

6 September 2017

TF50 (2017) 15 – Commission to EU 27

Subject: Guiding principles transmitted to EU27 for the **Dialogue on Ireland/Northern Ireland**

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: For discussion at the Council Working party (Art. 50) of 7 September 2017

Remarks: The attached paper for the **Dialogue on Ireland/Northern Ireland** contains the guiding principles of the EU position in this regard, to be presented to the UK in the context of the dialogue on Ireland/Northern Ireland.

Guiding Principles for the dialogue on Ireland/Northern Ireland

The European Council Guidelines following the United Kingdom's notification under Article 50 TEU and the subsequent directives for the negotiation of an agreement with the United Kingdom on its withdrawal from the European Union include specific provisions relating to the unique circumstances on the island of Ireland (paragraphs 11 and 14 respectively). In its resolution of 5 April 2017, the European Parliament also recognises the unique position of and the special circumstances confronting the island of Ireland.

Issues unique to Ireland include the protection of the gains of the peace process and of the Good Friday Agreement ('Belfast Agreement')¹ in all its parts, the maintenance of existing bilateral agreements and arrangements between the United Kingdom and Ireland including the Common Travel Area, and specific issues arising from Ireland's unique geographic situation, including the aim of avoiding a hard border between Ireland and Northern Ireland. The invisible border on the island of Ireland is one of the major achievements and societal benefits of the Peace Process. Border issues are broader than economic questions. The physical border itself was a symbol of division and conflict.

This paper is different from the other papers in preparation of a European Union position to be presented to the United Kingdom in the context of negotiations under Art. 50, in line with the process established related to the discussions on Ireland/Northern Ireland. The present paper does not put forward solutions for the Irish border. The onus to propose solutions which overcome the challenges created on the island of Ireland by the United Kingdom's withdrawal from the European Union and its decision to leave the customs union and the internal market remains on the United Kingdom.

A thorough understanding of the other issues beyond customs arrangements which are relevant to the border is also required in order to move forward to discussing solutions in the context of the dialogue with the United Kingdom.

It is the responsibility of the United Kingdom to ensure that its approach to the challenges of the Irish border in the context of its withdrawal from the European Union takes into account and protects the very specific and interwoven political, economic, security, societal and agricultural context and frameworks on the island of Ireland. These challenges will require a unique solution which cannot serve to preconfigure solutions in the context of the wider discussions on the future relationship between the European Union and the United Kingdom.

¹ The Good Friday Agreement was concluded as a Multi-Party Agreement that forms an annex to a bilateral international agreement between Ireland and the United Kingdom (the "British-Irish Agreement"). A number of related implementing agreements have also been entered into, including the Agreements establishing the North-South Ministerial Council and the North-South Implementation Bodies. Through the British-Irish Agreement, the two Governments solemnly committed to support and implement the provisions of the Good Friday Agreement. Hereafter, references to the "Good Friday Agreement" include the Multi-Party Agreement, the British-Irish Agreement and related implementing agreements.

As an essential element of the withdrawal process, there needs to be a political commitment to protecting the Good Friday Agreement in all its parts, to protecting the gains of the peace process, and to the practical application of this on the island of Ireland. As stated in the Guidelines, in view of the unique circumstances on the island of Ireland, and in order to protect the Good Friday Agreement in all its parts, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border. These solutions must respect the proper functioning of the internal market and of the Customs Union as well the integrity and effectiveness of the Union legal order.

The principles underpinning this approach are set out below. Agreement on these principles will form the basis for the subsequent negotiation of solutions.

Good Friday Agreement and Peace Process

The European Union and the United Kingdom, as a co-guarantor with Ireland of the Good Friday Agreement, should continue to support peace, stability and reconciliation on the island of Ireland.

The Good Friday Agreement was concluded on 10 April 1998 against the background of membership of the European Union by Ireland and the United Kingdom and the common framework of European Union law and Union policies underpins the operation of many of its institutions. The gains and benefits of peace which have been achieved through the Good Friday Agreement and facilitated and supported by the European Union should continue to be protected and strengthened. They include societal benefits and the normalisation of relations between communities in Northern Ireland and between North and South.

