significantly aided cooperation across the island.

In its negotiating document, the Government has highlighted this importance even further:

“Ireland's energy interconnections to the EU via the UK and heavy reliance on the UK as a source of energy imports raises the possibility of Brexit posing security of supply challenges. Brexit could pose a potential threat to the functioning of the all-island Single Electricity Market, which enables Ireland and Northern Ireland to maximise market efficiencies and ensures security of electricity supply at an affordable cost for consumers.”

Energy was also raised in the all-island sectoral dialogues, with a number of key themes emerging:

### All-Island Sectoral Dialogue - Themes<sup>127</sup>

- Risk to the security of energy supply; the negative impact of uncertainty on energy investment decisions; fear of tariffs; and concern over potential divergence of energy and climate policy between the UK and Ireland.
- Importance of investment to reduce reliance on gas and oil and the need to keep energy high on the agenda in the negotiations.
- De-carbonisation and a drive towards energy independence were suggested as potential mitigation strategies.
- Significant concern on the risks to the All-Island Single Electricity Market and there is a need to better communicate its importance to consumers. Horizon 2020 funding important for North/South cooperation on research into renewable energy.
- A number of potential opportunities for Ireland were considered including; exporting clean energy to the U K, becoming more self-sufficient in energy, and as a leader in innovation and research.

The Minister for Communications, Climate Action and Environment, Mr Denis Naughton TD, further underlined these concerns, stating that:

“I think it is fair to say that the energy relationship Ireland has with the UK is unique when compared to other European countries and other sectors. Although other European countries have significant energy relationships with the UK, no country has the level of reliance that Ireland has. Furthermore, when I look across the other sectors of the Irish economy, I also view energy as unique. Many sectors of the Irish economy have

<sup>127</sup> *All-Island Civic Dialogue: A Compendium*, November 2016 to February 2017

high levels of trade with the UK. However, the energy sector has one of the highest levels of interdependence with the UK.”<sup>128</sup>

The statistics relating to Ireland’s energy sector further underline the importance of cooperation between the UK and Ireland.

#### The Energy Sector in Numbers

- Ireland has increased its production of renewable energy from 5% in 1990 to 44% in 2014.
- As part of the increase in renewable sources, wind power has increased from under 1% of total primary energy production in 1990 to 22% in 2014.
- By contrast, natural gas as a proportion of total energy production has fallen from 54% in 1990 to 6% in 2014.
- For the natural and manufactured gas commodity group in 2016, imports were valued at €719.8 million, while exports were valued at €13.3 million.<sup>129</sup>
- For the natural and manufactured gas commodity group in 2016, imports of electric current were valued at €14.2 million, while exports were valued at €50 million.<sup>130</sup>

These statistics firstly highlight the significant growth in renewable sources of energy, but also highlight the importance of imports, particularly in the gas sector. There has been a significant drive to decarbonise the Irish energy market, with more emphasis on fuels such as natural gas and renewable sources of energy over fossil fuels. The Sectoral Dialogue highlighted possible opportunities for the export of clean energy and self-sufficiency.

#### Challenges

The challenges identified for the energy sector pre and post-Brexit include:

- The future of the Single Electricity Market (SEM) and the Integrated Single Electricity Market (I-SEM)<sup>131</sup>;
- Security of Supply;
- The future of interconnection with the UK and possible interconnection with France;
- Prices and consumer impacts for both gas and electricity;
- Opportunities for Ireland, particularly in the renewable energy sector; and
- Obligations Ireland may have to meet as part of the Energy Union.

A number of the challenges discussed in previous chapters are relevant, most notably:

- Challenges regarding trade, infrastructure and particular issues concerning Northern Ireland;
- The potential post-Brexit regulatory divergence; and

<sup>128</sup> Denis Naughton TD, Minister for Communications, Climate Action and the Environment, to the Sectoral Dialogue on Energy, 6 February 2017, Roscommon.

<sup>129</sup> Central Statistics Office

<sup>130</sup> Ibid.

<sup>131</sup> The Integrated Single Electricity Market (I-SEM) refers to the linking of the Single Electricity Market to wider European markets.

- the geographic position of Ireland may necessitate direct interconnection with mainland Europe.<sup>132</sup> The Committee heard this is achievable through the Celtic Interconnector project (discussed below).

## Summary and Potential Solutions

### Single Electricity Market

- The maintenance of the SEM and the progression of the I-SEM are key components of the all-island economy.
- Guarantee the functionality of the I-SEM by ensuring adequate data protection rules are deemed to apply in the UK.

### Interconnectors

- The preferred solution is the facilitation of the seamless interconnection of energy between the EU and the UK as part of the negotiated agreement on the future EU-UK relationship.
- In the event of a hard Brexit, the most prominent solution post-Brexit is the completion of the Celtic Interconnector between Ireland and France, which would reduce Ireland's reliance on the UK. A transition period may be needed here to ensure the interconnector is completed.

