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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Good Friday Agreement and Peace Process
Information Note from Ireland to the Article 50 Working Party

Delegations will find in the ANNEX the Irish information note on "Good Friday Agreement and Peace Process".

Good Friday Agreement and Peace Process

Information Note from Ireland to the Article 50 Working Party

Introduction

1. The Good Friday Agreement (GFA) is the overarching framework for deepening peace, political stability and reconciliation in Northern Ireland and on the island of Ireland. It is the foundation of the Peace Process and was resoundingly endorsed by referendum on both parts of the island of Ireland in 1998.
2. The GFA is an agreement concluded between the political parties in Northern Ireland and the Governments of Ireland and the UK in which it was agreed to establish: a power-sharing Executive and a legislative Assembly in Northern Ireland; the North/South Ministerial Council and six North/South Implementation Bodies with cross-border executive functions; the British-Irish Council and the British-Irish Intergovernmental Conference, and to uphold high standards of civil, economic and social rights in Northern Ireland. The GFA is in turn annexed to a treaty between the two Governments ('the British-Irish Agreement'¹) under the terms of which they undertake to support and implement the GFA.
3. An outline of the GFA including the remit and functions of the GFA institutions is at Annex I.
4. The Peace Process has been successful over the last two decades in moving definitively beyond the violence of the Troubles. However, it is necessarily an ongoing process, requiring the continued active oversight and involvement of the two Governments as co-guarantors and benefitting from the support and facilitation of the European Union.

¹ Registered with the United Nations - UN Treaty Series No. I-36776.

Since the conclusion of the Good Friday Agreement in 1998, it has been necessary to pursue a series of successive further political and legal agreements to consolidate the peace settlement provided for in the GFA and to address crises of political confidence in Northern Ireland.²

5. Addressing the difficult legacy of the past, achieving reconciliation and overcoming deep-rooted sectarianism in Northern Ireland remain as ongoing challenges at the core of the Peace Process.

Role of the EU

6. The negotiation and implementation of the GFA has been considerably facilitated by both Ireland and the UK being Member States of the EU and the Peace Process has benefitted from consistent strong support by EU partners and EU Institutions.
7. EU membership by Ireland and the UK has supported the realisation of the objectives and commitments set out in the GFA and the wider gains of the peace.
8. The gains of the peace include the considerable normalisation of relationships between communities in Northern Ireland and between North and South on the island of Ireland. People's daily lives in Northern Ireland have been transformed and they now live without the constant threat of violence and the discriminatory practices of the past have been eliminated. There is an invisible border on the island of Ireland and all-island cooperation under the GFA extends across a broad range of sectors, supporting the further development of the all-island economy and civic space, including in border regions.
9. The Union has provided significant financial support to the Peace Process under the PEACE and INTERREG programmes. Ireland and the UK are currently partners in three EU-funded cross-border Cooperation Programmes with a total value of €650 million over the period 2014-2020. The programmes are important drivers of regional development in a cross-border context and allow for practical support of the Peace Process and the advancement of the Good Friday Agreement.

² At the time of publication, continuing political disagreements in Northern Ireland have meant that the devolved power-sharing Executive has not yet been formed following Assembly elections in March 2017. The two Governments as co-guarantors of the Good Friday Agreement are engaged to support the political parties in agreeing a basis for the formation of a new Executive.

10. EU involvement has allowed for the realisation of projects that may otherwise have become mired in political disagreement. Removal of this constructive influence and of the funding itself would have a significant impact on the ongoing reconciliation work in Northern Ireland and the border region.
11. The common EU legal framework, including non-discrimination and other rights set down in EU law, economic development within the European Union, and the wider European political, civic, economic and social perspective that EU citizens enjoy, have also facilitated societal normalisation in Northern Ireland through the Peace Process.
12. The GFA does not expressly require either Ireland or the UK to retain membership of the EU, but the Agreement clearly assumes continuing membership of the Union by both countries. For example, the preamble of the British-Irish Agreement recalls the wish of the two Governments to “develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union.” The GFA also provides that one of the tasks of the North/South Ministerial Council is to “consider the European Union dimension of relevant matters” and to make arrangements “to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings.” There are also EU-related functions for a number of the North/South implementation bodies under the GFA.

