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# **The impact of Brexit on cross-border cooperation in Europe: the case of the Irish border**

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## ABSTRACT

La mia ricerca si è concentrata sugli effetti della Brexit sul processo di cooperazione transfrontaliera europea, con particolare attenzione alle conseguenze sul confine tra Irlanda e Irlanda del Nord. La cooperazione transfrontaliera è un elemento chiave per il processo di integrazione dell'Unione Europea, in quanto promuove la cooperazione tra gli Stati Membri e i Paesi limitrofi che condividono un confine terrestre o un passaggio marittimo. I suoi obiettivi principali sono la promozione dello sviluppo economico e sociale nelle zone di confine, affrontando sfide comuni come l'ambiente, la salute pubblica, la sicurezza e il miglioramento della mobilità di persone, merci e capitali. Le regioni di confine sono luoghi in cui lo sviluppo dell'integrazione europea dovrebbe essere percepito in modo particolarmente positivo: dovrebbe quindi essere garantito il normale svolgimento di tutte le attività quotidiane (come studio, lavoro, formazione, assistenza o affari) indipendentemente dall'esistenza dei confini nazionali. Sebbene l'apertura delle frontiere europee abbia dato ai residenti delle regioni di confine maggiori possibilità di vivere, lavorare e accedere ai servizi degli Stati membri confinanti, significative barriere legali e amministrative impediscono ancora l'impegno transfrontaliero.

Per condurre la mia ricerca, sono partita da fonti primarie come i trattati e gli accordi bilaterali e multilaterali contenuti nella Gazzetta ufficiale dell'Unione europea e negli archivi legislativi online del governo britannico e delle Nazioni Unite. Inoltre, per sostenere la mia tesi mi sono basata su indagini e interviste fornite da diversi *think tank* che studiano la Brexit e la cooperazione transfrontaliera, i principali dei quali sono *Institute for Government*, *UK in a Changing Europe*, il Centro per gli Studi Transfrontalieri con sede in Irlanda e il Centro di Ricerca sui Confini Internazionali della Queen's University a Belfast. Per comprendere il processo negoziale post-referendum e le dinamiche attuali, ho utilizzato articoli di quotidiani come *The Guardian*, *BBC News*, *Bloomberg* e *The Independent*, oltre alle dichiarazioni ufficiali della Commissione europea e del Parlamento britannico.

Il primo capitolo mira a fornire le informazioni di base e il contesto storico dei concetti che sono stati poi analizzati in modo più approfondito nei capitoli successivi. In primo luogo, ho fornito una panoramica delle origini e dell'evoluzione della cooperazione transfrontaliera in Europa, per sottolineare la sua importanza nel processo di integrazione dell'UE, nonché le sfide e gli ostacoli legali e amministrativi che sta affrontando. Oggi, oltre il 30% dei cittadini dell'UE risiede in regioni di confine, lungo 38 confini interni costituiti da barriere linguistiche e

geografiche che spesso portano le cicatrici dei passati conflitti europei. Ciò rende le aree di confine una dimensione adatta a valutare le teorie sull'integrazione dell'UE. Con l'attuazione del programma del mercato unico, la struttura della cooperazione territoriale all'interno dell'UE ha subito una trasformazione significativa. Di conseguenza, la cooperazione transfrontaliera è esplosa con il progredire del processo di integrazione europea e l'attuazione di misure di remunerazione per le aree meno sviluppate. Il Consiglio d'Europa e l'Unione Europea hanno avuto un ruolo chiave nel migliorare le condizioni per la collaborazione transfrontaliera. Mentre il primo si è impegnato in particolare per migliorare la situazione giuridica, i progetti di cooperazione transfrontaliera ricevono un'importante assistenza finanziaria dalla Commissione europea attraverso i programmi Interreg. Nonostante ciò, ci sono ancora molte barriere che impediscono ai cittadini di vivere, lavorare e studiare oltre confine. Queste barriere includono ostacoli invisibili al commercio e sfide alla cooperazione transfrontaliera in diverse aree politiche come il mercato del lavoro, l'educazione, i trasporti, il sistema sanitario e la sicurezza.

Successivamente, ho presentato una sintesi di come è stata gestita la cooperazione transfrontaliera tra Irlanda e Regno Unito nel corso degli anni, esaminando il ruolo che l'Accordo del Venerdì Santo ha avuto nel processo di pacificazione, insieme ai finanziamenti del Programma PEACE dell'Unione. Essendo l'unica area del Regno Unito che condivide un confine terrestre con un altro Stato membro dell'UE, l'Irlanda del Nord è un esempio interessante per studiare come la cooperazione transfrontaliera europea sia stata influenzata dall'uscita del Regno Unito dall'Unione Europea. L'adesione della Gran Bretagna e dell'Irlanda alla CEE/UE ha migliorato significativamente le strutture transfrontaliere e ha fornito una struttura legislativa per la libera circolazione di persone, merci e servizi. Il confine è diventato quasi invisibile grazie all'Accordo del Venerdì Santo, al Mercato Unico Europeo e all'assenza di controlli di sicurezza, il che ha reso possibile la ripresa dei viaggi transfrontalieri e del commercio tra tutte le isole. Anche se nell'Accordo del Venerdì Santo non si parla molto dell'UE (secondo la Corte Suprema del Regno Unito, l'accordo presupponeva, ma non richiedeva, che il Regno Unito continuasse a far parte dell'UE), questa supposizione era fondamentale per molti partecipanti al processo di pace.

Il conflitto di nazionalismi in atto nella società nordirlandese è stato attenuato dalla cooperazione tra Irlanda e Regno Unito come Stati membri dell'UE e dalla cessione dell'autorità legislativa alle istituzioni europee. Dal 1989, l'UE ha fornito assistenza finanziaria al processo di pace in Irlanda del Nord sia attraverso la politica regionale che con i contributi al Fondo internazionale per l'Irlanda. In risposta alle possibilità offerte dalla tregua del 1994, tra il 1995

e il 1999 si è svolto il primo programma PEACE (PEACE I) sostenuto dall'Unione europea. Dopo aver beneficiato dei finanziamenti dell'UE, l'uscita del Regno Unito dall'Unione ha suscitato preoccupazioni per diversi settori dell'Irlanda del Nord nel lungo periodo, nonché per il processo di pace e la collaborazione transfrontaliera dopo il 2020. Il capitolo si conclude con una cronologia dei principali eventi che hanno portato al fenomeno della Brexit, a partire dall'ingresso del Regno Unito e dell'Irlanda nella Comunità Economica Europea fino alle ragioni che hanno portato alla vittoria del "leave" e ai successivi negoziati sulla Brexit e alle loro conseguenze sul rapporto con l'Irlanda e l'Irlanda del Nord.

Nel secondo capitolo ho analizzato gli effetti dei risultati del referendum sulla Brexit sulla cooperazione transfrontaliera con l'UE. Sono partita dalle implicazioni per la cooperazione e il commercio transfrontaliero nell'accordo commerciale e di cooperazione UE-Regno Unito, per poi concentrarmi sugli impatti sul controllo delle frontiere, sulla mobilità transfrontaliera, sul diritto penale e sulla cooperazione giudiziaria. Per quanto riguarda i confini tra Regno Unito e Unione Europea, la Brexit è ancora un lavoro in corso. Il governo ha fissato una difficile scadenza per l'attuazione da parte delle dogane di tutte le disposizioni del modello operativo di frontiera, ovvero il 31 dicembre 2023. Inoltre, la Strategia per le frontiere 2025 del governo britannico è in fase di sperimentazione e consultazione. L'incertezza sui controlli di frontiera sta avendo ripercussioni non solo sul commercio, ma anche sui viaggi transfrontalieri. Le lunghe file di viaggiatori che cercano di attraversare la Manica a Dover sono il simbolo di come sia cambiato il confine tra Regno Unito e Unione Europea. A causa del confine più difficile, viaggiare tra il Regno Unito e l'UE è più impegnativo che in passato dato che sono in vigore regolamenti contrastanti sull'attraversamento del canale della Manica. Si ritiene che la gestione delle frontiere sia l'area in cui la Brexit porterà alle tensioni politiche e alle lacune politiche più significative, in particolare per quanto riguarda la politica di immigrazione.

Un problema impellente è la mancanza di un sistema giuridicamente vincolante che stabilisca la responsabilità per le persone in cerca di asilo politico e semplifichi i trasferimenti tra l'UE e il Regno Unito. Sebbene non esistano più modi legali per far entrare i richiedenti asilo nel Regno Unito, come avveniva con il Regolamento di Dublino, si è registrato un aumento di ingressi non autorizzati attraverso piccole imbarcazioni che attraversano la Manica. Dopo la Brexit, la cooperazione UE-Regno Unito in materia di asilo e migrazione è scesa a nuovi minimi storici; in più, il "Nationality and Borders Bill", lanciato dal governo britannico nel luglio 2021 come parte del suo nuovo piano per l'immigrazione, è stato fermamente condannato dall'Alto commissariato delle Nazioni Unite per i rifugiati.

Inoltre, al termine del periodo di transizione, il 31 dicembre 2020, il Regno Unito ha perso accesso a molti dei meccanismi di cooperazione poliziesca europea. La terza parte dell'accordo commerciale e di cooperazione stabilisce infatti che il Regno Unito perda la sua adesione all'Agenzia europea per la cooperazione nell'applicazione della legge (Europol) e all'Agenzia dell'Unione europea per la cooperazione nella giustizia penale (Eurojust). Dopo la Brexit, i sistemi di polizia che accelerano la condivisione di informazioni e dati come il Sistema d'informazione Schengen II, il Sistema europeo di casellari giudiziari e il Passenger Name Record (PNR) non sono più accessibili al Regno Unito. Inoltre, il Regno Unito è ora considerato un Paese terzo anche per quanto riguarda i procedimenti giudiziari transfrontalieri. La sostituzione del diritto dell'Unione con i trattati nazionali e internazionali solleva inoltre numerose questioni giuridiche. Ciò riguarda in particolare il riconoscimento o l'esecuzione di sentenze straniere, la cooperazione giudiziaria e la giurisdizione internazionale. Le controversie transfrontaliere tra il Regno Unito e l'UE erano regolate da un solido sistema giuridico prima della Brexit. Tuttavia, a seguito della Brexit, questo quadro non è più in vigore e non è stato ancora sostituito da un quadro legislativo analogo; pertanto, molte questioni di giustizia civile saranno ora controllate dalle leggi locali degli Stati membri.

Il terzo e ultimo capitolo presenta un caso di studio per indagare gli effetti della Brexit su una specifica regione di confine, quella tra Irlanda e Irlanda del Nord. Le maggiori sfide esistenziali e pratiche dell'uscita del Regno Unito sono state rivelate in quest'area. Infatti, la data di uscita del Regno Unito dall'UE ha dovuto essere rinviata tre volte a causa dell'estrema difficoltà di raggiungere un accordo sul confine irlandese. Ho evidenziato come l'UE abbia svolto un ruolo indiretto nel processo di pace irlandese e ho analizzato insieme le conseguenze della Brexit sull'Accordo del Venerdì Santo.

I legami Nord-Sud irlandesi sono stati resi tangibili e d'impatto in conformità con gli obiettivi dello *Special EU Programmes Body*. Nonostante relativa pace che ha fatto seguito al conflitto irlandese non sia stata direttamente prodotta dalle istituzioni dell'UE, quest'ultima ha offerto un contesto utile per la normalizzazione della società. L'uscita del Regno Unito dall'UE compromette e destabilizza questo ambiente condiviso, indebolendo sia lo stesso Accordo del Venerdì Santo che la sua positiva attuazione. L'Accordo del Venerdì Santo presuppone che il Regno Unito e l'Irlanda continuino a far parte dell'UE, ma non obbliga nessuna delle due parti a farlo. Nell'ultimo punto ho illustrato le prospettive dei cittadini e delle istituzioni locali che vivono nella regione di confine, riportando le loro testimonianze sulle difficoltà che incontrano

quotidianamente dopo l'uscita definitiva del Regno Unito dall'Unione. Infatti, i veri vantaggi della cooperazione transfrontaliera non si limitano alle iniziative ufficiali o ai meccanismi istituzionalizzati. Le abitudini di cooperazione sono quelle che richiedono più tempo per essere sviluppate, ma che hanno un impatto più significativo e a lungo termine sulla qualità della vita e del lavoro attraverso i confini. Negli ultimi 20 anni, questi comportamenti sono cresciuti nella regione frontiera irlandese e si sono rivelati vantaggiosi dal punto di vista pratico. Data l'importanza del lavoro e della vita transfrontaliera, l'incertezza della Brexit ha avuto un impatto profondo sulla vita degli intervistati nella regione di confine. Nel corso dei tre anni di discussioni sulla Brexit, l'ansia dell'opinione pubblica per l'eventualità di un confine rigido non ha fatto che aumentare.

In conclusione, se è inevitabile che l'uscita del Regno Unito dall'Unione comporti ripercussioni sui territori con cui confinano, si spera che questo apra nuove opportunità per la nascita di nuovi partenariati nei territori, eliminando le barriere esistenti alla collaborazione transfrontaliera. Per il momento, tuttavia, la cooperazione transfrontaliera europea è stata colpita negativamente dalla Brexit, vedendo messo a rischio il suo complesso equilibrio. Anche se l'integrazione europea ha aumentato diversi incentivi alla cooperazione transfrontaliera, l'implementazione di un nuovo livello di governance condivisa nelle regioni di confine è ancora rallentata da numerosi impedimenti visibili e invisibili, e il ritiro del Regno Unito dall'UE ne è l'esempio principale. Questa tesi mira a dimostrare che la Brexit ha effettivamente provocato diversi squilibri e passi indietro in molte aree della cooperazione transfrontaliera.

Nonostante la sua importanza in termini di identità e di politica, la resistenza del processo di pace deriva dal fatto che molti abitanti del luogo potevano (per la maggior parte) ignorare la presenza del confine. Il rischio principale della discussione sulla Brexit in merito al confine irlandese è stato quello di sollevare ancora una volta il dilemma per agli abitanti dell'Irlanda sul loro sentimento di appartenenza alla Gran Bretagna o all'Irlanda (e di conseguenza all'Unione Europea). Una misura di garanzia per il mantenimento dei termini della cooperazione nord-sud è stata fornita dal protocollo sull'Irlanda/Irlanda del Nord nell'accordo di recesso. Tuttavia, l'attuale tensione nelle relazioni diplomatiche tra il Regno Unito e l'UE suggerisce che le questioni di confine continueranno a essere un argomento che richiede una costante sensibilità politica e compromessi. In molti sensi, il confine irlandese è una questione irrisolta che trascende le considerazioni geografiche, economiche e persino politiche. Grazie all'accordo del 1998 e alla forza d'animo delle persone che vivono lungo la regione di confine, la vita e il lavoro transfrontalieri sono diventati una routine. Il processo della Brexit, i cui effetti cominciano a



farsi sentire, sta mettendo alla prova questa capacità di resistenza. I recenti sviluppi politici relativi al Protocollo dell'Irlanda del Nord dimostrano come la protezione dell'Accordo del Venerdì Santo sia per lo più utilizzata come leva per interessi politici e commerciali. Questo probabilmente porterà a un Regno Unito sempre più frammentato e a un aumento dell'opinione pubblica irlandese a favore di un referendum per l'unificazione dell'Irlanda. Ritengo che la cooperazione transfrontaliera sull'isola irlandese sia l'aspetto che è stato più sottovalutato durante la campagna del referendum sulla Brexit e, di conseguenza, ora è ciò che più sta danneggiando le relazioni tra il Regno Unito e l'Unione Europea.

## INTRODUCTION

Cross-Border Cooperation is a key element for the process of EU integration, promoting cooperation between EU countries and neighbourhood countries sharing a land border or sea crossing. Its main objectives are the promotion of economic and social development in border areas, addressing common challenges such as environment, public health, safety, and security and improving the mobility of persons, goods, and capital. Border regions are sites where the development of European integration should be perceived in a particularly good light: it should be possible to carry out all daily activities (studying, working, training, aiding, or doing business) regardless of the existence of national borders. Although the opening of Europe's borders has given border region residents more chances to live, work, and access neighbouring Member States' services, significant legal and administrative barriers still prevent cross-border engagement.

My research focused on the effects that Brexit had on the European cross-border cooperation process, with a focus on the consequences for the border between Ireland and Northern Ireland. The first chapter aims to provide the basic information and historical background of the concepts that will later be analysed in more depth. First, an overview of the origins and evolution of cross border cooperation in Europe will be provided, to underline its importance in the EU integration process together with the challenges and obstacles it is facing. After that, I will present a summary of how cross-border cooperation between Ireland and the UK has been handled, looking into the role that the Good Friday Agreement had in the peace-making process, together with the EU PEACE Programme funding. The chapter ends with it a timeline of the main events that led to the Brexit phenomenon, starting from the UK and Ireland's entrance in the European Economic Community to the reasons that led to the victory of the "leave" and the subsequent Brexit negotiations and their consequences on the relationship with Ireland and Northern Ireland. This will be useful to provide an overall framework for the following chapters.

The second chapter will analyse the effects of the results of the Brexit referendum on cross-border cooperation with the EU. I will start from the implications for border cooperation in the EU-UK Trade and Cooperation Agreement, later focusing on the impacts on border control, cross-border mobility, criminal law and judicial cooperation. The delays and uncertainty surrounding the Border strategy put into practice by the UK at the end of the transitional period

had serious repercussions not only in cross-border travel, causing endless queues at the controls for the Channel crossing, but also on migration and asylum matters, being no binding framework and cooperation between the UK and the EU to define responsibility for asylum seekers. Additionally, the European Arrest Warrant, the European Criminal Records Information Exchange System (ECRIS), the Second-Generation Schengen Information System (SIS II), and Europol were all instrumental in facilitating successful cross-border policing. When the transition period concluded on 31 December 2020, the UK was set to lose full access to several of those mechanisms. As a result, the UK and EU required to agree on a new basis for extraditing people between the two countries, exchanging law enforcement data, and facilitating law enforcement and criminal justice cooperation.

The third and final chapter will present a case study to investigate the effects of Brexit on a specific border region, which is the one between Ireland and Northern Ireland. Since the territory presents the only land border between the EU and the UK, by looking at the relations between the UK and Ireland we can monitor the efficacy of the Brexit negotiation process. The issues that were introduced in the second chapter will be then applied to the Irish reality. I will highlight how the EU played an indirect role in the Irish peace process and investigate the consequences of Brexit on the Good Friday Agreement together. The last point will illustrate the perspectives of the local citizens and institutions living in the border region, reporting their testimonies on the difficulties they encounter daily after the United Kingdom's final exit from the Union.

With this thesis I want to stimulate a reflection on the concept of borders on the current geopolitical scenario; while globalisation and the digital revolution have made boundaries more permeable, the Brexit referendum can be seen as a retreat to national borders. The Brexit campaign to depart the European Union was principally motivated by hostility to immigration and the free movement of EU workers to Britain. As a result, the strengthening of Britain's borders has the capacity to alter decades of de-bordering which has been facilitated by EU membership. Brexit has seen the United Kingdom move away from some of these vital cross-border information-sharing arrangements, requiring both new arrangements to be put in place, as well as an honest appraisal of the various gaps that remain. Northern Ireland poses one of the most challenging problems related to Brexit due to the peculiar structure of its relationship with the UK and EU. In a framework as fragile and contentious as the relationship between the

UK and Ireland, I believe that the EU has served as a third stabilising force, and the departure of the UK from the Union endangered this complex balance.

To conduct my research, I started from primary sources such as bilateral and multilateral treaties and agreements contained in the Official Journal of the European Union and in the online legislative archives of the British government and of the United Nations. Moreover, to support my thesis I relied on surveys and interviews provided by several think tanks studying Brexit and cross-border cooperation, the main ones being The Institute for Government, UK in a Changing Europe, the Centre for Cross Border Studies and the Centre for International Borders Research of Queen's University Belfast. To gain insight into both the post-referendum negotiation process and the current dynamics, I used media outlets such as The Guardian, BBC News, Bloomberg and the Independent, along with official statements provided by the European Commission and the UK Parliament.

## CHAPTER ONE

### CROSS-BORDER COOPERATION IN EUROPE AND BREXIT

#### 1.1 Cross-border cooperation development in the European Union

Europe's internal borders include several that were built after World War II. European integration has minimized long-standing border disputes, yet it has not resolved them. On the one hand, frontiers were physically removed from the majority of the internal area of the EU. On the other, they are now a flourishing environment for institutional innovation and regional cooperation. Some of the fragmented border regions with a shared culture and history are re-emerging in an unified Europe in recent years, in part as a result of globalization and in part as a result of regional integration. However, even if European integration has downplayed long-standing border disputes, it has not resolved them. Borders are constantly rebuilt in social systems through communication; therefore, it is not surprising that national, local, and media institutions replicate this mental frame, fear, and suspicion of their neighbours over time. This social reproduction of borders continues even in the face of debordering and EU-funded regional cooperation programs. Some regions have succeeded to transcend this mindset and establish a discourse aimed at improving cross-border collaboration; others have continued to turn their backs on their neighbours. Border areas are an appropriate level for evaluating theories of EU integration for each of these reasons. They provide a unique opportunity to examine how flows and exchanges of capital, people, and goods have changed over time and the amount to which the integration process is responsible for the growth of those exchanges. In this context, Cross-Border Cooperation (CBC) can be seen as a key instrument to counteract recent trends that have led to the hardening of borders, such as Brexit, the reinvigoration of border controls in several Schengen Area countries because of the rising influx of migrants, or the rise of extreme far right populism in many European nations.<sup>1</sup>

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<sup>1</sup> DE SOUSA, L. (2013) *Understanding European Cross-border Cooperation: A Framework for Analysis*, in *Journal of European Integration*, p. 669 – 672

According to the legal basis provided by article 174 of the Treaty in the Functioning of the European Union,<sup>2</sup> the Union must “aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.”<sup>3</sup> Among the regions concerned, cross border regions are included. The article so acknowledges the unique circumstances of cross-border areas and mandates that the Union give these regions special consideration when establishing and maintaining its action to promote the strengthening of its economic, social, and territorial cohesion. Today, more than 30% of EU citizens reside in border regions, along 38 internal boundaries made up of linguistic and geographical barriers that frequently bore the scars of past European wars.<sup>4</sup> This makes border areas a suitable dimension for evaluating EU integration theories. A border region is more than just the most remote portion of the sovereign territory shared by two or more neighboring countries and demarcated by a hard border. They are intended here as a unique zone of social, cultural, economic, and political flows and exchanges, a site where a variety of activities flourish and where the character and volume of transactions have changed over time. With the creation of the Single Market, the introduction of a single currency, and the removal of border controls under the Schengen agreement, border regions are clearly defined territorial areas that have seen the dissolution of borders and customs. Along with the removal of jurisdictional controls, debordering changed how neighbors interacted with one another. Even if they are strongly intertwined, European integration and cooperation are two different concepts. European integration expects governments to cede some of their sovereign authority to a supranational organization, while cooperation, although leading to interdependence, it does not require a formal agreement to occur, and each involved state or territorial unit keeps its own capacity for sovereignty intact.<sup>5</sup>

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<sup>2</sup> Official Journal of the European Union, C 326, Consolidated version of the Treaty on the Functioning of the European Union, 26.10.2012, available at: [https://eur-lex.europa.eu/eli/treaty/tfeu\\_2012/oj](https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj) (last accessed: 5 July 2022)

<sup>3</sup> Treaty on the Functioning of the European Union, art. 174, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E174> (last accessed: 5 July 2022)

<sup>4</sup> European Commission, *Interreg A – Cross-border Cooperation*, available at: [https://ec.europa.eu/regional\\_policy/it/policy/cooperation/european-territorial/cross-border/#1](https://ec.europa.eu/regional_policy/it/policy/cooperation/european-territorial/cross-border/#1) (last accessed: 5 July 2022)

<sup>5</sup> DE SOUSA, p. 669

Regional administrations in Europe can cooperate with one another according to existing international agreements and EU internal regulations. In 1958, local associations from both sides of the German-Dutch border organized the first cross-border meeting, which led to the creation of the first official Cross-Border Region, the Euregio, in the vicinity of Enschede (NL) and Gronau (DE). Since then, Euroregions and other types of cross-border cooperation have grown throughout Europe. The term "Euroregion" refers to a variety of associations between regions and border regions that are more or less organised and, in some instances, include a permanent secretariat. In 1971, the Association of European Border Regions (AEBR) was founded with the purpose of acting in the best interests of all European border and cross-border regions, exchanging knowledge and information to formulate and coordinate mutual interests based on different cross-border opportunities and issues. The legal frameworks that are employed vary from border to border depending on how long the cooperation has been going on and the current legal environment. Some Euroregions are led by associations or foundations, while others have chosen the structure of a European Grouping of Territorial Cooperation (EGTC). Most of Euroregional partnerships have been formalized by an agreement between the member regions and territories.

The Council of Europe and the European Union had a key role in enhancing the circumstances for cross-border collaboration. While the first has been particularly engaged on improving the legal situation, CBC projects receive significant financial assistance from the European Commission through the Interreg programs.<sup>6</sup> The Council of Europe has been a significant proponent of cross-border cooperation since the 1960s, as a way to aid in the spread of local democracy and positive neighbourly relations. The first step in legislating Euro-regions at the European level has been the Madrid Convention, also known as the Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities, introduced by the Council of Europe in 1980 and offering a legal framework and sample agreements for the creation of cross-border regions at both the inter-state and local levels.<sup>7</sup> The preamble and twelve articles that describe the requirements and obligations under international law that are binding on the States that are party to the Convention make up its first section. Model contracts, agreements, and statutes pertaining to cross-border collaboration are included in the second

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<sup>6</sup> Espaces transfrontaliers, *Euroregions*, available at: <http://www.espaces-transfrontaliers.org/en/resources/territories/euroregions/> (last accessed: 30 June 2022)

<sup>7</sup> DE SOUSA, p. 677

section. Article 2.1 of the Convention provides a definition of Cross- border cooperation, describing it as “any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose.”<sup>8</sup>

With the implementation of the Single Market program, the structure of territorial cooperation inside the EU has undergone a significant transformation. As a result, Cross-border cooperation exploded as the process of European integration progressed and measures of remuneration for the least developed areas were implemented. The European Commission considers Cross-border cooperation (CBC) as a crucial component of the EU's neighbor policy, helping in the reduction of living standard disparities and the tackling of shared issues across these borders while promoting sustainable growth along the EU's external borders. The three major goals envisaged are to improve conditions for people, commodities, and capital movement, solve common concerns (environment, public health, safety, and security), and promote economic and social growth in border regions. The European Grouping of Territorial Collaboration (EGTC) is the most well-known of the legal instruments that have been created by the European Union over time to encourage and enable cross-border cooperation. EGTC was created by Regulation (EU) No 1082/2006<sup>9</sup>, which entails the signing of a convention that permits public bodies from two or more Member States to cooperate under a single structure with full legal identity. In addition to that, Regulation no 1638/2006<sup>10</sup> of the European Parliament and of the Council of 24 October 2006 laid down general provisions establishing a European Neighbourhood and Partnership Instrument. If it is true that EGTCs aided cooperation by providing legal certainty for cross-border initiatives, EGTCs do not have the authority to make policy and, in particular, may not exercise any powers granted by public law, in accordance with Article 7(4) of the EGTC Regulation. EGTCs are unable to amend the laws that apply to

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<sup>8</sup> DE SOUSA, p. 673

<sup>9</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), available at:

<http://data.europa.eu/eli/reg/2006/1082/oj>

<sup>10</sup> Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, available at: <http://data.europa.eu/eli/reg/2006/1638/oj>



their activity because they lack any regulatory authority, for this reason may be viewed as an inadequate tool for removing these cross-border barriers.<sup>11</sup>

The European Union has been funding cross-border collaboration for the past 32 years through Interreg, a fundamental financing tool for cross-border regional development. Interreg was first created in 1990 as a community initiative before being reorganized in 2000 as an official "objective" of European Cohesion Policy, and it is financed under the e European Regional Development Fund (ERDF). Its goal is to address shared problems and produce common solutions in a variety of areas, including transport, renewable energy, research, education, and health. It includes three types of programmes: cross-border cooperation programmes, transnational cooperation programmes, interregional programmes. Interreg A, or European Cross-Border Cooperation, promotes collaboration between NUTS III regions from at least two Member States that are located on or near borders. The purpose of this is to address shared issues in border regions that have been recognized together and to take advantage of untapped growth potential in border regions, all the while improving the cooperative development process for the Union as a whole. Interreg A included fifty-six cooperation programs for the 2014–2020 term, with a budget of EUR 6.6 billion. Seventy-three cross-border cooperation projects will be funded by the current program, which will run from 2021 to 2027, with a budget of 6.7 billion euros.

