

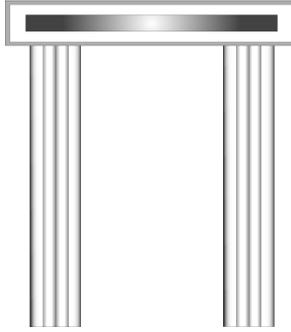


**Ray Bassett**

**Brexit –  
Options for the Irish Border**

**POLITEIA**

A FORUM FOR SOCIAL AND ECONOMIC THINKING



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**POLITEIA**

2018

First published in 2018  
by  
Politeia  
14a Eccleston Street  
London  
SW1W 9LT  
Tel: 0207 799 5034  
*Second Edition*

E-mail: [secretary@politeia.co.uk](mailto:secretary@politeia.co.uk)  
Website: [www.politeia.co.uk](http://www.politeia.co.uk)

© Politeia 2018

ISBN 978-1-9999171-6-6

Cover design by John Marenbon

Politeia gratefully acknowledges support for this publication from

**The Foundation for Social and Economic Thinking (FSET)**

Printed in Great Britain by:  
Plan – IT Reprographics  
Atlas House  
Cambridge Place  
Hills Road  
Cambridge CB2 1NS

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Dr Bassett, who worked as a scientist (biochemist) before entering the diplomatic service, is a columnist on the *Sunday Business Post* and a regular contributor to TV and radio shows in both Dublin and Belfast.



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# I

## Introduction

### Ireland's National Interest

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Here in Ireland, the Brexit referendum result in the UK was a huge shock. Despite the rhetoric at the time, there was little or no real preparation, either psychologically or materially, for a pro-Brexit outcome.

Ireland had nailed its colours to the EU mast, right from the outset, with no plan B. This led it to making a disastrous decision during the Cameron re-negotiation with the EU, not to assist the UK to get any meaningful concessions. Such concessions might have made it easier for the Remain side to win. It was a gamble and one which backfired badly.

The Irish public service, both politicians and officials, got it horribly wrong. This cohort, through constant meetings and connections with the EU, is considerably more pro Brussels than the general Irish population. It believed the briefings that both Brussels and the British establishment had given them in private.

A similar pattern could be seen in the British public service in the run up to the referendum, hence, the confusion in Dublin in the immediate aftermath of the result. In addition, the Nationalist community in Northern Ireland did not engage heavily in the referendum, the lowest turnout of any constituency in the United Kingdom was West Belfast, where fewer than 50% voted. The overall result was greeted with dismay and surprise in Nationalist circles in the North.

Brexit is very serious business for Ireland. There is no other EU member State which is as economically, culturally, linguistically and geographically intertwined with the UK, as Ireland. According to the Department of Foreign Affairs and Trade in Dublin, there are over 500,000 Irish born citizens resident in GB, compared to just over 17,000 in Spain, the country in the EU with the second highest number of Irish born. It is estimated that there are under 10,000 Irish born living permanently in France. In many respects Ireland and the UK form a single labour market, a shared cultural space and a long history of interactions and migration between our two islands. Almost every home in the Republic has access to British TV stations and radio, which have large audiences here. British newspapers circulate widely.

We enjoy the full benefits of the Common Travel Area (CTA) and are not treated as foreigners in British immigration law. We are overwhelmingly the net

beneficiaries of our bilateral arrangements with our neighbouring island. We are placing that relationship in danger and there is scarcely a family on the island of Ireland who does not have kinship ties with GB. No one on this island will thank our political leaders if the result of their efforts is a restriction on the rights our people have enjoyed for centuries in Britain. In future economic crises in Ireland, where will our young people move for employment if the CTA is terminated? The tiny numbers of Irish living in mainland Europe, in comparison to the Anglophone world, demonstrate that there is no real popular identification with Europe.

Economically, the UK is vital for Irish interests. With 50% of Ireland's beef exports going to the UK (250,000 tons), and the UK taking between 40-50% of exports from Irish owned SMEs. Much of these exports originate away from Ireland's affluent east coast, in places where alternative employment would be difficult to access. In addition, the UK is Ireland's trade portal for the rest of the world.

While the growth of US multinational firms in the Republic has assisted in greatly lessening Ireland's traditional dependence on the UK market (now around 15% of the total), more than 80% by value and over 90% by volume of Irish total exports, use the UK transport system to reach markets worldwide. It is simply fanciful to imagine that Ireland could reorganise its trading patterns to avoid sending the bulk of its goods through the land bridge in Britain to world markets.

Hence, it is overwhelmingly in Ireland's interest that the UK and the EU agree to friction-free arrangements across a wide range of areas. Rationally, Ireland should be the UK's strongest ally inside the EU, pressing for the best possible terms and a successful Brexit. There are numerous other examples of the importance of British links to Ireland economically.

