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THE STATUS OF NORTHERN IRELAND AFTER BREXIT: PROBABLE MODELS

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Abstract. The article highlights one of the main issues related to the UK's withdrawal from the European Union, Northern Ireland's new status, in particular, the status of the border between NI and the Republic of Ireland. It has been an 'apple of discord' from the first stage and during the last stage of the Brexit negotiations. The future 'hard' or 'soft' Irish-British border is not a problem in the negotiations between the United Kingdom and the European Union only, but is also a serious domestic political challenge for Theresa May's government. The article explains possible models of the future status of Northern Ireland. The most probable solutions are: a 'reverse Greenland', a 'reverse Cyprus' and a 'German version'.

Following the Good Friday Agreement of 1998, the EU invested heavily in supporting border communities for the development of small business and industry, which improved the economic situation in the area of the former conflict and facilitated border dialogue. However, it led to the fact that many enterprises were oriented towards the EU market or border trade. The article concludes that the 'reverse Greenland' model would enable Northern Ireland to remain in the single market and customs union apart from the rest of Great Britain, which would prevent the establishment of a tight boundary between both Irelands. The author outlined the possible implications of the 'reverse Cyprus' model, which suggests that the United Kingdom would technically remain a part of the EU, and that the EU's legislation would be suspended only on its separate parts (that is, Wales and England). The researcher emphasizes that the 'German version' could be applied in the case of future reunification of both Irelands, then Northern Ireland would remain a part of the EU until its new status on the referendum have been resolved.

The article summarized that no examples above provide a precise analogy, since Brexit is unprecedented event. The most likely models of the Northern Ireland's future are the 'reverse Greenland' and the 'reverse Cyprus'.

Keywords: Brexit, models, the British-Irish border, border control, custom union, single market.

1. INTRODUCTION

The results of the referendum on Brexit on June 23, 2016, provoked a series of the unprecedented events. England (53.4%) and Wales (52.5%) supported Brexit. Northern Ireland (55.8%) and Scotland (62%), in contrast, voted against Brexit [1]. These results exposed the fault lines between the parts of the United Kingdom once more. Both Scotland and Northern Ireland voted to remain. The several factors

had an impact on it. Brexit is particularly problematic for Northern Ireland, which is closely linked to the Republic of Ireland, and for which it has strong economic and political difficulties.

The United Kingdom seeks to avoid any physical infrastructure on the Irish border, although Northern Ireland will be a member of the EU after Brexit. Britain and Ireland have repeatedly stated their reluctance to establish border control. However, the situation is tricky due to the fact that London intends to leave the customs union. Thus, the problem of the British-Irish border has become a key one at Brexit, especially on its first stage.

The United Kingdom and the EU are required to protect and support the progress of various institutions established under the Trustee Agreement of 1998. For the United Kingdom, it is important that there is no regulatory divergence from the rules of the single market and the customs union that the future North-South cooperation may need. If the Good Friday Agreement was violated, Britain would be forced to pay the high political price for an unsuccessful peace process. Therefore, it is necessary to consider the future situation of Northern Ireland as a part of the United Kingdom and, at the same time, its possible membership in the EU. The purpose of the article is to analyze the future status of Northern Ireland after Brexit.

The problem of relations between Ireland and Northern Ireland during and after Brexit is the object of analyses by Ukrainian researchers, such as Vladislav Kudryk and Serhii Rudko. Some aspects are covered in the world media publications (*BBC News, the Guardian, Independent, Belfast Telegraph, Irish Times*) by Caoilfhionn Gallagher, Elin Hofverberg, Carolyn Quinn, Jennifer Rankin, Denis Staunton, Pat Leahy, Jon Stone, Joe Watts, et al.

2. RESULTS

In January 2017, in the speech on UK's withdrawal Teresa May outlined the key tasks the British government would work on. She talked about a confident and controlled withdrawal from the EU without legal problems but with the maintaining of the Common Travel Area in common with Ireland. The tasks are also an immigration control and ensuring the rights of both the EU citizens in the UK and the British in the EU. May gave special importance to a participation in the single market through a comprehensive free trade agreement, signing the new trade agreements, and continuation of a cooperation with the EU in the field of security [2].

The first stage of the negotiations on the withdrawal of the United Kingdom from the EU lasted from June 19 to December 15, 2017. London hoped to prioritize financial issues, but Brussels wanted to solve other problems firstly. Northern Ireland's issue was a sharp one [3].

Northern Ireland has a specific state situation during and after Brexit. It is the only part of the UK with a land border with an EU-member state with almost no physical infrastructure. A significant integration of cross-border markets and the Common Travel Area for the citizens of the UK and Ireland for a free movement are also the arguments to be proved. Besides, the citizens of Northern Ireland are eligible for having both British and Irish passports. There is a special status of international law in the coverage of the Good Friday Agreement, which is crucial in supporting the peace process.

If the UK left the Customs Union and the single market, the EU would insist on tighter border controls. As a result, the contradictions between supporters and opponents of the idea of a united Ireland could again spill over in Northern Ireland. To save the peace process the technological migration control without the border crossing points could be applied. However, it is difficult to say whether this would not lead to a political crisis or even to the security crisis in Northern Ireland [4].