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<sup>11</sup> European Commission, *Cross-border Cooperation*, available at: [https://ec.europa.eu/neighbourhood-enlargement/european-neighbourhood-policy/cross-border-cooperation\\_en](https://ec.europa.eu/neighbourhood-enlargement/european-neighbourhood-policy/cross-border-cooperation_en) (last accessed: 30 June 2022)

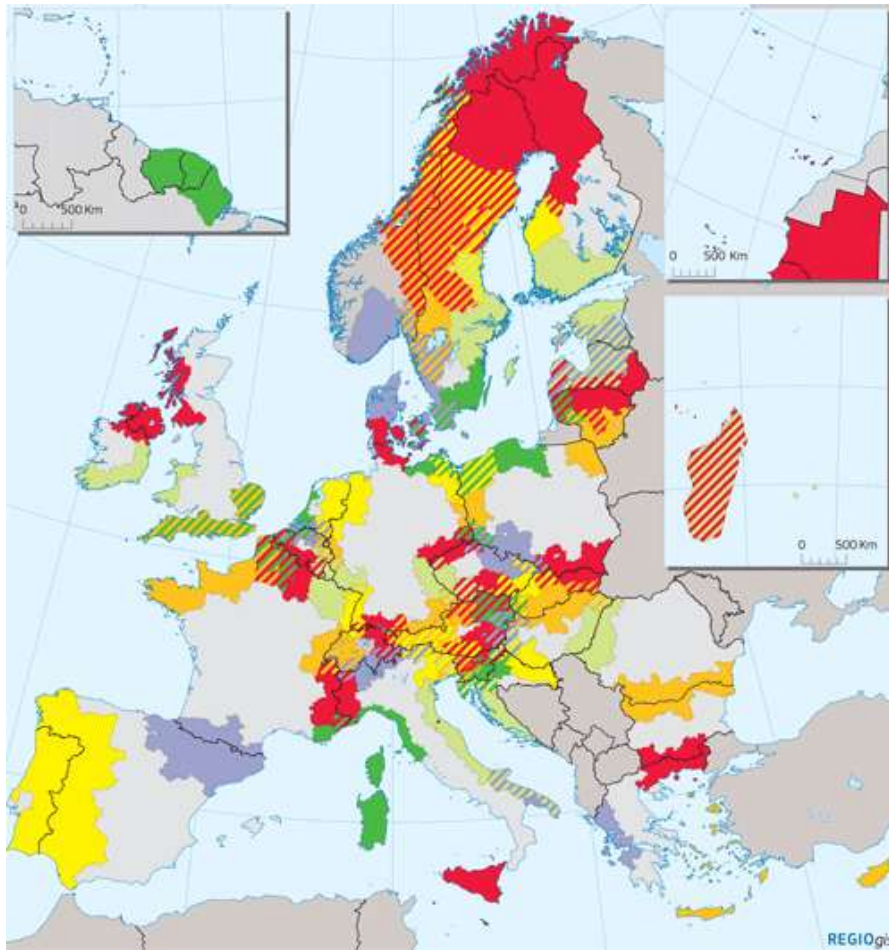


Figure 1. Interreg A Cross-border cooperation programmes 2014-2020 (Source: European Commission – DG REGIO). Each programme area is shown with a specific colour. Hatched areas are part of two or more programme areas simultaneously.

What follows is a summary of the findings of a survey conducted between February and April 2020 among residents of the border regions covered by Interreg cross-border cooperation programs.<sup>12</sup> A total of 54 Interreg cross-border cooperation programmes were taken into consideration. On behalf of the European Commission, DG Regional and Urban Policy, approximately 41,091 respondents from various social and demographic groups were contacted by phone and questioned in their native tongue. The study aims to explore the awareness of cross-border cooperation programmes, the level of cross border mobility, the attitudes towards citizens of neighbouring countries and the obstacles to cross-border

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<sup>12</sup> European Commission, *EU Cross-border cooperation survey (2020)*, available at: [https://ec.europa.eu/regional\\_policy/en/information/publications/reports/2020/eu-cross-border-cooperation-survey-2020](https://ec.europa.eu/regional_policy/en/information/publications/reports/2020/eu-cross-border-cooperation-survey-2020) (last accessed: 01 July 2022)

cooperation between border regions together with underlining the geographical differences that emerge from the results.

Only 24% of respondents who live in border areas supported by Interreg cross-border cooperation programs have knowledge of any EU-funded cross-border cooperation initiatives in their region. Comparatively more people are aware of it among those who live in border areas of Eastern European nations: 49 % in Slovenia, 35 % in Hungary, 34 % in Bulgaria, and 33 % in Croatia and Slovakia. On the other hand, less than one in six respondents having heard of such activities in France (14%) and Cyprus, or in the Nordic nations of Finland (16%), Sweden (16%), and Norway (9%).

Since 2015, cross-border mobility has increased, reaching 56% of residents who reside in EU border regions. Travel for leisure activities, including visits from tourists, is often the top reason for cross-border travel among the six reasons considered by respondents (58 %), followed by travel for shopping for products or services (34 %). The percentage of respondents who have been abroad shows significant geographic inequalities; in Lichtenstein (97%), Hungary (96%), Switzerland (94%), and Germany (94%), more than 90% of respondents have visited another country at least once, followed by residents of Finland (92%), Norway (92%), and Sweden (92%). In comparison, just 62% of respondents in Cyprus and 63% in France and the Czech Republic reported having visited another country.

The survey also reported that a sizable majority of residents in EU border regions said they would be at ease with a neighbour (91%), co-worker (89%), family member (88%) or manager (82%) who is a citizen of a different nation covered by an Interreg cross-border cooperation programme. Finally, respondents are more likely to view living in a border zone as an opportunity (38 %) than an impediment (3%). Language barriers (52%) and legal and administrative differences (44%) continue to be the two most often reported barriers to cross-border collaboration out of the six potential impediments examined.

Politically speaking, the early 1990s Interreg programs undoubtedly established a direct relationship between border regions and European integration, which had not previously existed. CBC has thus been acknowledged as a component of European unification, necessary for both territorial cohesion and economic progress. By sharing the best multilevel governance practices among the Commission, Member States, and local and regional stakeholders, Interreg can therefore be considered as a crucial tool for legitimating a supranational approach, which has evolved into a vector of European integration. As the EU has expanded over time, Interreg

programs have adapted by embracing an increasing number of eligible regions on each occasion. These regions are now referred to as "cross-border regions" officially thanks to the Lisbon Treaty of 2007. Nevertheless, while taking into account current events in Europe, the evaluation of Interreg is slightly different. The unexpected migration wave in 2015 thus served as the catalyst for the Schengen crisis, which raised new concerns about the role borders play in European integration. In particular, the dream of a Europe without borders, which the EC has promoted ever since the ambitious Single European Market project, began to fall apart. In addition to slowing down the pace of European integration, the reinstatement of border controls in a number of EU Member States also poses a barrier to CBC in Europe.<sup>13</sup>

## **1.2 Persisting obstacles in cross border cooperation**

As a result of European integration and globalization, cross-border movements of various kinds have risen. While the single market has increased opportunities for cross-border cooperation, there are still many barriers that prevent citizens from living, working, and studying across borders. These barriers include invisible trade barriers and challenges to cross-border cooperation in a variety of policy areas. (e.g., environmental issues, police co-operation, public transport links, provision of health services).

In 2015, the European Commission Directorate-General for Regional and Urban Policy (DG REGIO<sup>14</sup>) carried out the "Cross – Border Review" initiative, to assess the existing issues and their effects on border region residents, organizations, companies, and governmental authorities. The Review consisted of three primary components: a public survey, stakeholder workshops, and a study that included an inventory of 239 border obstacles; it covered thirty-seven of the EU's 40 internal land borders and took over two years to complete. The online public consultation included in the Review ran from 21 September 2015 to 21 December 2015, for a total of three months, receiving 623 replies. Available via the EU Survey tool in the 23 EU languages in form of an online questionnaire, it comprised a series of open and closed questions. The poll covered the internal border regions of the EU as well as the borders between

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<sup>13</sup> REITEL, B., WASSENBERG, B., PEYRONY, J. (2018). *The INTERREG Experience in Bridging European Territories. A 30-Year Summary*, in Medeiros, E. (eds) *European Territorial Cooperation*, The Urban Book Series, Springer

<sup>14</sup> European Commission Directorate-General for Regional and Urban Policy (DG REGIO), responsible for EU policy on regions and cities, available at: [https://ec.europa.eu/info/departments/regional-and-urban-policy\\_en](https://ec.europa.eu/info/departments/regional-and-urban-policy_en)

the EU and the nations of the European Economic Area (EEA) and the European Free Trade Association (EFTA). It requested input on the remaining barriers to cross-border exchanges from Union individuals, organizations, companies, and public administrations as well as suggestions for how to remove them. Each respondent could list up to three very difficult challenges and explain them, describing the challenge's form and how it affects their lives. The majority of respondents (53%) cited legal and administrative obstacles as a pertinent barrier in their region as the most significant border impediment, followed by language barriers, considered relevant by 38% of the respondents. 32% of the respondents also mentioned limited physical access as a barrier. Following this top three issues, the willingness of public officials to collaborate and economic disparities are the next two obstacles, each of which was recalled by 29% of respondents. Comparatively, noted by 20% and 12% of respondents, respectively, culture differences and a lack of trust are considered as less important.<sup>15</sup>

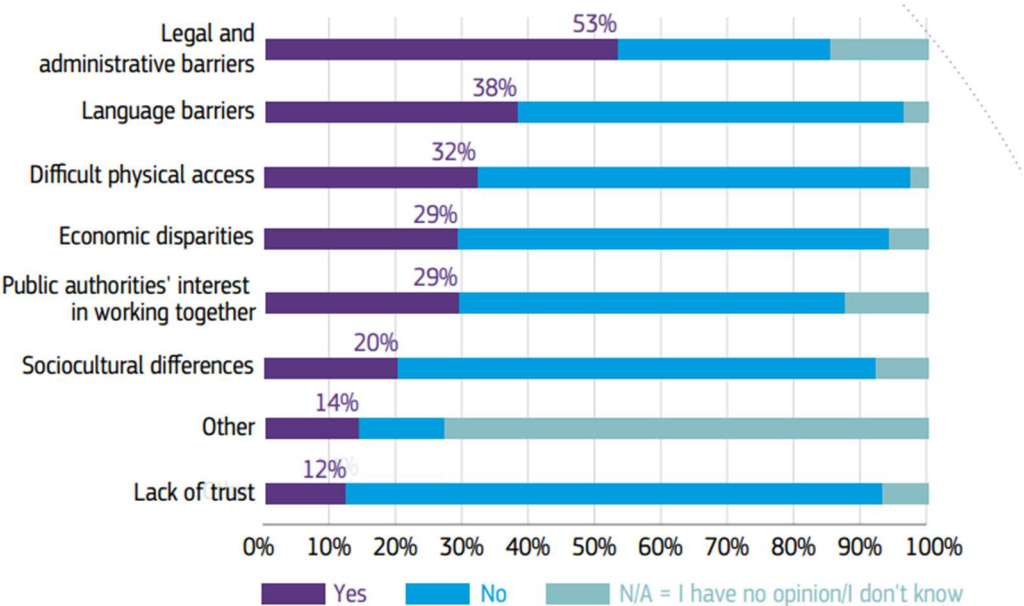


Figure 2: Relevance and frequency of obstacles (Source: European Commission - Summary report on the online public consultation on overcoming obstacles in border regions)

<sup>15</sup> European Commission, *Overcoming Obstacles in Border Regions – Summary report of the online public consultation*, September – December 2015. Available at: [https://ec.europa.eu/regional\\_policy/sources/consultation/overcoming-obstacles-border-regions/results/overcoming\\_obstacles\\_en.pdf](https://ec.europa.eu/regional_policy/sources/consultation/overcoming-obstacles-border-regions/results/overcoming_obstacles_en.pdf)

Legal and administrative barriers are regarded as the most relevant factor since they make it more challenging to live on one side of the border while having a job on the other. This problem involves several different aspects. Lack of education and certification recognition is one of the most frequently voiced worries. Moreover, cross-border employees are regularly described as being heavily burdened by disparities in social security, pension, and taxation systems. These obstacles also affect businesses and entrepreneurs. Disparities in technical standards and regulations for goods as well as certain services operate as de facto barriers for entry into certain international markets. The issue of information and awareness of the legal and administrative requirements that apply on the other side of the border are viewed as crucial for enterprises.

According to the respondents, there are a variety of groups that are impacted by language difficulties; hence policies should be focused on these groups. Businesses are considered as having a need for information about and awareness of the legal and administrative requirements that apply on the other side of the border. Some approached the problem from a broad societal viewpoint, highlighting how language limitations might limit contact in daily life, for example, the lack of participation in civic or community activities. Others underlined the importance of linguistic difficulties in the workplace. For instance, respondents recommended providing additional funding for education and ongoing language acquisition. Many interviewees also emphasized the importance of combining language study with an interest in and comprehension of the neighbouring country's socio - cultural norms.

The main issues regarding difficult physical access were the following: a lack of or low quality/safety of infrastructure, a lack of integrated public transportation systems at the border, a lack and low frequency of connections, various rules, and standards in relation to transportation, a lengthy commute and high border crossing fees. This overview of the findings from DG Regio's public consultation demonstrates that, despite Interreg's contribution to the growth of cross-border cooperation in the EU, numerous barriers in border regions remain outside of its direct control and present a variety of unique difficulties. Economic performance in border regions is typically worse than in other, more inland regions of the corresponding Member States. In general, border regions have more difficult access to public services like

hospitals and universities. It is still sometimes difficult and expensive to transition between the various legal and administrative systems.<sup>16</sup>

An inventory of 239 instances of legal and administrative barriers was included in the Review as another component and it was based on a thorough literature review and web research. The inventory encompassed thirty-seven of the forty internal land borders inside the EU, including those between members and the surrounding non-EU nations of Andorra, Norway, Switzerland, and Lichtenstein. It is a brief picture of the scenario that existed between 2011 and 2015, concentrating solely on barriers that fall into one of these three categories:

- Legal barriers brought on by a lack of EU legislation in areas of policy or by errors in how EU law is translated into national law.
- Legal barriers brought about by conflicting domestic laws of EU Member States.
- Administrative challenges brought on by poor procedural standards at the local, regional, or national levels.

Each of these thirty-seven internal EU land borders has a different number of impediments, which varies greatly.

<b>Broad coverage</b> (large number of obstacles in a variety of policy areas)	<b>Focused coverage</b> (limited number of obstacles in several policy areas)	<b>Weak coverage</b> (one or two obstacles in specific policy areas)	<b>Not covered</b> (lacking documentation)
SE-NO DK-SE BE-FR ES-PT IE-UK BE-NL DE-NL ES-FR-AD (Pyrenees) BE-DE-FR-LU (Grande Region) BE-NL-DE (Euregio Maas-Rhein) DE-FR-CH (Upper Rhine Area)	FI-SE DE-DK DE-PL BG-EL EE-LV LT-PL FI-NO HR-SI	AT-DE AT-HU AT-SI AT-IT AT-SK HU-SI HU-HR HU-SK SK-PL CZ-SK CZ-PL CZ-DE BG-RO FR-IT IT-SI FR-CH IT-CH AT-DE-CH-LI	LT-LV AT-CZ HU-RO

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<sup>16</sup> European Commission, *Overcoming Obstacles in Border Regions – Summary report of the online public consultation*, September – December 2015. Available at: [https://ec.europa.eu/regional\\_policy/sources/consultation/overcoming-obstacles-border-regions/results/overcoming\\_obstacles\\_en.pdf](https://ec.europa.eu/regional_policy/sources/consultation/overcoming-obstacles-border-regions/results/overcoming_obstacles_en.pdf). (last accessed: 11 July 2022)



Figure 3: EU-land borders covered by the 239 inventory obstacles (Source: European Commission)

The most prevalent legal challenges concern EU Member States' legislation (104 cases) and administrative obstacles (99 cases) while overall, there are less challenges relating to EU regulations (36 cases). Almost one-third of all administrative and regulatory restrictions have an impact on the broader policy area of "Labour Market & Education" (73 cases), yet, four additional policy sectors are also strongly impacted, which are: "Social Security & Health" (48 cases), "Transport & Mobility" (38 cases), "Policy Planning & Public Services" (30 cases) and "Industry & Trade" (29 cases). Less affected are the policy areas "Environment," "Climate Change," and "Information Society," which collectively account for only eighteen incidents of all inventory difficulties.<sup>17</sup>

As a result of the Cross-Border Review, the European Commission released a communication on boosting growth and cohesion in EU border regions in September 2017. This report provided a ten-point action plan and made specific mention of current development on the cross-border strategy, suggesting additional Commission initiatives or actions for Member States and other relevant parties. The next ten points on the Commission's proposed plan, together with the corresponding actions, are now listed.

- 1. Deepening cooperation and exchanges:** effective cross-border cooperation mechanisms must take into account the multi-level government aspect of EU policymaking. In this regard, an online professional network has been created for the entire EU where border stakeholders can present and discuss legal and administrative border concerns. This Network makes use of the Futurium platform, and the Commission controls it through the Border Focal Point, a professional network operating across the EU that gathers cross-border issue experts.
- 2. Improving the legislative process:** even though a European legal framework exists, Member States have some autonomy in how they implement this law in their domestic systems. Frequently, different Member States adopt specific levels of criteria set in EU

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<sup>17</sup> European Commission- Directorate-General for Regional and Urban Policy (2017), *Final Report "Easing legal and administrative obstacles in EU border regions"*, available at: [https://ec.europa.eu/regional\\_policy/en/information/publications/studies/2017/easing-legal-and-administrative-obstacles-in-eu-border-regions](https://ec.europa.eu/regional_policy/en/information/publications/studies/2017/easing-legal-and-administrative-obstacles-in-eu-border-regions) (last accessed: 12 July 2022)



law with variable degrees of rigor. The Commission pledged to increase the participation of border stakeholders in this process through its Border Focal Point and the professional network mentioned above.

3. **Enabling cross-border public administration:** when diverse administrative cultures and systems collide, the variety across EU Member States may become a barrier. Cross-border administrative processes are less common and often have a national focus. In order to provide cross-border public services that are responsive to the demands of people and businesses, the Commission focused its e-government projects on involving border stakeholders.
4. **Providing reliable and understandable information and assistance:** the preparation work for this communication has brought to light worries held by people and companies over the lack of trustworthy information services that may cause legal confusion. The "Single Digital Gateway" (SDG) was proposed by the Commission to make it simpler for people and businesses to access high-quality information, online administrative processes, and assistance services through a single digital entry point.
5. **Supporting cross-border employment:** labour mobility has been recognized as the most significant area directly impacted by border barriers by preliminary research. To increase access to information and jobs on the cross-border labour market, Member States and regional authorities are urged to increase collaboration between public employment services in border regions, particularly joint cross-border employment services.
6. **Promoting border multi-lingualism:** speaking another language is becoming more and more necessary to increase employment, mobility, and competitiveness, which is especially significant in border regions. Member States, regions, and municipalities are advised to increase measures to encourage bilingualism in border regions by utilizing opportunities for life-long learning.
7. **Facilitating cross-border accessibility:** cross-border interactions between regions are greatly facilitated by transportation. Particularly public transportation services support integration procedures and improve the long-term viability of cross-border connectivity. 2018 saw the release of a Commission research on the lack of rail connections along internal boundaries. Through the Border Focal Point, it has been distributed to interested parties.
8. **Promoting greater pooling of health care facilities:** the health care facility's limited accessibility from both sides of the border prevents it from being used to its full potential. Also, cross-border operations are occasionally complicated for emergency and rescue

services. The Commission committed to identify best practices and examine upcoming difficulties through a thorough mapping of cross-border health cooperation throughout the EU.

**9. Considering the legal and financial framework for cross-border cooperation:** the institutional structure of Member States may not always be adequate for removing administrative and legal barriers. Some Member States are debating the potential of a new instrument that would enable the rules of one Member State to be applied in the neighbouring Member State for a specific project or action that is time-limited, located in a border region, and was started by local and/or regional public authorities, on a voluntary basis and with the approval of the responsible authorities.

**10. Building evidence of cross-border interaction to inform decision-making:** just a small quantity of resources is devoted to gathering and analysing data on border complications and problems. To further advance territorial research pertaining to border regions, the Commission established the European Observation Network for Territorial Development and Cohesion (ESPON). The Commission also relied on fruitful territorial research initiatives supported by Horizon 2020 and the Joint Research Center's Seventh Framework Program for Research and Technological Development.<sup>18</sup>

Practical examples that demonstrate how many aspects of living in border regions are unnecessarily complex and burdensome are provided in the public consultation. One example is that firefighters might have to wait at the border before being allowed to help their co-workers across the border, since Ambulances that transport patients across borders are subject to restrictions in a number of Member States. Another example listed is that a student from a vocational school in Belgium was unable to complete his apprenticeship in France near his home because the two nations' respective systems for recognizing apprentices were incompatible. Furthermore, Companies that conduct business internationally spend 60% more than those that conduct business domestically to complete critical procedures, primarily because translation and certification are more expensive.

In addition, the study and public consultation also brought to light several excellent instances of European integration and prospects in border regions. An example of good practice is that,

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<sup>18</sup> Communication from the Commission to the Council and the European Parliament, *Boosting growth and cohesion in EU border regions*, 20 September 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0534>, (last accessed 14 July 2022)

due to agreements between the two nations to exchange medical resources, people from Belgium who once had to go 200 km three times a week for dialysis now just have to travel 3 km to France. In addition to that, new proposals are being implemented by the Benelux nations and the German-speaking region of Southeast Europe known as Westphalia to make it simpler for people to recognize each other's qualifications through collaboration based on mutual trust in their different educational systems. Finally, in the border regions between Slovenia and Hungary, Austria and the Czech Republic, and Hungary, some children commonly go to bilingual and multilingual play areas where they can interact with children from other cultures. Nevertheless, there are not enough remarkable cases when border populations have taken advantage of the opportunity presented by the presence of a border, like in the examples just provided.<sup>19</sup>

When Luxembourg assumed the Council Presidency in 2015, it promoted the establishment of a European Cross-Border Mechanism, resulting in the formation of an informal working group where a number of member states investigated strategies to handle enduring border barriers when carrying out cross-border projects. The European Commission also presented a proposal for a regulation on a mechanism to resolve legal and administrative obstacles in a cross-border context, as part of the May 2018 package of legislative proposals establishing a new cohesion policy framework for the 2021–2027 timeframe.

The introduction of a mechanism to address cross-border obstacles could allow the EU's border regions to fully realize their economic potential, thereby contributing to the improvement of the Union's economic, social, and territorial cohesion. According to a 2017 study, the removal of just 20% of cross-border obstacles in border regions could increase their GDP by 2%.<sup>20</sup> The proposed mechanism would make it possible to apply the laws of a neighbouring member state within a specific member state and in respect to a shared cross-border territory when the laws of the other state pose a legal barrier to the completion of a joint operation.

The proposed mechanism has two major components:

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<sup>19</sup> Ibidem

<sup>20</sup> European Commission and Polytechnic of Milan (2017), *Quantification of the effects of legal and administrative border obstacles in land border regions*, available at: [https://ec.europa.eu/regional\\_policy/en/information/publications/studies/2017/quantification-of-the-effects-of-legal-and-administrative-border-obstacles-in-land-border-regions](https://ec.europa.eu/regional_policy/en/information/publications/studies/2017/quantification-of-the-effects-of-legal-and-administrative-border-obstacles-in-land-border-regions) (last accessed: 14 July 2022)

- The European cross-border commitment: the 'committing' Member State would be able to deviate from its own domestic laws, which would still be in effect, by transferring laws from the neighbouring Member State across the border.
- The European cross-border statement: it entails a legislative process in the Member State to formally alter the relevant Member State's national regulations to permit a derogation.

The plan calls for the establishment of cross-border coordination points, which would be in charge of coordinating all commitments and statements pertaining to the Member States' preparation, signing, implementation, and monitoring.

As provided by the third paragraph of Article 175 of the Treaty on the Functioning of the European Union, the European Economic and Social Committee (EESC) and the European Committee of the Regions (CoR) must be consulted. The CoR's opinion was adopted on 4 July 2018, emphasizing the need to address physical, administrative, legal, and cultural barriers in order to strengthen cooperation in EU border regions. For instance, it noted that many border regions still experience a lack of, insufficient supply of, or poor-quality transportation services. The European Economic and Social Committee announced its position on this matter on September 19, 2018<sup>21</sup>. It welcomed the regulation proposal and believed it would likely increase the likelihood of subsidiarity-based cooperation between Member States, adding that current institutions like the EGTC lack the authority required to enact such legislative measures. The legislative proposal was approved by the European Commission on May 29 and sent to the Council and the European Parliament. The file has been given to the Committee on Regional Development in the European Parliament (REGI). The REGI report, which was adopted at the 22 November 2018 meeting of the REGI committee, explicitly states that using the ECBM would not prevent the use of other equivalent instruments. The same day, the REGI committee made the decision to engage in inter-institutional negotiations based on its report, and the plenary ratified this choice on December 1. After first reading in Parliament on October 2, 2019, the committee chose to begin interinstitutional negotiations and the European Parliament chose to continue working on this document during the upcoming 2019–2024 term. The proposal was

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<sup>21</sup> Opinion of the European Economic and Social Committee on the *Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context*, 19 September 2018, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018AE2790> (last accessed: 15 July 2022)

the subject of a legal opinion from the Council's legal service on March 2, 2020. The opinion covered the determination of legal basis, the proposal's consistency with the Treaties, the choice of legal instrument, and the proposal's voluntary nature but the Council would not continue to work on the proposal, according to a decision made by the Working Party on Structural Measures on May 10, 2021. The Council's unwillingness to move forward with the cross-border mechanism was the topic of a debate at the EP's plenary session on October 6, 2021, during which representatives of the EP's major political groups called for an end to the Council's standoff to allow for a productive discussion in the interest of border regions.<sup>22</sup>

To sum up, the implementation of a new level of shared governance at the border regions is still being slowed by numerous visible and invisible impediments, despite the fact that European integration has increased several incentives for cross-border cooperation. States with shared boundaries have diverse organizational structures, therefore the division of authority and the level of autonomy enjoyed by decentralized units differ greatly from one nation to the next. Given that they have the necessary organizational structures, leadership, skills, and resources, some border regions can run joint programs. Other times, border political authorities are authorized to sign cooperation agreements, but the kind, extent, and funding for those accords are still within the jurisdiction of the central government. Still, Arrangements for cross-border cooperation have now been included into EU law. It can be expected that cross-border cooperation will transition from being a minor, specialized, and informal set of arrangements to becoming a stronger, more legally certain, and transparent organizational feature of the EU institutional architecture.<sup>23</sup>

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<sup>22</sup> European Parliament, *legislative train schedule of the Proposal for a Regulation on a Mechanism to resolve legal and administrative obstacles in a cross-border context*, available at: <https://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-mechanism-to-resolve-cross-border-obstacles> (last accessed: 13 July 2022)

<sup>23</sup> DE SOUSA, p. 686

### **1.3 History of UK – Ireland Cross-border cooperation and the role of Good Friday Agreement**

Being the only area of the UK that shares a land border with another EU member state, Northern Ireland is an interesting example to investigate how European cross-border cooperation has been affected by the UK's departure from the European Union. The border, 310 miles in length and crossed by around 30,000 people per day solely for work purposes, has become a roadblock to social and economic development as a result of the region's history and the connections between the two parts of the island. Catholics/Nationalists and Protestants/Unionists have always been seen as two independent and distinct identities that make up Northern Ireland's population. The troubles' consequences on Ireland's border region were felt strongly; in particular, the border towns experienced intense division and unrest that is still being felt today. The quantity and variety of border crossings continue to constitute significant problems, as the Irish government announced on August 26, 2019, there were more than two hundred border crossings. In fact, the number of border crossings between the north and south is around 40% more than the total number along the Eastern European border<sup>24</sup>. The EU continued to play a significant role as a key agency in facilitating and funding projects on the ground that consolidated the peace process and minimised intercultural conflict, gradually replacing outright animosity with the growth of political trust. The most important achievement was to reduce the visible 'fact' and symbolism of a 'hard' border between the two Irelands. To provide a complete analysis, it is necessary to go back to the origins of the border between the two Irelands and to reconstruct the steps that made the peace process possible.

The partition of the island into two autonomous nations was enacted by the Ireland Act of 1920, which resulted in the establishment of the border between Ireland and Northern Ireland as part of Britain's resolution of the Irish Question. The 1921 Anglo-Irish Treaty granted Dominion Status, which included fiscal autonomy, to six north-eastern counties with a Unionist/Protestant majority, which remained a part of the United Kingdom but had a decentralized administration. The two Irelands' relations were not amicable for many decades; in 1937, the island of Ireland was designated as the nation's territory by the Irish Constitution, and cross-border travel was

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<sup>24</sup> DAVIS, S., *Why is the Irish border issue so complex?* Euronews article, 26 July 2019, available at: <https://www.euronews.com/2018/09/25/why-is-the-irish-border-issue-so-complex-euronews-answers>

prohibited for security reasons. County borders established the border itself, which divided market networks, transportation networks, and dioceses. As a result, 180 cross-border routes connected ten Irish counties that touched the border; 35–40 of these roads delineated the border, but there were only sixteen authorized crossing sites. The limited number of allowed crossings could require diversions of up to twenty miles instead of a mile or two on an unauthorized road, making it difficult to travel between neighbouring towns and villages in either state in many border areas, as a consequence many towns lost access to their economic hinterland. Up until the late 1960s, tariffs and quotas still had an effect on cross-border trade until a return to free trade in manufactured goods was made possible by the 1965 Anglo-Irish Free Trade Area Agreement and the British and Irish membership in the European Economic Community (EEC) in 1973. However, joining the EEC did not result in the free flow of agricultural goods, and the Common Agricultural Policy (CAP) greatly encouraged the smuggling of goods between the two Irelands. These biases were eliminated in 1993 with the implementation of the Single Market, which together with the 1998 Good Friday Agreement re-established all-island trade and transportation networks for farmers and businesses in border areas<sup>25</sup>.