The question has to be asked as to why it is not the case that Ireland is following its national interest. Ireland and its political leaders, Leo Varadkar, the Taoiseach, and the Tánaiste, Simon Coveney, have adopted an aggressive and at times unhelpful line which risks repeating the same mistake as was made in the Cameron renegotiation, with similarly adverse consequences for Ireland. The answer lies partly in the historical legacy of the division of Ireland into two states, together with a large misplaced dose of Europhilia.

There is currently little optimism on the possibility of an early breakthrough in the vital area of agreeing future trading arrangements between the EU and the UK. The Chequers proposals have been rejected by the EU's Chief negotiator, Michel Barnier, while the UK has ruled out the EU Commission's proposal to retain Northern Ireland inside the Single Market and the Customs Union when the UK departs. Time is running out and there needs to be a sensible compromise that caters for the requirements of both sides.

## II The Irish Border – The Legacy

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In February 1923, Winston Churchill wrote, describing the aftermath of World War I and the changes that the Great War had wrought on the international scene, in the following way:

The position of countries has been violently altered. The modes of thought of men, the whole outlook on affairs, the grouping of parties, all have encountered violent and tremendous change in the deluge of the world. But as the deluge subsides and the waters fall short we see the dreary steeples of Fermanagh and Tyrone emerging once again. The integrity of their quarrel is one of the few institutions that have been unaltered in the cataclysm which has swept the world.

These two Ulster counties, Tyrone and Fermanagh, had been forcibly incorporated into the new Northern Ireland State against the expressed wishes of the majority of their people. Local government administration had to be suspended at the time. The difficulty of drawing a border between the new Free State and Northern Ireland was proving hugely difficult, even at that time.

Many of those who found themselves north of the new border, including districts in Derry, South Armagh and South Down, were bitterly resentful at their exclusion from the new Irish State. Periodic outbreaks of violence, followed by periods of uneasy peace, characterised much of the history of Northern Ireland.

It was also the Free State Government of William T Cosgrave who instigated a physical customs border in Ireland. Against the wishes of the PM of Northern Ireland, Sir James Craig; Edward Carson; the British Government and much of the Dublin business community, a new customs border was established on 1 April 1924. The thinking behind this ill-conceived initiative was that it would force the UK authorities to move the border economically into the Irish Sea. Unlike the situation today, Belfast was the main business centre in Ireland at the time and supplied much of the goods used throughout the island. When reading the State papers of the day, there is a haunting similarity to some of the false arguments being currently proposed.

There has been much recrimination, over the years, about the historical role of the Dublin Government, which was perceived among Nationalists in the North, as having abandoned them to the new State of Northern Ireland, which was very

hostile to their interests. It was only with the outbreak of the “Troubles” in Northern Ireland, that the Irish Government, in reality, took an active and hands on approach to the interests of its own citizens in the North.

### **The Good Friday (Belfast) Agreement**

After 30 years of violence and 3,500 deaths, countless injuries, both physical and psychological, as well as tens of thousands of people passing through the prison system, the Good Friday Agreement (GFA) brought unprecedented stability. It was overwhelmingly endorsed in referenda, in the North (71%) and the Republic (95%).

The beauty of the Agreement is that it allows for huge ambiguity in a conflict which was essentially about identity. Under the terms of the Agreement, Nationalists in Northern Ireland could mentally ignore the border; get their Irish passports in the local Royal Mail Post Office, play in any sport for an Irish team, engage in all Ireland cultural organisations, travel to work across the border daily, etc., and feel part of what has been described as “the Irish nation”. This was psychologically important and greatly ameliorated their sense of alienation from the Northern Ireland State, and to some extent, the State institutions in the Republic.

Unionists in Northern Ireland saw the GFA from a different perspective. They welcomed the end to a violent campaign to remove their home from the United Kingdom and a recognition that constitutional change could only come through the consent of a majority. They greatly welcomed the stability that the GFA brought.

Because of demographic changes in Northern Ireland, most Nationalists believed that it was only a matter of time until their “side” would achieve the majority position. In many regards, both communities in Northern Ireland were content to park the sovereignty issue for the time being. In the meantime, Northern Ireland would be governed in a way which gave “parity of esteem” to both aspirations and identities. This would be bolstered by what is reputed to be the toughest anti-discrimination laws in Europe.

In any case, the lines of national identity have always been blurred in Ireland, with many Irish people regarding themselves as British, also having an Irish identity, and with most Irish people not regarding the English, Welsh and Scots as foreigners. The blurring of citizenship and identity in the GFA which allows

people in Northern Ireland to identify themselves as Irish, British or both, as well as the recognition of the close and special relationship between Britain and Ireland, in effect, reflected the reality of the complex situation.

