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## **Brexit and the Irish Border: Shifting border regimes**

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# BREXIT & THE IRISH BORDER

## *SHIFTING BORDER REGIMES*

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with Milena Komarova  
Queen's University Belfast

UK in a Changing Europe  
EUI, 4 November 2016

## Deep division

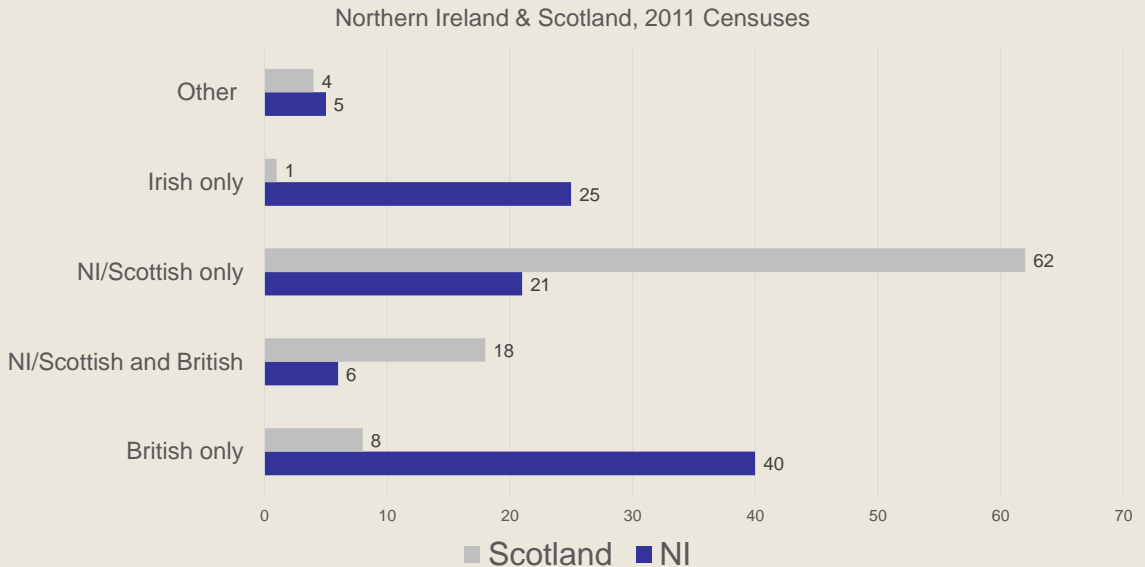
### ■ Division in NI Executive

- SF and DUP do not agree on the validity of the Referendum results.
- The only common position publically expressed so far is the letter to May.
  - Different priorities to GB

### ■ Unionist DUP position

- [No distinction among parts of the UK](#)
  - The 'proper' engagement should take place with UK ministers
- No hardening of Irish border
- No impact on peace process
- No interference from Irish government; representation through British government
  - No participation on the all-island 'dialogue'
  - Some have called on Ireland to consider leaving the EU itself

## Why 'special status' is rejected by unionists



## Deep division

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### ■ Nationalist Sinn Féin

- Membership of the EU is fundamental to the peace process: "One should not go about unilaterally rewriting a peace agreement"
- Lack of trust in the British government representing the best interests of all in the North
- Seat for Irish representative at Brexit negotiating table is pre-emptive effort of EU to offer reassurance to nationalists in this regard.
  - (Legacy of 1984 EP Haagerup Report)

### ■ Opposition

- *New and somewhat tenuous formation*
- Parties now splitting along orange/green lines
- Centrist Alliance: gains from having friends in Europe battling in our corner Unionist UUP: tied by electoral split
- Nationalist SDLP: driver in McCord court case, actively emphasizing 'Remain'
- Greens: small but vocal

## 'Constitutional moment' of Brexit

*As seen from the Irish border*

- [Other than the re-emergence of the constitutional question]
- Where does the 'hard border' lie?
  - *What form will it take?*
- Internal UK relations/cohesion
  - *Undifferentiated goal does not mean an even outcome*
- Peace Process
  - *1998 Agreement in EU context*
- Fundamental division within NI
  - *System unable to adequately represent a cross-community majority*
- Irish citizens in UK
  - *All\* born in NI are eligible.*