Regarding travel mobility, the Irish Free State was a Dominion in 1922, and its residents had the freedom to travel, reside, and work anywhere in the United Kingdom, but World War II restricted this freedom of travel. Between 1946 and 1952, limitations requiring the production of an identity card and a visitor's pass, or work visa granted by the British authorities were gradually lifted. When Ireland left the Commonwealth in 1949, the 1948 British Nationality Act was still in effect, giving Irish individuals the same rights as British nationals in terms of employment and freedom of admission. However, restrictions on Irish citizens' ability to work in Northern Ireland were finally lifted in the 1970s with the implementation of EEC rules allowing for the free movement of workers. With fewer cross-border migrants and likely fewer cross-border marriages, the Border has had an influence on short-distance migration between neighbouring counties. It also appears to have accelerated the rate of population decrease in Irish counties near the border, as the population decreased in all three border counties between 2011 and 2016.<sup>26</sup>

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<sup>25</sup> DALY, M. (2017), *Brexit and the Irish Border: Historical Context*, A Royal Irish Academy – British Academy Brexit Policy Discussion Paper pp. 3-4

<sup>26</sup> DALY, M. (2017), pp. 4-6

It is evident that the EEC/EU membership of Britain and Ireland has significantly improved cross-border facilities and provided a legislative structure for the free movement of people, goods, and services. The border almost became invisible as a result of the Good Friday Agreement, the Single European Market, and the absence of security checks, and this has made it possible for intra-border travel and all-island trade to resume. I am now going to focus on the role that both the Good Friday Agreement and the European Union initiatives had in the peace-making process between the two Irelands.

From the 1960s up until 1998, armed organisations on the nationalist side of the conflict had campaigned for political unification with the rest of Ireland, and armed groups on the unionist side of the conflict battled for Northern Ireland to remain a part of the United Kingdom. This civil conflict is known as “The Troubles,” resulted in over 3600 deaths and was put to an end by the signing of the 1998 Belfast Agreement, which is also known as the Good Friday Agreement since it was signed on Good Friday, April 10<sup>th</sup>. Voters approved it on May 22, 1998, and it went into effect on December 2, 1999<sup>27</sup>. After the armed parties agreed to a ceasefire in 1994, peace negotiations were launched by the British and Irish governments. This compromise was historically significant, as the two governments and parties from both sides of the border came to an understanding on a new political structure for Northern Ireland for the first time. It was decided that no change would be made to the constitution on whether Northern Ireland should remain in the UK or join a united Ireland without the support of the majority, which could eventually be verified by referendum. A new power-sharing arrangement was created, including an Executive and Assembly, and was based on a series of fundamental principles, including the equal regard accorded to both communities and the right of Northern Irish people to identify and be recognised as British or Irish, or both, and to hold dual citizenship. Moreover, on decommissioning, security, policing, and prisons, agreements were established. The Agreement led to the development of the three political threads:

- Strand One provided for a democratically elected Assembly with the ability to exercise both legislative and executive authority in Northern Ireland, subject to safeguards to protect the rights and interests of all parties to the Community. The European

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<sup>27</sup> Britannica, The Editors of Encyclopaedia. "Good Friday Agreement". *Encyclopedia Britannica*, available at: <https://www.britannica.com/topic/Good-Friday-Agreement> (last accessed: 22 August 2022)



Convention on Human Rights and any Northern Ireland-specific Bill of Rights that may augment it are listed as safeguards.

- Strand Two established the North-South institutions supporting the cooperation between Northern Ireland and Ireland on matters of mutual interests. The two governments committed to make necessary legislative preparations to ensure the functioning of the North/South Ministerial Council. Moreover, the Annex included a list of issues requiring North South co-operation and implementation, such as agriculture, education, transport, environment, social welfare, health, urban and rural development, and relevant EU Programmes such as INTERREG.
- Strand Three established East-West institutions, such as the British-Irish Council and the Intergovernmental Conference that promote collaboration between Ireland the UK. The British-Irish Council was created to promote a mutually beneficial development of the relationships among people of the two islands and aimed at exchanging information and use the best endeavours to reach agreement on cooperation on matter of mutual interests. Suitable issues would comprehend transports, agricultural issues, cultural and environmental issues, healthcare, education, and approach to the EU.<sup>28</sup>

In order to be realised, the Belfast Agreement required the establishment of regional institutions that utilized a power-sharing paradigm and required parties to collaborate in the law-making. The Social Democratic and Labour Party (SDLP), led by John Hume, and the Ulster Unionist Party (UUP), led by David Trimble, were the two major political parties that supported the Agreement. The Alliance Party, the Progressive Unionist Party, and Sinn Féin were also participating in the negotiation. On the other hand, the Agreement was opposed by the Democratic Unionist Party (DUP), which went on to become the largest unionist party. Although there are detractors of the Agreement from all sides, it is undeniable that the institutions and values it established remain a cornerstone of the peace process and are crucial for establishing common ground for cooperation across the three strands.

Even if there is not much mention of the EU in the GFA (according to the UK Supreme Court, the GFA assumed but did not demand that the UK would continue to be an EU member), the supposition was crucial to many peace process participants. The conflict of nationalisms at play

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<sup>28</sup> UK government, *The Belfast Agreement*, available at: <https://www.gov.uk/government/publications/the-belfast-agreement> (last accessed: 17 July 2022)

in Northern Ireland's society was lessened by Ireland and the UK cooperating as EU member states and ceding legislative authority to EU institutions. The process of making the EU a protector of the Agreement is indeed a fascinating one. The EU did not participate in the talks that led to the Agreement, nor was EU membership given special weight in the implementation of its principles. The 1998 Agreement did, however, explicitly say that the British and Irish states were "friendly neighbours and as partners in the European Union." Due to their shared EU membership, both countries essentially shared the same outlook for the future, which resulted in coordination of goals and actions across a wide range of public policy.<sup>29</sup>

Since 1989, the EU has given financial assistance for the peace process in Northern Ireland through both regional policy and contributions to the International Fund for Ireland. In reaction to the possibilities provided by the 1994 ceasefires, 1995 to 1999 saw the first PEACE Programme (PEACE I) supported by the European Union. With the intention of "strengthening progress towards a peaceful and stable society and promoting reconciliation by increasing economic development and employment, promoting urban and rural regeneration, developing cross-border co-operation, and extending social inclusion," this program was implemented as a Community Initiative.<sup>30</sup> PEACE I presented a fund that included €500 million from the European Commission and another €167 million from the governments of Great Britain and Ireland. To build on the success of PEACE I, the PEACE II Programme (2000-2004) was launched as a structural fund program in March 1999 with a total financing allocation of €835 million. Later, the program was extended through 2006. Some of the priorities of the earlier programs were carried over into PEACE III, which ran from 2007 to 2013. While all of the structural funds were used to fund PEACE I and PEACE II, only the European Regional Development Fund (ERDF) was used to fund PEACE III. On January 14, 2016, the PEACE IV program (2014-2020) was formally inaugurated. A big focus of the program is on investments directed toward the youth. During the discussions on the conditions of the UK's withdrawal from the European Union, the PEACE IV initiative gained a lot of attention. The Withdrawal Agreement between the UK and the EU contains a promise to ensure their continuance until their end in 2023. The Commission suggested maintaining the PEACE (PEACE PLUS)

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<sup>29</sup> HAYWARD, K. & MURPHY, M. (2018) *The EU's Influence on the Peace Process and Agreement in Northern Ireland in Light of Brexit*, in *Ethnopolitics*, Volume 17, 2018 - Issue 3

<sup>30</sup> *Peace programmes learning platform*, available at: <https://www.peaceplatform.seupb.eu/en/timeline/> (last accessed: 17 July 2022)

initiative in its proposals for the post-2020 cohesion regulations. The proposals were made in accordance with the regular legislative procedure, and on July 1, 2021, following protracted discussions, the legislative acts controlling cohesion policy for the 2021–2027 programming period came into effect. The co-legislators resolved that PEACE PLUS should be run as an integrated program, with the UK's contribution being incorporated as external allocated revenue. When designated as the management authority, the Special EU Programmes Body shall be regarded as having a location in an EU Member State.<sup>31</sup>

The PEACE PLUS Programme comprehends six key thematic areas:

- building peaceful and thriving Communities: budget of €250 million
- delivering economic regeneration and transformation: €170 million
- empowering and investing in young people: €123 million
- healthy and inclusive communities: €172 million.
- supporting a sustainable and better-connected future: 303 million.
- building and embedding partnership and collaboration: €52 million.

Northern Ireland and the border counties of Ireland, Counties Cavan, Donegal, Leitrim, Louth, Monaghan, and Sligo are included in the program area. Nevertheless, cross-border cooperation has a flexible geography depending on the topic at hand and is not strictly constrained to the official borders of the Programme, it is referred to as a functional area.<sup>32</sup>

Regulations (EU) 2021/1060 and (EU) 2021/1059 of June 24, 2021, serve as the legal foundation for the PEACE PLUS Programme. The paragraph 21 of regulation 2021/1060 formalised the launch of the programme and declared the intent to support North -South cooperation under the Good Friday Agreement. It also says that it is important to make sure that the ERDF is included, encouraging social, economic, and regional stability and cooperation in the affected regions, particularly through initiatives that strengthen community cohesiveness. Moreover, article 55 illustrates the management methods, establishing that the programme should be implemented under shared management both in Ireland and in the United Kingdom.

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<sup>31</sup> European Parliament, *Northern Ireland PEACE Programme*, available at <https://www.europarl.europa.eu/factsheets/en/sheet/102/northern-ireland-peace-programme> (last accessed: 20 July 2022)

<sup>32</sup> *PEACE PLUS Programme*, available at: <https://www.seupb.eu/PEACEPLUS> (last accessed: 20 July 2022)

The EU has invested billions in advancing the peace process and fostering intercommunity ties. Both loyalists and nationalists regarded the currency as neutral and so acceptable. Having benefited greatly from EU funding, the UK's withdrawal from the Union sparked worries for several Northern Ireland sectors in the long run, as well as for the peace process and cross-border collaboration after 2020. In Northern Ireland, the debate over the EU Referendum centred on two major problems relating to the province's political stability and the Irish border, particularly in the eyes of the Remainers. One concern was that quitting the EU might jeopardize the peace process by undermining the devolution agreement, which had been reached in April 1998 with the Good Friday Agreement. Indeed, in what was formerly a bilateral partnership, the EU acts as a stabilizing third wheel. On the other side, there was a lot of uncertainty around Brexit because of the Irish border issue. In the summer of 2016, when Brexit became a reality, these were some of the concerns Ireland was dealing with.

#### **1.4 Brexit: political background and negotiation process**

The current geopolitical scenario can stimulate a reflection on the concept of borders. Indeed, while globalization and the digital revolution have made boundaries more permeable, the Brexit referendum can be seen as a retreat to national borders.<sup>33</sup> The increasingly complicated functioning of borders as geopolitical instruments is indeed shown by Brexit, particularly its implications for the Irish border. I am now providing an overview of the key moments of the relationship between the United Kingdom and the European Union, from the time of its admission in 1973 through the developments building up to the upcoming vote on Britain's membership.

Following two failed attempts to join the EEC in the 1960s, the UK joins the EEC on January 1973 along with Denmark and Ireland, bringing the total number of EEC member nations to nine. France's President de Gaulle, who worried that Britain's links to the US would cause Europe to "drown in the Atlantic," had prevented it each time. Since the early years of the EEC,

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<sup>33</sup> ZIELONKA, J. (2017): *The remaking of the EU's borders and the images of European architecture*, in *Journal of European Integration*, p. 643-644

in the late 1950s, British officials have been aware that joining the organization would have resulted in some loss of sovereignty. Elections the year before brought back to office a Labour administration that was bitterly divided over the UK's EEC membership; as a result, Under the leadership of Prime Minister Harold Wilson, in early June 1975 a referendum is conducted on whether Britain should continue to be a member of the Common Market; The majority of the Tory press supported staying in, and 67% of voters agreed. In contrast, Northern Ireland's support for the European project was significantly lower, with only 52% of voters saying they were in favor, compared to overall UK support. Ireland's and the UK's relationship dynamics have evolved as a result of EU membership. During the 1960s, when the UK was Ireland's largest market, Ireland was essentially forced to imitate the UK's efforts to enlist in the European project. It was crucial for Ireland, nevertheless, that the UK and it both joined as equal members.<sup>34</sup>

Four years before she was elected prime minister, Margaret Thatcher campaigned to stay in the EEC. In 1986, she signed the Single European Act to remove trade restrictions within the European Community, setting the way for a fully functional single internal market by 1992. However, the negative pressure of those protracted negotiations impacted negatively, gradually changing her opinion of Europe from positive and favorable to strongly skeptical. Thatcher's support for the Single European Act has completely vanished by the early 2000s, long after she left power, as she believed that agreeing to it was a horrible mistake. The UK's relationship with the European Community was irrevocably altered by Margaret Thatcher's address to the College of Europe in Bruges in September 1988, which is remembered for a controversial Thatcher statement: “We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level, with a European super-state exercising a new dominance from Brussels”. The speech served as a benchmark for Britain's increasing Euroscepticism throughout the 1990s and 2000s, which contributed to fuel the expansion of UK Independence Party (UKIP) and eventually the Brexit referendum.<sup>35</sup> Thatcher's downfall was accelerated by her increasingly fervent skepticism, which caused her to clash with important cabinet members.<sup>36</sup>

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<sup>34</sup> DE MARS, S., et al. (2018), *A Tale of Two Unions. Bordering Two Unions: Northern Ireland and Brexit*, 1st ed., Bristol University Press, pp. 1–10.

<sup>35</sup> HELM, T., *British Euroscepticism: a brief history*, *The Guardian*, 07 February 2016, available at: <https://www.theguardian.com/politics/2016/feb/07/british-euroscepticism-a-brief-history>

<sup>36</sup> WALKER, N. (2021), *Brexit timeline: events leading to the UK's exit from the European Union*, House of Commons library

The ambitious Maastricht Treaty officially established the new European Union on November 1, 1992, when foreign and security policy, as well as justice and home affairs, have been added as new areas of policy cooperation among EU nations. The citizens of the 12 member states gained new voting rights, complete freedom of movement, and European citizenship. The agreement also launched the initiative towards economic and monetary union. Britain successfully negotiated the first of several special opt-outs on important elements of European law, including monetary union, and succeeded in getting the Social Chapter removed from the main treaty, securing an opt-out of that as well. In 1997, a new Labour government led by Tony Blair was in power, and it appeared more pro-European than its predecessor. Nonetheless, there is initial uncertainty, as the new prime minister was really generally in favor of eventually adopting the euro, but aware of how negative the press would be about doing so. During the following few years, Blair is also acknowledged with playing a proactive role in helping to overhaul the Common Agricultural Policy by advancing the Lisbon agenda. Moreover, Blair has been a key supporter of the EU's largest expansion plan, which would see 10 new states join in 2004, eight of which were former communist republics that have transitioned to free-market democracies after the Cold War; the results of this action will directly affect the referendum in 2016. The EU member states were permitted to temporarily impose immigration restrictions on residents from the majority of the new nations under the 2004 accession accords, as a consequence, all pre-2004 member nations proceeded to restrict entry to their labor markets, with the exception of Ireland, Sweden, and Britain, which welcomed additional workers to support economic growth. In fact, understanding a 2004 Labour government decision that had long-lasting political effects is essential to understanding why Britain turned more and more against immigration from the EU. On the assumption that other member states would likewise open their labor markets, the number of migrants from Central and Eastern Europe entering the UK was projected to be in the range of 5,000 to 13,000, but the majority did not. And the flows ended up being over 20 times higher than this estimate's upper bound. The perception of a nation unable to manage its borders began to take hold as migrants were regarded as placing additional strain on employment and pay, housing, schools, and health facilities, therefore the discussion over whether free mobility was a positive thing was sparked by Labour's decision. In order to appeal to the British voters, the UK Independence Party successfully tied immigration and EU membership together. When Tony Blair willingly left Downing Street in 2007, he claimed that the EU was crucial to Britain's future. Gordon Brown, who took his place, attempted to increase Britain's influence at the top table in Brussels

by assuring that the UK would be present at eurozone summits. However, as new European treaties brought about ever-deeper integration, Tories who were Eurosceptics started publicly discussing leaving the EU. In 2010 David Cameron was elected as prime minister, who, while six years later leading the effort to keep the UK in the EU, he is believed to have presided over the biggest change in British foreign policy since joining the EU, moving the nation firmly in the Eurosceptic side. In 2011, he became the first prime minister of the UK to veto an EU treaty, opposing plans for a new EU treaty on fiscal regulation.<sup>37</sup>

In a speech given to Bloomberg in January 2013, Prime Minister David Cameron talked on the future of the European Union and said he was in favor of an in-out vote based on a fresh deal for the UK in the EU. Indeed, without Nigel Farage and UKIP's ongoing success, Cameron might never have called the referendum. When the prime minister called the EU vote in January 2013, Ukip had begun to gain ground in local elections, so if Cameron did not respond to their requests for a plebiscite, there was a concern that a number of Tory backbenchers might leave the party. The European Union Referendum Act, which established a referendum on the UK's potential EU membership, received royal assent on December 17, 2015. As a result, the referendum on the UK's membership in the EU is held as a result on June 23, 2016. The referendum's outcome is made public the next day, with most voters opting to exit the EU. The results of the referendum were: 16,141,241 (48.1%) for Remain, 17,410,742 (51.9%) for Leave. After having strongly campaigned for the UK to stay in the EU and having described Brexit as an act of “economic self-harm,” prime minister David Cameron announced his resignation. Theresa May succeeded him, becoming prime minister on 13 July 2016. The outcome of the Brexit referendum altered the situation, not only in terms of ties between the UK and the EU but also in terms of ties between Scotland, Northern Ireland, and the rest of the UK. This is given by the fact that Northern Ireland voted to remain in the EU by a majority of 56%, and Scotland of 62%.<sup>38</sup>

The Centre for Social Investigation conducted a poll as part of a project financed by the Economic and Social Research Council to learn why British citizens chose to vote in the manner

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<sup>37</sup> MASON, R., *How did UK end up voting to leave the European Union?*, *The Guardian*, 24 June 2016, available at: <https://www.theguardian.com/politics/2016/jun/24/how-did-uk-end-up-voting-leave-european-union>

<sup>38</sup> *ibidem*

they did in the EU referendum. Between February 2 and March 8, 2018, the polling company Kantar conducted an online survey with about 3,000 respondents. When asked to rate four reasons for voting Leave in order of importance, Leave voters reported that "to reclaim control over EU immigration" received the highest average rank. Not wanting the EU to play any involvement in UK legislative processes was the reason with the second-highest average rank. On the other hand, when asked to rank four reasons for voting Remain, Remain voters gave the reason that leaving the EU would harm the British economy the highest average ranking, receiving 54 % of the vote. The reason with the lowest average score was "a strong attachment to Europe," which is significant because it supports the idea that British people have a weak sense of European identity.<sup>39</sup>

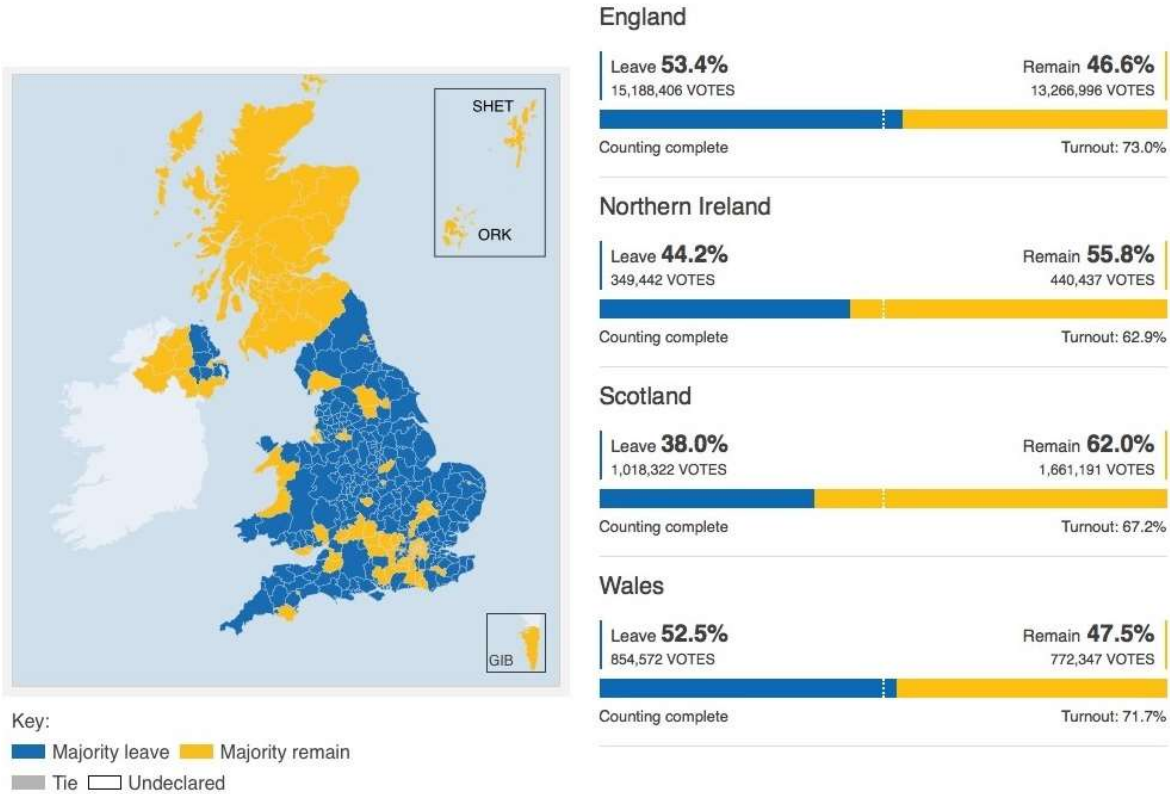


Figure 4: Map showing the results of UK's 2016 EU referendum by council (Source: BBC)

<sup>39</sup> CARL, N. (2018). *CSI Brexit 4: Reasons Why People Voted Leave or Remain*, Centre for Social Investigation, available at: <https://ukandeu.ac.uk/wp-content/uploads/2018/07/CSI-Brexit-4-People%E2%80%99s-Stated-Reasons-for-Voting-Leave.pdf>



Northern Ireland is one of the most challenging aspects of Brexit, because its relationship with both the UK and the EU is very distinctive. A report for the European Parliament in March 2017 showed that Ireland was the country most exposed to the economic effects of Brexit. Since Ireland and the UK joined the EEC together in 1973, all trade between both countries has come to be governed by shared membership of the single market and custom union, and exports and imports flew back and forth across the Irish sea and over the land border.<sup>40</sup> Before visiting Northern Ireland in September 2016, David Davis, the newly appointed Secretary of State for Exiting the European Union, emphasized in a letter to the Belfast Telegraph that it was clear that they did not want a hard border with Ireland, no unnecessary barriers to trade and added that they remained "open for business." Moreover, in an Irish Times article he stated that Ireland would not have to decide whether to have a strong commitment to the UK or the EU—rather, it could and should have both. Following the Supreme Court's decision, legislation became necessary, and on January 26, 2017, the government published a draft bill that would enable the UK to begin the process of leaving the EU. The Bill is relatively brief and only comprises one operational clause, which would provide the UK Government the legal right to inform the European Council that the UK has decided to leave the EU in accordance with Article 50 of the Treaty on European Union (TEU). It adds that despite any provision imposed by the European Communities Act of 1972 or any other law, this section is valid.<sup>41</sup>

A "Northern Ireland and Ireland Position Paper" outlining the UK's view on how to manage the special circumstances of Northern Ireland and Ireland in light of the UK's withdrawal from the EU was published by the UK Government on April 29, 2017. The paper identified four major areas where the opening stages of the conversation required an emphasis on the special relationship between the UK and Ireland as well as the centrality of the peace process in Northern Ireland: upholding the Belfast ('Good Friday') Agreement in all its parts; maintaining

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<sup>40</sup> CONNELLY, T. (2017) *Brexit and Ireland: The Dangers, the opportunities and the inside story of the Irish response*, Penguin, p.40

<sup>41</sup> European Union, *Notification of Withdrawal Act (2017)*, available at: <https://www.legislation.gov.uk/ukpga/2017/9#:~:text=1Power%20to%20notify%20withdrawal,1972%20or%20any%20other%20enactment>

the Common Travel Area and associated rights; avoiding a hard border for the movement of goods and aiming to preserve North-South and East-West cooperation, including on energy.<sup>42</sup>

The UK and the European Commission, speaking on behalf of the EU, reached an agreement on the terms of reference for the Article 50 on June 19, signalling the start of the first round of EU exit negotiations. On the topics of citizens' rights, the financial settlement, and other separation-related matters, both parties agreed to form working groups. Northern Ireland-specific concerns were also discussed by the negotiation coordinators for the EU and UK. Other four rounds of negotiations followed, the last one being held on October 9, 2017. The European Union Withdrawal Bill gained royal assent and became the European Union Withdrawal Act on June 26, 2018. The following year, the UK parliament rejected the Brexit agreement reached by London and Brussels and endorsed by the other 27 EU governments three times. The deal was decisively rejected in each of the three House of Commons votes—held on January 15, March 12, and March 29—by an unusual coalition of Brexit advocates and opponents. It was the worst parliamentary loss for an administration in UK history. As a result, the UK's intended departure date from the EU was twice postponed due to deadlock over the future course, which led to the resignation of Prime Minister Theresa May. One of the primary reasons for the rejection of the agreement was the contentious “Backstop Agreement,” reached by the EU and the UK to prevent a hard border with Ireland, avoiding infrastructure like customs posts and checkpoints. Given the differing taxes and regulatory standards that the UK's vote to exit the EU's single market and customs union was expected to bring about, the Irish "backstop" was considered as being crucial, reducing the likelihood that political divides may resurface after 1998 peace agreement. Many "leavers," who were concerned that the backstop would be used to permanently entangle the UK in the EU customs union and prevent the country from negotiating its own trade agreements, believed that the agreement linked the UK too closely with the EU. Members of the Parliament decided to force May's administration to seek a delay in Brexit rather than allow the country to leave the EU without a deal despite a standoff in parliament over any alternative option to the previously negotiated plan.<sup>43</sup>

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<sup>42</sup> Northern Ireland and Ireland - position paper, available at: <https://www.gov.uk/government/publications/northern-ireland-and-ireland-a-position-paper> (last accessed: 29 July 2022)

<sup>43</sup> SANDOFRD, A, *What was in Theresa May's Brexit deal and why was it so unpopular?*, Euronews, 29 January 2020, available at: <https://www.euronews.com/2018/12/07/what-is-in-theresa-may-s-brexite-deal-and-why-is-it-so-unpopular>

The newly elected Prime Minister Johnson makes a statement in the House of Commons on July 25, 2019, committing to the October departure date while refusing to completely rule out the possibility of a "no-deal" departure. After making considerable compromises regarding Northern Ireland, he was ultimately successful in renegotiating the departure agreement with the EU in the autumn. The Conservatives' subsequent victory in the general election set the door for Britain's ultimate withdrawal from the EU on January 31, 2020, starting a transition period of 11 months which lasted until December 31, 2020. These months were spent by the EU and the UK to negotiate the EU-UK Trade and Cooperation Agreement, which was ratified on April 20 and went into force on May 1, 2021.