## **Brexit and the Implications of the Good Friday Agreement**

It should be conceded that the departure of the UK from the EU has potential adverse implications for the continuation of the present beneficial arrangements at the border. However, these potential difficulties can be overcome if all sides are determined to be practical and not let politics get in the way of possible solutions. The creation of a new EU/third country boundary between the Republic and Northern Ireland will bring with it a whole series of new challenges which will require some novel solutions.

While ambiguity is a corner stone of the GFA, the European Union's approach is in the opposite direction. Its published bottom line is that any arrangements, post Brexit, agreed on the island of Ireland must "maintain the integrity of the Union's Legal Order". This restriction, if pursued to its logical conclusion, greatly limits the possible range of solutions. The EU, which has now deemed itself as a guardian of the GFA, is not actually a party to the Agreement.

The question of a "frictionless" border was avidly seized upon by Brussels, as a way of putting pressure on the British Government, especially on the issue of a financial settlement. With a British Government extremely anxious to reach an accommodation with the EU on the terms of the divorce settlement and transitional arrangements, the UK agreed to the following in the December Agreement:

In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement.

EU negotiators have maintained that this means that in the absence of any other agreed solution, Northern Ireland would remain in the Customs Union and Single Market when the rest of the UK departs, described as the "Backstop" option by the Irish Government. This would essentially pass over the economic management of the area to Brussels. While the EU and Irish Government's

interpretation of the meaning of alignment almost certainly represents some overreach in World Trade Organisation terms, the UK Government, possibly suffering from buyer's regret, now heavily disputes this interpretation.

### III

## Brexit, Ireland & Current Policy Options

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The possibility of the UK departing the European Union in March 2019 without a deal has loomed larger recently. The rejection of the Chequers proposals by the EU essentially ended the attempts by the UK to appease Brussels. The impasse this has created means that Ireland's worst nightmare has become a possibility, even if the overall likelihood remains that some compromise will be reached in the end.

The UK has made it clear that in the event of a no deal, it will be opposed to erecting a physical customs border on the island of Ireland. As an independent State, it will have the ability to carry out that policy successfully. Ireland, unfortunately, will be subject to Brussels and may not be able to match that offer. Hence the British advice to firms who engage in cross-border trade to speak to the authorities in Dublin, since it will be the Republic of Ireland which may be forced to introduce new physical restrictions on trade. This is an embarrassment for Ireland because any EU attempt to resurrect the border will lead to chaos. There is simply no real possibility of re-erecting peacefully the type of security arrangements which existed during the Troubles. One of the great achievements of the Good Friday Agreement was the total removal of these forts. This has helped restore stability in Border communities.

### **Options**

Therefore, if we accept the bone fides of all sides in wanting to avoid a hard border on the island of Ireland, what are the various options, available to the negotiators in putting together a possible deal?

Firstly, it has to be recognised that the Irish border, however invisible to the naked eye, does exist. There are differing excise, personal taxation, currencies and VAT rates between North and South. However, despite the presence of low-level smuggling of oil products to the North and alcohol products to the Republic, neither Government has felt the necessity to have physical border checks. Any proposed new arrangement, post Brexit, needs to ensure that there is no undue hardening on that position.

It also has to be recognised that there are already differences between Northern Ireland and GB in areas such as animal and plant health. The clear veterinary view in the UK and Ireland is that it makes sense to have distinct animal health

strategies on the island of Great Britain (GB) and on the island of Ireland. Again, it would be very undesirable politically, greatly to increase the current divergence between Northern Ireland and the island of Britain, for the same reasons as a hard land border would be undesirable.

Against that background and depending on the outcome of the overall EU/UK agreement on future trading arrangement, the following are, at least in theory, options.

- Britain to remain in the Customs Union (BINO)
- The Chequers' proposals
- The so-called Backstop
- Ireland opts for an EFTA type arrangement with the EU (Ch IV)
- Technological solution. (IV)

### **Brexit In Name Only - BINO**

Bino, Brexit in Name Only, (or alternatively Beano, Brexit Existing as Name Only), is very much the preferred solution of the European Union and indeed the Irish Government. It was also the preferred approach of much of the British establishment. They hoped that the UK would stay in the Customs Union and the Single Market. This would mean that Brexit was essentially symbolic in nature and without substance.

Much of the early negotiation tactics by Brussels was geared towards inducing the UK down this line. Of course, the EU and many Europhiles in the member States felt that the whole Brexit process could be reversed, and the UK would recant and come back to the EU fold. If that were not possible, then BINO was the next best thing. In fact, those British Remainers pursuing the BINO line needlessly complicated the early Brexit discussions, as Brussels kept a weather eye on political developments in Westminster. There was little point in being generous to the UK, if a hard-line policy stance strengthened the EU Commission's own allies in London.

