



Jean Monnet Centre of Excellence – Tensions at the Fringes of the EU Stream 3: Variegated Geometry, Differentiated Integration and Transnational Governance

**Northern Ireland at the Edge:
What next after “BREXIT”?**

15 September 2016, Queen’s University Belfast, 13:50 – 17:0, Moot Court Room

(Summary report)



This seminar was jointly organised between the Jean Monnet Centre of Excellence (TREUP) and the Royal Irish Academy. For TREUP it complemented its stream Variegated Geometry, Differentiated Integration and Transnational Governance, focusing on a particularly current aspect of the EU’s variegating geometry – the leaving of one of its larger Member States. Due to the focus on “Brexit”, the TREUP contribution is co-sponsored by the ESRC funded project “The

UK 40 Years in the Union - Northern Ireland” within the larger project “The UK in a Changing Europe”. For the Royal Irish Academy, the conference was part of its Constitutional Conversations series, co-sponsored by Mayson, Hayes and Curran.

Opening the seminar, Professor John Morison emphasised that there are still no clear answers to the many questions surrounding the ‘Brexit’ process or future UK/EU relation, as well as to the questions associated to the status of UK’s constituent parts. The UK can learn from the experiences of other states outside the EU in order to find a solution (ideally) which accommodates the different preferences of the UK’s constituent parts in relation to the European Union. Unlike England and Wales, where most voters favoured leaving the EU, voters in both Scotland and Northern Ireland expressed a strong preference for remaining in the European Union. This poses the question whether Scotland and / or Northern Ireland can achieve a special status or indeed remain within the EU – one of the key points of the seminar. For Northern Ireland, the UK’s future relationship with Ireland is equally important, in particular concerning the potential of an EU external border crossing the island of Ireland and the future of the Common Travel Area.





In his introduction, Professor David Phinnemore, reminded everyone of the key question: what follows next? As emphasised by David, there is no clarity as to what happens next which creates confusion. Number of things happen because of geography. After the Brexit there might be a border with the EU (Ireland) and this raises a question as to the Good Friday agreement and its further enforcement. There is an imperative on people in Northern Ireland to both identify issues arising from BREXIT and to come up with solutions. Speakers at the seminar, as noted by Phinnemore, can discuss this from other perspectives. Certainly, nobody can say will happen, but rather what the experiences of other countries are in this respect and what are the alternatives for the UK and its constituent parts.

Professor Dagmar Schiek welcomed the participants also on behalf of the Jean Monnet Centre of Excellence Tension at the Fringes of the European Union Regaining the Union's Purpose short TREUP, stressing how the name alludes to the geographical position of Ireland as an island at the fringes of the EU, and to the fact that problems can sometimes be perceived more clearly (and solutions conceived more easily) from the fringes than from the centre of an entity such as the EU.

Part I: 'Inside, Outside and the possibilities of "special status"'

The first part was chaired by **Professor Dagmar Schiek**. Taking the slogan "Brexit means Brexit" literally, its aim was to imagine alternatives to withdrawing Northern Ireland from the EU alongside England and Wales. The panellists explored options for such an alternative future for Northern Ireland remaining within the EU or at least having a special status which approximates EU membership

Professor Jo Shaw (Salevesen Chair University of Edinburgh) commented on the three notions which the organisers have focused upon in the event announcement: 'inside', 'outside', and 'special status', and placed it into context of the UK, Northern Ireland and Scotland. The 'inside' discussion assumes that the UK knows where it stands while the current UK position is not really clear. What is known is that the country is still a member of both the EU. The 'outside' discussion focuses on what future agreement the UK and the EU will negotiate about. However, it can be assumed that it might be easier to ignore Scotland than the Northern Ireland in the negotiations process. While Scotland can probably decide what it wants in terms of status, the Northern Ireland is more complicated in this respect. The 'special status' discussion focuses on the future status of UK's constituent parts. What is clear is that it would be difficult to fit everyone's interests.



The question of the future borders and relationship with Ireland is a hot topic in Northern Ireland. Indeed, as confirmed by **Trevor Redmond**, the specific question of the open border with Northern



Ireland, as well as the overall issue of the Common Travel Area, is complex and multi-faceted. While it is often noted that the CTA between the UK and Ireland pre-dates the joint entry of the two countries into the EEC in 1973, it is equally true that the CTA is entering a distinctly new phase in which one of its members will be within the EU, albeit not in Schengen, while the other is outside it. The extent to which keeping the border open is clearly an important matter that will require careful examination over the coming months. While some commentators have stressed that its solution is down

to London, Belfast and Dublin, it must be kept in mind that Ireland will discuss as an EU Member State and as such is obliged to fully comply with the EU law, including with the principles of loyal cooperation and solidarity.

Ass. Prof. Dr Ulrik Pram Gad discussed Greenland’s experience with the EU and the possibility to keep Northern Ireland in the EU. The Ulrik’s conclusion was that Greenland’s exit from the EEC in 1985 is generally a poor precedent for Brexit. Both in terms of process, substance, and the size of the problem, although there might be lessons to learn concerning the importance of constitutional pragmatism and willingness on all sides to play games with sovereignty. Activating Article 50 on the basis of Brexit majorities in England and Wales, would involve the risk of Scottish secession, renewed troubles in Northern Ireland, and severe isolation in Gibraltar. Instead, negotiations could aim at a territorial exemption of England and Wales from UK membership. Yet, such a ‘reverse Greenland’ arrangement would leave another, central problem on the table: namely the relationship England and Wales would have with the EU and the single market. The solution to this problem would determine the future character of the borders inside the UK.