### Gas

- Derogations under the European Gas Directive should continue to be available to Ireland post-Brexit.
- While the imposition of a tariff poses no financial risk to Gas Networks Ireland, it may increase the cost to the consumer and negatively impact the competitiveness of gas. A zero tariff at EU level should continue and be included in an EU-UK free trade agreement.

### Electricity

- The preferred solution is the maintenance of the SEM and the completion of the I-SEM.
- The free-flow of electricity through inter-connectors, particularly through the completion of the Celtic Interconnector, should be a priority.
- Investment in the Irish market is important and recommitting to Ireland's energy challenges, including new ways in which to address these challenges, should be explored.
- Due to the falling cost of technology, more opportunities exist for the offshore generation of wind energy.

### Security of Supply

- In the case of gas, a voluntary protocol exists between Gas Networks Ireland and National Grid (UK gas network operator) to address emergencies. This needs to be secured post-Brexit.
- On the issue of regulatory compliance, Ireland should request a derogation from EU energy legislation post-Brexit to maintain security of gas supply arrangements with the UK. However, if this is not possible, then the costs and benefits to consumers must be considered in any decisions to build new gas infrastructure.

## Single Electricity Market

In relation to the electricity grid, the Committee heard that EirGrid is a fully integrated business, owning its Northern Irish equivalent, SONI. The regulation of the electricity grid is operated

<sup>132</sup> Prof Alan Barrett, Director, ESRI, Dáil Symposium on European Union Affairs, 22 September 2016

cooperatively between the Irish Commission for Energy Regulation and the Northern Irish utility regulator, UREGNI, through the Single Electricity Market Committee.<sup>133</sup>

The Committee heard that there is explicit recognition at both official and political level in Brussels, London and Dublin that the all-island SEM should not be impacted by Brexit and that it has operated very successfully for the past ten years. The Committee heard that the next step for the development of the SEM is the I-SEM, with a connection to the wider European internal energy market.

With particular regard to the SEM, the Committee is also aware of concerns regarding the processing of (citizens') data between an EU Member State and a non-EU Member State. In a scenario where there is no decision by the European Commission that the UK is considered to provide adequate protection for any data transferred to its jurisdiction, Ireland would be legally obliged to refuse to transfer the personal data to any data processor, e.g. an energy provider, distributor or regulator, in Northern Ireland.<sup>134</sup> Should this arise, the establishment of "safe harbour principles" similar to data protection provisions between the EU and the United States would need to be finalised.

### **Interconnectors**

There are currently a number of interconnectors for gas and electricity between Ireland and the United Kingdom. For gas, there are two interconnectors with Scotland that service Ireland, Northern Ireland and the Isle of Man. For electricity, there is an East-West interconnector between north Dublin and north Wales and a second proposed North-South interconnector between Ireland and Northern Ireland.<sup>135</sup> The island of Ireland is currently served with a second electricity interconnector at Moyle in Northern Ireland.

On the overall matter of interconnection, the Committee heard that Gas Infrastructure Europe took the view that energy should not be used in any negotiations between Europe and the UK. The Committee heard that there are precedents for interconnection between the EU and third countries, e.g. Poland (EU) and Ukraine / Belarus (non-EU), and that progression of these arrangements depends on how these third countries accept the rules of the internal energy market in Europe.<sup>136</sup>

An option for additional interconnection post-Brexit exists with France, through the construction of the proposed Celtic Interconnector across the Celtic Sea. The Committee heard that while this is likely to be feasible and grant funding made available for the overall project (depending on the criteria involved), the additional capacity offered by the Celtic Interconnector may not be accessible until 2022 at least.

When completed, the Celtic Interconnector is expected to have capacity to support electricity for 450,000 homes. The Committee is satisfied that this is a possible addition for securing Ireland's energy needs in the event of a hard Brexit. As it will not be available until 2022, a transition period

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<sup>133</sup> Details on the SEM Committee are available at <https://www.semcommittee.com/>, accessed 14 June 2017.

<sup>134</sup> *What does Brexit Mean for the Energy Sector in Ireland*, Higgins and Costello, IIEA Policy Brief, 2016 at p.3

<sup>135</sup> The North-South interconnector is currently subject to judicial review.

<sup>136</sup> A possible challenge here is the jurisdiction of the European Court of Justice, which the UK has pledged to end within its territories as part of the negotiations. This may require a form of dispute resolution or common enforcement for energy cooperation between the EU and the UK.



for Ireland may be necessary, in line with specific phasing-in arrangements for Ireland, as discussed in Chapter 2.