North/South cooperation

13. North/South cooperation between Ireland and Northern Ireland is a central part of the GFA.
14. Under the Agreement, the North/South Ministerial Council (NSMC) was established to develop consultation, cooperation and action on matters of mutual interest within the competence of the administrations, North and South, on an all-island and cross-border basis. The NSMC brings together the Irish Government and the Northern Ireland Executive, and meets in a number of Sectoral formats at Ministerial level and in Plenary format, which represents a full meeting of the two administrations on the island.

15. The Agreement expressly recognises “that the North/South Ministerial Council and Northern Ireland Assembly are mutually inter-dependent and that one cannot successfully function without the other.”
16. The UK’s withdrawal from the EU presents a major challenge to North/South Cooperation because much of this cooperation is embedded in the common framework of EU law and EU policies that applies across the island of Ireland at present.
17. Further information on the operation of North/South Cooperation and examples of the reliance of this cooperation on EU law and EU policies are at Annex II

Rights

18. The human rights and equality provisions of the GFA provide confidence for both communities in Northern Ireland in the political institutions of the Agreement and other public authorities. The GFA human rights and equality provisions are outlined in Annex II.
19. EU law provides a supporting framework of rights that underpin the equality provisions of the GFA. A range of significant rights and equality protections are in fact established through EU regulations and directives such as in the area of employment law and non-discrimination, as well as being enshrined in the EU Charter of Fundamental Rights.
20. In this context, a key concern is a future divergence of rights North and South as a consequence of Brexit, which could effectively create barriers on the island and impede the requirement under the GFA for equivalent standards of protection of rights in Ireland and Northern Ireland.

Citizenship

21. The Agreement recognises “the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British or both, as they may so choose and accordingly confirm[s] 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.”
22. This citizenship provision of the Good Friday Agreement is central in addressing the identity conflict that is at the root of the Troubles and the continuing divisions in Northern Ireland.

23. The GFA citizenship provision applies to approximately 1.8 million people born in Northern Ireland. Those born in Northern Ireland who currently hold, or in the future choose to exercise their entitlement to, Irish citizenship under the GFA are therefore also EU citizens.
24. The UK's withdrawal from the Union will alter the geographical scope within which Irish citizens in Northern Ireland can exercise and enjoy their EU citizenship and associated rights. The exercise by Irish citizens in Northern Ireland of these EU rights are an important component of the citizenship provision of the GFA.

Border

25. As the most obvious symbol of the Peace Process, the invisible border on the island of Ireland is essential to the continuing normalisation of relationships.
26. Prior to the Good Friday Agreement, security checkpoints on the border, and accompanying military installations, which had been built and reinforced from the 1970s onwards, were potent symbols of division and conflict in Northern Ireland and were frequent targets for attack. The disappearance of physical border crossings and checkpoints is both a symbol of and a dividend from the success of the Peace Process. People's daily lives in Northern Ireland and in the border region have been transformed. Any reversal of this transformation would have considerable adverse economic, social, political, security and psychological impacts on people both in border communities and on the island as a whole.

Annex I: Outline of the Good Friday Agreement

Declaration of Support

The Good Friday Agreement (GFA) commences with a Declaration of Support by the signatories. The declaration includes a commitment “to partnership, equality and mutual respect” and to “strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed institutions.”

The Declaration also “accepted that all of the institutions and constitutional arrangements are interlocking and interdependent and that in particular the functioning of the Assembly and the North/South Council are so closely inter-related that the success of each depends on that of the other.”

Constitutional issues

The GFA recognises the “legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status”.

The GFA acknowledges the legitimacy of the two constitutional aspirations in Northern Ireland and the “present wish of a majority of people of Northern Ireland” to remain part of the UK.

The GFA provides for the possibility of a change in the constitutional status of Northern Ireland, should a majority in the future, North and South, decide through a referendum to opt for a united Ireland.³

In the context of the comprehensive political agreement under the GFA, the Irish Government committed to proposing and supporting an amendment to the Constitution of Ireland, and the British Government committed to proposing and supporting incorporations in British legislation, to provide the necessary legal frameworks for the constitutional status provisions in the GFA. These Constitutional and legislative changes were made, following the approval by referendum of the GFA, North and South.