However, from a British point of view, it would seem a pretty pointless exercise for the UK to absent itself from all the decision-making process in the EU but still be prepared to accept completely rules which the EU alone decided. It is also clear that the EU would expect the UK to abide by the four fundamental freedoms of the Treaty of Rome, freedom of movement for people, capital, goods and services. It would also keep the European Court of Justice (ECJ)

heavily enmeshed in the UK legal system, again without a British member of the Court's judiciary. Also, it should be recognised that there is a tendency with all EU institutions, including the ECJ, to engage in mission creep and gradually enhance their own powers at the expense of the national Governments. This would inevitably lead to friction, post Brexit, in a BINO type arrangement.

The EU would of course welcome this option as a means of keeping control of the UK and restricting the UK's ability to plot an independent path and become a serious competitor to the EU.

This type of future relationship between the UK and the EU would be in direct opposition to the reasons why a majority of British voters opted for Brexit, including national immigration controls, return of sovereignty, etc. Indeed, one of the main attractions of Brexit, is that it will allow the UK to establish an independent international trade policy.

It is of course true that the Labour party has chosen a variation of this as its preferred policy option. It talks about "a customs union" as opposed to the EU customs union, without in any way really clarifying the differences. But the suspicion must be that this is purely a tactical position, viewed primarily as something which is likely to attract support from diehard Remainers in the Conservative Parliamentary party and hopefully bring about a general election. In reality, it must be doubtful that any new Labour Government would wish to be shackled by restrictive EU regulations which would curb their freedom of action. The Opposition Leader, Jeremy Corbyn, and his chief lieutenant, John McDonnell, are hardly likely to welcome the EU Commission and ECJ vetting their radical economic plans.

The Irish Government would greatly welcome the UK staying in the Customs Union, as it would undoubtedly alleviate the problems of a potentially hard border between the North and the Republic and also allow for continued unfettered free trade across the Irish Sea, something that economically is much more important to Ireland than the North/South border.

However, as the months pass by and the British Government continues to insist that it is not only going to give effect to the referendum result but believes that this will entail departing from the customs union, the advocates of this policy option, in Dublin and Brussels, are seeing less likelihood of its being adopted.

## **The Chequers' proposals**

The Chequers Proposals, initially published in July and outlined later in the British White Paper, are closely aligned to the BINO option. They allow for full free trade in goods, hence no need for a physical border in Ireland, and also free trade across the Irish Sea. These features, coupled with the continuation of the Common Travel Area, make them very attractive from an Irish point of view.

However, the proposals stand no real chance of being accepted in their current form. They would, in reality, severely curtail the UK's ability to conclude trade deals with non-EU countries, despite claims to the contrary by the British Prime Minister. They would be unacceptable to many Conservative party MPs. It would also mean that the UK would have no real input into the formulation of industrial standards but would have to accept what Brussels decided.

Also, the EU Commission has made it clear that it is strongly opposed to the Chequers idea of splitting trade in goods from trade in services. It would also oppose a Brexit deal which conferred much of the benefits of EU membership on the UK without free movement of people. The Commission regards itself as the guardian of the *acquis communautaire*, (the accumulated body of European law), much as the ideologues of the Vatican and the Kremlin once stood guard on their own rigid orthodoxies in the past. Hence, Chequers, and its plea for flexibility on the EU side, is an affront to the Brussels establishment.

The real question relating to the Chequers proposals has been the relative silence of the Irish authorities on the issue. These proposals were overwhelmingly in the country's interests, yet the Irish Government did not endorse them. It was a classic example of the failure of Dublin to act in the country's own national interest. It chose instead to remain subservient to Brussels, a sad state of affairs.

## **The So-Called Backstop?**

The Backstop is so called because it is the supposed fall-back position on the Irish border in the event of all else failing. This, on the face of it, would appear to indicate that if the UK cannot come up with a solution to this issue to Ireland and to the EU's satisfaction, then there must be full alignment of policies in the two parts of Ireland. Essentially, this means that Northern Ireland would have to remain subject to the EU's regime - it would be annexed economically by Brussels. It would require a customs border in the Irish Sea between two parts

of the UK. This would be against a background where Northern Ireland is fully integrated into the UK's single market and the island of Great Britain is by far its largest outside trading partner.

It has been argued that the Irish interpretation of the Backstop would run foul of international regulations in GATT. No State runs different tariff levels to international trade for different parts of their jurisdictions.