### **Gas Regulation and Prices**

The Committee heard that as the UK is transposing all existing EU legislation into UK legislation, then no immediate negative repercussions are anticipated at the moment of Brexit. However, regulatory divergence remains a concern after that, particularly for future legislation that the EU agrees but the UK decides not to implement, or that the UK devises and implements for itself. The Committee heard that under the third European gas directive, derogations are possible, but would need to be sought, and that cross-border requirements under EU gas legislation can already apply to interconnection points with third countries.

In relation to the cost of gas and the potential for increased costs, the Committee heard that the maximum tariff that could be applied to the imports of all gases is 0.7% compared to a zero tariff on gas imports that the EU currently applies. Should a tariff between 0% and 0.7% be applied then this may result in an increased cost for the consumer. Depending on tariffs applied to other fuels, the Committee heard that this could also adversely affect the competitiveness of gas. An increase in the cost of gas could impact attempts to decarbonise the Irish energy sector through the use of natural gas.<sup>137</sup> The continuance of a zero tariff by the EU for gas and the inclusion of this in a free trade agreement with the UK would be preferable.

### **Electricity Regulation and Prices**

The Committee heard from Mr Rodney Doyle, representing EirGrid, that any move from the current model would result in an increase to electricity prices both in Ireland and Northern Ireland as it would have a negative impact on competitiveness and security of supply. Maintaining the development of the I-SEM to ensure minimal prices and cost competitiveness is a solution the Government should explore. Achieving the Celtic Interconnector with France would have a further positive impact on prices and the Committee heard that in its absence, prices may be higher, as when operators engage in market coupling, there is the benefit of being linked to the lower price zone of their partners.

There should be a further drive to increase the amount of renewable energy generated in Ireland. The Committee heard of the potential for wave energy and wind energy, with a particular example being the potential for 4.5 GW of electricity to be generated by wind power off the east coast. In the case of wind energy, the Committee further heard that its main challenge is technology and that advances in technology for wind power production far outweigh the advances for wave energy. Finally, the Committee heard that the falling cost of technology may present a real opportunity for Ireland to produce energy offshore in the future.

### **Security of Supply**

In the case of gas, two issues arise, namely physical security of gas supply and regulatory compliance. The physical infrastructure connecting Ireland and the UK will not change post-Brexit in relation to supply. The Committee heard that Northern Ireland and the Isle of Man's dependence on

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<sup>137</sup> *What does Brexit Mean for the Energy Sector in Ireland*, Higgins and Costello, IIEA Policy Brief, 2016 at p.9

Gas Networks Ireland's infrastructure in turn emphasises the importance of continued cooperation between Ireland and the United Kingdom. A voluntary protocol exists between Gas Networks Ireland and National Grid (the UK network operator) for addressing gas emergencies and the Committee heard that there is no reason for these arrangements to change post-Brexit. They should therefore be protected.

In relation to regulatory compliance, the Committee heard that under Regulation (EU) 994/2010 and a revision due to be approved this year, Member States are required to ensure that in the event of disruption to the single largest piece of gas infrastructure supplying the Member State, the remaining infrastructure is able to satisfy total gas demand on a day of exceptionally high demand. This is known as the N-1 test.<sup>138</sup> Ireland and the UK are grouped for the purposes of this requirement, with the UK capacity able to satisfy Ireland's required gas demand.<sup>139</sup>

As the UK will no longer be a Member State, an accommodation for Ireland under EU legislation will be required, so Ireland can continue security of supply measures with the UK. Without this, Ireland would be obliged to build significant additional gas network infrastructure. The development of the Shannon (Liquefied Natural Gas) LNG terminal, as well as the use of renewable energy technologies in the gas industry, e.g. the harnessing of bio-gas in the agriculture and food sectors and supplying this gas to the gas network, could provide some part of the solution. However, these solutions are not viable in the short-term.

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<sup>138</sup> Regulation No 994/2010, Article 8, currently involves the Member State being able to supply gas in the event of extreme temperatures over a 7-day peak period, or any period of at least 30 days of exceptionally high gas demand, both under a statistical probability of occurring once in 20 years. This also applies during a period of at least 30 days in the event of disruption to the single largest gas infrastructure in the Member State under average winter conditions.

<sup>139</sup> Ireland's gas demand is only 6% of that of the UK, meaning that Ireland cannot satisfy this requirement on its own without building additional gas infrastructure.