The 2020 Withdrawal agreement includes protocols on the 'Sovereign Base Areas in Cyprus', on Gibraltar and on Northern Ireland. The protocol on the Sovereign Base Areas (SBA) in Cyprus safeguards the interests of Cypriots who reside and work there, while the protocol on Gibraltar enables strong coordination between Spain and the UK regarding Gibraltar in order to implement citizens' rights. To avoid a hard border on the island, the Protocol on Ireland and Northern Ireland was created, which came into force on January 1, 2021. The Common Travel Area between Ireland and the UK is still preserved, among other special conditions on the island of Ireland are protected by its rules. Additionally, it secures the preservation of the Single Electricity Market and permits essential North-South collaboration in sectors like agriculture, transportation, education, and tourism. The Protocol contains a consent mechanism that allows the elected members of the Legislative Assembly of Northern Ireland the authority to choose whether to continue using the system. The protocol ensures that there will not be any physical infrastructure or associated checks and controls associated with a hard border on the island of Ireland. However, products coming into Northern Ireland from the rest of the UK will be subject to inspection and control. For instance, it is necessary to assess whether food products and live animals adhere to sanitary and phytosanitary standards. In addition to the Protocol, the Brexit Adjustment Reserve will provide aid to Ireland in reducing the financial effects of Brexit. This €5.37 billion funding will help the Member States, regions, and industries most negatively impacted by Brexit.<sup>44</sup>

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<sup>44</sup> European Commission official website – *Brexit and Ireland*, available at: [https://ireland.representation.ec.europa.eu/strategy-and-priorities/key-eu-policies-ireland/impact-brexit-ireland\\_en](https://ireland.representation.ec.europa.eu/strategy-and-priorities/key-eu-policies-ireland/impact-brexit-ireland_en) (last accessed: 29 July 2022)

Irish-UK relations face significant hurdles as a result of the de-Europeanization process that Brexit has sparked. This is because Brexit has undeniably re-ignited political polarization. According to Dr. Colfey and Diamond, Following Brexit, the potential outcomes for Northern Ireland politics and Irish-UK ties are comparable to the three basic ideas of re-engagement, disintegration, and disengagement. The following outcomes are therefore envisaged:

- Irish unification and constitutional reform resulted in Northern Ireland's reengagement with the EU: the question of Irish unity which has received considerable attention in Brexit's aftermath. Aiming to reduce Ireland's economic dependence on the UK, the government established the "Shared Island Initiative" in 2020, committing five hundred million euros for cross-border projects. However, there are many unknowns on the path to Irish unification. According to Garry et al. (2020), 21% of all NI voters supported Irish unification whereas 50% preferred to stay in the UK. There would likely need to be a significant shock, like a hard border or an economic recession, for Brexit and de-Europeanization to result in a real shift.
- Breakdown of Irish–UK relations—dismantling Europeanisation: in light of Brexit, Ireland must decide whether to strengthen its ties to Europe or not. If the Irish state strengthens its commitment to European integration in the wake of Brexit, the breakdown of ties could worsen. According to academics, Brexit would unavoidably bring Ireland closer to the EU and strengthen Europeanization. Growing economic pressures may be a contributing factor to deteriorating relations, as Ireland is the EU member state that will be most negatively impacted by Brexit after the UK.
- Muddling through passive disengagement from Europe: in this case, the GFA's principles would still be followed by the governments of the UK and Ireland. Given that there is still not yet consensus on whether to seek Irish unity or even what that may entail, the Irish government would be likely determined to keep things stable. The governments of the UK and Ireland would therefore create a workable post-Brexit operating system. Given their substantial interconnection and common interests, the Irish and UK economies have remarkable similarities that would support this strategy.

In conclusion, the scenario is likely to remain deadlocked for the near future, and political instability risk still exists. Since 2016, NI's future has been less certain due to the vision of Brexit that involves active de-Europeanization and disintegration. Additionally, de-Europeanization endangered Nationalist support for the peace accord by eroding Northern Ireland's ties to Europe.

## CHAPTER TWO

### THE IMPACT OF BREXIT ON CROSS BORDER COOPERATION

#### 2.1 Cross-border cooperation in the EU-UK Trade and Cooperation Agreement

According to the terms of the Withdrawal Agreement<sup>45</sup>, the United Kingdom was in a transitional period from 1 February 2020 to 31 December 2020, continuing to be a member of the Single Market and the Customs Union even though it was no longer an EU member throughout that time. On 30 December 2020, the European Union, the European Atomic Energy Community (Euratom), and the United Kingdom signed the Trade and Cooperation Agreement (TCA)<sup>46</sup>. It was implemented provisionally on January 1, 2021, when the Brexit Transition Period ended, and went into effect on May 1, 2021. The Agreement establishes preferential arrangements for goods and services trade, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation, and participation in Union programs. It is supported by clauses that guarantee respect for fundamental rights and fair play. The Trade and Cooperation Agreement goes beyond conventional free trade agreements and offers a strong foundation for maintaining the long-standing friendship and cooperation between the UK and the EU, even though it do not match the level of economic integration that existed while the UK was an EU Member State.<sup>47</sup>

The Agreement does not apply to Gibraltar, which was previously a member of the EU and is the subject of a different negotiation between the UK, Spain, and the EU. Moreover, the provisions on trade in products do not apply to Northern Ireland because they are covered by a

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<sup>45</sup> The EU-UK Withdrawal Agreement, 12 November 2019, available at:

[https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en)

<sup>46</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (2021) available at: [http://data.europa.eu/eli/agree\\_internation/2021/689\(1\)/oj](http://data.europa.eu/eli/agree_internation/2021/689(1)/oj)

<sup>47</sup> The EU-UK Trade and Cooperation Agreement, European Commission official website, available at: [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en)

protocol to the Brexit divorce agreement<sup>48</sup>. Since they are not included in the TCA or the Brexit withdrawal agreement, the following aspects of the UK's previous status as an EU member state ended on January 1, 2021: UK membership in the European Single Market and Customs Union, free movement of people between the parties, UK participation in most EU programs, a component of EU-UK law enforcement and security cooperation, such as access to real-time police data, defence and foreign policy cooperation, and the ability to resolve disputes through the European Court of Justice (except in regards to the Protocol for Northern Ireland). The Agreement does not address foreign policy, external security, or defence cooperation because the UK choose not to negotiate these issues. The Trade and Cooperation Agreement also excludes decisions regarding financial service equivalences, the suitability of the UK's data protection laws, and the evaluation of the UK's sanitary laws for the purpose of listing the UK as a third country authorized to export food products to the EU. These are, in fact, the EU's unilateral decisions, and they are not negotiable.<sup>49</sup>

- Part One: common and institutional provisions;
- Part Two: trade, transport, fisheries and other arrangements;
- Part Three: law enforcement and judicial cooperation in criminal matters;
- part Four: thematic cooperation;
- part Five: participation in union programmes, sound financial management and financial provisions;
- part Six: dispute settlement and horizontal provisions;
- part Seven: final provisions.

Being the most important document for EU-UK trade after Brexit, it is useful to analyse how and how much cross-border trade was considered in the agreement.

Chapter three, Title II of Part Two of the Agreement contains regulations on cross-border trade in services and investment that will guarantee ongoing market access across a wide range of sectors, such as professional and business services, financial services, and transport services,

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<sup>48</sup> Protocol on Ireland/Northern Ireland, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf#page=8](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf#page=8) (last accessed: 19 September 2022)

<sup>49</sup>The EU-UK Trade and Cooperation Agreement

and will enable future and ongoing foreign direct investment. Indeed, the chapter contains obligations on: Market Access (Art. 135) to ensure that service providers and investors are not subject to restrictions such economic necessity tests, business form restrictions, and foreign equity caps; National Treatment (Art.137) to guarantee equal treatment for investors and service providers in the UK and the EU; Local Presence (Art.136), to ensure that cross-border trade is not inhibited by establishment requirements; Prohibition of performance requirements, ensuring that investments are not subject to restrictions like domestic content requirements or export restrictions and Most Favoured Nation treatment (Art.138), to make sure the Agreement stays up with any future FTAs between the Parties. Unless otherwise specified, the provisions on cross-border trade in services and investment liberalization apply to all industries covered by these chapters.

In the same Part, Cross-border financial services and investment commerce are covered in Section 5 of Chapter 5, which will guarantee ongoing market access. The Agreement offers safeguards that will guarantee that regulatory and oversight bodies can take action to maintain market integrity, financial stability, and investor and consumer protection.

Title III, of Chapter Two of the agreement deals with data flows and personal data protection. In this context, Art. 201 regulates cross-border data flows, claiming that, to support trade in the digital economy, the Parties are committed to safeguarding cross-border data flows. To that purpose, no Party may block cross-border data transfers between the Parties. Furthermore, the following article adds that a Party may establish or maintain measures to protect personal information and privacy without the Agreement's provisions interfering including with relation to cross-border data transfers, assuming that the law of the Party has instruments that permit transfers under circumstances that are generally applicable to protect the data transferred.

In the same Part, Section Two, Chapter Two of Title VIII of the Agreement concerns energy regulation, and attention to cross-border flows of electricity is given by article 311, according to which each Party should take the necessary actions to guarantee that a multi-party deal for the reimbursement for the expenses of hosting cross-border electricity flows between system operators established by European Commission regulation and UK transmission system operators. Meanwhile, art. 316 asserts that each Party is required to evaluate potential threats to the reliability of the supply of electricity or natural gas, including cross-border threats.

Chapter Three of Title XI regulates subsidy control, prescribing that to promote the development and adoption of new technologies, subsidies may be given in the context of



significant cross-border or international cooperation projects, such as those for transportation, energy, the environment, research and development, and first deployment projects. Also, cross-border or international cooperation projects must have wider benefits and relevance through spill over effects that do not only benefit the State that provides the subsidy, the relevant sector, and the beneficiary. Instead, they must benefit more than just the economic actors, the sector, or the participating States. Regarding cross-border pollution, taking into consideration the fact that the Union and the UK share a common ecosystem, Art. 393 of the same title is dedicated to environmental and climate principles. Therefore, each party Each Party agrees to uphold the environmental standards to which it has agreed, such as those in the Rio Declaration on Environment and Development<sup>50</sup>, which was approved in Rio de Janeiro on June 14, 1992, and also those in international environmental agreements, such as the Convention on Biological Diversity (CBD)<sup>51</sup>, signed on June 5, 1992 in Rio de Janeiro, and the United Nations Framework Convention on Climate Change (UNFCCC)<sup>52</sup>, signed at New York on May 9, 1992.

Part Four of the agreement regulates thematic cooperation. In the case of a major cross-border hazard to health, Title I supports robust arrangements and information sharing between the UK and the EU. This is crucial in the context of Covid-19. Art. 702 establishes that a major cross-border threat to the other Party's health must be reported to the other Party, and the Parties must make every effort to do so promptly. Following a written request from the United Kingdom, the Union may give the United Kingdom temporary access to its Early Warning and Response System (EWRS) in cases where there is a substantial cross-border hazard to health. Additionally, the Union may invite the UK to take part in a committee that has been formed inside the Union and is made up of representatives from Member States to enhance information sharing and coordination in connection to the significant cross-border danger to health. This article defines "severe cross-border threat to health" as a potentially fatal or otherwise serious health risk of biological, chemical, environmental, or unknown origin that has crossed or poses a serious risk of crossing the borders of at least one Member State and the UK.

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<sup>50</sup> Rio Declaration on Environment and Development, 14 June 1992, available at: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf)

<sup>51</sup> Convention on Biological Diversity, 5 June 1992, available at: <https://www.cbd.int/doc/legal/cbd-en.pdf>

<sup>52</sup> United Nations Framework Convention on Climate Change, 9 May 1992, available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>

Title II of the same Part offers a framework for UK-EU collaboration in the area of cyber security, where such collaboration is advantageous on both sides given the transnational nature of cyberthreats and issues. In accordance with Article 704, the parties must also make an effort to work together in relevant international organisations and forums, as well as to develop global cyber resilience and improve third countries' capacity to effectively combat cybercrime. The United Kingdom may participate at the invitation, and the United Kingdom may also request, of the Management Board of the European Union Agency for Cybersecurity (ENISA), in the areas of capacity building, knowledge and information, awareness raising and education, in order to promote cooperation on cyber security while maintaining the autonomy of the Union decision-making process. Lastly, Art. 705 mandates that the national UK computer emergency response team and the Computer Emergency Response Team - European Union (CERT-EU) cooperate on a voluntary, timely, and reciprocal basis to share information on tools and methods and best practices, as well as on general threats and vulnerabilities.

A research report<sup>53</sup> published by Descartes Systems Group examined the impact of Brexit, the COVID-19 epidemic, and the level of future uncertainty on cross-border trade. The study included interviews with more than 500 supply chain managers, conducted by SAPIO Research in March 2021, evaluating the specific aspects of EU trade that have been impacted. The main conclusions include:

- In 2021, Brexit impacted negatively 43% of firms, but in the post-Brexit environment, 19% of enterprises are growing;
- 53% predicted that their 2021 turnover would be lower than it would have been if the UK had stayed in the EU, and the average decline is 29%;
- Since the end of the transition period, 90% of enterprises have experienced disruption.

While the same research conducted in 2020 predicted the negative impact of Brexit on cross-border trade, the more recent research demonstrates how the post-Brexit trade environment is far more complex. The results showed how disruption is a fact: In 2021, 9 in 10 companies reported disruptions in their capacity to conduct business with the EU, with 20%

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<sup>53</sup> Descartes Systems Group (2021), *Beyond Brexit: The Realities of Brexit for UK-EU Cross Border Trade*, Descartes Research Report, available at: [https://www.thebwa.com/wp-content/uploads/Descartes\\_PostBrexitReport\\_WP\\_V2.pdf](https://www.thebwa.com/wp-content/uploads/Descartes_PostBrexitReport_WP_V2.pdf)

reporting major disruptions following the end of the transition period. Furthermore, 40% of businesses have said that the performance of the EU supply chain has been worse than predicted, notwithstanding the high degree of concerns highlighted in the 2020 study. The negative impact has been severe for many enterprises (43%) with manufacturing and engineering firms being the worst hit. However, nearly one fifth (19%) of businesses are really doing well in the post-Brexit economy, with 35% of them being in the electronics, computer, and telecommunications sector. Additionally, 17% claim that the performance of the EU supply chain has surpassed expectations.<sup>54</sup>

In essence, as the study demonstrates, businesses were simply unprepared for the end of the Brexit Transition Period on January 1, 2021, finding that nearly two in five enterprises believe the economy was not ready. Even a company that is fully prepared may experience business disruptions if suppliers fail to make the necessary modifications. This lack of preparation by individual businesses has had a serious knock-on impact on the rest of the supply chain. Many enterprises have been in a spiral as a result of Brexit, particularly those whose plans were stalled or delayed by COVID-19. However, as this research demonstrates, planning is crucial for compliance in cross-border trade, but it also significantly affects how well businesses operate.

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<sup>54</sup> Ibidem

## 2.2 Border strategy and cross-border mobility after Brexit

The British government adopts a phased strategy known as the "Border Operating Model"<sup>55</sup> to impose border restrictions between the United Kingdom and the European Union now that the UK has exited the EU. The UK border strategy for 2025 was first released by the government in December 2020.<sup>56</sup> By 2025, the strategy aims to have "the world's most effective border,"<sup>57</sup> and it includes steps to increase cross-government cooperation and data sharing, transfer more border checks away from the border, and promote more automation. The plan is divided into six transformations that the government wants to carry out across the UK border and a number of cross-cutting programs that the government will advance in collaboration with stakeholders:

1. Create a coordinated, user-centric government strategy for border design and delivery that collaborates with business to promote border innovation.
2. To provide a thorough and comprehensive perspective of data at the border, combine government collection, assurance, and use of border data.
3. Establish "ports of the future" at border crossing locations to enhance passenger and trader convenience and security while better safeguarding the general populace and environment.
4. When it is acceptable, use upstream compliance to move processes away from the actual border for both traders and travellers.
5. Simplify communication with border users to enhance their experience and build the capacity of workers and the border industry responsible for delivering border services, particularly in an age of growing automation.
6. To advance UK interests and ease end-to-end trade and travel, shape how borders are developed globally in the future.

On 1 January 2021, the first phase of the Border Strategy officially launched. The second phase was previously delayed, and it is currently experiencing yet another delay. The Institute for Government, a British independent think tank that seeks to enhance government effectiveness through research and analysis, claims that the EU Trade and Cooperation Agreement does not

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<sup>55</sup>UK Cabinet Office, *Guidance to the Border Operating Model*, available at: <https://www.gov.uk/government/publications/the-border-operating-model> (last accessed: 20 August 2022)

<sup>56</sup> UK Cabinet Office, *2025 UK Border strategy*, available at: <https://www.gov.uk/government/publications/2025-uk-border-strategy> (last accessed: 20 August 2022)

<sup>57</sup> Ibidem

significantly speed up border procedures, which implies that there is now a lot more friction for traders than there was when the EU was a member.<sup>58</sup> New paperwork and checks are required for trade between the GB and the EU; the specific requirements vary on the nature of the commodities, where they cross the border, and who is transporting them. The UK government chose to gradually implement customs rules for GB imports from the EU between January and July 2021 in order to simplify the introduction of formalities. The UK government has since announced numerous delays to border inspections. It announced delays to the implementation of comprehensive import checks in March 2021, on average by six months, claiming that firms needed extra time to get ready after interruption from a pandemic. In September 2021, it announced additional delays to a number of border checks because the pandemic's effects were still being felt and because of the interruption to the world's supply lines. In order to delay the implementation of new checks that were scheduled to take effect in January 2022, it was announced in December 2021 that the current border arrangements for imports from the island of Ireland would be extended for as long as discussions on the Northern Ireland protocol are ongoing. The government declared in April 2022 that it was stopping its plans to implement further border checks this year, citing ongoing supply chain disruptions, notably those brought on by the Ukraine crisis, and increases on the living costs. The United Kingdom runs the danger of angering non-EU countries until the new British border model is put into effect, since they will have to go through more hoops to export to the U.K. than those in the EU do. Following a business consultation and the publication of a new set of guidelines for UK border operations in the fall of 2022, the government intends for any additional inspections to be implemented before 2024.<sup>59</sup>

As a result, the uncertainty regarding border checks is having repercussions not only on trade, but also on cross-border travel. The long lines of travellers trying to cross the English Channel at Dover serve as a symbol of how the UK/EU border has changed.<sup>60</sup> Because of the more

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<sup>58</sup> MARSHALL, J. (2022), *The GB-EU Border*, Institute for Government, <https://www.instituteforgovernment.org.uk/explainers/future-relationship-gb-eu-border> (last accessed: 25 August 2022)

<sup>59</sup> CASALICCHIO, E., *UK outsources post-Brexit border checks to EU*, *Politico*, 24 May 2022, available at: <https://www.politico.eu/article/uk-outsources-border-check-eu-brexit/> (last accessed: 25 August 2022)

<sup>60</sup> O' CARROLL, L., *Kent travel chaos: is there a fix and should Brexit take the blame?* 25 July 2022, *The Guardian*, available at: <https://www.theguardian.com/uk-news/2022/jul/25/kent-travel-chaos-fix-brexit-blame-dover-folkestone> (last accessed: 25 August 2022)

difficult border, travel between the UK and the EU is more challenging than it used to be. Juxtaposed regulations are in place at the channel, which means that one can enter either France or England before leaving England. In Dover, French border guards provide permission to enter the EU. EU border guards are gradually implementing a mechanism to ensure that tourists do not stay in the Schengen region for longer than the maximum of 90 days in a 180-day period permitted for UK nationals, therefore checks are needed for access and exit. E-gates that can calculate stay and stamp passports are not yet available, as a consequence things can move very slowly when there are not enough border agents to deal with the passengers, and when there is not enough infrastructure or knowledge to deal with the massive amount of them.<sup>61</sup>

The new Entry/Exit System (EES) and European Travel Information and Authorization System (ETIAS) will be made available to all non-EU travellers starting in the following year as part of the EU Smart Borders Programme<sup>62</sup>. This applies to visitors from Britain. Passengers from the UK will no longer need their passports to be stamped; instead, they will need to register their biometrics and fill out an online application form to enter the EU. In order to provide the EU more control over tourists from other countries, biometrics will be validated at each entry and exit from the Schengen zone. As the UK government launches its own Electronic Travel Authorization (ETA) scheme for EU tourists, who will also need to apply for authorisation before they travel, obstructions and delays to movement in the opposite direction will also get worse. Both of these programs, in varying degrees, include biometric registration and recognition. To access trains and ferries in both directions, passengers will need to have a digital authorization, or risk being refused boarding entirely. However, there haven't been any proposals made public to date to install technology in Dover or Calais to improve the flow of cross-border traffic.<sup>63</sup>

In terms of the UK/EU borders, Brexit is still very much a work in progress. The government has set a new, difficult deadline for Customs to implement all the Border Operating Model's

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<sup>61</sup> HAYWARD, K., SMITH, T. (2022), *Dover disruption- is this the new normal for Britain's border?*, UK in a changing Europe - the authoritative source for independent research on UK-EU relation available at: <https://ukandeu.ac.uk/dover-disruption/> (last accessed: 22 August 2022)

<sup>62</sup> European Commission official website – *Smart Borders*, available at: [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/smart-borders\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/smart-borders_en) (last accessed: 26 August 2022)

<sup>63</sup> HAYWARD, K., SMITH, T. (2022)

stipulations, which is 31 December 2023. Moreover, the UK government's 2025 Border Strategy is in a phase of testing and consultations. In fact, the government declared<sup>64</sup> that no new import restrictions on products from the EU will be implemented this year. It has been announced that from July 1, 2022, businesses could stop making preparations for the anticipated regulations. The end of 2023 is the new goal date for the adoption of the controls regime, according to a target operating model that the administration pledged to publish in the autumn. Both items from the EU and the rest of the globe will be subject to this new policy. It will be founded on an accurate risk assessment and employ proportional, risk-based, and technologically sophisticated controls. This includes the Single Trade Window, which will begin to function in 2023, the development of a trust-based ecosystem between the public and private sectors, and other transformational initiatives as part of the 2025 Borders Strategy.<sup>65</sup>

It is believed that border management is the area where Brexit will lead to the most significant political tensions and policy gaps, particularly regarding immigration policy.<sup>66</sup> Prior to Brexit, the UK was not a member of the Schengen region, and British authorities already regulated who may enter their country. Two things have changed as a result of Brexit: first, the UK has withdrawn from the EU's accords on immigration from third countries, and second, the right of EU nationals to live and work in the UK has been abolished. On January 1, 2021, the UK implemented a new immigration system that put an end to free travel between the UK and the European Union (EU) and the larger European Economic Area (EEA).<sup>67</sup> The new regulations went into effect concurrently with the UK-EU Trade and Cooperation Agreement. The new system presents a considerable tightening of limitations on EU migration compared to free movement and will apply to all individuals migrating to the UK for job, study, or family

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<sup>64</sup> UK Cabinet Office, Press release, 28 April 2022, available at:

<https://www.gov.uk/government/news/new-approach-to-import-controls-to-help-ease-cost-of-living> (last accessed: 26 August 2022)

<sup>65</sup> UK Cabinet Office, *The UK Single Trade Window: Consultation on Features to Inform Design and Legislation*, 21 July 2022, available at: <https://www.gov.uk/government/consultations/the-uk-single-trade-window-public-consultation/the-uk-single-trade-window-consultation-on-features-to-inform-design-and-legislation> (last accessed: 26 August 2022)

<sup>66</sup> NEIDHARDT, A. (2022), *Post-Brexit EU–UK cooperation on migration and asylum: How to live apart, together*, European Policy Center, available at: <https://www.epc.eu/en/Publications/Post-Brexit-EUUK-cooperation-on-migration-and-asylum-How-to-live-apa-49631c> (last accessed: 27 August 2022)

<sup>67</sup> UK Home Office, *New immigration system: what you need to know*, last updated 8 March 2022, available at: <https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know> (last accessed: 27 August 2022)



reasons, with the exception of Irish nationals. In essence, it will no longer be possible for immigrants from EU nations to enter the country to work in lower-skilled or lower-paying jobs. EU-born immigrants traveling to the UK for family or educational purposes must meet the same requirements as immigrants from other countries.

Another impelling problem is the lack of a legally binding system that establishes accountability for people seeking refuge and streamlines transfers between the EU and the UK. While there are no longer legal ways for asylum seekers to enter the UK as there were under the Dublin system, the UK has seen an extraordinary increase in unauthorized entries by small boat over the English Channel. Since the UK is not a part of the Schengen Area, the regulations governing land and marine border crossings are outlined in bilateral agreements between France and the UK, whose execution is unaffected by Britain's decision to exit the EU. As such, the Le Touquet (2003)<sup>68</sup> and Sandhurst (2018)<sup>69</sup> treaties govern border restrictions between the UK and France. The latter improved cross-border cooperation between France and the UK, inspiring the establishment of the UK-France Coordination and Information Centre to share real-time information on traffic movements across the English Channel. After Brexit, multilateral anti-smuggling collaboration also continued, despite the UK's new third-party status in Europol. Nevertheless, Channel crossings reached record highs in 2020 and 2021.<sup>70</sup> This has contributed to an overall rise in asylum requests. Between 2020 and 2021, applications increased in the UK and the majority of EU member states, in part because border restrictions put in place during the COVID-19 pandemic were lifted. In the EU, the increase ranged from 27% (France) to 45% (Germany), whereas the UK saw a 52% increase in applications. In fact, the number of primary asylum seekers in the UK in 2021 is also the largest in almost 20 years.<sup>71</sup> While it is

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<sup>68</sup> Le Toquet Agreement (2003), signed between the UK and France concerning the carrying of Service Weapons by French Officers on the territory of the UK, available at: <https://www.gov.uk/government/publications/agreement-between-the-uk-and-france-concerning-the-carrying-of-service-weapons--2>

<sup>69</sup> Sandhurst Treaty (2018), signed between the UK and France concerning the reinforcement of cooperation for the coordinated management of their shared border, available at: <https://www.gov.uk/government/publications/uk-france-summit-2018-documents>

<sup>70</sup> DEARDEN, L., *Channel boat crossings tripled in 2021 as government's 'chaotic approach' to asylum seekers blamed*, *The Independent*, 04 January 2022, available at: <https://www.independent.co.uk/news/uk/home-news/channel-crossings-2021-record-patel-b1986041.html>

<sup>71</sup> THOMPSON, F., *Asylum claims hit near 20-year high as backlog of cases soars*, *The Independent*, 26 May 2022, available at: <https://www.independent.co.uk/news/uk/home-office-home-secretary-amnesty-international-uk-refugee-council-government-b2087943.html>



getting harder to sneak into the country by hiding in tracks, the number of boats crossing the English Channel hit a record high of 28,000 in 2021, up from 2,000 in 2019 and 8,000 in 2020. Small boats have reportedly carried more than 9,000 migrants across the border so far this year, more than twice as many as were observed during the same time period in 2021.<sup>72</sup>

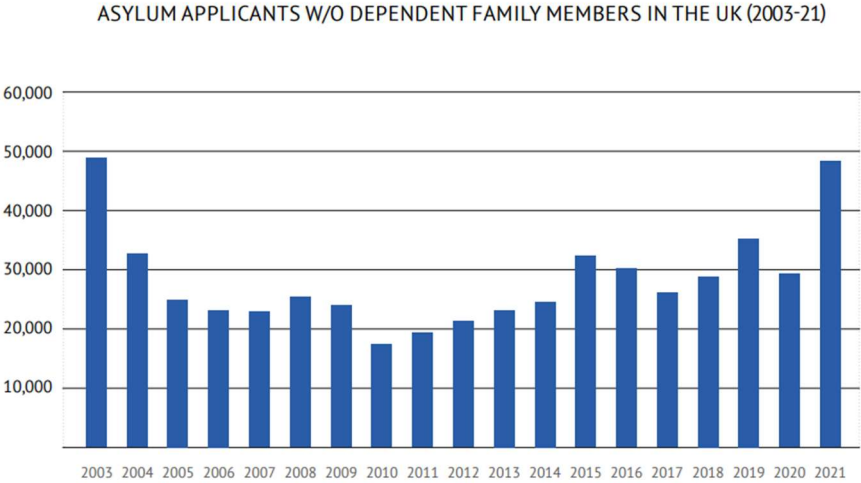


Figure 5 - asylum applicants w/o dependent family members in the UK (2003-21). Source: UK Home Office, “How many people do we grant asylum or protection?”<sup>73</sup>

On November 24, 2021, at least 27 people perished while attempting to cross the UK in a small boat, making it the deadliest incident ever documented in the English Channel .<sup>74</sup> Soon after the shipwreck, France organized an emergency meeting in Calais with representatives from the European Commission, Belgium, the Netherlands, and Germany where they agreed to increase judicial and police collaboration and deploy Frontex resources, even if they were only for aerial surveillance, in the North Sea area. They also agreed that the EU and the UK must cooperate on these matters. A review of present tactics was, however, impossible due to the tensions that resulted in the diplomatic repercussions before to the Calais summit, which only served to exacerbate bilateral relations between France and the UK.<sup>75</sup>

<sup>72</sup> Frontex, *Q1 illegal border crossings into EU highest since 2016*, 14 April 2022, available at: <https://frontex.europa.eu/media-centre/news/news-release/q1-illegal-border-crossings-into-eu-highest-since-2016-vvVOak> (last accessed: 29 August 2022)

<sup>73</sup> Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2021/how-many-people-do-we-grant-asylum-or-protection-to>

<sup>74</sup> SYAL, R., CHRISAFIS, A. AND TAYLOR, D., *Tragedy at sea claims dozens of lives in deadliest day of Channel crisis*, *The Guardian*, 25 November 2021, available at:

<https://www.theguardian.com/world/2021/nov/24/several-people-dead-migrant-boat-capsizes-channel>

<sup>75</sup> NEIDHARDT, A. (2022)

The Nationality and Borders Bill<sup>76</sup> was launched by the British government in July 2021 as a part of its New Plan for Immigration<sup>77</sup>. On April 28, 2022, the Bill was finally enacted by Parliament after a protracted review process. Among other things, it established a two-tier system based on how frequently asylum seekers entered the UK. People who enter the UK illegally, particularly those who do so by boat across the English Channel, may be given less advantageous rights, such as temporary protection with restricted access to welfare benefits and restricted rights to family reunions. The United Nations High Commissioner for Refugees issued a detailed legal analysis<sup>78</sup> warning that the Bill violates the 1951 Refugee Convention, an accord that the UK is a signatory to, and which has long provided protection for refugees. According to the publication, the bill reflects important changes, such as the elimination of any time limits on how long an asylum request can be put on hold after being declared as "inadmissible," which could leave people in uncertainty indefinitely. Moreover, other changes include: the enablement of the Secretary of State to operate in a manner that disregards the law of the sea and to attempt to return individuals to other nations without other nations' consent, the use of questionable and even dangerous medical age assessment techniques, as well as the Home Office's ability to override local authorities' judgments on children in their custody and the and the unanticipated loss of nationality, which increases the danger of statelessness, especially for young people.<sup>79</sup>

When negotiating the Trade and Cooperation Agreement, the EU negotiation team declared its aim to have a regular conversation on irregular migration, but The UK government made it clear during the negotiations that it did not want to continue participating in Dublin III as a third party.<sup>80</sup> Instead, the UK suggested two draft accords, one on transporting unaccompanied asylum-seeking children and the other on readmitting people who arrived or stayed illegally.