Whatever about the interpretations of International regulations or the specific meaning of what was agreed in Brussels in December, it should be realised that this form of Backstop is undeliverable by Theresa May. This is not just because she needs the support of the DUP at Westminster. In reality, no British Prime Minister could agree to full internal custom barriers inside the UK. It was noteworthy that no major British political figure, pro- or anti-Brexit, has openly supported the Backstop option. In addition, the UK House of Commons passed an amendment to the new Customs Bill which specifically outlawed any special treatment of the North for customs purposes. It should be noted that the amendment was passed without division. There was absolutely no appetite in Britain for the type of approach that Dublin was pursuing. If the text of a declaration is in collision with reality, then the chances are that reality will win out in the end. Therefore, expect the Backstop to be gradually watered down in each negotiation session.

After the December agreement in Brussels, the Irish Taoiseach, Leo Varadkar, in a moment of self-congratulations, claimed that the Backstop was now “rock solid, bullet proof and cast iron”. He is now less ambitious, stating that “a backstop” (undefined) would have to be included in any final agreement. He has even conceded that it might not be in the main text but included in an attached protocol.

If Ireland and the EU, however, push the hard Backstop option to finality, then the British will have to go for No Deal. This will mean a hard border, not just North/South, but for the vast bulk of our exports which access the world through the UK transport system.

To quote the Irish-American tennis player, John McEnroe, when disputing a line call at Wimbledon, ‘Are you serious?’.

For the Irish to push the UK into a position where it would have to walk away from a deal with the EU over the border would be simply insane, given the economic implications.

If it is being used as an incentive by the EU to get the British to take some unpalatable medicine elsewhere, then it is a fairly blunt weapon. I have stated previously that in any game of bluff, there has to be a reasonable possibility of having one's bluff called. Anybody looking at the situation cannot help but conclude that Ireland would not bring the house down in a single-minded pursuit of a political goal, if this was to do huge damage to its own economy. Any hard border in the Irish Sea and North/South would hurt Ireland a lot more than it would Britain. As the main Irish business organisation IBEC stated,

Ireland's geographic position, with the use of the UK as a land bridge to other EU states, and the reliance on UK suppliers and markets, in addition to the land border with Northern Ireland, means it is uniquely exposed to the cost, complexities and disruptions associated with applying and administering a customs border. The economic implications are potentially enormous.

In addition, I believe that the Backstop option, with the implication of a border in the Irish Sea, presents the same dangers to the Good Friday Agreement that a hard border on the island of Ireland represents. It would psychologically cut off Unionists from their fellow citizens in Britain. The Irish Government signed up to the concept of parity of esteem for both traditions in Northern Ireland, not just for Nationalists. The aggressive pushing of the hard Backstop option would appear to conflict with the spirit, if not the letter, of the Good Friday Agreement.

This option, in its most stark form, has no chance of being implemented.

## IV Ireland's Opportunities

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### **Ireland EFTA type arrangement with the EU**

The Irish Government has placed huge importance on maintaining a “frictionless” border on the island of Ireland. This is understandable, given the history of the border and also the need to preserve the stability engendered by the Good Friday Agreement. However, Dublin has completely placed the onus on the British Government to come up with a solution. It has worked on the basis that it was the UK's decision to leave the EU that caused the problem and hence has absented itself from making any suggestions. Its only contribution was to ask the British Government to stay in the Single Market and Customs Union, something that Prime Minister Theresa May and her Cabinet have ruled out as not reflecting the wishes of those who voted for Brexit.

The Irish Government even initially refused to enter into direct talks with London on the matter, instead choosing to work only through the EU negotiators. They have belatedly gone back on that refusal as the possibility of forcing the UK to stay in the Customs Union has receded.

However, one option which has not been seriously considered to date is that Ireland should itself agree to depart the EU Customs Union to preserve frictionless movement of goods and people with the UK. Since Ireland is the main beneficiary of the current arrangement, this is surprising. The Irish Government could ask the EU for a special arrangement, so it could stay in the EU but outside the EU Customs Union but maintaining, as far as possible, a customs union with the UK. If this were not possible as it breaches the need to “maintain the integrity of the Union's Legal Order”, then membership of the European Free Trade Area (EFTA), on the lines of Iceland, Norway and Liechtenstein could be considered as an option.

If avoiding a hard border in Ireland is so important politically, then there is an onus on the Irish Government carefully to examine all options for its avoidance. This option certainly has its attractions for all the parties concerned: Ireland, the UK and the EU.

There is no doubt that Ireland has benefitted economically and culturally from its membership of the EU. However, the attractiveness of full membership, once the UK departs, will have been reduced considerably.

The UK is still Ireland's most important trading partner. The Welsh port of Holyhead alone took 425,000 HGV vehicles on the Irish Sea route in 2016 and is now the second busiest Ferry port in the UK, second only to Dover. Other Welsh and English ports receive large volumes of Irish goods on their way to markets around the world.