## 10. Education, Research and the Irish Language

### Challenges

Brexit creates a number of challenges in these sectors, with key concerns including:

- The future of EU funded programmes involving the United Kingdom, including the Erasmus+ Programme and PEACE/INTERREG funding;
- Mobility of students between the UK and Ireland, particularly issues pertaining to freedom of movement and university fees;
- Mutual recognition of academic and professional qualifications and the future of cross-border apprenticeships;
- There is a need for Ireland to attract additional researchers, and there are related challenges regarding infrastructure to attract new talent as well as investment.
- The promotion and development of the Irish language in Northern Ireland.
- The Committee heard that the UK is considered a leader in scientific research and innovation

### Research, Education and Irish in Numbers

- As of February 2017, researchers in institutions and companies in Ireland have won a total of €386 million in EU funding from Horizon 2020.
- In 2016, 2,421 students from the UK were studying in Irish third level institutions.<sup>140</sup> In 2017, the number of UK students in Irish colleges has increased to 2,812.<sup>141</sup>
- It is estimated that by 2020, four million people will have participated in the Erasmus Programme.
- In the Erasmus Programme, the UK receives 30,183 students from other EU countries and 14,801 UK students attend universities in other EU countries.
- 4,200 people in Northern Ireland stated their main language is Irish in the 2011 Census of Northern Ireland, while 11% of respondents had some ability in Irish.<sup>142</sup>

### Summary and Potential Solutions

#### Research

- The maintenance of strong collaborations between Ireland and the UK in the area of scientific research.
- Ireland should put more emphasis on leading and winning research projects within the Horizon 2020 framework programme and future framework programmes.

#### Talent

- There is an opportunity to attract academics from the UK. This, as a solution, may need to be integrated with infrastructural projects for building more housing and office space, as

<sup>140</sup> Central Statistics Office

<sup>141</sup> Irish Times, 2 May 2017

<sup>142</sup> *Census 2011: Key Statistics for Northern Ireland*, Statistic Bulletin, Northern Ireland Research and Statistics Agency, 11 December 2012, available at <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2011-census-results-key-statistics-statistics-bulletin-11-december-2012.pdf>, accessed 15 June 2017.

well as with the additional funding of research and an ability to enhance remuneration packages for notable academics.

#### **Erasmus Programme**

- The continued participation of the UK in the Erasmus Programme is essential, particularly as English is a working language of the EU. EEA Member States and Turkey all have access to this Programme. Switzerland is currently suspended from the programme due to restrictions on the free movement of people, which has resonance with the Brexit scenarios

#### **Third Level Education Generally**

- The safeguarding of current equivalence for EU students from third-level fees should be considered in the UK and for UK students in either the whole EU or in Ireland. Generally, non-EU students have to pay full rates of tuition fees. The ideal solution is the continuance of current arrangements between the UK and the EU (as part of the agreement on their future relationship).
- The creation of a single education sector or area for Irish and Northern Irish students, either as a temporary measure or permanent arrangement, is another solution which may mitigate the impact of Brexit.

#### **Gaeilge / Irish Language**

- Preserving access to Irish-medium education should not be impeded as a result of Brexit. The Committee heard that continued access to Irish-medium education for students from Northern Ireland is important for developing the Irish language in Northern Ireland.
- Solutions previously discussed on the protection of cross-border workers, including the continuance of the Common Travel Area and a soft border in the context of travel apply equally to organisations working in the Irish language sector.

#### **Young People and Brexit**

- Full utilisation by Ireland of funds such as the Global Adjustment Fund and the Youth Guarantee should be explored.

### **Research and Higher Education**

The Committee heard that Brexit presents the opportunity for Ireland to attract academics and researchers who may wish to leave the UK, but at least three challenges have already been identified including the provision of office space, pay and access to housing. A solution offered by Trinity College Dublin was the enhancement of remuneration packages for notable academics. Similar to concerns in attracting FDI, attracting researchers may be impacted by housing availability.

The Committee heard that as 88% of scientific collaboration on successful EU programmes does not involve the UK, Ireland is not overly dependent on the UK for scientific collaboration, and this could be managed with good planning and through diversifying the funding base. In contrast, the Committee heard that Northern Ireland is very dependent on Ireland for its collaborations. The Committee suggests that this may be alleviated through including Northern Ireland in the EEA or establishing a single education area on the island of Ireland.

#### **Erasmus Programme**

The Committee heard that the Erasmus Programme is one of the EU's greatest success stories. Representing the European Youth Forum, Mr David Garrahy told the Committee that "Erasmus is a fundamental way for Europe to start discovering and knowing itself". The Committee heard that

young people in the UK seem to recognise this as, between 2007 and 2014 the number of UK participants in Erasmus increased by 115%.<sup>143</sup> The Committee observes that continued engagement of the UK in the Erasmus Programme may be instrumental to strengthening its future relationship and good understanding with the EU and for EU students to understand the UK.

Inclusion in Erasmus may be impacted by choices made on the free movement of people and the Committee notes that members of the EEA, as well as Turkey and Switzerland participate in the Erasmus programme. The continued inclusion of the United Kingdom is therefore possible. In 2014, Switzerland was suspended from the Erasmus Programme following restrictions it placed on the free movement of people. The Committee heard that this suspension is still in force, with Swiss students currently unable to access the programme. The UK's position on free movement is therefore very important to continued participation.