³ In such circumstances, in accordance with international law, the EU treaties would apply to all of Ireland as then unified. This existing legal and political position was recognised in the Statement by the European Council of 29 April 2017

Citizenship

The GFA recognises “the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British or both, as they may so choose and accordingly confirm[s] 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.”

This provision applies to approximately 1.8 million people born in Northern Ireland. Following the UK’s departure from the EU those born in Northern Ireland who exercise their entitlement to Irish citizenship under the GFA will continue to enjoy rights as EU citizens.

Strand One: Northern Ireland

Legislative Assembly:

The GFA provides for a “democratically elected Assembly in Northern Ireland which is inclusive in its membership... and subject to safeguards to protect the rights and interests of all sides of the community.”

The Assembly has “authority to pass primary legislation for Northern Ireland in devolved areas”, subject to certain requirements, including adherence to the European Convention on Human Rights.

The GFA provides that terms be agreed “between appropriate Assembly representatives and the Government of the United Kingdom to ensure effective co-ordination and input by Ministers to national policy-making, including on EU issues.”

Power-sharing Executive:

The GFA provides for Executive authority to be discharged on behalf of the Assembly by a First and deputy First Minister and up to ten Ministers with Departmental responsibilities.

The First and deputy First Minister are “jointly elected into office by the Assembly voting on a cross-community basis”. Other Ministerial posts in the Executive are “allocated to parties on the basis of the d’Hondt system by reference to the number of seats each party has in the Assembly.”⁴

⁴ These provisions establish a power-sharing executive which is jointly led by and comprised of representatives from both communities in Northern Ireland.

The duties of the office of First and deputy First Minister include “coordinating the work of the Executive” and “the response of the Northern Ireland administration to external relationships.”

Strand Two: North/South

North/South Ministerial Council:

The GFA provides for a North/South Ministerial Council (NSMC) to bring together the Northern Ireland Executive and the Irish Government “to develop consultation, co-operation and action within the island of Ireland - including through implementation on an all-island and cross-border basis - on matters of mutual interest within the competence of the Administrations, North and South.”

Under the GFA, “It is understood that the North/South Ministerial Council and Northern Ireland Assembly are mutually inter-dependent and that one cannot successfully function without the other.”

It is also provided that the NSMC “consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings.”

The GFA provided that at least 12 areas would be identified for Co-operation / Implementation for mutual benefit under the aegis of the NSMC.

There are six Areas of Cooperation currently under the NSMC: Education; Agriculture; Environment; Health; Transport and Tourism⁵. In each of the six areas of co-operation common policies and approaches are agreed in the NSMC and implemented separately in each jurisdiction.

⁵ Although not an Implementation Body, Tourism Ireland operates under the auspices of the North/South Ministerial Council and promotes the island of Ireland overseas as a tourist destination.

There are also six North/South Implementation Bodies: Waterways Ireland; Food Safety Promotion Board, Special EU Programmes Body; North/South Language Body; InterTradeIreland; and, the Foyle Carlingford and Irish Lights Commission. Each of the six North/South Implementation Bodies operates on an all-island basis. While having a clear operational remit, the Bodies all carry out their activities under the overall policy direction of the North/South Ministerial Council.

Strand Three: East/West

British-Irish Council:

The GFA provides for a British-Irish Council “to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands.” Membership comprises representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales, together with representatives of the Isle of Man and the Channel Islands.

British-Irish Intergovernmental Conference:

The GFA also provides for a British-Irish Intergovernmental Conference to “promote bilateral cooperation at all levels on all matters of mutual interest within the competence of both Governments.”

The GFA includes “recognition of the Irish Government’s special interest in Northern Ireland and of the extent to which issues of mutual concern arise in relation to Northern Ireland” and provides that there will be “meetings of the Conference concerned with non-devolved Northern Ireland matters, on which the Irish Government may put forward views and proposals.”

Rights, Safeguards and Equality of Opportunity

The human rights provisions of the GFA provide confidence for both communities in Northern Ireland on the basis on which the political institutions of the GFA and other public authorities can act

Under the GFA, the British Government committed and is under a continuing obligation to provide for the “incorporation into Northern Ireland law of the European Convention on Human Rights, with direct access to the courts and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.”