While it would be possible to establish some streamlined customs arrangements with the UK, many of these goods will ultimately pass through the English Channel ports to EU countries and be subject again to custom procedures. It would be much better to have one set of customs to deal with, rather than two.

In addition, as Ireland has prospered economically, it has moved away from being a net recipient of EU funds. The Irish net contribution this year will be around €1bn and rising, soon to top €1.3bn, similar per capita to the UK's present contribution. This is even before the EU proposes measures to fill the gap in the budget left by the UK's departure. These measures are likely adversely to affect Ireland, as the EU will be seeking larger payments from the present net donors, as well as cuts to the Common Agricultural Policy (CAP), an area where Ireland gets most of its receipts from the EU (around two thirds). Norway, a country in EFTA with a similar population to the Irish Republic, pays the EU approx. €400m pa, for full access to the EU's Single Market. This figure is less than half the current Irish net contribution.

In addition, the Irish have always mistakenly looked on the EU as an economic project. As the more grandiose political schemes of Europhiles like Macron, or the SPD in Germany, become more apparent, then Ireland will have less enthusiasm for Brussels. In addition, it should be admitted that much of the Euro enthusiasm in Ireland has traditionally been a form of Anglophobia. With the UK no longer there, the love affair with Brussels will increasingly cool, as Ireland is forced to give up even more of its sovereignty.

This will be particularly true when the EU seeks to curb Ireland's attractiveness to Foreign Direct Investment (FDI), because of its corporation tax rate of 12.5%. The move to a common consolidated corporation tax (CCCT) would force even the most Europhile Irish politician to reconsider the country's continued participation in the Euro project. If Ireland was outside the EU, then the ability of Brussels to dictate its tax rates would be eliminated. The EFTA type arrangement would, of course, maintain full and free access to the Single Market.

An EFTA type arrangement would greatly suit Ireland in the fishing area. Ireland is allocated an even smaller % of the total fish caught in its own rich fishing grounds, than the UK is in its waters. Once the UK regains control of its maritime resources, other EU countries will be looking at enhanced quotas off Ireland as compensation. In an EFTA type arrangement, Ireland could, like Norway, greatly revive its fishing communities and, in conjunction with the UK, end the huge over fishing which is going on at present around our islands. For Ireland, this is important because 90% of the country's exclusive economic zone is actually maritime, by far the highest in the EU.

If Ireland were to opt for an EFTA style deal with the EU, this would relieve the UK of the need to solve the thorny issue of the Irish border, as Ireland could maintain the present customs union with the United Kingdom, thus preserving the mutually beneficial arrangements between the two islands. The downside for Ireland would be its exclusion from the decision-making process in Brussels. However, with a voting share of between 1-2% in the Council of Ministers, it is arguable whether Ireland, at present, has much of a say in EU law making.

In addition, there are attractions to the EU for agreeing Ireland's exit to an EFTA linkage. The usefulness of Ireland in the negotiations has now passed, with the UK agreeing to a generous financial settlement. To countries on the European mainland, Germany, France, the Netherlands etc., it is doubtful whether the huge difficulties in finding a solution to the Irish border are worth the candle. As the EU showed in its notorious Bailout for Ireland, it was more than willing to dispense with Ireland's national interests when faced with wider EU considerations. Given the small size of the Irish economy, relative to the whole EU, it is extremely unlikely that the issue of the Irish border will be allowed scupper the wider deal.

Ireland is situated in the middle of Anglophone North Atlantic countries, with the UK to the east and Canada to the west. It will be separated from the rest of the EU, not only by water but also by the UK. Geographically, historically and linguistically it will be an oddity in the EU. If a free trade area is established by the USA, Canada and the UK, it would be a much more natural fit for Ireland, than to be left as a small English-speaking State on the periphery of a centralising EU Superstate.

Better to take matters into our own hands and seek EFTA membership, for a period, to assess the country's future options post Brexit.

## **Technological Solution**

If all the other options are ruled out, we come to the technological solution by a process of elimination. The UK has ruled out continued membership of the Customs Union, Ireland will not consider the EFTA route, the EU demands that we must stick rigidly to its Legal Order and the Backstop is not really an option.

The Technological solution is essentially based on the British paper of last August. In addition, there are no simple off the shelf solutions available which can be copied from places like the US/Canadian border or Norway/Sweden. Having crossed the Canadian frontier many times, it is not a simple straightforward matter and trade and individuals can be held up for hours at times. Something similar would lead to chaos and possibly civil disorder in Ireland. It should be factored in that the greatest resistance to a hard border lies in the strongly Republican districts just North of the boundary line. It would be a nightmare trying to construct and maintain any new permanent structures. Nobody wants a fixed line of confrontation in the middle of the peaceful Irish countryside.