### **Fees**

The Committee heard that Brexit may result in fees for UK students of €18,000 to €20,000 per year as non-EU students in EU universities, which may mean that many students may not be in a position to attend third level education in Ireland as they have in the past. The Committee heard that Ireland could offer guarantees in this respect, but with significant financial impact, the ideal solution is continued cooperation on access to education in the final agreement on the EU-UK future relationship.

### **Mutual Cooperation**

While the mutual recognition of qualifications must be maintained, the Committee heard that there is an opportunity in the orientation of Irish universities and education institutions towards the other EU Member States, through the development of cooperation with EU universities and by using Ireland's highly developed education infrastructure to support projects and partners currently supported by UK universities.

### **Other Issues**

A specific issue raised with the Committee was the impact of a hard border on students. The Committee heard that a permit system would allow students and educators to move quickly and easily across the post-Brexit border.

The issue of nationality may be relevant to third level grants. The Committee heard that Student Universal Support Ireland (SUSI) can only provide maintenance grants for third level to EU citizens, with students from Northern Ireland potentially ineligible post-Brexit. The preferred solution is to preserve current arrangements for the award of maintenance grants on the island of Ireland. A much broader solution to this and many other potential problems may be to allow all current UK citizens to retain EU citizenship.<sup>144</sup>

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<sup>143</sup> David Garrahy, European Youth Forum, Evidence to the Committee, 8 June 2017

<sup>144</sup> European Parliament Representative on Brexit, Guy Verhofstadt, has suggested allowing UK nationals to retain a form of EU citizenship as a possible outcome of negotiations (BBC News, 10 March 2017).

## **Gaeilge / Irish Language**

Similar to the issues identified in the higher education sector, the Committee heard that most of the 9,000 students who visit the Donegal Gaeltacht annually come from Northern Ireland and summer colleges in the Gaeltacht contribute significantly to tourism in their local areas. The Committee heard that the imposition of a hard border could result in additional challenges for both Irish speaking communities and those who wish to access Irish-medium education.

The Committee heard from Foras na Gaeilge on the possible impacts on the Irish-language sector, such as the attractiveness of employment opportunities and the work of organisations that promote the Irish language.<sup>145</sup>

The derogation that applies to Irish as an official language of the EU is due to end in 2021. This means that all documentation from the EU will be translated in Irish and not selected documents as is currently the case. A challenge exists in the all-island context as Irish speakers living in Northern Ireland may face additional barriers in accessing the employment opportunities at European level which may, in turn, negatively impact the Irish language generally in Northern Ireland.

## **Young People and Brexit**

The Committee heard that 73% of 18 to 24 year olds and 61% of 25 to 34 year olds in the UK voted to remain. In Ireland, 90% of 18-24 year olds and 90% of 25-34 year olds indicated that they believed that Ireland should remain a part of the EU.<sup>146</sup> The Committee heard that the removal of border controls resulted in young people developing a more open mindset, as they began to see opportunities in the place of borders or obstacles.

The Committee also heard that young people are among the first to experience unemployment in the event of an economic downturn. This has been evidenced with the high rates of youth unemployment in the most distressed economies, including Ireland, during the recent recession. The Committee heard that funds such as the Global Adjustment Fund and the Youth Guarantee could equip young people with additional skills for employment.

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<sup>145</sup> Seán Ó Coinn, Foras na Gaeilge, Evidence to the Committee, 7 June 2017

<sup>146</sup> European Movement Ireland / Red C, Ireland and the EU Poll 2017

## 11. Health

### Background

The Committee heard of a number of challenges in the health sector described during its hearings, one of the most serious of which is the access to healthcare for those living in the Border regions. Particularly for areas where the closest hospital or emergency care is located on the other side of the border, this is vital. The Government has acknowledged that “a key issue for this sector will be to ensure that there is minimum disruption to health services and that essential services are maintained on a cross-Border, all-island and Ireland-UK basis”.<sup>147</sup>

### Summary and Potential Solutions

#### Cross Border Health Care

- The most important solution is to ensure that there are no new obstacles to the access to healthcare on the island of Ireland and that the *status quo* is maintained.
- The maintenance of the CTA may be a very important aspect to ensuring this care, particularly in ensuring that healthcare professionals travel freely to work and cooperate in joint initiatives.
- The Irish and UK authorities should ensure mutual cooperation in the healthcare sector through bilateral arrangements. This could include the establishment of negotiating bodies between Ireland and the UK to replace negotiations that would have happened at EU level, which could be explored provided it is compatible with Ireland’s continued membership of the EU.

#### Rights of Healthcare Workers

- The retention of the rights of UK and EU citizens in each others’ jurisdictions post-Brexit, with particular rights to permanent residence granted to doctors, including those in the UK for less than five years.
- The mutual recognition of qualifications must be retained.
- While there are concerns over the number of Irish medical professionals moving to the UK, particularly nurses and midwives, further incentives to keep such workers in Ireland could be explored. The importance of UK programmes in training healthcare workers should also be recognised.