This panel triggered a specifically lively discussion from an audience combining civil servants and elected politicians from Northern Ireland and Ireland as well as academics, citizens active in non-governmental organisations, participants from the business community and others identifying themselves as “general public”. A large partition of questions and suggestions referred to the future border regime on the island of Ireland. During the discussion it was clarified that the need to conduct border controls would arise if free movement of persons between a non EU Member State UK and the EU Member State Ireland would be restricted. However, even if free movement of persons would be guaranteed, control of vehicles transporting goods would remain necessary in the absence of a common customs tariff between the UK and Ireland. While the option that Northern Ireland retains EU membership emerged as the best guarantee for a continuation of the current border regime, most discussants were sceptical that this could be realistically achieved. Application of EU free movement rules as well as the customs union to Northern Ireland emerged as the second best option. The last speaker’s suggestion that the EU can be surprisingly pragmatic and flexible gave some parts of the audience hope that this would be achieved, but others were more sceptical. The resolve of the Irish government to work for maintaining as many preconditions of an open border as possible, as well as its degree of preparation, was welcomed. Another aspect discussed was the degree to which separating Northern Ireland, or the UK as a whole, from the EU would make the continued implementation of the Belfast Agreements and its progeny more difficult, if not impossible. Further, the future of business cooperation across Ireland after Northern Ireland left the common customs tariff was discussed. Without a common customs tariff, a product imported into the EU must be of clear origin, making continued trade with products based on north south cooperation complicated.

Part II: ‘Alternatives to EU membership—EEA, EFTA and special arrangements’

The second part of the discussion, chaired by **Professor Dagmar Schiek**, discussed the alternatives to EU membership, focusing on the experiences of Switzerland and Liechtenstein (Dr Ulf Sverdrup, Director of the Norwegian Institute of International Affairs, had to cancel his participation on short notice due to illness.) All three of these states have in common their membership in the European Free Trade Association (EFTA), while Liechtenstein and Norway are two out of three EFTA members of the European Economic Area (EEA). While the “Swiss option” and the “Norwegian option” are widely discussed, Liechtenstein is mentioned less frequently. Yet, the microstate is the only one which has made longstanding use of the exception from free movement of persons under a specific emergency break rule contained in the EEA agreement. This has triggered some interest in the small state.



Professor Sieglinde Gstöhl (Professor & Director of Studies College of Europe, Bruges) gave an



Professor Sieglinde
Gstöhl

considered whether Liechtenstein can serve as a model for the UK future relationship with the EU. As noted by Sieglinde, the special solution for free movement of persons achieved by Liechtenstein is closely linked to its tiny territory (160 km²) and high percentage (up to 30 %) of foreigners in its resident population of only 37.000 persons. This arrangement is not likely to constitute a model for the UK or for other countries with larger populations. Microstates such as Liechtenstein are more easily comparable with other microstates, such as Andorra, San Marino and Monaco. These have achieved specific conditions in their interrelation with the EU Internal Market as well. This is in line with the declaration on Article 8 TEU, introduced by the Lisbon

Treaty, in which the EU promises to 'take into account the particular situation of small-sized countries which maintain specific relations of proximity with it'.

Prof. Christine Kaddous (University of Geneva ADD FULL TITLES) presented the "Swiss model" with a specific focus on free movement of persons. Christine emphasised that if the UK is thinking of participating in the internal market without fully subscribing to free movement of persons, it may find itself in the same kind of situation as Switzerland. Since the country voted in 2014 for a strict limit on immigration from the EU, the EU has insisted that there are clear limits not to be crossed in the search of a mutually accepted solution. The principle of non-discrimination is sacrosanct (and not under discussion in Switzerland), and any limitations on the right to exercise an economic activity and reside on the territory of other party can only be temporary, if accepted at all. Unilateral decisions of the country in contradiction to these limitations and EU basic principles might jeopardise the bilateral relations between the UK and the EU. Christine also highlighted the long and winding road for arriving at the patchwork solution for a relationship with the EU, and stressed that the EU institutions now insist on an overhaul of this complex construction.



Professor Christine
Kaddous

The discussion of this panel was more subdued, in recognition of the complexity of negotiating a future trade relationship with the EU. It was stressed that the UK will not automatically remain a member of the EEA after leaving the EU. Although the EEA agreement does not contain an explicit clause on withdrawal, membership in the EEA is clearly linked to membership either in the EU or the EFTA (Article 128 EEA Agreement). Accordingly, the fact that there was no referendum on EEA membership would not have any impact on the UK's position in this regard. Members of the audience were curious to learn how much diplomatic expertise and effort was needed to achieve a tailor-made solution, and there was some doubt as to whether what was possible for relatively small countries would also be achievable for the relatively large UK.



Rory Montgomery, Second
Secretary General,
Department of the Taoiseach

The **Concluding Session**, led by Rory Montgomery, took an optimistic tone: while it has to be acknowledged that the UK's withdrawal from the EU harbours uncertainty and related dangers, especially due to the paucity of information from the UK government, it was submitted that past experiences of small countries such as Liechtenstein indicated that flexibility for small territories has in the past been demonstrated by the EU and its predecessors. Since Northern Ireland's circumstances are now better understood due to the advocacy of academics, politicians and diplomats both before and after the referendum, there is also hope that they might be considered. The administrations in Belfast, Dublin and

London are committed to working together in order to preserve the integrity of the CTA, and this will be a discussion point at the North-South Ministerial Council and similar fora. However, it was also discussed that maintaining some degree of free movement of persons was insufficient to maintain the degree of socio-economic interaction that has been the backbone of the incremental peace-process taking shape since the conclusion of the Belfast agreement. The enormity of the task of maintaining that process should there be no special status for Northern Ireland became apparent during the debates of the day.