Therefore, the authorities will have to construct something unique. It will not be perfect and will not be to anybody's 100% satisfaction. As a seasoned negotiator, the late David Ervine of the Progressive Unionist Party (PUP) said during the GFA Talks, everybody should get what they need, not what they want, and there should be parity of pain and satisfaction all round.

The first step is to remove any question of using the border for immigration control. The UK has already indicated that it will focus its efforts, to limit immigration of EU nationals, at the employment level. There is already very good cooperation between the immigration authorities, including sharing information on visa applications, informal liaison officers regularly at Belfast and Dublin airports etc. This could continue and be enhanced.

These immigration arrangements should in theory continue as before. They can be maintained as long as the UK does not impose visa restrictions on any of the remaining 27 States. This is unlikely, especially in the short to medium term. The other proviso is that Ireland stays out of the Schengen arrangements and maintains its own mini Schengen with the UK, Isle of Mann and the Channel Islands. The commitment to the maintenance of the Common Travel Area should assist Ireland to successfully ward off pressure from Brussels on Schengen.

The next area to exempt is, as indicated by the August British paper, local traffic and agriculture. These make up to 80% of trade transactions on the Irish border. They are characterised by high volume and frequency but low value transactions. However, exempting these will require a level of flexibility from the EU which is not evidenced to date.

However, the exemptions appear to be compliant with GATT regulations.

The economist, Dr David Collins, who is professor of Law at City, University of London, and an acknowledged WTO specialist, has just published a pamphlet with the prestigious British Think Tank, Politeia, on Brexit. Collins pointed out that, in a free trade deal type, along the lines of the recent EU/Canada Comprehensive Economic and Trade Agreement (CETA),

The land border between the UK and Ireland need not have any physical infrastructure and as such should not represent a political obstacle to a UK-EU FTA. Article XVIII of the GATT and the Trade Facilitation Agreement of the WTO require that WTO members must minimize customs procedures as far as reasonably possible. Moreover, special arrangements to streamline borders (as between Northern Ireland and the Republic of Ireland) such as those involving regular trader exemptions and technology, are permitted under the exemption for border traffic under Article XXIV of the GATT.

Also, the UK has already indicated that, in a limited number of areas, including energy, animal and plant health, transport etc., it makes perfect sense to align the regulatory requirements throughout the island of Ireland. This can be achieved, in part, through the mechanism of the North/South implementation bodies which have operated on an all island basis in several areas since 1999 and are based on the North/South Strand of the Good Friday Agreement.

The remaining element, which in reality means large firms with a defined number of employees or turnover, can be accommodated by a trusted trading arrangement. While any British Irish operation on the border would be *sui generis*, one model which would be worth looking at is the Australian one.

The main features of the Australian Trader Programme (ATT), which is rapidly growing, includes,

- A single point of contact between the Australian Border Service and the Trusted Trader Business. Communications are normally electronic.
- A composite monthly return submitted by the Trusted Trader, rather than returns on every cargo.
- A single consolidated return for multi types of goods rather than a different declaration for different goods type
- Regular discussions between the companies and the Australian Border Service
- Use of a special Logo, clearly designating the goods as coming or going to a Trusted Trading company
- Priority for these companies in any dealing with the Border Service

All trusted trader systems operate on a self-assessment and self-regulation basis. Responsible Companies will not wish to violate the law, and this would be backed up by a system of audits and on-site inspections, much as the present VAT system operates.

In addition, there could be a further requirement that all HGV operators on the island of Ireland install a special tracking device in their vehicles so that the customs authorities could check whether any company returns tallied with the physical evidence of the tracking device.

These types of arrangement could be modified over time, as experience is gained in where the snags will arise and where it works well. However, if operated with a coordinated mutual recognition programme by the two customs services, it may be sufficient to facilitate all parties desire to avoid a hard border.

There would, of course, still be a need to have some monitoring of vehicles crossing the border on the main routes, but this could be achieved through technology, with the use of cameras. There are already cameras installed on the main Dublin/Belfast highway, just south of the border city of Newry. These are unobtrusive, and taken with the other arrangements, might be adequate enough to avoid any new installations.

There may also have to be some limited checks at ports connecting Ireland, both North and South, with Britain. These would constitute a similarly unobtrusive arrangement to ensure that areas which remained aligned on an all island basis, and where there was some divergence with Britain, were also monitored. It is also likely that this system would require some spot checks at mainland

European ports on Irish vessels to ensure the system was not being abused as a back door into the EU.

As with the present EU/Swiss model, a supervising committee, comprising expert representatives of the EU and the UK could meet regularly to monitor its operation and advise authorities on the need for any changes.