#### Regulation

- There are concerns that common European rules on pharmaceuticals, medical devices, data protection, as well as legislation aiding the movement of health care professionals may no longer apply, and not be replaced by something similar.
- It is imperative that common standards on patient safety, medical education and training are maintained between the EU and the UK post-Brexit. The cross-border recognition of patient prescriptions should be maintained, as well as arrangements for the secure transfer of patient data from one side of the border to the other.

#### European Medicines Agency

- Ireland’s bid for the relocation of the European Medicines Agency (EMA) is welcome and could present a number of opportunities and benefits for Ireland and Northern Ireland.

<sup>147</sup> Ireland and the negotiations on the UK’s withdrawal from the European Union, Government Publication, 2 May 2017 at p.38

## Cross Border Healthcare and Irish-UK Cooperation

A key concern is the provision of health services on an all-island basis. The Committee heard that careful planning must be undertaken to ensure that cross-border cooperation in health care continues. One solution proposed is the establishment of a cross border committee which would include political leaders and stakeholders, to examine the impact of Brexit on both existing and future health care services, with a view to ensuring that watertight agreements are in place for future collaboration.

Particular concerns arise in the access to health care for those living in the Border regions. During hearings, this Committee heard that 53,000 people in the Border areas benefitted from health and social care services under the INTERREG IVA Programme. The Committee also heard that there are 30,000 frontier workers who are entitled to access care in both jurisdictions and both UK and Irish nationals are entitled to access necessary care under the European Health Insurance Card.<sup>148</sup> The Joint Committee on Health also highlighted the possible impact of border checks in its recent report.

The Committee heard that the HSE purchases a number of treatment services from the UK, including organ transplants and the treatment of lymphoedema, as well as the purchase of care from the UK under the waiting lists initiative and on a case-by-case basis. This included 574 patients under the treatment abroad scheme.<sup>149</sup>

With respect to collaborative arrangements, the Committee heard that:<sup>150</sup>

- Future scenarios should be developed to assess risks and barriers to patient care and ensure that access to services, treatment and follow on care is seamless;
- Long-term cost and funding arrangements for current and future collaborative care must be secured; and
- Mechanisms must be put in place to ensure the timely movement across the border of ambulances, patients and healthcare professionals post-Brexit.

Central to this, the Committee also heard that where the EU facilitated cross-border healthcare through common rules, ongoing cooperation must be ensured through bilateral cooperation.

### Rights of Healthcare Workers

There are two central issues concerning the rights of healthcare workers following the UK withdrawal from the EU:

- 1) The right to work and residence
- 2) The mutual recognition of qualifications.

This first concern is in the area of citizens' rights, particularly in the rights to work and to residency. The Committee heard that permanent residence should be granted to EEA citizens working as doctors in the UK and *vice versa*. The Committee also heard that if such workers are resident for fewer than five years, it should not become an obstacle to this. The Committee heard that

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<sup>148</sup> This applies to EU citizens who are temporarily in the jurisdiction where they are accessing care.

<sup>149</sup> Dr Ann Hogan, IMO, Evidence to the Committee, 8 June 2017.

<sup>150</sup> *Ibid.*



traditionally, there has been a very healthy ‘sharing’ and movement of medical professionals between Ireland and the UK, whether this is for training or long term work, with many Irish specialists spending time in the UK before returning.

In the case of nurses and midwives, the Committee heard that many Irish nurses and midwives move to the UK to work and that Ireland has had challenges in retaining them.<sup>151</sup> While the issue of incentivising Irish nurses to stay in Ireland is separate to Brexit, the Committee heard that it is unlikely that the UK will not recognise qualifications because it needs nurses from abroad. A particular point brought to the Committee’s attention was that, in the case of doctors, the situation is very much the reverse, with 8% of the UK’s workforce coming from other EU Member States, rising to 15% for some disciplines.

Regarding the second main issue, the importance of retaining the mutual recognition of qualifications was stressed to the Committee. In May 2017, the Joint Committee on Health recommended that this is retained, so as to minimise any possible disruption to health services.<sup>152</sup> As an additional solution, the Committee heard that practices undertaken by doctors and medical professionals aimed at improving standards across Europe, e.g. the European Union of Medical Specialists, should be protected.

## **Regulation**

Following the UK’s withdrawal from the EU, it is possible that there will be divergence of regulation between the UK and the EU, which could disrupt trade and result in additional requirements in certification and clearance, including for pharmaceutical and medical devices. The potential withdrawal from the UK from agencies such as the European Centre for Disease Prevention and Control and the European Medicines Agency, could have implications for the maintenance of common standards.

Particular reference was made to patient safety measures, which the Committee heard, depends on the mutual sharing of information across Europe.<sup>153</sup> One particular example given was the communication of restrictions placed on a doctor’s ability to practise. It is imperative such measures are maintained and agreed between the respective authorities post-Brexit. The Committee heard that in the cross- border context, the mutual recognition of prescriptions should be maintained.