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<sup>76</sup> Nationality and Borders Act 2022, available at:

<https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted>

<sup>77</sup> UK Home Office, *New Plan for Immigration*: policy statement, 29 March 2022, available at: <https://www.gov.uk/government/consultations/new-plan-for-immigration/new-plan-for-immigration-policy-statement-accessible> (last accessed: 28 August 2022)

<sup>78</sup> UNHCR *Updated Observations on the Nationality and Borders Bill*, January 2022, available at: <https://www.unhcr.org/61e7f9b44> (last accessed: 28 August 2022)

<sup>79</sup> *Ibidem*

<sup>80</sup> *UK asylum policy after Brexit*, UK in a Changing Europe, available at <https://ukandeu.ac.uk/explainers/asylum-policy-after-brexit/> (last accessed: 28 August 2022)

The European Commission dismissed these ideas because they were outside the scope of the TCA discussions, which member states had unanimously agreed to exclude refugee and repatriation issues from. The British proposals, which would require member states to take back all asylum seekers who entered the UK illegally after living in or passing through the EU, were also described by EU authorities as being extremely imbalanced.<sup>81</sup> Alternative draft accords for post-Brexit asylum cooperation were not offered by the EU and no agreements were consequently approved. The UK, on the other hand, would only permit unaccompanied minors if their relatives already resided there. The member states were not motivated to revise the Commission's mandate by the uneven obligations present in the British proposal. The TCA contains objectives and long-term aims rather than legally binding promises in relation to various aspects of immigration and asylum policies, such as family reunions and returns. Additionally, Brexit made it more difficult to develop and carry out efficient anti-smuggling plans with European allies. Despite these differences, a post-Brexit cooperation deal is not in the cards because each side is pursuing structural reforms that reflect divergent interests and a widening political chasm.<sup>82</sup>

Post-Brexit, EU-UK cooperation on asylum and migration has fallen to new record lows, reflecting the broader political dynamics. The relationship is already tense, and the ongoing disputes over the Northern Ireland Protocol make it doubtful that there will be a comprehensive and ambitious partnership encompassing issues of asylum and migration. Because the UK is no longer obliged by the Dublin Regulation, there are serious doubts about whether the UK can return asylum seekers to the EU in the absence of a substitute returns mechanism. The UK government has stated its desire to reach bilateral agreements with EU member states for this purpose; however, several EU member states have stated that they will not agree to this.<sup>83</sup> The EU and the UK will continue to be pressed to define shared objectives and establish the framework for future, mutually beneficial cooperation since there is a genuine potential that further serious incidents may occur in the Channel. As members of the European Common Asylum System, the UK and France may find it difficult to decide what kind of asylum

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<sup>81</sup> Ibidem

<sup>82</sup> NEIDHARDT, A. (2022)

<sup>83</sup> BULMAN, M., *Hundreds of asylum seekers in UK being considered for removal to EU – despite absence of returns deals*, *The Independent*, 27 May 2021, available at: <https://www.independent.co.uk/news/uk/home-news/uk-asylum-seekers-deportation-returns-b1854858.html>

arrangement might replace Dublin III. The UK will essentially be forced to pursue a deal with the EU despite a widening political and policy gap from the EU. The absence of a framework for collaboration harms not only UK goals but also EU interests.

### **2.3 Impact of Brexit on cross-border police cooperation**

Cross-border police work is referred to as transnational policing in international supranational agreements. European policing cooperation has grown through time and is now seen as essential to maintaining both domestic and international security and order. Over the past ten years, there has been a push for increased coordination between the enforcement organizations of the United Kingdom and the European Union as the transnational policing environment has grown increasingly complicated. Although technology is progressing quickly, with the introduction of artificial intelligence and automation already having an impact on criminal justice structures, Brexit has seen the United Kingdom sever ties with some of these crucial cross-border information-sharing arrangements. This necessitates the creation of new arrangements as well as an honest assessment of the various gaps that still exist.<sup>84</sup>

Making the EU a place of freedom, security, and justice based on the respect for basic rights is a critical component of effective police cooperation. The purpose of cross-border law enforcement cooperation is to prevent, identify, and look into criminal offenses across the EU. This collaboration involves the police, customs, and other law enforcement services. However, police collaboration and judicial cooperation in criminal cases have not yet been fully incorporated into the Community framework and still retain some of their original characteristics: according to article 76 of the TFEU<sup>85</sup>, the European Commission shares its initiative-taking authority with the Member States, provided that they account for at least 25% of the Council's members. Parliament is only consulted on operational cooperation measures that the Council unanimously approves. It is conceivable for nine or more Member States to

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<sup>84</sup> DAVOLI, A. (2022), *Police Cooperation, Fact Sheets on the European Union*, European Parliament, available at: <https://www.europarl.europa.eu/factsheets/en/sheet/156/police-cooperation> (last accessed: 10 August 2022)

<sup>85</sup> Treaty on the Functioning of the European Union, art. 76, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E076> (last accessed: 11 August 2022)

collaborate on the basis of enhanced collaboration when there is not unanimity in the Council. In this case, the European Council invokes the "emergency brake" provision of Article 87(3) of the TFEU to halt the procedure and seek consensus.<sup>86</sup>

Before analysing the consequences of Brexit, it is useful to provide an overview of how the development of cross-border police cooperation in the EU across the years. The 'Trevi Group,' an intergovernmental network made up of representatives from the justice and home affairs ministries, was where police cooperation among the Member States first started in 1976.<sup>87</sup> In 1985, Cross-border police cooperation had already been a reality with the establishment of the Schengen Area, which at first only included a small number of Member States. During this time, the Europol Drugs Unit was initially established, which led to the creation of the European Union Agency for Law Enforcement Cooperation (Europol). The Europol Convention was signed on July 29, 1995, and official operations started on July 1, 1999, based on the expanded authority provided by the Treaty of Amsterdam, which introduced the idea of an Area of Freedom, Security, and Justice as the first treaty (AFSJ). The UK and Ireland were able to negotiate a number of opt outs through a Protocol to the Amsterdam Treaty, giving them more control over their participation in AFSJ measures and allowing decisions to be made on a case-by-case basis regarding the adoption of specific Commission-proposed measures in areas like immigration and asylum, border controls, and civil and family law. Criminal matters, however, continued to fall under the purview of the Council of Ministers and were subject to unanimous decision-making. The similar intergovernmental approach was utilized for police cooperation measures approved by a limited group of Member States under the Prüm Treaty, which included rules for the exchange of DNA, fingerprints, and car registration information. In 2002, Eurojust was established with the goal of promoting judicial cooperation between member states in criminal cases involving two or more nations. In order to support significant actions, Eurojust also offers states help and coordination tools. This frequently takes the shape of Joint Investigation Teams (JITs), in which police forces from various member states cooperate to look into transnational crimes. The European Arrest Warrant (EAW) has been in operation since 1 January 2004 and it was introduced with the aim of simplifying extradition processes that existed between EU Member States. A warrant issued by one state is valid throughout the

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<sup>86</sup> *ivi*, art. 87 (3), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E087> (last accessed: 11 August 2022)

<sup>87</sup> DAVOLI, A. (2022)

EU as the EAW is similarly founded on the concept of mutual recognition, and there are few reasons to reject extradition requests. 1,626 people were turned over to the UK under the EAW between 2009 and 2019, and 11,300 people were extradited from the UK during that time.<sup>88</sup>

The Treaty of Lisbon (TFEU), which went into force in 2009, greatly simplified the institutional structure. The majority of police cooperation measures are now implemented through the usual legislative procedure (codecision) and are subject to judicial review by the Court of Justice. The first pillar of the Treaty was expanded to include the domain of freedom, security, and justice, ending intergovernmental decision-making. This had the effect of subjecting FSJ to qualified majority vote and codecision, and as a result, subjecting FSJ to the regular legislative process. Before this, it was believed that decision-making was constrained since the Commission had limited power to compel the Member States to enact laws.<sup>89</sup> After being approved by Parliament, laws passed under the new system had greater influence. The Lisbon Treaty contains a Protocol on the status of the UK and Ireland<sup>90</sup>, as did the other Treaties, allowing for a number of case-by-case opt-outs and opt-ins.

Prior to Brexit, National Police Chiefs Council (NPCC) and National Crime Agency (NCA) leaders emphasized the need to keep EU policing tools because alternative proposals were seen as less automated and more cumbersome to use. According to policing organizations, European law enforcement systems make it possible to share data quickly and effectively, guide quick and effective response, and help coordinate cooperative action, including setting strategic priorities. Policing, intelligence, and law enforcement operations would be less successful without access, according to policy experts.<sup>91</sup> Indeed, immediately after the UK voted to leave the EU, experts at the Institute for Government assessed the effectiveness of the EU and UK's negotiating positions, concluding that the failure to reach a comprehensive security agreement

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<sup>88</sup> HARGREAVES, I. (2021), *Cross-Border Criminal Cooperation in a Post-Brexit World*, Covington & Burling website, available at: <https://www.cov.com/en/news-and-insights/insights/2021/01/cross-border-criminal-cooperation-in-a-post-brexit-world> (last accessed: 10 August 2022)

<sup>89</sup> HADFIELD, A., BULLOCK, K., TONG, S., MALLETT, E., KENINGALE, P. AND WELLINGS, F. (2022) *Border trouble? Cooperation between UK and European police, judicial, port and border authorities in the post-Brexit age*. (Discussion Paper), Centre for Britain and Europe (CBE), University of Surrey. pp. 10-13

<sup>90</sup> TFEU, protocol (no 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, available at: [http://data.europa.eu/eli/treaty/tfeu\\_2016/pro\\_21/oj](http://data.europa.eu/eli/treaty/tfeu_2016/pro_21/oj) (last accessed: 10 August 2022)

<sup>91</sup> *Ibidem*

in the areas of policing and criminal justice could have grave and immediate repercussions for transnational security operations across the continent.<sup>92</sup>

Part three of the Trade and Cooperation agreement is about law enforcement and judicial cooperation in criminal matters, and its thirteen chapters represent a range of cooperation continuity/discontinuity beginning on January 1, 2021. This demonstrates a reduction in official British government influence over the strategic development of EU criminal justice law, institutions, and operational priorities as well as an initial decrease of operating performance. As an EU member and during the transition, the UK benefited from almost flawless policing and security database cooperation with other EU Member States. The TCA prevented a so-called "cliff-edge" exit from the EU on January 1, 2021, which was widely believed to have had major repercussions for security in the UK and throughout the EU. To lessen the consequences of the departure, the International Crime Coordination Centre (ICCC) was founded. Its goal is to assist UK Law Enforcement in combating international criminality and ensuring continuity after Brexit. But as the TCA makes clear, there had to be a change in the official procedures for cross-border collaboration with regard to information sharing, criminal justice systems, and institutional memberships. The agreement included some, although scarce, information about how Brexit might formally change the nature of European transnational policing in a number of subject areas. According to Title III Part Three, Britain would keep taking part in the PRÜM convention, which exchanges information on vehicle registration, DNA, and fingerprints to fight terrorism and cross-border crime. In addition, Title III granted the UK access to Passenger Name Records (PNR) for the sole purpose of conducting border and security checks, which was a crucial concession for the UK security industry.

The University of Surrey produced a report with the goal of mapping and following the development of UK-EU legislation, policies, and agreements in the post-Brexit environment.<sup>93</sup> The research included a comprehensive engagement with UK and EU stakeholders about how Brexit has changed the organization, structures, and processes of UK-EU transnational law

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<sup>92</sup> *Brexit: policing and criminal justice*, Institute for government, Negotiating, available at: <https://www.instituteforgovernment.org.uk/summary-negotiating-brexit-policing-and-criminal-justice> (last accessed: 11 August 2022)

<sup>93</sup> HADFIELD, A., BULLOCK, K., TONG, S., MALLETT, E., KENINGALE, P. AND WELLINGS, F. (2022)



enforcement in response to this critical evidence gap addressing the evolution of UK law enforcement following Brexit.

First, Title V, Part Three of the TCA established that the UK would forfeit its memberships at the European Agency for Law Enforcement Cooperation (Europol) and at the European Union Agency for Criminal Justice Cooperation and (Eurojust). In particular, Europol has been essential to the UK's fight against organized crime. Through the SIENA communications system, the UK used Europol's systems often, exchanging intelligence about 47,000 times. According to the NCA, UK agencies have profited from the extensive operational usage of Europol's analytical and coordinating capabilities across all serious and organized crime danger areas. Representatives from the UK participated in 170 operational meetings in 2019 alone, steering 66 of them<sup>94</sup>. Additionally, the UK has lost direct access to the data stored in databases, such as the Europol Analysis Projects, in which the UK has made considerable investments and data contributions. Eurojust, which was founded in 2002, offers operational support during the various stages of cross-border criminal investigations and helps with the investigation and prosecution of crimes involving two or more nations. It can also set up joint investigation teams. The TCA authorizes Europol and Eurojust collaboration, although this is restricted and the UK's standing within the organizations is less significant than it has been in the past. But the UK's exclusion from Europol's management board, where it has been reduced to observer status and has no voting rights, is a big setback for the country's law enforcement.<sup>95</sup> The UK's involvement at Eurojust is similarly curtailed by Title VI Part Three of the TCA to the secondment of liaison officers who are able to participate in sessions dealing to strategic topics. According to reports, the UK no longer has access to the Eurojust case management system, which enables the Crown Prosecution Service to cross-investigate cases to determine whether other member states are required to be involved.<sup>96</sup> Undoubtedly, post-Brexit arrangements with EU law enforcement and judicial institutions fall short of guaranteeing the same level of access and surface area that EU membership manages to do.

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<sup>94</sup> Hargreaves, I. (2021)

<sup>95</sup> HOXHAI, A. (2020). *The UK's Policy Response to Serious and Organised Crime after Brexit*, in *Global Policy*. Available at: <https://www.globalpolicyjournal.com/blog/02/07/2020/uks-policy-response-serious-and-organised-crime-after-brexit> (last accessed 11 August 2022)

<sup>96</sup> Eurojust (2021), *Judicial cooperation in criminal matters between the European Union and the United Kingdom from 1 January 2021*, available at: <https://www.eurojust.europa.eu/publication/judicial-cooperation-criminal-matters-between-european-union-and-united-kingdom-1-january-2021> (last accessed: 11 August 2022)



Second, Brexit has changed the rules for "mutual recognition," a procedure by which a judgment made by a judicial authority in one EU member state is recognized and enforced, as needed, by the authorities of another member state as if it were a decision of the judicial authorities in that state. Mutual recognition was made the cornerstone of policing and judicial cooperation by the 1999 Tampere decision of the European Council<sup>97</sup>. Examples include prisoner transfers, the European Investigation Order (EIO), and the European Arrest Warrant (EAW). Indeed, title VII Part Three of the TCA addresses the European Arrest Warrant (EAW) and explains the rules that must be followed for future extraditions. Due to the dual criminality criterion, which specifies that "the offence must exist in both states for an extradition to be compelled," the new structure under the TCA is far less reliable.<sup>98</sup>

Third, access to systems like the European Criminal Records System (ECRS), the Passenger Name Record (PNR), and the Schengen Information System II (SIS II) speeds up information and data sharing. The European Criminal Records Information System (ECRIS)<sup>99</sup>, is a noteworthy technology, allowing for the harmonized electronic information sharing between EU member states about convictions. When a citizen of another Member State is found guilty, the convicting Member State is required to notify that nation via ECRIS. As reported by the National Crime Agency, the UK consistently used ECRIS the most frequently in terms of the overall number of notifications, requests, and responses. After Brexit, SIS II and ECRIS are no longer accessible to the UK. The Second Schengen Information System, another vital information system that automates warnings to police and border guards on wanted or missing persons, is one that the UK heavily utilized. It enables information sharing between customs, police, and national border control authorities, guaranteeing that the free movement of persons within the EU may happen in a secure environment. The SIS II has three areas of expertise: border and migration management, vehicle control, and security cooperation.<sup>100</sup> The first two

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<sup>97</sup> European Council, Tampere Summit (1999), available at:

[https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm) (last accessed: 30 August 2022)

<sup>98</sup> HARGREAVES, I. (2021)

<sup>99</sup> European Commission, *European Criminal Records Information System*, available at:

[https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/tools-judicial-cooperation/european-criminal-records-information-system-ecris\\_en](https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/tools-judicial-cooperation/european-criminal-records-information-system-ecris_en) (last accessed 12 August 2022)

<sup>100</sup> European Commission, *SIS II - Second generation Schengen Information System Migration and Demography*, available at: [https://knowledge4policy.ec.europa.eu/dataset/ds00009\\_en](https://knowledge4policy.ec.europa.eu/dataset/ds00009_en) (last accessed 12 August 2022)

allow authorities to produce warnings on missing people as well as people or things that may be connected to criminal offenses. No other region in the world has such close multilateral cooperation in these areas, especially not with such a formal legal underpinning, and member states continue to develop this in response to the changing nature of crime, including evolving terrorist and cyber threats. This is true even though some nations may cooperate closely.<sup>101</sup> To replace SIS II, The UK has been forced to rely on the Interpol database, which requires additional manual maintenance because it is not directly integrated with the UK's Police National Computer (PNC) and Border systems, or with the national systems of other EU Member States. In place of ECRIS, the Brexit agreement specifies a different method for the exchange of criminal record information, although UK enforcement authorities will still need to make separate requests to member states' governments each time they want to obtain this information.

The UK has been preparing to lose the EU's resources and authority in the months leading up to Brexit. In order to maintain continuity after leaving the EU and to offer advice, support, and direction on the policing strategies and resources available to combat international criminality, it has established the International Crime Coordination Centre (ICCC). In order to combat all types of foreign criminality, the centre offers a variety of counsel, support, and guidance on policing methods and techniques. The ICCC will advise UK Police forces on the processes and fallback positions to adapt EU tools post-Brexit, monitoring how UK Police forces have adjusted to the change of losing EU tools as a result of the changing relationship with the EU. After these changes, treaties from the 1950s may be alternatives used to aid law enforcement. For instance, the European Convention on Extradition (1957) and the European Convention of Mutual Assistance in Criminal Matters (1959) are treaties that cover extradition and criminal investigation, respectively. Interpol also facilitates international police cooperation. However, these alternatives have been perceived as being less efficient than the arrangements and ties in place prior to Brexit since they are slower and more bureaucratic.<sup>102</sup> As a result, while the TCA

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<sup>101</sup> *Negotiating Brexit: policing and criminal justice*, Institute for government, available at: [https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG\\_Brexit\\_policing\\_criminal\\_justice\\_web.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_policing_criminal_justice_web.pdf) (last accessed: 13 August 2022)

<sup>102</sup> HADFIELD, A., BULLOCK, K., TONG, S., MALLETT, E., KENINGALE, P. AND WELLINGS, F. (2022), p.7

has made sure that collaboration is still possible in some areas, there is still a gap in others, which has an impact on bilateral ties in transnational policing.

Participants concurred that traditional security frameworks and information sharing procedures had inexorably fractured as a result of the UK's exit from the EU. On the one hand, the TCA's mitigating effects were highlighted, and on the other, the UK government's preparations for emergencies were highlighted. In contrast to the pre-Brexit plans, many of the fallback measures implemented by the government were thought to be inadequate. Many, however, underlined how the impact of Brexit was less significant than they may have thought in the years leading up to December 31, 2020. The most significant changes, in the participants' eyes, concerned information sharing, particularly the loss of access to SIS II. Law enforcement's access to information and how quickly it is made available have both been impacted by this. Another result was the creation of more bureaucracy as a result of the reliance on emergency measures, which were not perceived as being as effective as pre-Brexit procedures. The revocation of institutional memberships, such as those in Europol and Eurojust, was also brought up by participants. A decrease in strategic and operational power within these organizations is perceived as the main problem. Concerns about extradition and losing the EAW were also expressed by stakeholders. They now see how complicated this process has grown.<sup>103</sup>

Although the TCA offers extensive guidance on trade in goods, digital trade, intellectual property, and public procurement, as well as the logistics of aviation and road transport, energy, fisheries, and social security criminal matters continues to be a major concern. Overall, even while formal cooperation between the UK and Europol and Eurojust has persisted, albeit to a lesser extent, and even though the PNR and PRÜM procedures for quick data transmission have not changed, leaving the European Union has had a significant impact on UK-EU policing structures.

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<sup>103</sup> Ivi, p. 5

## 2.4 Implications of Brexit for the EU's judicial cooperation

People should be able to contact courts and authorities in any EU nation just as easily as they do in their home, according to the European Commission.<sup>104</sup> Authorities from EU nations should work together more closely to address the complexities of various systems. The foundation of this cooperation between EU nations is the idea of reciprocal recognition based on trust. With Brexit, the United Kingdom is now regarded as a third country, raising some concerns for cross-border legal proceedings involving the country. Numerous legal issues are also raised by the replacement of Union law with national and international treaties. This specifically relates to the recognition or enforcement of foreign judgments, judicial cooperation, and international jurisdiction. Cross-border disputes between the UK and the EU were governed by a strong legal system before Brexit. It included articles for the mutual enforcement of judgements, the choice of the applicable law, and the jurisdiction. However, as a result of Brexit, this framework is no longer in effect and has not yet been replaced by a comparable legislative framework, therefore many civil justice issues will now be controlled by the local laws of the member states. Brexit may therefore have important practical ramifications for how litigants pursue cross-border litigation in the absence of any additional agreements.<sup>105</sup>

When a cross-border dispute emerges, it is necessary to identify which national system of private law will apply and which courts should hear the case because each country has its own system of private law and its own courts qualified to handle disputes concerning private law conflicts.<sup>106</sup> Article 114 of the TFEU<sup>107</sup> permits the harmonisation of private law rules within the EU in order to ensure the efficient operation of the internal market (primarily through the use of directives), and Article 81 of the TFEU<sup>108</sup> permits the development of instruments in the area of judicial cooperation in civil matters. States ratify international agreements that provide universal guidelines for conflicts of laws and jurisdictions to make it simpler to implement

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<sup>104</sup> European Commission, *What is Civil Justice Cooperation?* Available at: [https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/what-civil-justice-cooperation\\_en](https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/what-civil-justice-cooperation_en) (last accessed: 27 August 2022)

<sup>105</sup> Simmons + Simmons law firm, *Post Brexit cross-border disputes – what next?* 7 July 2021, available at: <https://www.simmons-simmons.com/en/publications/ckocm3d7k13pg0967fsvqb1y7/post-brexite-cross-border-disputes-what-next-> (last accessed: 28 August 2022)

<sup>106</sup> European Parliament Think Tank, *The United Kingdom's possible re-joining of the 2007 Lugano Convention*, 18 November 2021, available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2021\)698797](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698797)

<sup>107</sup> TFEU, article 114, available at: [http://data.europa.eu/eli/treaty/tfeu\\_2008/art\\_114/oj](http://data.europa.eu/eli/treaty/tfeu_2008/art_114/oj)

<sup>108</sup> TFEU, article 114, available at: [http://data.europa.eu/eli/treaty/tfeu\\_2016/art\\_81/oj](http://data.europa.eu/eli/treaty/tfeu_2016/art_81/oj)

foreign judgments in domestic courts. Some of these agreements, developed at the Hague Conference on Private International Law, are meant to be universal agreements accessible to all nations. The Hague Conference system includes 155 nations, making it a genuinely worldwide effort in the field of private international law.

In contrast to the Hague Conference, which creates conventions for use worldwide, a type of regional private international law instrument started to emerge in Europe in the 1960s. Before the UK left the EU, the civil legal system's established framework was based on the idea of mutual recognition and enforcement. Six EEC Member States signed the Brussels Convention on jurisdiction and the enforcement of decisions in civil and commercial proceedings<sup>109</sup> in 1968, and the nine EEC Member States at the time signed the Rome Convention<sup>110</sup> in 1980. The two conventions were replaced by EU regulations for the Member States of the EU after the EU achieved sufficient authority to address these issues through EU legislative acts as a result of the Treaty of Maastricht. The Brussels I Regulation<sup>111</sup> took the role of the Brussels Convention in 2000, and the Rome I Regulation<sup>112</sup> took the place of the Rome Convention. The Rome and Brussels I Regulations were quickly followed by other EU instruments, giving rise to the "Brussels regime" for cross-border intra-EU civil procedure and the "Rome regime" for intra-EU conflict of laws.

Reforming the legal framework for conflicts of jurisdiction in EU-EFTA relations was also necessary as a result of the Brussels I Regulation, and the Lugano Convention of 2007<sup>113</sup> took this action. It aims to clarify which national courts have jurisdiction in cross-border civil and commercial disputes and ensure that judgments taken in such disputes can be enforced across borders. It was signed by the EU (representing all EU Member States except Denmark),

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<sup>109</sup> 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, available at: <http://data.europa.eu/eli/convention/1972/454/oj>

<sup>110</sup> 1980 Rome Convention on the law applicable to contractual obligations, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41998A0126%2802%29>

<sup>111</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001R0044&from=EN>

<sup>112</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), available at: <http://data.europa.eu/eli/reg/2008/593/oj>

<sup>113</sup> 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1221%2803%29>

Denmark (acting on its own behalf), and three EFTA states: Norway, Iceland, and Switzerland. As a result, the participating EFTA nations were integrated into the EU's civil judicial system, which required a high degree of trust between the civil judiciaries of EU Member States and EFTA nations.

The Brussels I-bis Regulation, often known as the Brussels "Recast" Regulation, is the successor regulation to the Brussels I Regulation that was created by the European Parliament and Council.<sup>114</sup> According to Article 36(1) of the Brussels I-bis Regulation, a judgment rendered in one Member State shall be recognized in the other Member States without the need for any special procedure, which reflects a higher stage of integration with regard to judicial cooperation in civil matters between the EU Member States. Furthermore, Article 39 states that there is no need for a declaration of enforceability in order for a judgment rendered in one Member State to be enforceable in all other Member States.

The United Kingdom was an EEC/EU Member State at the time the 1988 and 2007 Lugano Conventions were signed. According to Article 67 of the Withdrawal Agreement<sup>115</sup>, UK-EU conflicts where civil and commercial actions were commenced before the leaving date would continue to be subject to EU rules on jurisdiction, recognition, and execution of decisions. This indicates that enforcement will continue to be simple for processes issued prior to that date. Express choice of law clauses is still upheld because the Withdrawal Act 2020, which was passed under UK legislation after the departure date, made Rome I and II retained EU laws. Prior to January 1, 2021, common EU legislation that had direct effect and generally offered automatic recognition applied to the enforcement of restructuring and insolvency procedures and judgements between the UK and EU Member States. The UK is no longer subject to such standard regulations. As a result, the 2005 Hague Choice of Court Convention as well as the national laws of the UK and each EU Member State will govern jurisdiction and enforcement issues for any civil matters filed after January 1, 2021.<sup>116</sup>

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<sup>114</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

<sup>115</sup> Withdrawal Agreement, article 67, available at: <https://www.legislation.gov.uk/eu/withdrawal-agreement/article/67/adopted>

<sup>116</sup> 2005 Hague Convention on Choice of Court Agreements, available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>

Because cross-border insolvencies are not addressed in the Brexit agreement negotiated by the UK and the EU, the benefit of the Recast Insolvency Regulation as between the UK and the EU were lost after the transitional period ended. English law will no longer necessarily be recognized as the governing law of the insolvency proceedings by EU member states, and UK insolvency proceedings are no longer automatically recognized in EU Member States. On the other hand, UK courts will not automatically recognize EU insolvency proceedings. On May 31, 2002, the European Insolvency Regulation<sup>117</sup> first went into effect. Its aims were to provide guidelines for identifying the appropriate court to handle a debtor's insolvency procedures, the applicable law to be utilized in those proceedings, and to establish requirements for the mandatory recognition of those processes in other EU member states. The Insolvency Regulation called for a review of how it was working after ten years, and the European Commission proposed updating it in December 2012. The final version of the reformed Insolvency Regulation was accepted by the European Parliament on May 20, 2015, following extensive trialogue negotiations between the European Commission, European Parliament, and Council, and on June 26, 2015, the "Recast Insolvency Regulation"<sup>118</sup> became effective. It establishes a framework for group insolvency proceedings with the intention of increasing the effectiveness of insolvency procedures involving various members of a group of enterprises, which could promote group cooperation and the rescue of the entire group.

