

The prospects for the post-Brexit Irish border

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Outline

- ▶ Still great uncertainty
 - ▶ Potential for 'no deal' at two stages

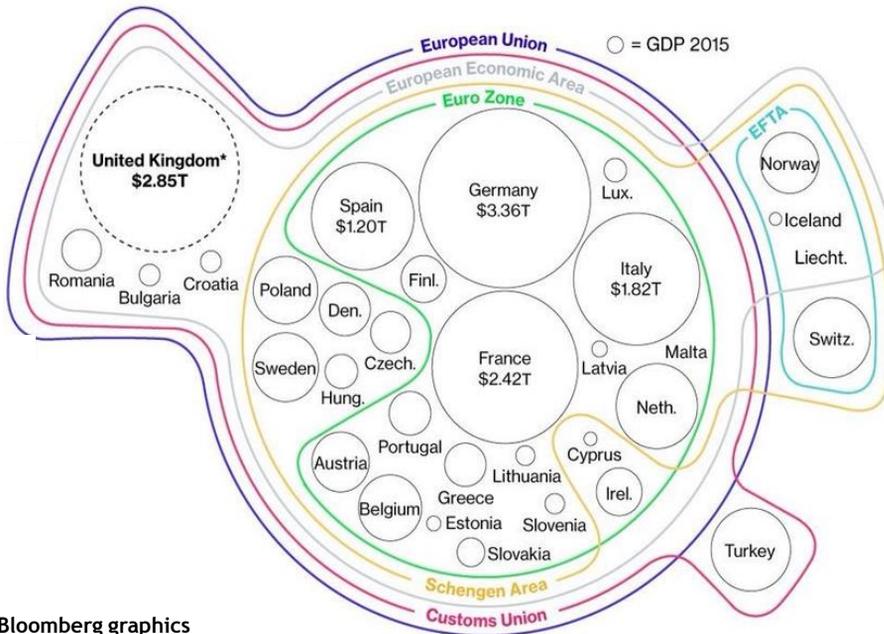
- ▶ Movement of British and Irish citizens most certain
 - ▶ But still limited, areas to be decided

- ▶ Three possible outcomes
 - ▶ No deal
 - ▶ Backstop option
 - ▶ Specific solutions

Current negotiations



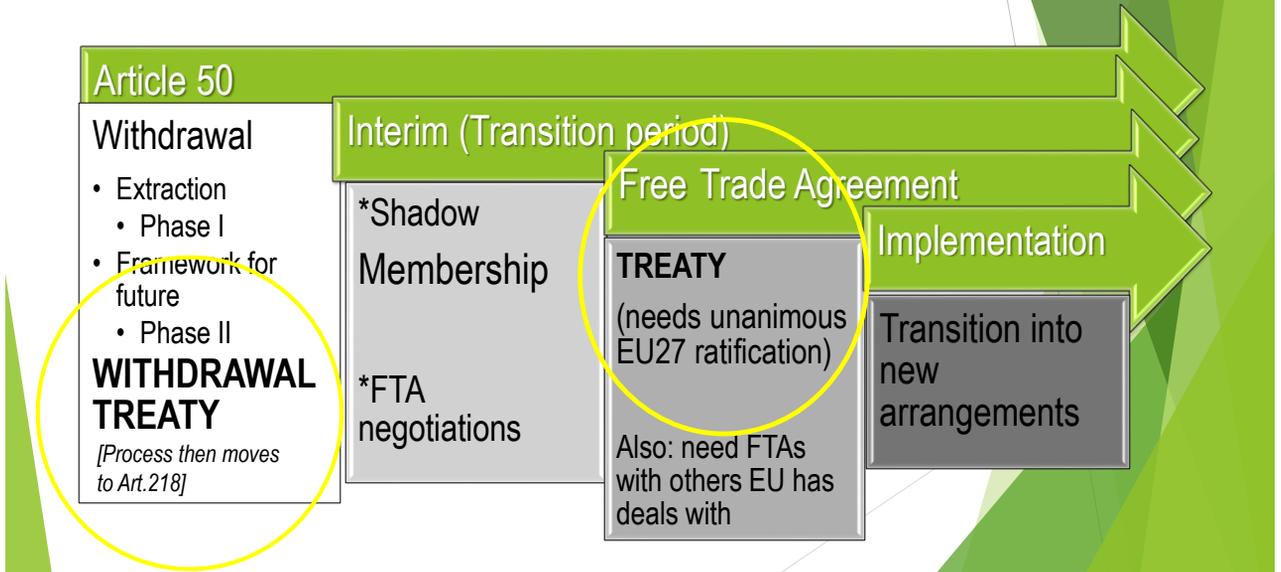
Why Brexit Means Borders



From IN with opt-outs, To OUT with opt-ins...?

Bloomberg graphics

Two risks of a 'no deal'



Moving from Phase 1 to Phase 2

► Joint Report commitments, 8 December 2017:

43. The United Kingdom's withdrawal from the European Union presents a significant and unique challenge in relation to the island of Ireland. The United Kingdom recalls its commitment to protecting the operation of the 1998 Agreement, including its subsequent implementation agreements and arrangements, and to the effective operation of each of the institutions and bodies established under them. The United Kingdom also recalls its commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls.