## **European Medicines Agency (EMA)**

A possible opportunity arising from Brexit is that EU agencies based in the UK will have to remain within the EU and therefore move. The Government has identified the EMA as one such agency that could be accommodated in Ireland, making a number of arguments in favour of its relocation here, including its proximity to London, the quality of life in Ireland, the availability of world class talent and a dynamic life sciences sector.<sup>154</sup> In relation to this issue, the Committee heard that the EMA

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<sup>151</sup> Liam Doran, INMO, Evidence to the Committee, 8 June 2017.

<sup>152</sup> *Report on the implications of the withdrawal of the United Kingdom from the European Union for the health sector in Ireland*, Joint Committee on Health, May 2017 at p.10.

<sup>153</sup> John D Woods, British Medical Association, Evidence to the Committee, 8 June 2017.

<sup>154</sup> Relocation of the European Medicines Agency, Department of Health, available at <http://health.gov.ie/wp-content/uploads/2017/04/Relocation-of-the-European-Medicines-Agency.pdf>, accessed 16 June 2017

would have a positive effect on the pharmaceutical industry and medical research.<sup>155</sup> The Committee also heard that it could have a positive impact on collaboration between Irish and Northern Irish universities, as well as new opportunities in areas such as clinical trials.

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<sup>155</sup> Professor Trevor Duffy, IMO, Evidence to the Committee, 8 June 2017.

## Appendices

### Appendix 1: Membership of the Committee

<b>Senators</b>	<b>Neale Richmond (FG) (Chairman)</b>
	<b>Frances Black (CEG)</b>
	<b>Gerard P Craughwell (Ind)</b>
	<b>Mark Daly (FF)</b>
	<b>Paul Daly (FF)</b>
	<b>Michael McDowell (Ind)</b>
	<b>Michelle Mulherin (FG)</b>
	<b>Ged Nash (Lab)</b>
	<b>Niall Ó Donnghaile (SF)</b>
	<b>Joe O'Reilly (FG)</b>

## Appendix 2: Terms of Reference

“D’ainneoin aon ní sna Buan Orduithe—

(1) mar aitheantas ar na hiarmhairtí ionchasacha a thiocfaidh mar thoradh ar bhreith na Ríochta Aontaithe tarraingt siar as comhaltas an Aontais Eorpaigh, go ndéantar Coiste Speisialta, ar a dtabharfar Roghchoiste Speisialta an tSeanaid um an Ríocht Aontaithe do Tharraingt siar as an Aontas Eorpach (‘an Coiste’) a cheapadh chun impleachtaí na tarraingthe siar sin i leith na hÉireann a bhreithniú, ag tagairt go háirithe do na nithe seo a leanas:

(a) na himpleachtaí do gheilleagar na hÉireann ag cásanna imeachta chrua nó imeachta bhoig,

(b) an caidreamh idir an Stát agus Tuaisceart Éireann,

(c) cearta saoránachta phobal uile Thuaisceart Éireann,

(d) an Comhlimistéar Taistil agus an Teorainn: gluaiseacht earraí, seirbhísí agus daoine idir an Stát agus Tuaisceart Éireann agus idir Éire agus An Bhreatain Mhór,

(e) talmhaíocht agus iascach,

(f) iompar, fuinneamh agus cumarsáid,

(g) leas, sláinte agus oideachas, agus do cibé nithe gaolmhara eile a chinnfidh an Comhchoiste.

(h) todhchaí na hEorpa

(2) Deichniúr comhalta a bheidh ar an gCoiste, ar comhalta amháin díobh An Seanadóir Neale Richmond a bheidh

That, notwithstanding anything in Standing Orders-

(1) In recognition of the potential consequences of the decision of the United Kingdom to withdraw from membership of the European Union, a special committee, which shall be called the Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union (‘the Committee’), be appointed to consider the implications for Ireland of such withdrawal, with particular reference to the following matters:

(a) the implications for the Irish economy of hard and soft exit scenarios,

(b) relations between the State and Northern Ireland,

(c) the citizenship rights of all the people of Northern Ireland,

(d) the Common Travel Area and the Border: movement of goods, services and people between the State and Northern Ireland and between Ireland and Great Britain,

(e) agriculture and fisheries,

(f) transport, energy and communications,

(g) welfare, health and education, and to such other related matters as the Committee may determine.

(h) the future of the EU

(2) The Committee shall consist of ten members, of whom one shall be Senator Neale Richmond who shall be

ina Chathaoirleach/ina Cathaoirleach agus a mbeidh naonúr díobh ainmnithe ag an gCoiste Roghnóireachta mar a leanas:

Grúpa Fhine Gael 2 chomhalta,  
Grúpa Fhianna Fáil 2 chomhalta,  
An Grúpa Neamhspleách 2 chomhalta,  
Grúpa Shinn Féin 1 chomhalta,  
An Grúpa Comhphárteachais  
Phoiblí 1 chomhalta,  
Grúpa Pháirtí an Lucht  
Oibre 1 chomhalta.