A new Northern Ireland Human Rights Commission and a new Equality Commission for Northern Ireland were also provided for and established pursuant to the GFA.

A Joint Committee of the two Human Rights Commissions, North and South, is provided for in the GFA, “as a forum for consideration of human rights issues on the island of Ireland.” The Joint Committee continues to meet periodically for this purpose.

The Irish Government also has a number of continuing rights obligations under the GFA, including to “ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland”.

There is provision in the GFA for consideration of a Bill of Rights for Northern Ireland “to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and expertise.” There has not yet been sufficient political agreement between the parties to take forward a Bill of Rights for Northern Ireland.

The GFA recognises that “it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation”. Full implementation and realisation of the GFA provisions on Reconciliation and Victims of Violence is still sought, including through establishment of a comprehensive framework of institutions to address legacy issues, which were provided for in the Stormont House Agreement of 2014.

The GFA also includes provisions on Economic, Social and Cultural Issues, including on respect, understanding and tolerance for linguistic diversity in Northern Ireland and specific supports for the Irish language⁶, including on broadcasting through the Irish language in Northern Ireland.

⁶ An Irish Language Act for Northern Ireland was provided for under the St. Andrews Agreement 2006, but has not yet been implemented.

Decommissioning

The GFA reaffirmed a commitment of all parties to the “total disarmament of all paramilitary organisations” which was progressively achieved through the Peace Process by the Independent International Commission on Decommissioning.

Security

The GFA provided for “as early a return as possible to normal security arrangements in Northern Ireland”, including the removal of security installations, which were largely at the border. These provisions have been implemented and contribute to the achievement of the open border on the island of Ireland today.

Membership by Ireland and the UK of the Single Market and the Customs Union has greatly facilitated the implementation of this provision of the Agreement, for instance by removing any question of security support to customs or other inspection posts at the border on the island of Ireland.

Policing and Justice

The GFA acknowledged the need and opportunity for major reforms of Policing and Justice in Northern Ireland. These provisions were progressively achieved, including through subsequent agreements in the Peace Process.

Prisoners

Both Governments agreed to an accelerated programme for the release of qualifying prisoners. The provisions on Prisoners were implemented and important in the early stages of the post-1998 Peace Process.

Validation, Implementation and Review

The GFA provided that validation of the Agreement would be by referenda in Northern Ireland and Ireland.

The Irish Government committed to supporting a related amendment to Articles 2 and 3 of the Constitution, to be approved by the Oireachtas (Parliament) and by referendum.

With approval in the referenda, the GFA provided that legislation as necessary to give effect to the Agreement be introduced by the two Governments.

The GFA provides for reviews by the GFA institutions themselves or, “If difficulties arise the process of review will fall to the two Governments in consultation with the parties in the Assembly”.

British-Irish Agreement 1998

The text of the Good Friday Agreement was included as part of a Treaty between the British and Irish Governments lodged with the United Nations as a binding Agreement under International Law.

Annex II: North/South Cooperation

Under the Agreement, the North/South Ministerial Council (NSMC) was established to develop consultation, cooperation and action on matters of mutual interest within the competence of the administrations, North and South, on an all-island and cross-border basis.

The GFA provided that at least 12 Areas would be identified for Co-operation / Implementation for mutual benefit under the aegis of the NSMC.

There are currently six Areas of Cooperation under the NSMC: Education; Agriculture; Environment; Health; Transport and Tourism. In each of the six Areas of Co-operation, common policies and approaches are agreed in the NSMC and put into effect by relevant Departments and agencies separately in each jurisdiction.

There are also six North/South Implementation Bodies: Waterways Ireland; Food Safety Promotion Board, Special EU Programmes Body; North/South Language Body; InterTradeIreland; and the Foyle Carlingford and Irish Lights Commission. Each of the six North/South Implementation Bodies operates on an all-island basis. While having a clear operational remit, they all carry out their activities under the overall policy direction of the North/South Ministerial Council.

Tourism Ireland is a further and important all-island agency, which promotes Ireland as a destination internationally on an all-island basis. Although not formally an Implementation Body, Tourism Ireland represents a major element of North/South cooperation and the body is overseen by the North/South Ministerial Council.

