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### EU Withdrawal Agreement Backstop – alternative ways ahead?

Those of us in the Ulster Unionist Party have been watching Brexit events unfold with growing concern over the last year or so. From the publication of the 'Backstop' proposals in December 2017, contained in the 'Joint Report' until now, we were able to see the implications this would have for all of us in the UK. On 7<sup>th</sup> December 2017 we wrote to the Prime Minister (attached) setting out our concerns. The following day, the DUP Leader issued a statement (attached) demonstrating that she did not grasp the dangers inherent in the Backstop proposal.

Had there been any doubt in anybody's mind about the direction of travel, the publication in March 2018 by the EU of their legal text on the Backstop should have brought any doubts to an end. It was by then entirely obvious where this was all leading.

Fast forward to November 2018 and the Withdrawal Agreement (WA) itself. A substantial chunk of the legal text is devoted to the 'Irish border issue' and we take no comfort from the aspirations contained in the political declaration that accompanies it. The explanatory letters from the European Commission President and the European Council President may have greater meaning in Brussels than they have in London but having been through the Belfast/Good Friday Agreement process, we know only too well that 'best endeavours' or 'using our influence' to achieve an outcome are of little value. In any event, neither President in Brussels will be in office later this year as the EU election cycle and Commission appointment process will be commencing in a few months' time.

The Ulster Unionist Party wants to see a deal done with the EU. This would be in all our interests as well as theirs. Although we recommended that people vote remain during the referendum, albeit on a free vote basis, we fully accept the outcome of the Referendum and wish to see the decision implemented as soon as practicable.

The Backstop proposal in the Agreement is detrimental to the maintenance of the Union. It would, if implemented, lead to a divergence on significant areas of economic policy and practice between Great Britain and Northern Ireland. Imagine, we would have to treat goods coming from England as if they were from a 'third country'! Farm animals could not have their veterinary testing done in a UK laboratory – it would have to be done in an EU laboratory, and so it goes on.

Is there another way forward? We believe there is. Let us set out the scale of the problem that we are trying to address.

We attach trade in goods statistics which set out the value of trade flows throughout the EU (i.e. the total value of each EU country's exports to the others). You can see that this is valued by Eurostat at EUR 2978 billion in 2016. You can also see the value of goods exported by Northern Ireland to the Irish Republic, valued by NISRA (NI statics agency) at EUR 3.02 billion in 2016. This values this cross-border trade, going into the Republic, as **0.00101 of total EU trade flows, or put another way, this is equivalent to 1/10 of 1%!**

There will be additional goods in transit, and there could be people who could use UK territory to try and infiltrate the EU single market via the Irish Republic, but even allowing for goods in transit, the figures are very small in the overall EU/UK context.

The question must be asked, as to how we got ourselves into such political chaos here and on the continent over such modest level of trade flow?

Possible ways ahead – an Irish solution to an Irish problem?

**The EU has a right to see its single market and customs union protected**, and at face value the proposals contained in the WA of November 2018 seek to achieve that and prevent infiltration or contamination of the EU market by unchecked imports moving from Northern Ireland to the Irish Republic and on to the EU mainland. Under current arrangements, if there is a no deal Brexit, the EU could require the Irish Republic to establish border checkpoints to ensure that the single market is protected.

Nobody on the island of Ireland wants what is termed a ‘hard border’ and we do not believe that any Irish government could survive if it were to erect a border. That is Dublin’s great fear. But current EU law will treat the Irish land border as an EU external border and having thrown their lot in with Brussels over the negotiations and ruled out any bi lateral negotiations, Dublin would be on the horns of a dilemma. However, if we look at how the EU has handled its external borders during the migration crisis, with the Dublin regulations ignored and countries like Greece and Italy left to fend for themselves, Ireland would be in a strong position to argue that it is a special case and requires a flexible and proportionate response by Brussels.

To lay the foundations of an alternative to the Backstop, **the UK could begin by introducing a new offence, whereby the use of our territory to export goods to the EU that are not compliant with EU regulations and standards, as required to maintain the integrity of the single market, would be prohibited**. This would send a clear signal to the EU that we are not going to allow people to smuggle or deliberately flout their market. It also sends a signal to any in the UK who would seek to do so that there will be a heavy price to pay for such action.