Due to the Recast Insolvency Regulation's loss of benefits to UK Insolvency Practitioners, choices are restricted to<sup>119</sup>:

- **Model Law:** intended to support States in updating and amending their laws on arbitral procedure to account for the unique characteristics and requirements of international commercial arbitration.<sup>120</sup> Only Greece, Poland, Romania, and Slovenia have passed the Model Law among EU Member States. It includes every step of the arbitration process, including the arbitration agreement and authority of the arbitral tribunal, the

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<sup>118</sup> Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), available at: <http://data.europa.eu/eli/reg/2015/848/oj> (last accessed: 16 August 2022)

<sup>119</sup>The Gazette, Official Public Record, available at: <https://www.thegazette.co.uk/all-notices/content/103914> (last accessed: 17 August 2022)

<sup>120</sup>United Nations, UNCITRAL Model Law on International Commercial Arbitration (1985), available at: [https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration) (last accessed: 17 August 2022)



scope of the court's involvement, and the enforcement and recognition of the arbitral verdict. Despite the Model Law's adoption, recognition still requires a court application; it does not happen automatically.

- **Comity:** according to this legal theory, courts acknowledge and uphold one other's judgments out of courtesy or out of a desire for reciprocity but not always as a matter of law. If the identical issues are being debated in another court in a different jurisdiction, courts adhering to comity will typically postpone evaluating the case.<sup>121</sup> Commonly, comity is favored in legal systems based on the English common law. 1. In terms of EU members, this would include Ireland and Cyprus.
- **Law of the EU Member State:** Depending on the conflict of law regulations of the jurisdiction where recognition is sought, this will vary. Germany, for instance, has domestic laws that permit the recognition of specific international insolvency proceedings. However, this will mostly include filing a court application rather than having it recognized automatically, and there may be discrepancies even between courts in the same Member State.<sup>122</sup>

The UK's preferred alternative for cross-border cooperation in dealing with jurisdiction and the enforcement of decisions in civil and commercial cases is the Lugano Convention of 2007. Its terms are essentially identical to those of the previous Brussels Regulation from 2001, which established a mechanism for the allocation of jurisdiction and the reciprocal enforcement of judgements between the EU and the UK. Its scope of application is also extensive. The 2007 Lugano Convention is still available to third nations even though it was designed as a tool for EFTA/EEA states' economic integration with the European Union. Any new member joining the Convention requires the approval of all current members. Iceland, Norway, and Switzerland have granted their approval. The EU Commission did, however, inform the relevant authorities at the end of June 2021 that the EU is unable to approve the UK's ratification of the Lugano Convention. As a result, the Lugano Convention no longer applies unless and until the UK accedes in its own right, which now seems improbable given the stance the EU Commission

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<sup>121</sup> Thomson Reuters Practical Law, Glossary: Comity, available at: [https://uk.practicallaw.thomsonreuters.com/2-201-5616?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#:~:text=The%20legal%20doctrine%20under%20which,as%20a%20matter%20of%20law](https://uk.practicallaw.thomsonreuters.com/2-201-5616?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=The%20legal%20doctrine%20under%20which,as%20a%20matter%20of%20law) (last accessed 17 August 2022)

<sup>122</sup> The Gazette, Official Public Record



has taken up to this point. According to the Commission, joining the Lugano regime entails a high degree of mutual trust and the idea of close economic integration with the EU. Therefore, no third country that is not a member of the internal market should be given the opportunity to participate in the Lugano system.<sup>123</sup> The Commission therefore asserted, in light of these arguments, that the Hague Conference regime should serve as the foundation for relations between the EU and the UK with regard to private international law.

Therefore, if the UK fails to adopt the Lugano Convention, another option is the 2005 Hague Convention on Choice of Court Agreements<sup>124</sup>. The Convention was re-joined by the UK on January 1, 2021, after the UK government filed its instrument of accession on September 28, 2020. Previously, the UK had only been a party to this convention since it was an EU member state. According to the Hague Convention, courts of signatory nations (including the UK, EU, Singapore, Mexico, and Montenegro) must recognize and uphold a contract's designation of a particular court as the only and exclusive forum for any disputes. However, compared to the quasi-automatic recognition systems provided for by the Lugano Convention or the Brussels I-bis Regulation, the Hague Convention's level of legal integration is far lower.

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<sup>123</sup> European Parliament Think Tank, *The United Kingdom's possible re-joining of the 2007 Lugano Convention*, available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2021\)698797](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698797) (last accessed: 18 August 2022)

## CHAPTER THREE

### CASE STUDY: IMPLICATIONS ON CROSS BORDER COOPERATION BETWEEN IRELAND AND NORTHERN IRELAND

#### 3.1 The role of the European Union in the Irish peace process

European integration has assisted to foster peaceful coexistence among diverse Member States by demonstrating that state borders can be heralds of international cooperation. Creating networks of interconnection across borders among actors at all levels is one method to encourage such peaceful coexistence. When it comes to contested borders, such an approach is both more difficult and more vital. The Irish border is a remarkable case study of the EU's capability in this regard as it is the site of a most intense relationship via both violent conflict and peaceful cooperation between two Member States. In fact, many EU programs particularly designed to address conflict resolution on the island have a clear cross-border mission. In conveying the European ideal of cross-border cooperation, actors in European integration's network play a critical role, especially in conflict situations.<sup>125</sup>

In Ireland, there was strong public support for joining the EEC. In a referendum in 1972, the third amendment to the Irish constitution that allowed the country to become a member of the bloc was approved with 83.1% in favour and 16.9% against on a turnout of more than 70%. In the UK, 67.2% to 32.8% of voters supported EEC admission in 1975, a lesser (but still considerable) margin on a 64% turnout.<sup>126</sup> It is interesting to note how quickly the Irish government embraced EEC membership, in contrast to the UK. The opinion of the Irish elite was that the economy would grow. Additionally, entering the EEC offered a chance to break political and economically free from reliance on the UK. While membership opened doors for trade and commerce, Irish identity and sovereignty were also affirmed through European integration, giving the Irish state authority within the European Union. While membership opened doors for trade and commerce, Irish identity and sovereignty were also affirmed through European integration, giving the Irish state authority within the European Union.<sup>127</sup>

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<sup>125</sup> HAYWARD, K. (2007), *Mediating the European ideal: Cross-border programmes and conflict resolution on the island of Ireland*, in *Journal of Common Market Studies* Vol. 45 (3)

<sup>127</sup> COLFER, B., DIAMOND, P. (2022), *Borders and identities in NI after Brexit: remaking Irish–UK relations*, in *Comparative European Politics*

In order to evaluate the circumstances, context, and effects of the European Union's role in conflict transformation through cross-border activity on the island of Ireland, Katy Hayward, Professor of Political Sociology at Queen's University Belfast, conducted interviews with people who were directly involved in EU-facilitated cross-border programs. None of the interviewees mentioned the EU's "compulsory impact" as a significant element in the Irish instance, despite the fact that all of them had regular direct interaction with the EU (mostly through the Commission, notably DG Regional Policy). This shows that the indirect, structural forms resulting from EU membership have been the most significant and successful ways that the EU has influenced national policy in relation to the conflict in Northern Ireland. According to Professor Hayward, the EU's importance for policy formation is the first and widest of the three keyways that the EU has been perceived to have enabled the conflict in Ireland. It was in fact noted that European policies are primarily concerned with reducing the negative effects of borders and establishing parity for border regions. The second aspect of the EU's enabling influence in Ireland is the motivation it has given to local leaders. This specifically entails drawing comparisons between how European integration has affected relations on the continent and how it relates to the Irish border. This includes specifically drawing comparisons between how European integration has affected relations on the continent and how it relates to the Irish border. For instance, former SDLP leader and MEP John Hume describes his first visit to the European Parliament in Strasbourg as a pivotal event because he realized the European Union is the best example of conflict resolution in the history of the world while standing on a bridge on the Franco-German border. This, according to Hume, motivated him to research the philosophy underpinning the European Union in order to draw conclusions for the Irish conflict. Hume finds strong comparisons between the EU model and the 1998 Good Friday Agreement, claiming that

*“(...) the EU has been an inspiration in the search for peace in these islands. The structures of the EU are clearly reflected in our new political institutions. It has helped us to develop the habit of working together within Northern Ireland and between the two parts of the island, as well as transforming relations within these islands.”*<sup>128</sup>

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<sup>128</sup> JOHN HUME, Speech by the Leader of the SDLP, Newcastle, Co. Down, 10 November 2001

It is also worth noting how Sinn Féin and the Social Democratic Labour Party's manifestos for the general election to Westminster in May 2005 made significantly more reference to the EU compared to any other manifesto in the United Kingdom. Both manifestos make reference to the EU context in practically every field, in addition to lengthy sections on EU matters. The Sinn Féin political program of 2005, for example, stated how “*The EU can provide local councils with additional sources of revenue for crossborder development, economic development and cultural activity*”.<sup>129</sup> Also, the same year the SDLP affirmed that the “Membership of the EU has brought significant material benefits such as improved infrastructure, assistance for agriculture as well as improvements for industry through access to wider and open markets”, “Build support for a PEACE III programme”.<sup>130</sup>

In relation to the conflict in Ireland, the connective impact was indeed the pathway most widely recognized as important by the interviewee. Due to its noticeable influence at the local level, funding provided by the EU to community organisations in Northern Ireland and the border counties is more well-known than other EU programs. Conflict resolution is thought to benefit directly from the connective impact of the EU's community spending. Several interviewees make categorical connections between EU-funded projects and a decline in sectarian violence in specific areas. But if the connective impact of the EU is perceived to be the most visible in the Irish situation, the constructive impact, is the most distinctive and, for many interviewees, the most significant. The constructive impact of the EU is multi-layered and reflected in new networks of contact and communication rather than being restricted to the boundaries of various communities or locations. One interviewee, as the director of Community Initiatives for the Special EU Programmes Body (SEUPB), defined cross-border connections as the restoration of the natural physical, economic, and emotional relationships between areas that had previously been hampered by partition.<sup>131</sup>

After launching the PEACE program in 1994, the EU can only really be regarded to have emerged as a significant foreign participant in the conflict by the middle of the 1990s. The British and Irish governments' new (though unsteady) climate of cooperation helped to promote

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<sup>129</sup> Sinn Féin political Manifesto of 2005, available at: <https://cain.ulster.ac.uk/issues/politics/docs/sf/sf05manlg.pdf> (last accessed: 10 September 2022)

<sup>130</sup> Social Democratic Labour Party's manifesto of 2005, available at: <https://cain.ulster.ac.uk/issues/politics/docs/sdpl/sdpl05man.pdf> (last accessed: 10 September 2022)

<sup>131</sup> HAYWARD, K. (2007), pp. 681-683

political reforms in Northern Ireland. The connections between British-Irish relations and the EU in the Irish peace process illustrate the mutually beneficial relationship between Member State governments and European integration. However, agreement between the two administrations as well as between the British and Irish governments was necessary for the European Union to take a unified stance that addressed the dispute as a transnational issue. The fact that early cross-border initiatives from the EU were implemented differently between the two jurisdictions of Northern Ireland and the Republic of Ireland, as a result of different national legislation, regulations, and civil service cultures, further demonstrates how local conditions determine the direct impact of the EU on the conflict.<sup>132</sup> However, the institutional and structural reforms brought about by the 1998 Agreement were gradually transforming this specific circumstance. the Special EU Programmes Body (SEUPB) is an example of that, created through the Agreement's Strand Two to enable the beneficial effects that European Regional Development Funding will have on people living in Western Scotland, Northern Ireland, and the Border Region of Ireland.<sup>133</sup>

Unionists were able to accept cross-border organizations as economically logical rather than politically significant due to the EU's framework, and these organizations now help the EU's north and south exert more influence. However, the limitations of local politics have mediated and constrained the influence of the EU. This shows that the EU's primary responsibility is to support and enable further transformation within the conflict society rather than acting as an independent force for conflict resolution. The EU is at best an enabling (rather than a driving) force for conflict resolution, according to Northern Ireland and the border counties' public perceptions of the EU. First off, people rarely explicitly link the EU with either resolving disputes or fostering cross-border ties. The EU's connective impact, according to a community relations officer for Derry City Council in Northern Ireland, may only be felt by non-governmental groups because only they are aware of the EU's activity at the local level. Despite the need to publicly declare receiving EU financing and the willingness of people concerned to admit the significance of these monies, ignorance of the EU's activities remains. The geographical separation of the constituencies most impacted by the conflict from the centre of power, in addition to the generally low degree of national public understanding of the EU,

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<sup>132</sup> Ivi, p. 684

<sup>133</sup> *Special EU Programmes Body*, available at: <https://www.seupb.eu/aboutus/SEUPB> (last accessed: 11 September 2022)

works against strong identification with the EU. This aspect is reflected by the words of a youth worker of a Community Resource Centre remarkably, saying that “whenever you live in the backend of nowhere like Donegal, Europe might as well be Argentina”. This supports the earlier assertion that local and national political environments play a vital mediating role in the influence of the EU.<sup>134</sup>

Through its influence on the economy, the EU has also had a direct effect on the process of normalization and reconciliation. Laffan (2003) asserts that the EU has had a significant indirect impact on Northern Ireland's conflict resolution, altering the region's conflict resolution mechanisms, context, and language. Laffan discusses four aspects of the EU model that were crucial to the success of the peace process in Northern Ireland.<sup>135</sup> First off, the extensive and recurrent EU Treaty talks highlighted the value of partial agreement. Second, the funding for the EU's institution-building efforts highlighted the significance of institutional innovation in fostering group action and educating political players on new processes and standards of policymaking. Third, the union's emphasis on pragmatic problem-solving was a helpful counterbalance to the zero-sum politics of Northern Ireland. Fourth, the partition of sovereignty in modern Europe was underscored by the sharing of sovereignty inside the EU. A manner of doing things that characterizes the implementation and operation of the Agreement as it becomes a living settlement was supplied by the language and style of politics in the EU, which emphasizes partnership, problem-solving, experimentation, innovation, and prolonged negotiations.

Aydın-Düzgıt and Kaliber's (2016) define Europeanisation as “a context to the extent that the European norms, values, institutions are incorporated into the public narratives by domestic actors. Thereby, its transformative impact is not procedural and linear, but is contextual, contested and contingent”.<sup>136</sup> Colfer and Diamond apply this definition to Northern Ireland, being a striking example of an environment in which domestic players have assimilated European standards, values, and institutions into their public narratives. Indeed, without issuing

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<sup>134</sup> HAYWARD, K. (2007), p.685

<sup>135</sup> LAFFAN, B. (2003), *Ireland, Britain, Northern Ireland and the European dimension*, IBIS Working Paper 27, Institute for British-Irish Studies, University College Dublin

<sup>136</sup> AYDIN-DÜZGİT, S., AND A. KALIBER (2016). *Encounters with Europe in an era of domestic and international Turmoil: Is Turkey a De-Europeanising Candidate Country?* in *South European Society and Politics* 21 (1), p.1

official directives or laws, the EU had an impact on the national policies of the governments of the UK and Ireland. Brexit in the UK context refers to more than just disengaging from the EU. A "hard" Brexit would indicate deliberate de-Europeanization, with the meaning of "dismantling EU policy at the domestic level, where dismantling means the cutting, diminution or removal of existing policy".<sup>137</sup> Additionally, even if the UK de-Europeanizes as a result of Brexit, Northern Ireland itself is still Europeanized because it continues to be a part of the EU single market and is governed by EU commercial and competition policy in addition to the ECJ's authority. Due to this, the de-Europeanization process is more complex than it initially appears to be.<sup>138</sup> De-Europeanization and Brexit are not synonymous; the UK might technically exit the EU while still aligning its internal politics and policymaking with that of a third country. The "hard" Brexit, as embodied in the WA agreed on by the UK and EU, however, entails ongoing de-Europeanization and dismantling, creating serious issues for preserving peace.

The Good Friday Agreement's logic, like that of the European Union, was to transform the struggle from one of violent subordination to one of identity before it became one about concerns that were defined through political discourse. It is crucial to recognize that the Good Friday Agreement is predicated on the idea that the conflict in Northern Ireland is a border issue if one is to comprehend its significance. The agreement's constitutional modifications, institutions, and guiding principles all reflect the premise that the conflict's central contention—the contested Irish border—is reflected in a binary opposition between British/Unionist and Irish/Nationalist. Since neither "Protestant" nor "Catholic" are mentioned in the Agreement's wording, it could be supported by a strong partnership between the governments of Great Britain and Ireland. In Northern Ireland, progress between communities that look to either London or Dublin for guidance would be made possible, it was assumed, if the two governments could agree on a border policy. Although they directly contradict, this strategy recognizes the legitimacy of both the ambitions for Irish union and the continued British rule over Northern Ireland. Additionally, it makes it possible to administer the border in a way that emphasizes mutual benefit and practicality. As a result, the Good Friday Agreement represented a framing

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<sup>137</sup> BURNS, C., V. GRAVEY, A. JORDAN, AND A. ZITO. 2019. *De-Europeanising or disengaging? EU environmental policy and Brexit*, in *Environmental Politics* 28 (2), p.273

<sup>138</sup> COLFER, B., DIAMOND, P. (2022)

of the dispute that has existed since the early 1980s but that was only made possible with the growth of the EU.<sup>139</sup>

To sum up, it may be claimed that the European Union normalized cross-border activity in terms of economic and political interaction. North-South ties have been made tangible and impactful in accordance with the goals of the Special EU Programmes Body. Additionally, there has been a noticeable increase in integration and north-southness. This is evident in the two important EU programs, PEACE and INTERREG, which deal with cross-border connections in Ireland. The EU's ability to play this role has been made possible by its reputation as a strong, impartial economic actor and, more specifically, as a material benefactor.<sup>140</sup> Thus, it is widely acknowledged that the EU's primary channels of influence in the conflict are its indirect "enabling" influence on the elite and its direct "connective" impact on the warring society through EU cross-border programs.<sup>141</sup> This illustrates how the EU is a heterogeneous organization whose significant consequences are decided at the recipient level. In the end, it seems that the European integration process itself has facilitated cooperation across ideological, political, and territorial borders rather than the EU's actors or structures.

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<sup>139</sup> MARY C. MURPHY & JONATHAN EVERSHERD (2022), *Contesting sovereignty and borders: Northern Ireland, devolution and the Union*, in *Territory, Politics, Governance*, 10:5, 661-677, DOI: 10.1080/21622671.2021.1892518 (last accessed: 10 September 2022)

<sup>140</sup> HAYWARD, K. (2007), pp. 688-689

<sup>141</sup> HAYWARD, K. (2017) *Bordering on Brexit: Views from local communities in the Central Border Region of Ireland/Northern Ireland*, Irish Central Border Area Network and Queen's University Belfast, available at: <http://go.qub.ac.uk/bordering> (last accessed: 10 September 2022)



### 3.2 The Good Friday Agreement after Brexit

As stated in the first section of the chapter, it is agreed that the relative peace that followed the Irish conflict was not directly brought about by the EU institutions, but the EU offered a helpful setting for societal normalization. The UK leaving the EU compromises and may destabilize that shared environment, undermining both the Good Friday Agreement itself and its successful implementation. Hence, Brexit threatens to restart the conflict and undo the significant progress made over the last twenty years, even though the least desired outcome—reimposing the physical border on the island of Ireland—has been avoided, since this would have brought back historical memories of the split a century ago. The Johnson Administration's hard Brexit and intentional severing of connections to the EU are considered incompatible with the principles of the 1998 Good Friday Agreement,<sup>142</sup> and minimal disruption of the environment necessary for the Good Friday Agreement's successful implementation is essential to reduce the threat that Brexit poses to its future.

The GFA had effectively established a precarious balance that enabled more cross-border integration, albeit not being without issues. The Brexit discussion, the vote, and the negotiations that followed upset this equilibrium because on the island of Ireland, the border and the relationship between the two halves of the island were inextricably linked to the discussion. The impact of Brexit on Northern Ireland was barely discussed in the public discourse in the UK during the 2016 referendum or immediately following it. The UK government's initial stance in the EU negotiations was that it would withdraw from the Single Market and Customs Union of the EU and would not permit free movement of employees between the EU and the UK. According to the EU, this would entail the need for a hard border between north and south in Ireland in order to safeguard the integrity of the single market. The UK government's initial position contained fundamentally contradictory goals: while the main objective was to leave both the Single Market and the Customs Union, it also stated that the UK government wanted to avoid a return to a hard border on the island of Ireland in order to safeguard the Belfast Good Friday Agreement, and that the alternative approach of a hard border between Northern Ireland and the rest of the UK was unacceptable. To try and achieve these three clashing aims, over the

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<sup>142</sup> COLFER, B. AND DIAMOND, P. (2022)

following two years the UK proposed a range of technical solutions, none of which had been successfully deployed in other contexts, and none of which were acceptable to the EU.

The Good Friday Agreement represented indeed a complicated combination of institutional and political agreements between Britain and Ireland, the North and South of Northern Ireland, and Northern Ireland itself as part of the constitutional settlement. The Anglo-Irish Agreement (1985), the Downing Street Declaration (1993), and the Framework Document (1995) were significant turning points before the Agreement. With the exception of a mention of both governments' commitment to forge close partnerships as EU partners, the Anglo-Irish Agreement contained no information about the EU. The European Union was mentioned far more frequently in the 1995 Framework Document. It spoke of implementing EU programs "on a cross-border or island wide basis," "joint submissions" to the EU, and "an agreed strategy for the whole island in respect to the difficulties and opportunities of the European Union."<sup>143</sup> Some people contest claims that Brexit will have an impact on how the Good Friday Agreement is implemented, since there are not many direct references to the EU in the Agreement's wording. But the few times the EU is mentioned in the text of the Good Friday Agreement should not be interpreted as meaning that the EU will play a little role in its implementation. It is evident that the Agreement was drafted with the shared membership of the UK and Ireland in the EU and with the implicit presumption that both countries would stay members.<sup>144</sup> In fact, the Good Friday Agreement itself is loaded with references to European issues, which may be evaluated within its three primary areas, as Laffan (2003) points out.<sup>145</sup> Strand One was made up of an elected Assembly and an Executive led by a Prime Minister and a Deputy Prime Minister. The Executive Agreement of December 1998 established ten departments, all of which had a European dimension. Many of them, particularly Regional Development, Social Development, and Enterprise, Trade, and Investment, have overlapping responsibilities in an EU environment. The Office of the First Minister and Deputy Minister, which coordinates the European briefs of the other departments and has cultivated relationships with a variety of EU

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<sup>143</sup> The Framework Documents - A New Framework For Agreement, 22 February 1995, paragraph 26, available at: <https://cain.ulster.ac.uk/events/peace/docs/fd22295.htm> (last accessed: 11 September 2022)

<sup>144</sup> HAYWARD, K, PHINNEMORE, D. (2017), "UK Withdrawal ('Brexit') and the Good Friday Agreement", European Parliament, Directorate General for Internal Policies – Policy Department for Citizens' rights and constitutional affairs, p.21

<sup>145</sup> LAFFAN (2003), pp. 12-14

stakeholders, was given responsibility for European concerns. The Agreement's allusions to the EU are by far more prominent in Strand Two. The North/South Ministerial Council is mandated to take into account the EU's perspective on pertinent issues, including the execution of policies and programs being considered in the EU. In order to ensure that the Council's opinions are heard and properly represented at pertinent EU meetings, arrangements must be made.<sup>146</sup> The proposal that EU-related topics were appropriate for discussion by the British-Irish Council is how the EU component of strand three was expressed. Additionally, the requirement that two or more members might create bilateral or multilateral agreements freed Dublin, Cardiff, and Edinburgh to establish political and policy ties.<sup>147</sup> Therefore, we can conclude that the Agreement presupposes that the UK and Ireland would continue to be members of the EU but does not obligate either party to do so.

Hence, Brexit was not a matter for Northern Ireland's autonomy. The Northern Ireland Assembly's approval was not required, according to the UK Supreme Court, for the UK government to exit from the EU.<sup>148</sup> In fact, the Northern Ireland Assembly and Executive lacked any formal authority to stop the UK's EU withdrawal process from starting once Article 50 is triggered. In other words, the UK government could move forward with Brexit whether the Northern Ireland Assembly gives its approval for the start of the departure process. The UK Supreme Court supported this stance in January 2017 after the High Court in Belfast affirmed it in its decision in October 2016.<sup>149</sup> Through judicial reviews heard at the High Court in Belfast and then the UK Supreme Court, a number of challenges to the UK government's hegemonic position and Northern Ireland's lack of autonomy regarding Brexit were raised. The challengers argued that if a parliamentary act was necessary, the Northern Ireland Assembly's Legislative Consent Motion was also necessary. One of the contestants argued that the Good Friday Agreement had established a substantively valid expectation that Northern Ireland's constitutional status would not alter without the people's approval. It was alleged that the UK's withdrawal from the EU fundamentally altered Northern Ireland's constitutional standing

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<sup>146</sup>The Good Friday Agreement (1998) Strand 2, Paragraph 17

<sup>147</sup> LAFFAN, B. (2003), pp.13-14

<sup>148</sup>European Parliament – Constitutional Affairs, *The Impact and Consequences of Brexit for Northern Ireland*, available at:

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL\\_BRI\(2017\)583116\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI(2017)583116_EN.pdf)  
(last accessed: 13 September 2022)

<sup>149</sup> R (Miller) and others v Secretary of State for Exiting the European Union, 29 October 2016, available at: <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>

against the wishes of most of its citizens. The primary claims of the petitioners' argument were that the Good Friday Agreement and the 1998 Northern Ireland Act, which covered domestic, EU, and international issues, were intimately linked to the UK's membership in the EU and that its removal from the EU would have a negative impact on both; Another argument was that applying EU law was necessary for protecting human rights and constitutional arrangements in Northern Ireland.

The Belfast High Court and the Supreme Court rejected all of Northern Ireland's legal objections to Brexit, holding that the triggering of Article 50 does not constitute legislation governing areas devolved to the Northern Ireland Assembly. Any legislation pertaining to Article 50 should instead be viewed as a power reserved by the UK government that is exempt from other laws. In other words, the Supreme Court found that the Northern Ireland Assembly's approval is not legally required prior to the relevant Act of the UK Parliament being approved and that Brexit is not a matter that the Northern Ireland Assembly has devolved. Furthermore, Northern Ireland's position inside or outside the EU is not referenced in The Good Friday Agreement's references to permission for changes in constitutional status, which refer to whether Northern Ireland became a part of a united Ireland or remained a part of the UK. Hence, the Agreement states that Northern Ireland citizens have the legal right to hold both British and Irish citizenship, and that this right "would not be affected by any future change in the status of Northern Ireland."<sup>150</sup>

Nothing in the final agreement with the UK should undermine the objectives and commitments set forth in the Good Friday Agreement, according to the EU negotiation directives published in May 2017. The directives also stated that negotiations should in particular aim to avoid the creation of a hard border on the island of Ireland while respecting the EU's legal system. The formal decision of the European Council that Northern Ireland would be deemed to automatically be a member of the EU, without the need for a Treaty agreement or a vote of other members, in the event that a future vote in favor of Irish unity, as provided for in the Belfast Good Friday Agreement, strengthened the position of the Irish government.<sup>151</sup> Brexit upended the precarious political equilibrium that the Belfast Good Friday Agreement had

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<sup>150</sup> The Good Friday Agreement (1998), Constitutional Issues

<sup>151</sup> Minutes of Special meeting of the European Council (Art.50) held on 29 April 2017  
<https://data.consilium.europa.eu/doc/document/XT-20010-2017-INIT/en/pdf>

established, and while the Protocol upholds the integrity of that Agreement, the Brexit discussion and the TCA negotiating process have both widened and changed political cleavages in Northern Ireland.

The island of Ireland has changed since 2016, before the Brexit referendum. In contrast to 2015, political demands for constitutional change and a potential vote on Irish unity are now significant.<sup>152</sup> Brexit indeed triggered a fresh and unprecedented public discussion about the island of Ireland's future constitutional arrangements and potential border elections for reunification in the two jurisdictions on the island. The year following the Brexit referendum, in its programme for the 2017 Assembly elections, Sinn Féin, the primary party representing the nationalist community, called for an island referendum on Irish unification.<sup>153</sup> Indeed, according to the rules of the Good Friday Agreement, the UK Secretary of State may hold a referendum in Northern Ireland if it seems there may be a chance that people may choose to support a united Ireland. The Agreement only permits polls every seven years. Gerry Adams, the president of Sinn Féin, stated that Brexit would have undermined the Good Friday Agreement's human rights provisions, reinforced the border, and was at odds with consent for change. Years later, an opinion survey conducted by the Sunday Times in January 2021 as part of an article on the future of the UK union revealed that a majority of Northern Irish people supported having a vote on Irish unification. When asked how they would vote, 10.7% said they were unsure, 42.3% said they would vote for a united Ireland, and 46.8% said they would stay in the UK. In that survey, the majority of respondents under 44 years old supported Irish union.<sup>154</sup> These developments across Ireland's island country suggest that Brexit has displaced the political consensus that followed the Belfast Good Friday Agreement with one that is more tumultuous, and that the ongoing constitutional and regional issues in the rest of the UK are also connected to the issue of Northern Ireland's future. Similar to the unrest in Northern

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<sup>152</sup> CONNOLLY, E., DOYLE, J. (2021) *Brexit and the Northern Ireland Peace Process* Eileen Connolly, Brexit Institute, Working paper nr 11 – 2021

<sup>153</sup> MURRAY, K., *Brexit revives Sinn Féin campaign for united Ireland vote*, Politico, 27 March 2017, available at: <https://www.politico.eu/article/brexit-prompts-sinn-fein-call-for-united-ireland-vote-ulster-eu/>

<sup>154</sup> *The Sunday Times* – Polling and Market Research, January 2021, available at: <https://www.lucidtalk.co.uk/single-post/lt-ni-sunday-times-january-2021-state-of-the-uk-union-poll> (last accessed 12 September 2022)

Ireland, these tensions are a result of the Brexit decision and the TCA's design, and they have a post-Brexit component.<sup>155</sup>

The Policy Department for Citizens' Rights and Constitutional Affairs commissioned a study<sup>156</sup> on UK withdrawal and the Good Friday Agreement at the request of the European Parliament's Committee on Constitutional Affairs. The study underlined how the mechanisms established by the Good Friday Agreement have fundamentally altered cross-border employment on the island of Ireland. According to the provisions of the Agreement, Irish and Northern Irish ministers are in charge of specific cross-border cooperation areas, necessitating the establishment of specialized teams in each civil service department to supervise relevant policies. Therefore, the Agreement reinforced the infrastructure to promote cross-border cooperation and catalysed support for it at the highest level. The Special EU Programmes Body's (SEUPB) work and The EU Member States demand that the UK government give details on how it plans to preserve cooperation in 142 areas or offer evidence of current activity that both show the breadth of cross-border and north-south cooperation. Education, social security/welfare, agriculture, transport, the environment, aquaculture and marine issues, health, and urban and rural development were only a few of the specific areas for cooperation and implementation listed in the Agreement. Other noteworthy areas where collaboration has taken place are in the areas of energy and the creation of a Single Electricity Market, as well as in the areas of justice and security.