## V Conclusion

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In the end, it is likely that a free trade agreement will be concluded between the UK and the EU, hopefully allowing for full tariff-free trade in goods between the two entities. It is also likely that there will have to be a separate protocol on customs arrangements on the island of Ireland. The contents of the protocol will, of course, greatly depend on what is covered in the main agreement. However, the issue of the Irish border is key for any Irish Government. The spectre of past betrayals haunts the corridors of power in Dublin. Hence the declaration by the Taoiseach Leo Varadkar that he is determined that his Government ‘will never again leave Northern nationalists and Northern Ireland behind.’

Therefore, the problems with the Irish border issue are that they are essentially political in nature. The relevant importance of North/South trade to the overall Irish and British economies is relatively small. However, with so much history and political capital invested in maintaining the Good Friday Agreement, the importance of solving this matter is out of proportion to the economic gains.

This emotive issue has been used as a weapon by those wanting to thwart the result of the Brexit referendum, including leading members of the British establishment. This is a very uncomfortable position for Ireland. Whatever the outcome of the Brexit process, Irish and British people will have to live alongside each other. Our history has been characterised on occasions by poor and short-term decision making. This is a time when Ireland should, by all logic, be working hard to ensure a beneficial outcome which restores the excellent relations between the two countries. Ireland needs to be the foremost advocate for comprehensive free trading arrangements between the EU and the UK. Unfortunately, the border issue has gotten in the way. We need to solve this matter as soon as possible, and by a method which does not seek to scupper the referendum result. The history of ignoring and reversing referenda results in the EU is shameful. We certainly do not need another example.

In addition, Ireland must keep its options open. Until recently it was almost taboo, close to treasonous, for anybody in Ireland seriously to question the country’s slavish devotion to the EU, yet there are very few in Government circles who have a deep understanding of what the “Project” is all about. I think we can confidently predict, as elsewhere in the EU, there will be growing disenchantment with Brussels and the desire of Europhiles for a United States of Europe. The whole sustainability of the European Union, as presently

constituted, is in serious long-term doubt. Ireland needs to be on the right side of these historical developments.

In many respects, the UK has been at the forefront of developments in the EU, including reform of the CAP (accepted by all now), the Single Market, Budgetary control, scepticism of the euro etc. The disenchantment with the Brussels model is also spreading to other countries. Recent elections in the Netherlands, Germany, Austria, Slovenia, Hungary and Italy have all shown increasing support for a different type of arrangement in Europe. The sole exception was the particular circumstances in France, where the choice was between Macron and the National Front's Marine Le Pen. Therefore, Ireland would be very short sighted to tether its future to a ship which is showing distinct difficulty in staying afloat.

Ireland needs to look after its own self-interest and realise that its deep connections with its neighbour, the United Kingdom, are more valuable than temporary plaudits from Brussels for being "the best boy in the classroom". The further abandonment of Ireland's remaining sovereignty is what is facing this country unless it changes course.

There is no need for the Irish border question either to derail the EU/UK Brexit discussions or to determine the overall agreement. The Border question has been used by elements within the Remain camp to try and block the UK's departure from the EU. It is certainly not in the long-term interest of Ireland to be used in this cynical manner.

While there is no comparable international example that can be readily used to solve the issue, goodwill and common sense should allow for a workable solution. It could be based on major exemptions for small companies and purely local trade, as well as agricultural and food products. The remaining trade could be monitored and operated on a trusted trader system. Under these arrangements, there would be no need for any new physical infrastructure on the border. The danger is that politics, not practicalities, will get in the way.

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The EU's attempts to play politics with the Irish border by imposing its preferred options for a soft border could threaten the stability of the island and the long term interests of Ireland. In *Brexit - Options for the Irish Border*, Dr Ray Bassett explains that Ireland's interests would be far better served by co-operating with the UK and accepting its sensible proposal for a technological solution to cross-border traffic, one which has again been highlighted by a group of senior UK parliamentarians.

The author, a former Irish ambassador to Canada, was also part of the Irish Government Talks Team for the Good Friday Agreement. He explains that the EU is playing a dangerous game. Its 'backstop' solution of keeping Northern Ireland under the EU's economic arrangements after Brexit would threaten the stability of the island, while the demand that the UK remain in a Customs Union with the EU is contrary to the UK's declared policy and unlikely to lead to continued good relations between Dublin and London.

Far better would be for Ireland's leaders to change course, and so serve Ireland's interests. Instead of acting as EU agents, Ireland's rulers should signal their intention to cooperate with the UK. They should denounce the 'backstop' agreement; recognise that the technological solution to cross border goods traffic proposed by the UK is both sensible and workable; and they should focus on talks with London to agree the practical arrangements to make the soft border a reality. For the longer term they should consider the opportunities for Ireland in changing course. They should recognise the reality of Anglo-Irish economic ties and prepare to bring Ireland out of the EU to join EFTA.

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