We know that between 80%-90% of the Irish Republic’s export goods go either to or via Great Britain to reach either other EU countries or other parts of the world. So, the main border between the UK and the Irish Republic is in fact between Dublin and ports such as Holyhead and Fishguard and not the land border on the island. This fact is rarely mentioned in the debates that we have been having over the last two and a half years. The availability of direct routes to the EU from Ireland is very limited and, in some cases, seasonal.

To deal with the border on the island of Ireland, following the creation of an offence of exporting non-compliant goods to the EU single market through UK territory, **a new cross border body could be established by Treaty with the Irish Republic in line with the existing six cross border structures**. Indeed, because of the nature of its purpose, it might be necessary to join the EU to the Treaty.

What would such a body do? It could have several functions: - a) **It could have an educational** role on the island of Ireland. Its staff could visit manufacturers and hauliers in both jurisdictions to ensure they fully understood the standards of goods (and components that make up those goods) required for them to be compliant with the EU single market and to explain to those who transport such goods what steps they need to take to ensure that they are not moving products that would be non-compliant with single market rules. B) **Officials of the Body could visit premises or depots on both**

**sides of the border to ascertain if goods or companies were compliant with the rules pertaining to the EU single market should it be their intention to sell them in that market;** (companies are used to selling products with different specifications around the world). While this is a role often carried out by customs officials, the legal and other problems associated with two different Excise organisations create difficulties which could be overcome by having staff that can operate throughout the island of Ireland in a tried and trusted way which has functioned successfully for over twenty years.

As with all cross-border bodies, they would be jointly funded by the Dail in Dublin and by the NI Assembly at Stormont. (In the absence of a functioning Assembly the role would fall to the Secretary of State for NI). As such functions would currently be outside the legislative competence of the NI Assembly, some modest devolution of functions from Westminster may be required.

The North/South Ministerial Council and indeed the British-Irish Council could have roles to play in ensuring that whatever arrangements are agreed to are fully implemented in all relevant jurisdictions.

Indemnity

It might be necessary to have an additional Treaty with the EU/Republic of Ireland. A new cross-border body will require an amendment to the existing 1999 Treaty setting up the current six bodies. Involvement of the EU in such a Treaty might be appropriate to give it confidence that arrangements were going to be honoured in a legal context.

**The UK could undertake to indemnify the EU/Ireland if it was found that UK territory had been used to export non-compliant goods to the EU via the land border on the island of Ireland.** This would ensure that the Republic of Ireland would not have to erect any land border and that should the other measures fail to deter an exporter or lead to the contamination of the EU market, the UK would be responsible for prosecuting the individuals/companies concerned and liable for the removal of the non-compliant goods from the EU market.

**The Ulster Unionist Party has pointed out the fact that there exists the Common Travel Area for persons, and we aspire to a Common area for goods,** but understand that as the ROI is in the single market and the UK out of it, confidence must be maintained in the protection of the single market's standards/regulations.

US Example.

One other example for consideration is the model used by the US on Irish soil to pre-clear persons travelling from Ireland to US destinations. In the event that the above mentioned proposal was not felt to be adequate, **a Treaty could establish a similar mechanism at GB ports that receive goods from the ROI. EU officials could perform similar functions on UK soil that US officials do on Irish soil.** At a stroke this would eliminate any necessity for any physical checks at the UK/EU land border on the island of Ireland. The percentage of vehicles checked in Europe is normally just over 1%.

**However one looks at it, the current Backstop proposal is a sledgehammer to crack a nut.** The Ulster Unionist Party believes that the Belfast/Good Friday Agreement is breached by the EU WA in several respects; the principle of consent is breached because the status of Northern Ireland is changed: we would be receiving regulations over which neither we, nor the UK as a whole, would have any control or input and the North South functions currently agreed will be usurped in part by the Backstop.

**We simply cannot believe that the current chaos and economic uncertainty can be tolerated on the basis that the Backstop proposal is the only way ahead.**

Our ideas are put forward in good faith and with the intent of seeing the outcome of the Referendum of 2016 respected and a suitable deal being done with the EU before the UK leaves. These are our two key objectives. We also acknowledge that for some people in both parts of Ireland, economics are not the only concerning aspect of our decision to leave the EU. Sadly, there has been little opportunity for many in Northern Ireland to have any meaningful input into the negotiating process so far and the absence of a functioning Assembly has made matters worse.

We believe that with good will and a degree of flexibility, a positive outcome for us all is achievable. The EU showed flexibility as well as generosity when it pioneered the special Peace programme for Northern Ireland. We know special measures are possible. Now it is our job to make them happen.