# BORDER REGIMES

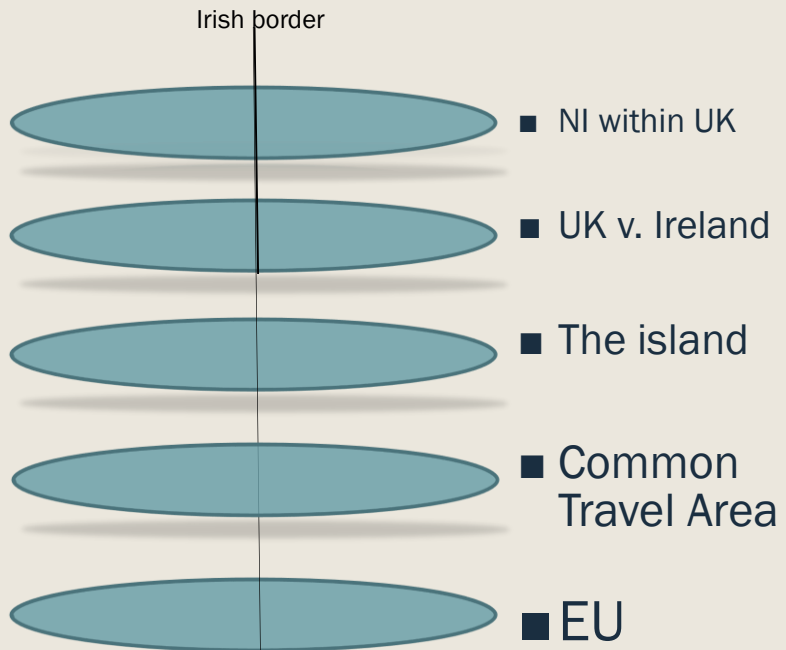
## Border regimes

\* “a system of control, regulating behaviour at the borders” and within them (Berg and Ehin, 2006: 54)

\* Hierarchies

- Governance
  - *Laws, jurisdiction*
  - *Institutions*
- Citizenship
  - *Rights (duties)*
  - *Inclusion/exclusion*
- Flows
  - *‘Four Freedoms’*
  - *Information*
  - *Interaction*
- Security
  - *Maintenance*
  - *Threat/challenge*

## Layers of Border Regimes



## Border regimes: implications for the Irish border

	Governance	Flows	Citizenship	Security
<b>EU</b>	Aquis communautaire; ECHR; EU institutions	Four freedoms of movement	Common citizenship rights outside state territory but based on MS nationality	Information sharing

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<b>The island of Ireland</b>	N/S institutions, implementation bodies; Border region bodies	Unfettered; different taxes and duties	1/5 residents in NI are Irish citizens; NI is 3% UK population and 28% island population	Cooperation not dependent on EU; could be closer, partitionist

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NI within UK	Devolution	Additional cost of air/sea transport; plans for different tax regime	Special status of NI being able to choose either (i.e. <b>not British</b> ) or both nationalities	Border monitored via information sharing; No passports needed

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## Assuming 'hard' Brexit...

Which points may yield and which may fracture?

### Yield

- Crime/ security
- British/ Irish
- EU programmes

### Tenuous

- Agri-food sector
- Fisheries
- Labour markets

### Fracture

- Energy
- North/South institutions
- Local authority cooperation

FREEDOM OF  
MOVEMENT

## Freedom of movement: Means of maintaining flows even with a hard Brexit

Privileges currently enjoyed – issues for Irish border post-Brexit:

1. Citizenship
2. Visa-free
3. Passport-free
4. Work
5. Hard border but soft monitoring

The EU border regime is characterised by exceptions, often dependent on relations between states and their neighbours

## 1. Citizenship

### Moldovans and EU citizenship

- Many EU member states have granted citizenship to persons residing permanently abroad if descendants of emigrants or persons with close cultural affinity
- E.g. Former citizens and descendants of Romanians living in Moldova and Ukraine are eligible for Romanian citizenship (and thereby EU citizenship)
- Non-resident Romanian citizenship was suspended during negotiations for EU accession but has been reintroduced
- Despite fears of other EU states, no overwhelming tide. A national issue.