All parties in Northern Ireland want to keep the entirely open border that the Good Friday Agreement has formalized. As was already mentioned, the EU has served as a crucial backdrop and role model for the institutions, cross-border collaboration, rights, and protections required to support this flexibility. Above all, the Good Friday Agreement is predicated on the idea that national authority can be increased through international collaboration and that sovereignty can be shared. As soon as one of these countries leaves the EU, issues arise not just economically and legally but also politically due to the divergent paths taken by the two countries that guarantee the Good Friday Agreement. The two main political communities in Northern Ireland unavoidably become more divided when the UK and Ireland diverge from one another.

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<sup>155</sup> CONNOLLY, E., DOYLE, J. (2021), p.11

<sup>156</sup> HAYWARD, K, PHINNEMORE, D. (2017)

Voting in the 2016 referendum had a strong ethno-national component, with 38% Protestant/British/Unionist people backing "Leave" and 85% Catholic/Irish/nationalist voters supporting "Remain."

Colfer and Diamond (2022) explain how the UK Government's idea of a "hard" Brexit undermines the GFA that established the power-sharing institutions in Northern Ireland by drawing on de-Europeanization theories.<sup>157</sup> The viability of the GFA is fundamentally threatened by a "hard" Brexit and the de-Europeanization process, which draws on two crucial ideas: borders and identity. The permeability of borders is threatened by de-Europeanization, which takes the shape of a "hard" Brexit that severates institutional and regulatory relations with the EU, reverses the pooling of sovereignty, and hinders the rethinking of national identities. The procedure undercuts the GFA's overarching premises.

The GFA recognized that:

*“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>158</sup>

The GFA's primary goal was to resolve boundary and identity problems between communities. The "constructive ambiguity" of the Agreement has been jeopardized because of the de-Europeanization and the absence of a unified EU membership. Ireland has recently benefited from support from EU institutions and member states throughout the negotiations up to the UK's EU exit, particularly in relation to the status of the border on the island of Ireland. During talks with the British government, Michel Barnier, the head of the European Commission's Task Force for Relations with the UK, emphasized Irish demands.<sup>159</sup> Given the country's influence

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<sup>157</sup> COLFER, B., DIAMOND, P. (2022)

<sup>158</sup> The Good Friday Agreement (1998), Constitutional Issues

<sup>159</sup> Keynote Address by Michel Barnier at the Institute of International and European Affairs, 2 September 2020, European Commission, available at: [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_1553](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1553) (last accessed: 14 September 2022)

over the EU's negotiating tactics, the Irish government saw this as a diplomatic victory. Furthermore, the GFA was seen as reflecting EU principles such as rule of law, international cooperation, and post-conflict rapprochement. It may be argued that the preservation of a porous border on the island of Ireland—which did not exist prior to shared EC membership—provides a tangible representation of those ideals.<sup>160</sup>

The GFA reflects the fundamental principle of subsidiarity, according to which the EU refrains from taking action until it is more effective than that taken at the national, regional, or local level and only in those areas where it has exclusive jurisdiction. Additionally, the Northern Ireland Human Rights Commission's inclusion of the European Convention on Human Rights (ECHR) established "safeguards" to ensure that all segments of the community can participate and cooperate. The ECHR is mentioned numerous times in the GFA.<sup>161</sup> Many of the rights and privileges that the GFA directly or indirectly guaranteed were supported—directly or indirectly—by EU law and its strong redress processes. For instance, when the government implemented EU law, both Ireland and Northern Ireland were obligated to abide by the EU Charter of Fundamental Rights. Additionally, as part of the basic principles of EU law, they were both governed by the fundamental rights jurisprudence of the Court of Justice of the European Union. The CJEU and local courts, for instance, use general principles to help interpret EU legislation; examples of general principles include equality and fundamental rights. When employment rights arise from EU legislation, including those governing working hours, Ireland and Northern Ireland used to have similar rights.<sup>162</sup>

The post-Brexit agreements that were formalized in December 2020 by EU negotiators and the UK government aimed to recognize Northern Ireland's special status. NI was considered as a hybrid state, a member of the UK with continued economic and constitutional connections to the EU, under the terms of the EU-UK Trade and Cooperation Agreement (TCA). The new regime increased prospects for trade and commerce but also brought up uncomfortable questions regarding Northern Ireland's constitutional position that seem destined to influence Irish-UK relations—and relations between NI and the rest of the UK—for a very long time.<sup>163</sup>

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<sup>160</sup> COLFER, B., DIAMOND, P. (2022)

<sup>161</sup> Ibidem

<sup>162</sup> MCCRUDDEN, C. (2017) *The Good Friday Agreement, Brexit and Rights*, British Academy and Royal Irish Academy

<sup>163</sup> COLFER, B., DIAMOND, P. (2022)



Furthermore, since it went into effect at the beginning of 2021, the Northern Ireland Protocol has been a cause of conflict. By successfully reducing some of the implications of Brexit on Northern Ireland, especially in regard to avoiding a hard Irish border for the flow of goods, the Protocol sought to maintain the 1998 Agreement in all of its dimensions. According to Boris Johnson, the UK and the EU managed to preserve “the letter and the spirit of the Belfast/Good Friday Agreement” in the Protocol.<sup>164</sup> However, two and a half years after it was negotiated, the UK Government's position is categorically that the Protocol harms all three strands of the Good Friday Agreement. On March 25, 2022, Secretary of State for Northern Ireland Brandon Lewis spoke before a House of Commons committee:

*“It is very clear that the Protocol in its current format and the implementation of it that the EU are seeking doesn’t work for the people of Northern Ireland. It is fundamentally undermining the Good Friday Agreement both in terms of North/South Ministerial Councils; east-west trade, and Stormont institution itself.”<sup>165</sup>*

Similar to how nationalists are worried that Brexit will undermine the 1998 Agreement due to the alteration in the relationship between the north and south of Ireland (Strand Two), unionists are worried that the Protocol will have a negative impact on the east-west relationship between Britain and Ireland (Strand Three), which is at the core of their worries about the Agreement.<sup>166</sup>

On June 13, 2022, the UK government introduced the "Northern Ireland Protocol Bill" in the House of Commons<sup>167</sup>. The bill stipulates that some clauses of the Northern Ireland Protocol would no longer have effect in the UK if it were to become law. Customs and the circulation of goods, the regulation of commodities, State aid, and the implementation of EU legislation are

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<sup>164</sup> Boris Johnson’s statement of 19 October 2019, House of Commons, available at: <https://hansard.parliament.uk/commons/2019-10-19/debates/8C3F5267-8186-4536-83EC-56E3C88DCC8E/PrimeMinister%E2%80%99SStatement> (last accessed: 15 September 2022)

<sup>165</sup> Northern Ireland Affairs Committee, 28 March 2022, parliamentlive.tv, available at: <https://parliamentlive.tv/Event/Index/d52e8647-464e-478f-b8e0-3501b2ac31ea>

<sup>166</sup> HAYWARD, K. (2022), *After 24 Years, the Good Friday Agreement is Perilously Wobbling*, DCU Brexit Institute, available at: <https://dcubrexitinstitute.eu/2022/04/after-24-years-good-friday-belfast-agreement-wobbling/> (last accessed: 14 September 2022)

<sup>167</sup> Northern Ireland Protocol Bill 2022, available at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0012/220012.pdf> (last accessed: 19 September 2022)

the primary areas under question. The bill gives the UK government the authority to define "qualifying movements" of "UK or non-EU destined" commodities into Northern Ireland as well as to establish measures regarding them. Moreover, the bill states that the UK government may implement new customs laws related to the Protocol and regulate checks, controls, and administrative procedures that encompass entry, examination, and search. These regulations may include clauses addressing how to handle commodities that cease to be or are bound for the UK or a country outside the EU. The bill declares the intent to create red lanes and green lanes for goods brought into Northern Ireland from Britain. Only reputable businesses shipping goods to Northern Ireland would be permitted to use the green lane. These would not be subject to inspection or customs regulations. Products destined towards the EU, including the Republic of Ireland, would travel in the red lane. These would go through thorough inspections and customs restrictions. Additionally, tax laws would alter. Currently, Northern Irish enterprises adhere to EU regulations regarding VAT and state aid. Therefore, tax reductions and government assistance to businesses in Northern Ireland must adhere to EU-set restrictions. The British government wants these restrictions lifted. The UK government may also enact new laws governing the regulation of products, notably those pertaining to the marketing, usage, and import of goods as well as their manufacture and availability on the market.

Regarding state aid, the Protocol clauses stating that Northern Ireland is subject to the State Aid Law of the EU (according to article 10 of the Northern Ireland Protocol)<sup>168</sup> are not included in the bill. Additionally, it prefers an impartial tribunal to the European Court of Justice for the resolution of disputes involving the Northern Ireland Protocol. A court or tribunal in dispute resolutions "is not bound by any principles laid down, or any decisions" made by the CJEU, and cannot submit any case to it, according to Clause 20 of the bill.<sup>169</sup>

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<sup>168</sup> Protocol on Ireland/Northern Ireland, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf#page=8](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf#page=8) (last accessed: 19 September 2022)

<sup>169</sup> Ibidem

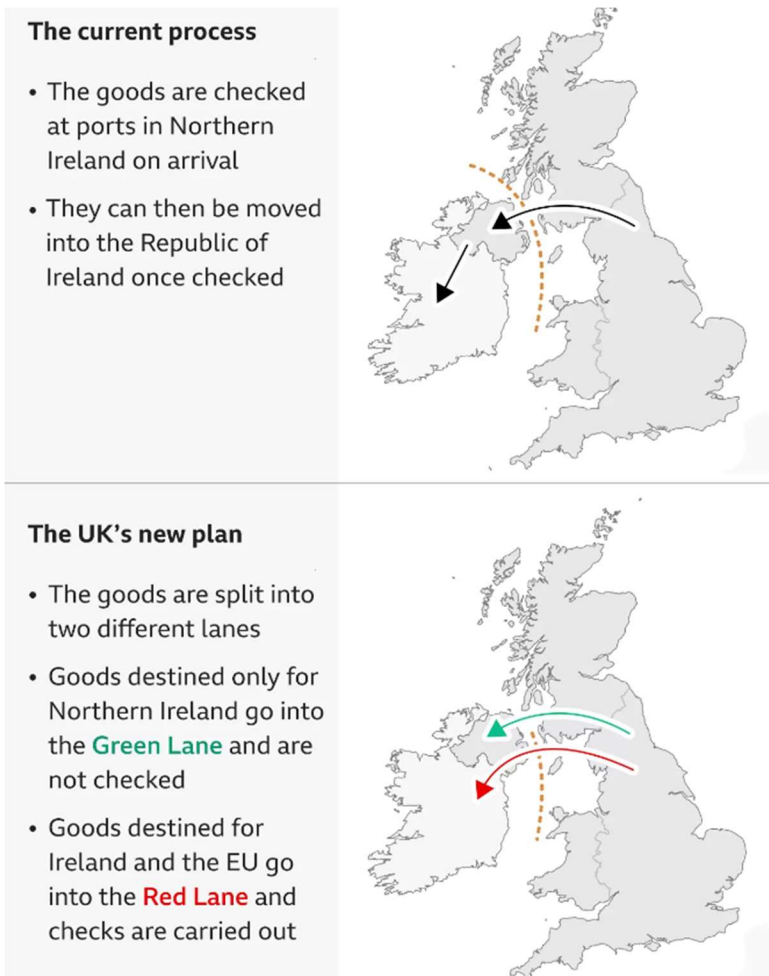


Figure 6- Source: BBC<sup>170</sup>

The UK government argues in the explanatory notes that the bill's goals are to protect the GFA and maintain peace and stability in Northern Ireland. According to the government, it is permitted to alter the wording of a convention or other international agreement in order to safeguard an essential interest, in this case to prevent the protocol from undermining peace in Northern Ireland<sup>171</sup> The UK government's proposed bill's legal justifications are based on the "doctrine of necessity" as stated in UN Responsibility of States for Wrongful Acts (2001), Article 25.<sup>172</sup> Under some rare and specific circumstances, the doctrine of necessity offers a solid foundation in international law to support the non-fulfillment of international duties.

<sup>170</sup> Ibidem

<sup>171</sup> *Brexit: What is the Northern Ireland Protocol?* BBC News, 27 June 2022, available at: <https://www.bbc.com/news/explainers-53724381> (last accessed: 14 September 2022)

<sup>172</sup> Responsibility of States for Internationally Wrongful Acts, 2001, available at: [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

According to the UK Government legal position<sup>173</sup>, The Belfast (Good Friday) Agreement's past promises and obligations are not being protected by the Protocol in its applicability. The Protocol currently acts as a barrier to the formation of a new Executive in Northern Ireland because discussions with the EU have not produced comprehensive and widely acceptable alternatives capable of producing sustainable arrangements. The Government's preferred solution is still a negotiated result. The UK's right to take actions under Article 16 of the Protocol to protect against serious economic, social, or environmental difficulties that are likely to persist or to cause trade to be diverted is unaffected by the government's conclusion that the situation in Northern Ireland constitutes a state of necessity.<sup>174</sup>

The EU reaction was expressed by Commissioner Šefčovič, who made it clear that the UK's conduct constituted a violation of international law. “Let’s call a spade a spade: this is illegal. This UK bill is extremely damaging to mutual trust and respect between the EU and the UK.”<sup>175</sup> Subsequently, the resumption of an infringement procedure regarding the movement of agri-food, started in 2021 and then frozen, and the start of two further infringement procedures were declared. The first infringement procedure had been initiated because the UK was not applying the protocol correctly, in particular the certification requirements for the movement of agri-food products. The procedure had been left open last year in a spirit of constructive cooperation to find common ground with the UK for a common and shared solution. Instead, one of the two additional violations relates to the failure to implement the required checks at Northern Ireland border control checkpoints by providing enough manpower and infrastructure. The other is for failing to give the EU crucial trade statistics information that would have allowed the EU to defend its Single Market.

The European Commission stated that the dual regulatory regime put forth by the UK in the bill to address the effects of regulatory divergence between the EU and the UK is not a viable

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<sup>173</sup>United Nations, *Northern Ireland Protocol Bill: UK government legal position*, 13 June 2022, available at: <https://www.gov.uk/government/publications/northern-ireland-protocol-bill-uk-government-legal-position/northern-ireland-protocol-bill-uk-government-legal-position#:~:text=The%20doctrine%20of%20necessity%20provides,certain%20exceptional%20and%20limited%20conditions> (last accessed 19 September 2022)

<sup>174</sup> Ibidem

<sup>175</sup> Remarks by Vice-President Maroš Šefčovič at the press conference on the Protocol of Ireland / Northern Ireland, European Commission, 15 June 2022, available at: [https://ec.europa.eu/commission/presscorner/detail/it/SPEECH\\_22\\_3758](https://ec.europa.eu/commission/presscorner/detail/it/SPEECH_22_3758) (last accessed 19 September 2022)

solution because it would confuse consumers, local producers, importers, and other businesses regarding the rules that are in effect. Additionally, it would be very difficult to ensure that goods are monitored and controlled, to adequately safeguard consumers, and it would be exceedingly dangerous for the EU Single Market. It was also noted that the Protocol designates The Court of Justice of the EU as the sole forum for resolving any disputes arising from the interpretation and application of EU law.<sup>176</sup> In the end, the Commission claims to be willing to continue discussions with the UK to find cooperative solutions that would benefit the people and businesses of Northern Ireland, but any solution must be in accordance with the Protocol and must include the appropriate protections for the EU Single Market.

However, despite legal action from Brussels, recent news indicates that the UK is still delaying customs inspections of goods transiting from Great Britain to Northern Ireland.<sup>177</sup> The recent election of Liz Truss as Britain's new prime minister has further increased the climate of tension and uncertainty. There were rising concerns that, if she were to win the election, she may start the Northern Ireland protocol's article 16 clause, thus rupturing the already tense relationship with the EU.<sup>178</sup> Article 16 would allow either party to take unilateral action if they considered the protocol was producing "severe economic, social, or environmental challenges that are likely to continue," or trade diversion. Truss has long mentioned it, but there is increasing interest as the deadline for the UK to respond to legal procedures initiated by the EU for failing to establish appropriate Irish Sea border checks approaches.

Sinn Féin MP for North Belfast John Finucane said the UK government's "reckless threats" to invoke Article 16 demonstrated the UK government's "complete disdain for the democratic demands of people and companies."<sup>179</sup> He claimed that while most people, businesses, and elected officials in Northern Ireland supported the protocol, the Conservatives worked hard to destroy it. Truss was encouraged by Finucane to "return to the table with the EU to provide clarity and stability to industries."

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<sup>176</sup> Ibidem

<sup>177</sup> *Northern Ireland Protocol: UK defies EU legal action over checks*, 16 September 2022, *BBC News*, available at: <https://www.bbc.com/news/uk-politics-62913872>

<sup>178</sup> ALLEGRETTI, A., *Liz Truss may trigger article 16 days after becoming PM, amid Brexit row*, 26 August 2022, *The Guardian*, available at: <https://www.theguardian.com/politics/2022/aug/26/liz-truss-may-trigger-article-16-days-after-becoming-pm-amid-brexit-row>

<sup>179</sup> Ibidem

Following the debate over Northern Ireland, the UK initiated its own dispute proceedings with the EU in early August, accusing it of violating the Brexit accord by locking it out of scientific research programs.<sup>180</sup> Truss stated that there had been a "clear violation" of the trade and cooperation agreement, and her department had written to Brussels requesting formal dispute resolution. The UK government asserted that the EU was seriously harming both research and development in the UK and EU member states, freezing out the UK from the science research program Horizon, the Earth observation program Copernicus, which provides data on climate change, the nuclear research program Euratom, and the space surveillance and tracking program.

We can therefore see that, despite the many post-Brexit negotiations undertaken in recent years, the climate of cooperation created by the Good Friday Agreement is still at risk. Even if a legal framework has been established to commit both the EU and the UK to maintain peace in Northern Ireland without losing progress, the present climate the present developments suggest that the process is still ongoing. Brexit has revealed how fragile the balance between the three parties is.

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<sup>180</sup>MASON, R., *UK starts dispute proceedings, claiming exclusion from EU scientific research*, *The Guardian*, 16 August 2022, available at: <https://www.theguardian.com/science/2022/aug/16/uk-starts-dispute-proceedings-claiming-exclusion-from-eu-scientific-research>

### 3.3 Criminal law and police cooperation

Cross-border security on the island of Ireland has been affected by the security cooperation between the UK and the EU, which was established as part of the Trade and Cooperation Agreement (TCA) between the two sides in December 2020. Cross-border criminality involves the intentional use of the border to avoid notice and capture, as well as a disregard for its existence when conducting criminal acts. It includes many forms, ranging from severe and organized criminals engaged in drug trafficking, human trafficking, and smuggling across the border to offenders crossing the border while committing crimes such as burglary. Therefore, Policing cooperation has so long been recognized as an essential strategy in combating cross-border crime. For as long as there has been a border on the island of Ireland, criminals have taken advantage of its "porous" nature, and police have had to deal with various types of cross-border crime.<sup>181</sup>

Since the signing of the Belfast/Good Friday Agreement in 1998, policing and criminal justice cooperation has grown rapidly in the Irish island. Prior to the Agreement, cooperation between the then-Royal Ulster Constabulary (Northern Ireland's police force from 1922 to 2001) and An Garda Sochána (Ireland's national police service) was based on informal communication and personal relationships. In 1999, the Belfast/Good Friday Agreement established the Independent Commission on Policing, which discovered that policing cooperation on the island of Ireland was more ad hoc and dependent on personal ties than previous examples of transnational policing cooperation at the time. Along with the formalization of cooperation networks between UK and Irish law enforcement agencies during the last 20 years, EU Justice and Home Affairs databases have been built to aid transnational cooperation.

The Northern Ireland Affairs Committee published a report which discussed cross-border cooperation on policing, security and criminal justice after Brexit between 2019 and 2021. The inquiry's goal was to examine the unique issues created by the loss of access to policing and criminal justice resources, as well as to evaluate ways to preserve effective cross-border cooperation across the Common Travel Area. Following the TCA's announcement on December 24, 2020, the Committee agreed to undertake three more evidence sessions to

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<sup>181</sup> House of Commons - Northern Ireland Affairs Committee: "*Cross-border co-operation on policing, security and criminal justice after Brexit*", Fourth Report of Session 2019–21, p.8

examine the TCA's impact on policing, security, and criminal justice cooperation between the UK and Ireland.<sup>182</sup> Because of the permeable character of the border, strong cooperation between UK and Irish law enforcement agencies is essential to address cross-border criminality.

The Committee underlines how the operational cooperation between UK and Irish law enforcement agencies was reinforced by EU police and judicial cooperation structures. Before the end of the transition phase, the UK took part in over forty EU initiatives targeted at strengthening and expanding EU security and criminal judicial cooperation. The European Arrest Warrant, the European Criminal Records Information Exchange System (ECRIS), the Second-Generation Schengen Information System (SIS II), and Europol were all instrumental in facilitating successful cross-border policing. When the transition period concluded on 31 December 2020, the UK was set to lose full access to several of those mechanisms. As a result, the UK and EU required to agree on a new basis for extraditing people between the two countries, exchanging law enforcement data, and facilitating law enforcement and criminal justice cooperation.<sup>183</sup>

Before reaching an agreement with the EU, the Government explained to the Committee in November 2020 that law enforcement agencies would have to apply Council of Europe Conventions such as the 1957 European Convention on Extradition and the 1959 Convention on Mutual Assistance in Criminal Matters. Naomi Long, Minister for Justice in the Northern Ireland Executive, also testified before the TCA agreement, discussing the sophistication of serious and organized crime, pointing out that many Council of Europe Conventions were outdated, having been developed in the 1950s, and concluding that it was not possible to combat 2020 crime and security threats using 1950s tools.<sup>184</sup>

Both sides of the border's law enforcement authorities emphasized the necessity of maintaining a competent extradition system after Brexit. The European Arrest Warrant addressed past political tensions between the United Kingdom and Ireland generated by extradition.

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<sup>182</sup> Ivi, p.6

<sup>183</sup> Ivi, p.8

<sup>184</sup> Northern Ireland Affairs Committee, *Oral evidence: Cross-border co-operation on policing, security and criminal justice after Brexit*, 18 November 2020, available at: <https://committees.parliament.uk/oralevidence/1257/pdf/>



Extradition between the two countries had been historically difficult prior to the implementation of the EAW. Indeed, Colin Murray and Dr Clare Rice noted that "extradition processes were arduous and frequently subject to judicial disputes" throughout the Troubles.<sup>185</sup> The transition from diplomatic extradition to arrangements based on mutual acceptance of legal proceedings was recognized as a major factor for the UK and Ireland's increased trust in extradition. The provision of new surrender agreements between the UK and EU to replace the use of the EAW is included in Part Three of the TCA. The Committee also drew attention to the discrepancies between the European Arrest Warrant and the new UK-EU extradition accords. In addition to allowing states to deny extradition of their own citizens, the Trade and Co-operation Agreement adds a political offense exception. These variations shouldn't have a big impact on Ireland-to-UK extradition procedures. However, in other instances, extradition between the UK and Ireland may take longer.

The Police Service of Northern Ireland and the Garda have a tight and fruitful working relationship, which serves as the foundation for cross-border policing cooperation. However, EU-level agreements had encouraged information exchange between Irish and British law enforcement authorities. Therefore, it is expected that the institutions of bilateral cooperation established between the Irish and UK criminal justice systems will become more significant. In order to enable and support joint intelligence sharing, UK and Irish law enforcement agencies are currently closely integrated in terms of the technology platforms to which they have access. However, if the UK does not keep up with future innovations of EU systems to increase the effectiveness and scope of information exchange, there is a risk of divergence in this area. This is demonstrated by the recent connection of Ireland to SIS II, which occurred at the same time as the UK lost access to the system once the transition period ended. This could result in an uneven distribution of authority between the UK and Ireland and unintentionally provide criminals a chance to take advantage of these differences. As a result, both the island of Ireland and the streets of Great Britain would be affected. Additionally, when the whereabouts of the suspect is unclear, the UK's loss of access to the Second-Generation Schengen Information could delay the receipt of arrest warrant notices by UK law enforcement agencies.<sup>186</sup>

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<sup>185</sup> House of Commons - Northern Ireland Affairs Committee (2021), p.15

<sup>186</sup> Ivi, p.22

The Committee also raised a concern about the UK's influence over Europol. When coordinating investigations throughout Europe, especially when more than two nations are involved, law enforcement organizations need access to Europol, however, the UK will not play any part in the management of the Agency because only EU Member States are granted full membership to it. Through the third-country agreement negotiated in the Trade and Cooperation Agreement, UK law enforcement agencies will continue to have access to Europol, however, the UK's capacity to determine Europol's future development through its management board is harmed by its loss of full membership.<sup>187</sup>

In the end, as Professor Gemma Davies claims<sup>188</sup>, we can say that while there has been thought put into the overall impact of Brexit on the Good Friday Agreement and agreement on the need to prevent a return to a hard border between Ireland and Northern Ireland, more thought has not been put into how Brexit may affect the continuation of cross-border criminal justice cooperation. Despite the Police Service of Ireland and Northern Ireland close working connection Due to the loss of EU police and judicial cooperation procedures, Brexit raises the possibility of increasing crime between Northern Ireland and the Republic of Ireland at a time when operational performance may suffer.

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<sup>187</sup> Ibidem

<sup>188</sup> DAVIES, G. (2020) *Facilitating Cross-Border Criminal Justice Cooperation Between the UK and Ireland After Brexit: 'Keeping the Lights On' to Ensure the Safety of the Common Travel Area*, in *The Journal of Criminal Law*. 2021;85(2):77-97 doi:[10.1177/0022018320977528](https://doi.org/10.1177/0022018320977528) (last accessed: 19 September 2022)

### 3.4 Experience of local citizens at the border

Another aspect that is worth analyzing is the impact of Brexit on the daily life of citizens living near the border. While avoiding a hard border was a goal agreed by the UK and the EU, figuring out how to do so proved to be a difficult technological and diplomatic problem. Despite a turbulent past and lack of development, the Irish border region had achieved one of the highest levels of global integration. This just raised the possible cost of Brexit for people who live and work there. The conditions for and behaviors that promote collaboration must be cultivated locally in order for cross-border growth to be successful. The biggest existential and practical challenges of the UK's withdrawal were, in a sense, revealed at the Irish border. A measure of assurance for the preservation of the terms of north-south cooperation is provided by the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement. However, the UK/EU border issue that affects Northern Ireland will continue to be a subject that requires constant political sensitivity and compromise. People in the Irish border region had little doubt that avoiding a hard border had to imply far more than just avoiding physical or obvious infrastructure while the Brexit discussions raged above their heads.