(3) Cúig is córam don Choiste.

(4) Beidh ag an gCoiste na cumhachtaí a mhínítear i mBuan-Ordú 71 seachas míreanna (2A), (3), (4), (4A), (4B), (6), (6A), (6B) agus (6C) de.

(5) Ní bheidh feidhm ag míreanna (2) go (6), go huile, de Bhuan-Ordú 76 maidir leis an gCoiste.

(6) Ní bheidh feidhm ag mír (2) de Bhuan-Ordú 83 maidir leis an gCoiste.

(7) Déanfaidh an Coiste tuarascáil deiridh a thabhairt do Sheanad Éireann nach déanaí ná 30 Meitheamh, 2017.

Chairman, and of whom nine shall be nominated by the Committee of Selection as follows:

Fine Gael group 2 members,  
Fianna Fáil group 2 members,  
Independent group 2 members,  
Sinn Féin group 1 member,  
Civil Engagement group 1 member,  
Labour group 1 member.

(3) The quorum of the Committee shall be five.

(4) The Committee shall have the powers defined in Standing Order 71, other than paragraphs (2A), (3), (4), (4A), (4B), (6), (6A), (6B) and (6C) thereof.

(5) Paragraphs (2) to (6) inclusive of Standing Order 76 shall not apply to the Committee.

(6) Paragraph (2) of Standing Order 83 shall not apply to the Committee.

(7) The Committee shall make a final report to Seanad Éireann not later than 30th June, 2017."

### Appendix 3: Glossary of Terms

<b>AFCO</b>	European Parliament's Committee on Constitutional Affairs
<b>BDO</b>	Binder Dijker Otte
<b>BIIC</b>	British-Irish Intergovernmental Conference
<b>CBI</b>	Central Bank of Ireland
<b>CSO</b>	Central Statistics Office
<b>CEO</b>	Chief Executive Officer
<b>CAP</b>	Common Agricultural Policy
<b>CTA</b>	Common Travel Area
<b>CETA</b>	Comprehensive Economic and Trade Agreement
<b>CBI (UK)</b>	Confederation of British Industry
<b>DSP</b>	Department of Social Protection
<b>Dr</b>	Doctor
<b>DART</b>	Dublin Area Rapid Transport
<b>ESRI</b>	Economic and Social Research Institute
<b>ETBI</b>	Education and Training Boards Ireland
<b>EI</b>	Enterprise Ireland
<b>ECHR</b>	European Convention of Human Rights
<b>EEA</b>	European Economic Area
<b>EEC</b>	European Economic Community
<b>EIB</b>	European Investment Bank
<b>EMA</b>	European Medicines Agency
<b>EU</b>	European Union
<b>FDI</b>	Foreign Direct Investment
<b>GW</b>	Gigawatt
<b>GPS</b>	Global Positioning System
<b>GDP</b>	Gross Domestic Product
<b>HGV</b>	Heavy Goods Vehicle
<b>ICMSA</b>	Irish Creamery and Milk Suppliers Association
<b>ICTU</b>	Irish Congress of Trade Unions
<b>IDA</b>	Industrial Development Authority
<b>IIEA</b>	Institute of International and European Affairs
<b>ISEM</b>	Integrated - Single Electricity Market
<b>IFA</b>	Irish Farmers' Association
<b>IMO</b>	Irish Medical Organisation
<b>INOUE</b>	Irish National Organisation of the Unemployed
<b>ITBA</b>	Irish Thoroughbred Breeders' Association
<b>JCFPERT</b>	Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
<b>LGV</b>	Light Goods Vehicle
<b>LOLO</b>	Load on, Load off
<b>MP</b>	Member of Parliament
<b>NUI</b>	National University of Ireland
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PSNI</b>	Police Service of Northern Ireland
<b>RORO</b>	Roll-on, Roll-off
<b>SSSC</b>	Seanad Special Select Committee
<b>SC</b>	Senior Counsel

<b>SEM</b>	Single Electricity Market
<b>SEUPB</b>	Special EU Programmes Body
<b>S.I.</b>	Statutory Instrument
<b>SONI</b>	Electricity system operator for Northern Ireland
<b>SUSI</b>	Student Universal Support Ireland
<b>TEN-T</b>	Trans-European Transport Network
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TCD</b>	Trinity College Dublin
<b>TUC</b>	Trades Union Congress
<b>UK</b>	United Kingdom
<b>US</b>	United States of America
<b>UCC</b>	University College Cork
<b>UREGNI</b>	Utility Regulator Northern Ireland
<b>WTO</b>	World Trade Organisation