Examples of North/South Cooperation:

Health

The North/South Ministerial Council on Health makes decisions on common policies and approaches in areas such as accident and emergency planning, co-operation on high technology equipment, cancer research and health promotion. One tangible outcome of health sector cooperation under this rubric is the new Radiotherapy Unit at Altnagelvin Area Hospital in Derry in Northern Ireland which opened on 28 November 2016. When fully operational it will have the capacity to treat just over 1500 new patients, including patients from the north west of Ireland who would otherwise have to travel to Galway for radiotherapy. This is a £66 million sterling capital development project that has been funded on a North/South basis, with €19 million capital funding provided by the Irish Government. Health co-operation has also given access to cross-border and all-island health services, such as GP out-of-hours and paediatric cardiology services, with all children with congenital heart disease from across the island having their emergency surgery carried out in Our Lady's Children's Hospital Crumlin in Dublin.

North/South cooperation on Health is facilitated by the EU harmonised regulatory system which ensures that both jurisdictions are meeting the same standards and provides assurance in terms of patient safety. Examples include a shared data protection regime and the standards for blood products, organs for transplantation, medicines and medical devices. There is also a Memorandum of Understanding in place between Ireland's HSE National Ambulance Services and the Northern Ireland Ambulance Service to allow the interoperability in the event of an emergency.

Environment

The North/South Ministerial Council on Environment makes decisions on common policies and approaches in areas such as environmental protection, pollution, water quality management and waste management in a cross-border context.

An example of the relevance of EU law and EU programmes for North/South Cooperation on Environment is the management of the three International River Basin District (IRBDs) on the island of Ireland, which all cross the border: the North Western, Neagh Bann and Shannon districts. Significant steps have been taken to harmonise the approaches adopted to implementing the EU Water Framework Directive through a high level of coordination between the relevant authorities. Together they form the North South Shared Aquatic Resource (NS Share) Project. This project is supported by the EU INTERREG IIIA Programme for Ireland/Northern Ireland. It was set up to implement the objectives of the EU Water Framework Directive in the region to ensure the protection and improvement of the water and its sustainable use.

Other areas of North/South cooperation:

While not established under the GFA, Justice and Security cooperation on a North/South basis is critical, for the Peace Process and for both jurisdictions on the island more broadly. There is highly effective North/South police and judicial cooperation to address residual paramilitary threats and activities stemming from the legacy of the Troubles. EU membership provides a comprehensive enabling framework for this cooperation, including the European Arrest Warrant system. The UK departure from the EU raises a range of difficult questions for maintaining essential North/South cooperation on Justice and Security matters.

The administrations North and South have also cooperated actively and intensively on energy policy for a number of years, with sustained political commitment to ensuring competition in the energy sectors. The all-island wholesale electricity market or Single Electricity Market (SEM) developed from the all-island energy project of the North/South Ministerial Council. The joint policy decision between the relevant Ministers, North and South, set out the all-island energy project as a project for competitive, sustainable and reliable markets on the island of Ireland to “operate in the context of the EU internal energy market”. The SEM was established in 2007 and has been operational since then. This very practical expression of North/South cooperation in an EU context is essential for Ireland and core to the effective functioning of North South cooperation.

Annex III: ‘Related implementing agreements’ referred to in Negotiating Directives:

Political Agreements:

Good Friday Agreement 1998

Weston Park Agreement 2001

St. Andrew’s Agreement 2006

Hillsborough Agreement 2010

Stormont House Agreement 2014

Fresh Start Agreement 2015

International Agreements:

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent International Commission on Decommissioning, 26 August 1997 (*no longer in force*)

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland, 10 April 1998

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing a British-Irish Council, 8 March 1999

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing a British-Irish Intergovernmental Conference, 8 March 1999

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing Implementation Bodies, 8 March 1999

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing a North/South Ministerial Council, 8 March 1999

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Commission for the Location of Victims' Remains, 27 April 1999

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Monitoring Commission, 25 November 2003 (*no longer in force*).

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland (*annexing the St. Andrews Agreement*), 22 March 2007

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Commission on Information Retrieval, 15 October 2015 (*not yet in force*)

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Reporting Commission, 13 September 2016.