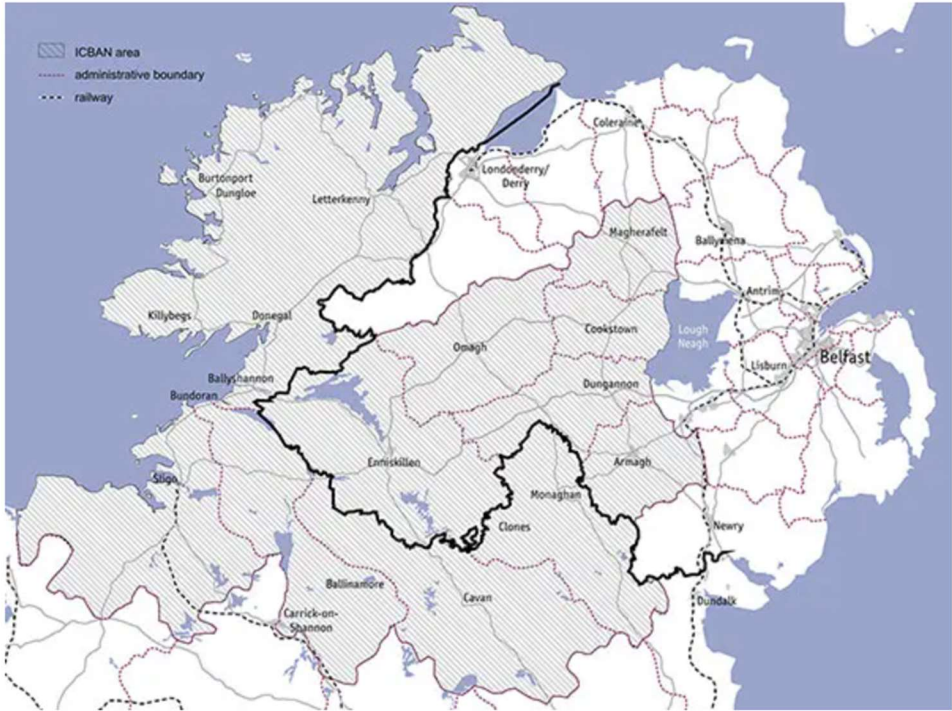


Figure 7- Irish border and central border region of Ireland/Northern Ireland. Source: Irish Central Border Area Network (ICBAN)<sup>189</sup>.

<sup>189</sup> Available at: <https://www.williemiller.com/icban-regional-strategic-framework.htm>

Research titled “The Border after Brexit”<sup>190</sup> was carried out by Queen’s University of Belfast together with the Irish Central Border Area Network of 8 local authorities in the Central Border Region of Ireland/Northern Ireland: Armagh City Banbridge and Craigavon, Cavan, Donegal, Fermanagh and Omagh, Leitrim, Mid Ulster, Monaghan, and Sligo, approximately the halfway point of the first year following the end of the transition phase. The goal of this research was to learn about the experiences of people who live and work on both sides of the border. Three components made up the research: a sizable online survey with 394 distinct replies, two focus groups, and five one-on-one interviews with regional stakeholders on both sides of the border. The goal of this study was to learn about the experiences of people who live and work in the border region in light of the conclusion of the transition period, the implementation of the Withdrawal Agreement and the UK-EU Trade and Cooperation Agreement, giving locals on both sides of the border a chance to have their voices heard.

Since the UK withdrew from the EU, the amount of interest and participation in the Brexit topic has only increased. This holds true for residents of the border counties of the Republic of Ireland as well as those in Northern Ireland. Brexit's impacts are 'live' cross-border worries. Nearly half of respondents (48%) indicate that their importance of Brexit has increased over the course of the past year when asked how their importance of Brexit has changed. Only 9% of people indicated it had become less important to them. Thus, 85% of those who responded to the study at the time think that Brexit is very important to them or significantly important to them, with 6 out of 10 ranking it as having the highest importance.

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<sup>190</sup> HAYWARD, K. AND KOMAROVA, M. (2021), *The border after Brexit: Experiences of Local Communities in the Central Border Region of Ireland / Northern Ireland*, Centre for International Borders Research Queen’s University Belfast Belfast

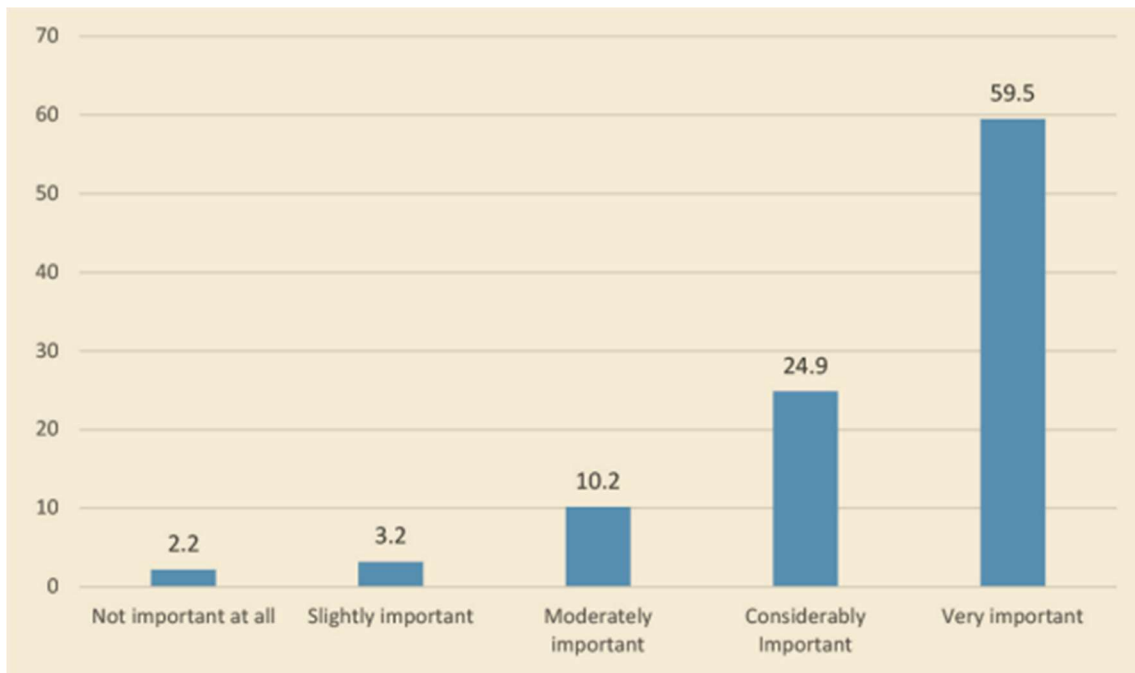


Figure 8- How important is the subject of Brexit to you now?<sup>191</sup>

Only 13% of those surveyed say the effects of Brexit have been better than they projected, while 53% say they have been worse or significantly worse. Additionally, there are a number of new and varied factors contributing to post-Brexit uncertainty, such as the pandemic's impact and the challenge of accessing information on issues that are now legally governed differently, such as cross-border healthcare entitlements. The border region has particularly poor access to information, which increases the level of uncertainty. The difficulty of keeping in touch with the Covid-19 outbreak, as well as the political sensitivities around Brexit and the Protocol, have made it more difficult to maintain excellent community and cross-border links. Overall, 75% of respondents believe that Covid-19 measures have limited their ability to acquire services across international borders. In terms of opportunities missed, this is certain to have an effect that will persist at least into the medium future. Respondents stress the importance of cross-border cooperation and integration as the only way forward to address the present challenges of both Brexit and Covid.

Economic effects of Brexit are the most commonly cited. Around half of those interviewed said they have issues with supply, delivery, delivery delays, and overall availability of items. It emerged how citizens were dealing with “lack of availability of goods, increase cost of

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<sup>191</sup> Ivi, p. 24

services” and “disruption of cross-border travel due to uncertainty in relation to insurance cover”.<sup>192</sup> Additionally, a lot of consumers notice how Brexit has an effect on their online buying. In the replies of "Leavers," the themes of practical changes in daily life were notably emphasized. Even though many people are concerned about the negative economic repercussions indicated above as ordinary citizens and customers, others are concerned about how these changes are affecting their own enterprises. It is noteworthy that several of these issues have little to do with the Protocol; in fact, some of them (such as access to EU goods) ought to have been averted by the Protocol.

Another recurring issue in the responses is the impression of harm to peace and stability, as well as the risk for resumption of conflict. Indeed, some people manifested some concern about a possible worsening of societal divisions and damage to community cohesion. Some also mentioned practical considerations, such as a lack of knowledge regarding cross-border rights and ability to travel, as well as 'cross-border illness entitlements. Others mentioned a different kind of ambiguity, such as the media's role in amplifying problems.<sup>193</sup>

Although the Protocol and the TCA have given about a third of people peace of mind that a hard border is no longer likely to exist, more than half (57%) still worry that there might be a hard Irish land border in the future. This demonstrates that there is a genuine sense of flux and concern about the post-Brexit situation on both sides of the border from people of different backgrounds and identities. One in ten respondents to the survey question about whether the importance of Brexit has changed for them specifically mentions some type of Brexit-related uncertainty that is problematic for them, whether in a personal sense or in relation to the overall political, social, or economic situation in Northern Ireland. Concerns about the impact of the numerous information sources available to border dwellers on the changes impacting life after Brexit are related to the feeling of unease and uncertainty. The variety of sources can occasionally be advantageous, but they can also increase confusion. One reply highlighted how there are numerous sources of information, so it would be simpler if there was one central location where everyone could go. To use one point of reference would simplify everything.<sup>194</sup> At least in part, this uncertainty can be related to the Covid-19 pandemic's intervention, which

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<sup>192</sup> Ibidem

<sup>193</sup> Ivi, p.32

<sup>194</sup> Ivi, p.34

respondents claimed temporarily diminished the significance of and worries about Brexit. A few people pointed out that Covid has hidden, delayed, or even intensified the effects felt.

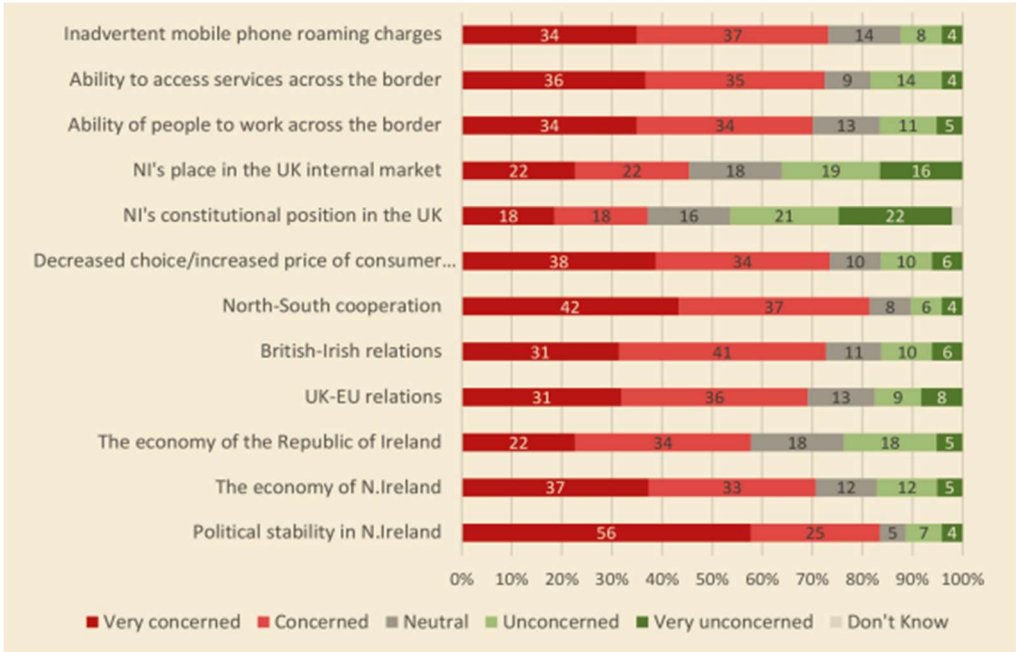


Figure 9- Levels of concern about areas of impact for Brexit and the Protocol<sup>195</sup>

Figure 9 demonstrates that political stability in Northern Ireland is the concern that inhabitants of the Central Border Region have the most (81%). North-South cooperation receives the second-highest level of concern. There are also high levels of concern (70–72%) about the economy of Northern Ireland, British–Irish relations, unintentional cell phone roaming fees, the ability to access services across the border, the ability to work across the border, and the availability of services. The Republic of Ireland's economy is the subject of average concern (56%).

Cross-border collaboration is vital across a number of topics, according to 9 out of 10 of the respondents, with 7 out of 10 saying it is extremely important. This demonstrates how important cross-border cooperation is for company growth, high-level executive / Irish government, and community interactions in the border region more generally. This provides motivation to prioritize such cooperation going forward, especially in light of the issues raised previously.

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<sup>195</sup> Ivi, p.70

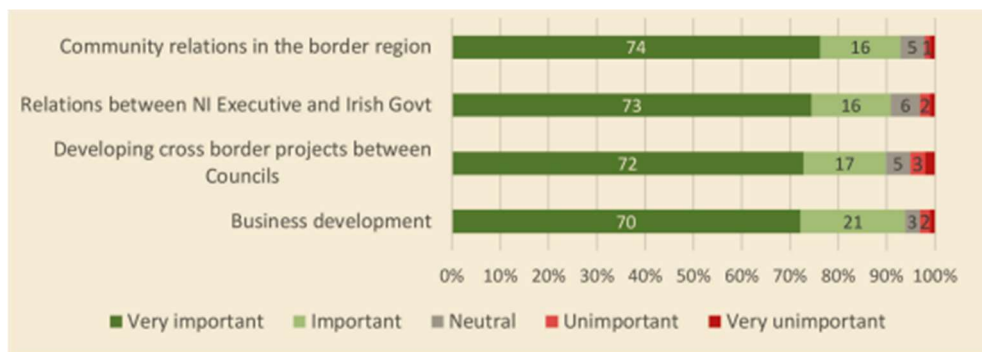


Figure 10 - How important is cross-border co-operation for meeting common challenges?

Two open-ended questions about the perceived advantages or opportunities of both Brexit and the Protocol were also included in the study. According to the majority of respondents, there are neither any nor many of these good aspects of Brexit. However, respondents' opinions of the Protocol can be characterized as being a little bit more favorable. The final question requested responders to provide a message. As a response to the alleged unfavorable socio-economic and political effects of Brexit, many messages urged for a united Ireland. Some called for politicians, in particular the Irish government, to prepare or set up a border poll or, at the very least, to start a serious and inclusive discussion about this possibility.<sup>196</sup>

To sum up, what emerges is that the complex environment of difficulties and potential for cross-border cooperation is extremely obvious when listening to the experiences of local people from both sides of the border. Cross-border collaboration is important to 9 out of 10 of our participants on a variety of subjects, with 7 out of 10 indicating it is very important. Among the respondents, those who declared to have voted "leave" during the June 2016 referendum were quick to point out that what had been given, whether politically or economically, was not what they had voted for.<sup>197</sup> We can see from this that cross-border cooperation is regarded as critical for company development, high-level Executive / Irish government contacts, and community interactions in the border region. This provides an incentive to continue pursuing such collaboration, particularly given the problems raised in previous issues.

<sup>196</sup> Ivi, p. 74

<sup>197</sup> Ivi, p. 64



A different survey was conducted by the Centre for Cross Border Studies in Northern Ireland, which elaborated a series of quarterly studies investigating the conditions for North-South and East-West Cooperation in the island.<sup>198</sup> Among the six different reports published, the findings of the first survey, conducted between January and March 2021, are the most relevant to measure the impact of Brexit. In contrast to the previous study, the respondents in this survey come from civic society organizations and local governments in Northern Ireland and the Republic of Ireland, giving them a wealth of knowledge, experience, and expertise about cross-border cooperation and collaboration. Out of the 80 replies to the poll, 79 included their location information. 6% had a presence on both sides of the border, while 56% were base in the Republic of Ireland and 38% in Northern Ireland. Community development (42%), education (38%), and international cooperation (33%) ranked as the top three areas of action.

In the context of North-South collaboration between Northern Ireland and the Republic of Ireland, when asked if they thought that the political, social, legal, and practical settings for international cooperation had altered over the previous three months:

- 60% of respondents thought that since the previous quarter, the political environment for cross-border collaboration got worse, while only four percent said that the situation improved;
- While 48% of respondents claimed that the social backdrop remained constant from the previous quarter, 36% disagreed;
- Only 3% of respondents said the regulatory context improved over the past quarter, while 61% say it got worse.
- Only 1% of respondents think the material context has improved since the previous quarter, while 50% report that it became worse.

Furthermore, just 36% of respondents said they had financing for international collaboration initiatives; the EU, the Irish government, or the organization's core budget were the main funding sources. No responder stated that the UK government had provided financing for international initiatives.

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<sup>198</sup> ROSHER, B., SOARES, A. (2021), *Quarterly Survey on the conditions for North-South and East-West cooperation*, Centre for Cross Border Studies, available at: <https://crossborder.ie/newsite/wp-content/uploads/2021/08/Research-Briefing-on-1st-Quarterly-Survey.pdf>

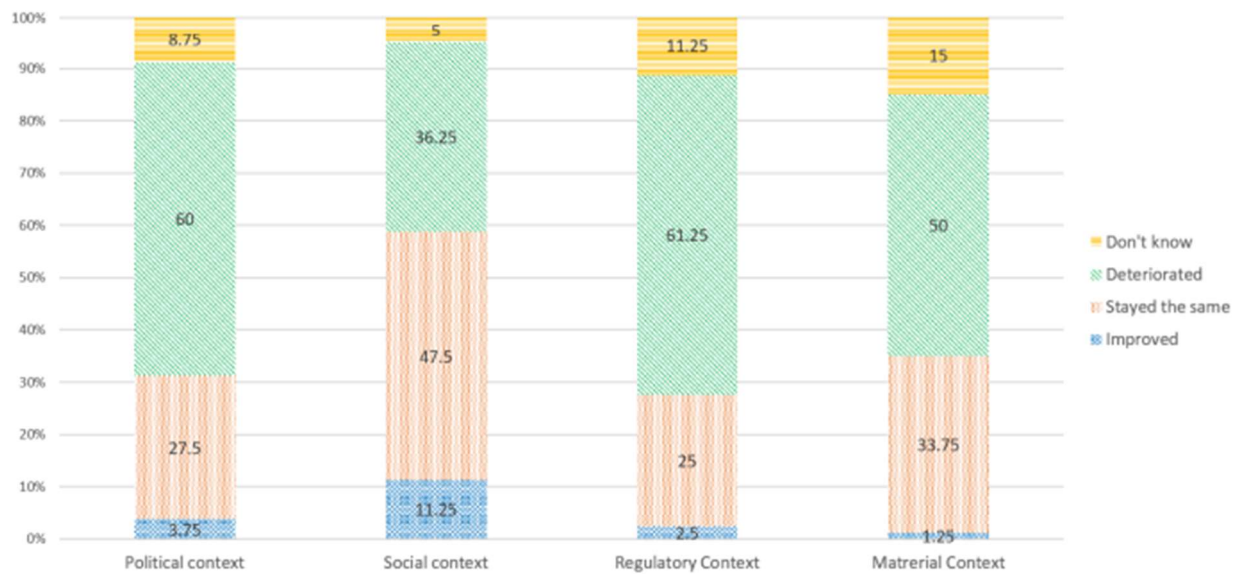


Figure 11 - How have the political, social, regulatory and material contexts of collaboration changes over the last quarter? (North-South dimension) <sup>199</sup>

Overall, the poll results show that most respondents have a generally poor opinion of the broader context of the circumstances surrounding collaboration between Northern Ireland and the Republic of Ireland.

The same set of question were asked to organizations regarding East-West cooperation.

- Only 4% of respondents said the political environment improved since the previous quarter, whilst 60% believed it became worse;
- While 48% of respondents claimed that the social backdrop had remained constant from the previous quarter, 36% disagreed;
- Only 3% of respondents said the regulatory context had improved during the prior quarter, while 61% said it had become worse;
- Only 1% of respondents thought that the material context had improved since the previous quarter, while 50% report that it had become worse.

Only 11% of those surveyed said their company received financing for collaborative initiatives, with the EU accounting for the majority of those funds. Once more, no respondent mentioned getting financing for joint endeavours from the UK government.

<sup>199</sup> Ivi, p.7

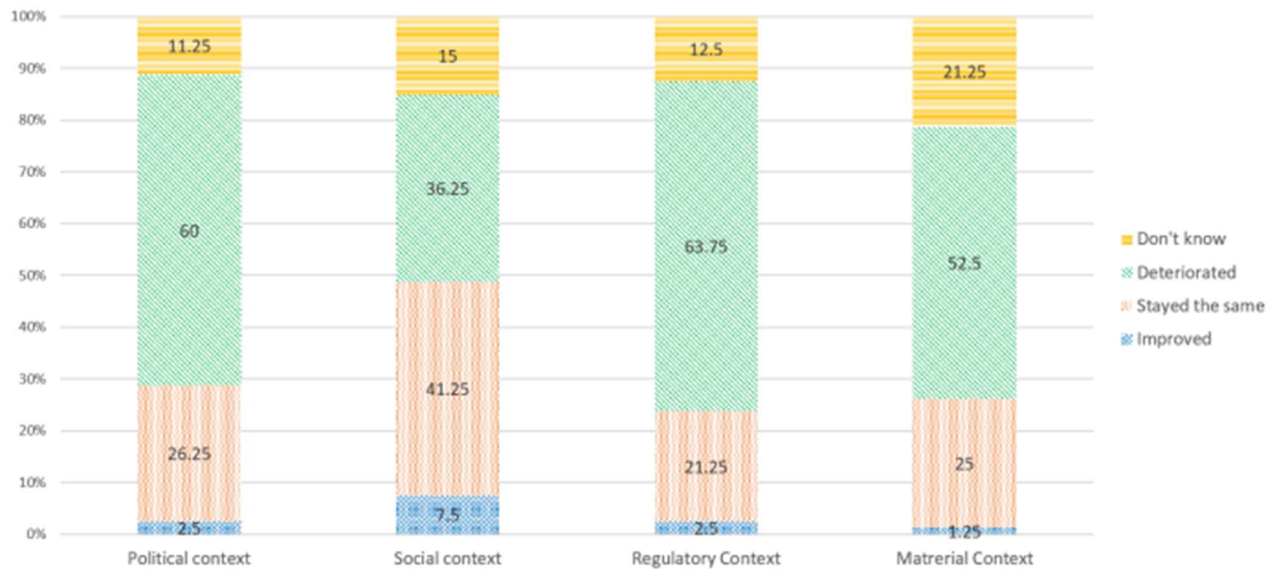


Figure 12 - How have the political, social, regulatory and material contexts of collaboration changes over the last quarter? (East - West dimension)<sup>200</sup>

What the survey reveals is a generally unfavourable perception of the overall backdrop of the conditions for East-West cooperation and collaboration, echoing the North-South dimension.

In the survey, participants were also asked to describe in their own words how they perceived and dealt with the circumstances surrounding East-West and North-South collaboration in the wake of Brexit. The following are a few of the most important:

*“The impact of the UK withdrawal from the EU has impacted significantly - while access to goods and services will probably be ironed out - the absence of formalised structures to support what were previously informal relationships and contacts has been overlooked - so dialogue, information sharing and problem sharing mechanisms are still stuck in the late 1990s.”<sup>201</sup>*

*“Uncertainty and political brinkmanship is the greatest difficulty. We find that business and organisations are willing to work towards finding solutions however, the political brinkmanship is making it more and more difficult.”<sup>202</sup>*

In conclusion, respondents have increased their level of North-South cross-border interaction over the past five years, and the majority of respondents are currently working on or actively

<sup>200</sup> Ivi, p. 10

<sup>201</sup> Ivi, p.11

<sup>202</sup> Ibidem

looking for new cross-border joint projects. The environment for this cooperation, however, is seen to be getting worse lately. With less than half of respondents saying that they had met with a UK organization this quarter and less than a third reporting that they are actively looking for new collaborations with partners in the UK, East-West cooperation looks to be suffering. Most people believe that the political, social, legal, and material environments are becoming less favourable for North-South and East-West interaction and cooperation. The UK government, in particular, does not provide enough financing for collaboration on an east-west and north-south basis, according to respondents. The results of this study also suggest that urgent conditions must be created for East-West communication and collaboration in addition to sustaining and fostering North-South contact and collaboration.

## CONCLUSIONS

With this research I intended to prove how the consequences for cross-border cooperation and relations with Ireland and Northern Ireland have been largely underestimated by the British government in proceeding with the exit from the European Union. Cross border cooperation is a fundamental pillar of the European integration, and if it is inevitable that the departure of the UK from the Union leads to repercussions to the territories in which they share a border, it is hoped that this would open up new opportunities for new partnerships to emerge in the territories, removing existing barriers to cross-border collaboration. For the time being, however, European cross-border cooperation has been badly impacted by Brexit, seeing its complex balance put at risk. Even though European integration has increased several incentives for cross-border cooperation, the implementation of a new level of shared governance at the border regions is still being slowed by numerous visible and invisible impediments, and the withdrawal of UK from the EU is the main example of this. This thesis aims to prove that Brexit has indeed provoked several imbalances and backward steps in many areas of cross-border cooperation.

With regard to cross-border trade, what emerges is that businesses were unprepared for the end of the Brexit Transition Period on January 1, 2021, and this lack of preparation has had a serious knock-on impact on the rest of the supply chain. Many enterprises have been in a spiral as a result of Brexit. The EU Trade and Cooperation Agreement does not significantly speed up border procedures, which implies that there is now a lot more friction for traders than there was when the EU was a member. The uncertainty regarding border checks is having repercussions also on cross-border travel, as the long lines of travellers trying to cross the English Channel at Dover this summer symbolized. It is believed that border management is the area where Brexit will lead to the most significant political tensions and policy gaps, particularly regarding immigration policy. Since the UK is no longer obliged by the Dublin Regulation, EU-UK cooperation on asylum and migration has fallen to new record lows. An impelling problem is the lack of a legally binding system that establishes accountability for people seeking refuge and streamlines transfers between the EU and the UK. While there are no longer legal ways for asylum seekers to enter the UK as there were under the Dublin system, the UK has seen an extraordinary increase in the crossings by small boat over the English Channel.

Moreover, there have been repercussions also on cross-border police cooperation, needing a reworking of the UK-EU policing partnership. Part three of the Trade and Cooperation agreement established that the UK would forfeit its memberships at the European Agency for Law Enforcement Cooperation (Europol) and at the European Union Agency for Criminal Justice Cooperation and (Eurojust). After Brexit, policing systems which speeds up information and data sharing as the Schengen Information System II, the European Criminal Records System and the Passenger Name Record (PNR) are no longer accessible to the UK. Additionally, the United Kingdom is now regarded as a third country also concerning cross-border legal proceedings. Because cross-border insolvencies are not addressed in the Brexit agreement negotiated by the UK and the EU, the benefit of the Recast Insolvency Regulation as between the UK and the EU were lost after the transitional period ended. The UK's preferred alternative for cross-border cooperation in dealing with jurisdiction and the enforcement of decisions in civil and commercial cases is the Lugano Convention of 2007, which now seems improbable given the EU Commission position in this regard.

The biggest existential and practical challenges of the UK's withdrawal were, in a sense, revealed at the border between Ireland and Northern Ireland. Indeed, the date of the UK's exit from the EU had to be delayed three times due to the extreme difficulty in reaching a deal about the Irish border. Indeed, the Brexit discussion about the Irish border was extremely divisive. Even if the relative peace that followed the Irish conflict was not directly brought about by the EU institutions, but the EU offered a helpful setting for societal normalization. The UK leaving the EU compromises and may destabilize that shared environment, undermining both the Good Friday Agreement itself and its successful implementation. Therefore, even if the Northern Ireland Protocol has been established in order to avoid an "hard" border in the island, the climate of cooperation created by the Good Friday Agreement is still at risk

In addition to bringing the UK and Ireland closer together through EU integration, the peace process benefited greatly from the "normalization" and depoliticization of cross-border collaboration in the EU. European Union normalized cross-border activity in terms of economic and political interaction through two fundamental EU funding programs, PEACE and INTERREG. However, the true advantages of cross-border cooperation are not limited to official initiatives or institutionalized mechanisms. Cooperation habits are the ones that take the longest to develop but provide the most significant and long-term impact to the quality of life and work across borders. In the past 20 years, these behaviours have been growing in the Irish

border region, and they have been beneficial practically. Due to the significance of cross-border work and living, Brexit uncertainty had a profound impact on respondents' lives in the border region. Over the course of the three years of Brexit discussions, public anxiety around the possibility of a hard border only increased.

Despite its importance in terms of identity and politics, the peace process's resilience stems from the fact that so many locals can (for the most part) disregard its presence. Giving people in Northern Ireland the option of choosing between living closer to Britain or Ireland gets at the core of this issue. The primary risk in the Brexit discussion over the Irish border stemmed from the fact that it once again raised this dilemma. A measure of assurance for the preservation of the terms of north-south cooperation was provided by the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement. However, the current tension in diplomatic relations between the UK and the EU suggests that border issues will continue to be a subject that requires constant political sensitivity and compromise.

In many senses, the Irish border is an unresolved issue that transcends geographic, economic, and even political considerations. The 1998 Agreement and the fortitude of people living along the border region are to thank for the fact that cross-border life and work have become so routine. With this study, I aimed to show how Brexit polarized and fragmented a community and a governmental body that was committed to peace and a shared purpose. The Brexit process, the effects of which are just now starting to be felt, put such resiliency to the test. Recent political developments concerning the Northern Ireland Protocol Bill show how the protection of the Good Friday Agreement is mostly used as leverage for political and commercial interests. This is likely to result in an increasingly fragmented United Kingdom and a rise in Irish public opinion in favour of a referendum for the unification of Ireland. I believe that cross-border cooperation on the Irish island is the main underestimated aspect in the Brexit referendum campaign and, as a result, it is now what is most damaging the relationship between the UK and the EU after their divorce.

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