► Scenarios:

1. UK/EU FTA that enables avoids a hard border
2. 'Specific solutions' for NI
3. 'Full alignment' with SM and CU rules

► What we have so far...



Protocol on NI/Ireland in Draft Withdrawal Agreement

With respect to the **DRAFT PROTOCOL ON IRELAND/NORTHERN IRELAND**, the negotiators agree that a legally operative version of the "backstop" solution for the border between Northern Ireland and Ireland, in line with paragraph 49 of the Joint Report, should be agreed as part of the legal text of the Withdrawal Agreement, to apply unless and until another solution is found.

The negotiators have reached agreement on some elements of the draft Protocol. They further agree that the full set of issues related to avoiding a hard border covered in the draft reflect those that need to be addressed in any solution. There is as yet no agreement on the right operational approach, but the negotiators agree to engage urgently in the process of examination of all relevant matters announced on 14 March and now under way.

The Protocol on IRL/NI

What is agreed

- ▶ Common Travel Area
- ▶ This Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism...
- ▶ A Specialised Committee on N/S, to report to Joint Committee (of UK/EU reps, Art. 157)
- ▶ Protocol would cease to apply if a subsequent agreement addresses the unique circumstances of the island of Ireland, etc.



The Protocol on IRL/NI

What is still being negotiated

- ▶ What is agreed in terms of objective only
 - ▶ The preamble (inc Irish citizens' EU citizenship)
 - ▶ Rights of individuals (inc rights, safeguards, equality of opportunity)
 - ▶ State aid (in respect of NI)
 - ▶ Single Electricity Market
- ▶ Everything else is not agreed in either text or principle
 - ▶ Inc. common regulatory area, free movement of goods, environment

Common Travel Area



What difference does the CTA make?

- **Border checks not usual**
 - Point of contact controls increasing
- **Entry, residency**
 - No restrictions on residency, no need for permission to enter (from UK/IRL)
 - No condition of economic activity
- **'Home advantage'**
 - Residency on either side of the border counts as habitual residency
 - Hence transferability of pensions, social security entitlements
- **Reciprocal rights IRL/UK**
 - Based on equal treatment of each other's citizens
 - Hence right to work, access to social housing, non-contributory benefits etc.
- **Bilateral agreements,**
 - e.g. recognition of professional qualifications

What the CTA does not cover

- *"A close look at current British laws shows a patchwork that may fall apart under post-Brexit political and practical pressures."* (Simon Cox, Doughty Street Chambers)
- **'Non-individuals'**
 - E.g. freedom of establishment and movement of services not covered
- **Non-Irish and UK nationals**
 - E.g. future EU frontier workers
- **Enduring 'special status' for Irish citizens in GB**
 - Unless codified in detail, e.g. an amendment to the 1971 Immigration Act.
 - Future immigration regime of the UK could introduce conditions to access
 - Recognition of contributions to pensions, etc. made outside the CTA

Possible outcomes



No deal (i.e. no withdrawal agreement)

- ▶ Cliff Edge
- ▶ Hard Irish border

- ▶ Remember: two sides: paperwork for both entry and exit of the territory
 - ▶ WTO rules apply
 - ▶ Goods have to be declared crossing border
 - ▶ All subject to tariffs
 - ▶ VAT has to be paid at point of entry

- ▶ No agreement on CTA, on rights, on 1998 Agreement operation, etc.



Backstop

(i.e. withdrawal agreement but no trade deal)

- ▶ NI in EU customs territory and part of Single Market for goods
- ▶ Harder Irish border
 - ▶ For movement of services
 - ▶ For EU citizens to NI, British citizens to ROI
- ▶ Harder Irish sea
 - ▶ GB is a third country
 - ▶ GB cannot treat NI as special, but same as rest of EU
 - ▶ Regulatory divergence between NI and GB in some areas

‘Specific solutions’ for NI

E.g. in final trade deal

- ▶ Harder Irish border
 - ▶ Will not be entirely frictionless as NI will be part of a third country, on a different trajectory.
 - ▶ Regulatory divergence in certain areas will have an effect
- ▶ Some GB/NI divergence
 - ▶ Much depends on whether UK in a Customs Union with EU or not
 - ▶ Much depends on scope of the UK-EU FTA
 - ▶ Need devolution working properly to manage this effectively
- ▶ The more comprehensive and close the FTA, the better for NI/IRL

Reason to be hopeful?

Even with the UK's current red lines, our intention is to reach an ambitious and wide-ranging free trade agreement with:

- Zero tariffs and no quantitative restrictions on goods;
- Customs cooperation to facilitate goods crossing the border;
- Rules to limit technical barriers to trade and protect food safety [sanitary and phytosanitary measures];
- A framework for voluntary regulatory cooperation to encourage convergence of rules;
- An open market for services, where companies from the other party have the right of establishment and market access to provide services under host state rules – I repeat, under host state rules;
- Access to public procurement markets, investments and protection of intellectual property rights.

This comprehensive offer already reflects our high level of ambition for an FTA with the UK.

► Barnier, 22 April:

- notes these are *political* as well as social & economic questions.
- The answers given by the UK to these Qs will be key to ratification of any future deal (by national & European parliaments).

To be continued..?

