

Negotiating Brexit..

...with a Border, a Belfast Agreement and... a Blueprint



“One old theme of my own is the doubleness of our focus in Ireland. The way we have a capacity for living in two places at one time...” Seamus Heaney

- The identity politics of Northern Ireland
- The Good Friday Agreement
- The happy coincidence of common EU membership- UK neither joined nor is leaving with Ireland, north or south, prominently in mind
- from a EU perspective, not designed for, but fitting for a divided island & in particular getting peace for the divided communities of Northern Ireland
- Membership helpful salve- certainty, openness, commonality, prosperity
- The challenge of disruption: market; people; security
- Brokenshire **“one of the most complex challenges in our preparation for exit”**

Factors particular to NI which should inform the negotiations-

- Only part of UK sharing a land Border with another Member State- thus economic interdependence with common EU membership
- Northern Ireland is geographically detached from the rest of the UK- trading disadvantage; contrast with public and private island trading
- Socio-politically, radically transformed- progress to being post-conflict
- But- highest security risk in UK; conflict and violence remain
- Peace Process still in a fragile state
- Failure to address legitimate concerns of population re devolution could act as a catalyst for deterioration in intercommunal relations

Why the devolution arrangements are unique and relevant to the Brexit negotiations

- Fundamental part of a larger peace agreement, intended to reconcile
- Underpinned by bilateral international treaty, between UK & Ireland
- The arrangements assume but do not require common EU membership of UK & Ireland, but extensive substantive reference to developing the unique relationships & co-operating though common EU membership
- Devolution arrangements depend on consent of both communities to continue- hence power sharing/ north south/ east west mechanisms
- Northern Ireland would be more adversely affected economically than the rest of the UK

Are the particular factors being picked up by the relevant parties in the negotiations?

- PM's art. 50 letter to Donald Tusk- UK & EU-
- ***“must pay attention to UK's unique relationship with.. Ireland and the importance of the peace project in Northern Ireland”***. And re the land border, ***“needs to avoid a return to a hard border”***
- The EU negotiating guidelines- notes EU's consistent support for peace & reconciliation enshrined in GFA; ***“continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance”***; ***“unique circumstances on the island of Ireland”***; requiring ***“flexible and imaginative solutions...including with the aim of avoiding a hard border, while..”***
- **“respecting the integrity of the Union legal order”**

What does the devolved NI government want from the negotiations?

- OFM/DFM letter to the PM in August 2016
- Essentially a call for the status quo to be maintained-
- Concerns inc- Undermining the GFA; illegal activity; criminal justice; agri food; migrant flows; the all island energy market; the CU & CTA
- Implicit is that NI remain in the Single Market and Customs Union
- & that not to do so would have major economic implications, and any change in the border major economic, social & political consequences
- No follow-up to the note. With the Assembly suspended, it is a matter of conjecture whether/how Brexit features in the current negotiations
- 3 parties called for special status for NI: SDLP, Sinn Fein & Alliance

The UK direction of travel for the negotiations

- Well, this is reasonably well known-
- “***Wide ranging bold and ambitious trade agreement***” sought and establishment of a “new strategic trade partnership”
- White Paper and notice of withdrawal of little help to elucidate
- Clean Break EU/Single Market/CU; extensive decoupling from EU based integration and co-operation
- Clearly entirely out of line with N.Ireland’s (& Scotland’s) aspirations
- Yet, UK aspiration to “frictionless” border or “as frictionless as possible” on the island of Ireland

Options for N. Ireland in the negotiations

- What is not on the table:- The UK-
- rejects EEA Option for UK as a whole;
- rejects the Scottish government EEA-style solution,
- rejects N. Ireland political parties calls for special status-this is understood to mean that NI may not, in effect, remain in the EU
What then is left?
- One option has been formulated by group of practitioners and academics intended to largely deliver on-
 - the desires of the NI government,
 - the self imposed constraints of the UK government; and
 - the requirements of EU law

N.I. Negotiations Blueprint: EEA Membership

(1/3)

- A “Northern Ireland’s Place in Europe” - Looking at the EEA template in a Northern Ireland context
- As UK withdraws, NI avails of participation in the EEA
- Inside the Single Market; outside CU; no “ever closer Union”; no CJEU
- Environment for key North South (& East West) GFA strands preserved
- Known concept; obligations & benefits clear; other than EU, only existing arrangement to achieve this
- Trading environment largely preserved; key OFM/DFM objective met
- Would largely meet UK/EU objectives; In particular, “respecting the integrity of the Union legal order”

N.I. Negotiations Blueprint: EEA Membership (2/3)

- Outside the Common Agriculture and Fisheries policies- but able to benefit from UK policies and new UK (or NI) accessed markets
- Outside VAT
- Outside the Eurozone
- Outside regional policy (and funding for less prosperous regions)
- Migrant labour and ease of tourism preserved (Citizens' Rights Directive)
- EEA Agreement has wider commitment to EU social policy eg sex discrimination, but not the full EU art 10 TFEU areas (inc. religion/belief)
- Free movement to NI may entail controls on UK-NI movement (EEA membership does not solve question, but does not accentuate it)

N.I. Negotiations Blueprint: EEA Membership (3/3)

- Budget contribution involved- would be modest given NI's GDP
- Customs Border? No EU tariffs on NI goods, but rules of origin apply on goods from elsewhere in UK & outside EEA entering Ireland (ie the EU) where tariffs applicable. How? For negotiation, but possibly could be applied at point at which VAT (or other sales tax applicable) is 1st paid in importing state. Sweden-Norway border relevant.
- Corresponding rules on goods from EU from Ireland into N.Ireland/UK to ensure UK tariffs on EU goods are paid
- EEA+? eg EU research programmes (negotiation of contributions required)/police/judicial co-operation
- EEA+? does not provide for Human Rights protections in Lisbon treaty/Charter: add on/ separate provision- importance of Rights in NI
- The constitutional position of N.Ireland unaffected

In conclusion.....

- Concluded though they may not be... the Stormont Talks-
- 2nd March Election- rebalancing of parties- strengthened pro EU lobby
- Agreed Brexit policy appears part of any party “deal” -signs of agreed approach. NI party agreement & the attitude of Ireland, could be a powerful combination to drive policy decisions in direction of suggestion of House of Lords EU committee for UK/Ireland agreement
- “bold and ambitious” while “respecting the integrity of the union’s legal order” We shall see where the road takes us..