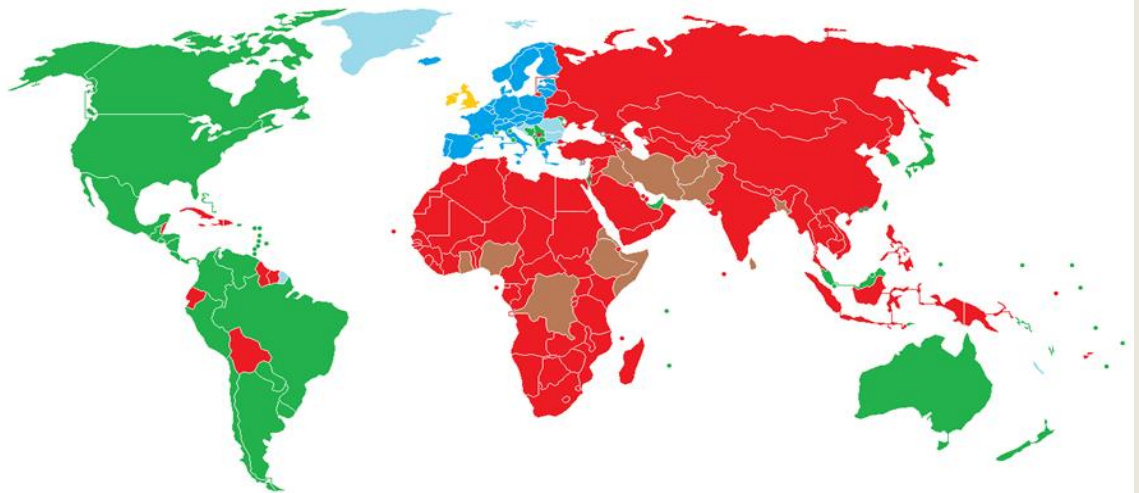
### Irish border case

- Issue: Retention of EU citizenship rights for (future) Irish citizens in NI
  - Potential obstacles to N/S movement if CTA undermined by Brexit
- Freedom of movement and privileges retained
- Decision is up to the Irish state rather than the EU – and up to individual residents in NI
- BUT introduces new differentiation between citizens in NI/on island

## 2. Visa-free travel

### EEA and Schengen

- Many countries have visa-free access to Schengen
- Permanent residency depends on the state



- Schengen member states
- Other EU members outside Schengen Area but bound by same visa policy and special territories of the EU and Schengen member states
- Members of the EU with an independent visa policy
- Visa-free access to the Schengen states for 90 days in any 180 day period, although some Annex II nationals can enjoy longer visa-free access in some circumstances (EC 539/2001 Annex II)
- Visa required to enter the Schengen states (EC 539/2001 Annex I)
- Visa required for transit via the Schengen states (EC 810/2009 Annex IV)
- Visa status unknown

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### Irish border case

- Issue: will visas be necessary for UK/Ireland movement?
- Common Travel Area means independent visa policy is still possible (Ire and UK distinct as is)
- UK needs to make a decision about visa-free travel for EU citizens. If not possible, where will checks take place?
  - *Can be automated for those coming in from outside the island (e.g. PNR)*
  - *On island, depends on status of CTA*
- BUT what status of CTA be post-Brexit?
  - *Is Ireland going to remain outside Schengen?*

## 3. Passport-free travel

### Nordic passport union

- Can have freedom of movement without ID checks between EU and non-EU states
- Pre-dated EU membership
- Members except Faroe Islands signed up to Schengen acquis
- Harder rules apply for movement from Faroe into Schengen than other way around
- Reimposition of some checkpoints and requirements in response to terrorist threats

### Irish border case

- Issue: will there need to be ID checks on the Irish border?
- Differential experience at the moment currently depends on airline carriers
- On the ground checks are less important than the pre-screening that happens
  - *Much less possible on land border*
- Reasonable risk assessment from EU as to likelihood of NI as a backdoor into the EU...
- Again, critical player here is the UK – will it want to harden border with Ireland more generally (not just Irish border) as EU frontier?
- Faroes shows it is possible to have checks on flows in one direction

## 4. Local regime

### Local Border Traffic Regime

- For residents/workers within 30km each side of the border
- Special permits and mobility
- Bilateral arrangement for EU/Non-EU countries
- Must have Commission approval of the terms
- Entry/Exit checks should still be performed
- May have exceptional border crossings, outside hours and crossing points
- E.g. Small Border Traffic zone Poland/Russia

### Irish border case

- Issue: what about cross-border workers?
- If border itself is hardened, local border traffic regime is possible
  - Crossing the border would be eased for pre-registered residents on both sides
- Arrangements are bilateral
- Could extend beyond 30km radius
- BUT need agreement with EU
  - Doesn't relieve hard border for most

## 5. 'Light touch' hard border

### Automated Border Controls

- Two settings:
  - Closed, e.g. airport, prior information
  - Open, e.g. unpredictable flows
- Technologies
  - Biometrics (e.g. facial recognition, fingerprints [Eurodac])
  - RFID (tags)
  - Intelligent Video Analytics
    - Verification of number plates
  - Breach detection
- E.g. Sweden/Denmark and Denmark/Germany
  - Use of Photo ID and smartphones by police inc. in train stations

### Irish border case

- Issue: how to monitor a 450km land border?
- Much talk of electronic border controls as easy solution for checks
- Q. Is this for monitoring of movement or prevention of entry?
- If these are to work effectively, need pre-registration of persons/vehicles
- BUT Not likely to put off or prevent cross-border crime or illegal migration
- Already problems in cross-border police cooperation and communication
- Willingness of people to divulge more personal information?

## Conclusions

- Experience of the EU external border regime shows that there is flexibility and adaptability
  - *Depends on negotiating relations between the two states concerned*
- Remember that the trend on the external border is towards hardening borders and restricting freedom of movement
  - *This is a particularly bad time for the UK to decide it wants to be on the outside of that border*
- With every 'solution' to a problem for Northern Ireland there are implications for the Republic of Ireland and for the rest of the UK