- (1) The Good Friday Agreement established interlocking political institutions which reflect the totality of the relationships on the islands of Great Britain and Ireland.² The institutions, which provide frameworks for cooperation between both parts of the island and between Ireland and Great Britain, will need to continue to operate effectively.³
- (2) Ensuring the avoidance of a hard border on the island of Ireland is central to protecting the gains of the Peace Process underpinned by the Good Friday Agreement. In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required to avoid a hard border, including any physical border infrastructure. This must be achieved in a way which ensures that Ireland's place within the Internal Market and Customs Union is unaffected.
- (3) North South cooperation between Ireland and Northern Ireland is a central part of the Good Friday Agreement and should be protected across all of the relevant

² British-Irish Agreement: Annex 1 "The Agreement Reached on the Multi-Party Talks": *Strand One, Strand Two and Strand Three*.

³ This includes preserving the effective operation of the Implementation Bodies established under the Good Friday Agreement, and other bodies that give effect to North South cooperation.

sectors.⁴ This cooperation is embedded in the common framework of European Union law policies. It will be necessary for the European Union and the United Kingdom to examine whether, and if so how, the fact that European Union law ceases to apply in the United Kingdom after withdrawal might impact on continued cooperation and whether specific provisions need to be inserted in the Withdrawal Agreement.

- (4) The Good Friday Agreement includes provisions on Rights, Safeguards and Equality of Opportunity⁵, for which European Union law and practice has provided a supporting framework in Northern Ireland and across the island. The Good Friday Agreement requires equivalent standards of protection of rights in Ireland and Northern Ireland. The United Kingdom should ensure that no diminution of rights is caused by the United Kingdom's departure from the European Union, including in the area of protection against forms of discrimination currently enshrined in Union law.
- (5) As regards citizenship, the Good Friday Agreement recognises the birthright of all of the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose. Further, it confirms 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. Full account should be taken of the fact that Irish citizens residing in Northern Ireland will continue to enjoy rights as EU citizens. To this end, the Withdrawal Agreement should respect and be without prejudice to the rights, opportunities and identity that come with European Union citizenship for the people of Northern Ireland who choose to assert their right to Irish citizenship⁶.
- (6) The Union has provided significant support to the Peace Process including through programmes such as PEACE and INTERREG. The United Kingdom and the Union need to honour their commitments under the current Multi-annual Financial Framework and examine how to ensure implementation in line with applicable European Union rules, including as regards the role and location of the Special European Union Programmes Body.

Common Travel Area

The Common Travel Area is a long-standing arrangement between Ireland and the United Kingdom, predating either country's accession to the Union, which enables Irish and British

⁴ The Good Friday Agreement sets out twelve specific areas for cooperation and implementation. These are agriculture; education; transport; environment; waterways; social security/social welfare; tourism; relevant EU programmes; inland fisheries; aquaculture and marine matters; health; and urban and rural development. Cooperation is not limited to these twelve areas and includes for example the Single Electricity Market. North South cooperation on Justice and Security issues is also an integral part of the Peace Process and of governance on the island of Ireland.

⁵ British-Irish Agreement: Annex 1 "The Agreement Reached on the Multi-Party Talks": *Rights, Safeguards and Equality of Opportunity*.

⁶ As defined in British-Irish Agreement: Annex 2 "Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship"

citizens to travel and reside in either jurisdiction without restriction and provides for associated rights and privileges in both jurisdictions.

- (1) The continued operation of the Common Travel Area is fundamental to facilitating the interaction of people in Ireland and the United Kingdom. Furthermore, it underpins the peace process and the provisions of the Good Friday Agreement, in particular the citizenship and identity provisions, by facilitating the movement of people across the island of Ireland.
- (2) Continuation of the Common Travel Area arrangements, in conformity with European Union law, should be recognised. The United Kingdom has expressed its readiness to ensure that the Common Travel Area can continue to operate without compromising Ireland's ability to honour its obligations as a European Union Member State, including in relation to free movement for European Economic Area nationals to and from Ireland.