Even if there were the conclusion of a comprehensive agreement with the EU and the application of Brexit's 'soft plan' for further participation in the single market, the regime for crossing the border between Ireland and the UK would require new solutions as it has long been open due to the presence of both states in the EU [5]. The European Parliament stressed that the circumstances on the Ireland Island are unique and should be considered 'in full compliance with the Good Friday Agreement, aligned with the areas of cooperation and legislation of the European Union to ensure the continuity and stability of the peace process in Northern Ireland' [6].

Based on the examples in the history of the EU, we distinguish three possible models of the future of Northern Ireland after Brexit. They are: a 'reverse Greenland', a 'reverse Cyprus', and a 'German version'.

The 'reverse Greenland' model allows Northern Ireland to remain in the single market and the customs union separately from the rest of Great Britain. This alternative is referred to in paragraph 8 of the European Parliament resolution on October 3 2017 [6].

The case of the Kingdom of Denmark is a good example for Great Britain. It shows how a sovereign state contains territories with different formal and practical status of interaction with the EU. The similar points are in the UK [7].

The scholars offered the 'reverse Greenland' model right after the referendum on June 23, 2016. Its gist is that only the separate parts of Great Britain will leave the EU, not the entire country. This is not a fantastic and an unrealistic possibility. There are currently 25 so-called Overseas Countries and Territories (OCTs) of the EU member states that are not the parts of the Union but are the parts of the member states.

In 1972, Greenland as a part of Denmark joined the European Economic Community. In 1979, the island received more sovereignty and, in 1982, voted for withdrawal from the EEC on the national referendum. In 1985, Greenland left the EEC and received the status of the Overseas Country and Territory.

Thereafter, Greenland and the EEC revised the fishing agreements. The states-members of the EEC got the same access to Greenland's territorial waters as when Greenland was the part of the Community. Greenland got duty-free access to the Community fishing market as a payment. The island also received the EU funding in addition to Denmark's financing [8]. Nowadays the Programming Document for Sustainable Development of Greenland provides granting Greenland estimated EUR 233.6 million for four years. The Fisheries Partnership Agreement concluded between the EU and Greenland covers the period up to 2020 [9].

Since 1923, a single migration zone has existed between Ireland and the United Kingdom. The length of the border between the Republic of Ireland and Northern Ireland is about 500 kilometers [10]. Many people cross the border freely for tourism purposes, shopping, and even on the way to work [11]. To prevent the problems in future Northern Ireland might remain in the single market and the customs union while the United Kingdom will leave it [12]. The EU agents and the Irish PM think that the only way to prevent a tight border between the two Irish states is the UK withdrawal from the single market and the customs union [13].

In August 2017, Teresa May announced she would like to maintain a transparent border 'without hindrance' in the form of customs and border posts. The EU's main negotiator, Michel Barnier, said that trade relations with non-EU countries provide barriers. Donald Tusk, the President of the European Council, said if London's offer was contradicting the interests of Ireland, it would be unacceptable for the whole of the EU [14].

When the 'reverse Greenland' model was applied, Northern Ireland apart from the United Kingdom would retain the following: the membership in the customs union and the single market, free movement of people and goods on the Ireland Island, the open non-physical land border between Ireland and Northern Ireland. The EU border with customs and inspections would operate in the Irish Sea between Great Britain and Northern Ireland.

As in Greenland's case, the exit of the part of the UK from the EU has to be made in an agreement between the United Kingdom and the EU. It is likely that the Free Trade Agreement between the United Kingdom and the EU and/or between Ireland and the United Kingdom would be important for facilitating trade through the Irish Sea. This option would allow avoiding a tight land border within the United Kingdom but practically it could have an impact on the status of Scotland [15, p. 59].

The 'reverse Cyprus' model implies the United Kingdom remains in the single market and the customs union. This is the first result mentioned in paragraph 8 of the European Parliament resolution on October 3 [6]. The rest of the United Kingdom could halt the *acquis* while promoting the movement of people and goods within the UK.

This model is similar to the one in Cyprus. Cyprus is a member state of the EU but in the uncontrollable by the government part of its territory, the work of the Community has suspended. European Council's resolution 866/2004 determining people and goods that could cross the actual border within Cyprus is called the 'Green Line'. Herewith the actual border is not the external border of the EU [16].

Due to this model, the UK would technically remain a part of the EU. The EU general legislation would be suspended only onto its separate parts, i.e. England and Wales. Northern Ireland would remain a part of the single market and the customs union, which would facilitate the free movement of people and goods on the Ireland Island. An open non-physical land border between Ireland and Northern Ireland would allow working within the Common Travel Area freely. Subsequently, the movement of people and goods within the United Kingdom could be agreed upon by domestic law or determined by the European Council without the introduction of a common EU tariff for exports and imports. A free trade agreement between the EU and the United Kingdom could also help to move goods.

An introduction of the 'reverse Cyprus' model would de facto create a customs border (not the EU's external border) in the Irish Sea and, perhaps, the land border between England and Scotland. On the example of Cyprus, its the government-controlled part remains under the law of the EU and is responsible for policing work and personal data checks at the border. The police surveillance at the Irish Sea border would likely divide between the Northern Ireland authorities in the west and the British authorities in the east [15, p. 58].

The 'German version' provides different ways to protect Northern Ireland from the negative consequences of Brexit. Northern Ireland would remain a part of the EU until its future status was resolved through a referendum, accompanied by a referendum in the Republic of Ireland. This is an alternative to any of the models above but it would rely on a possible unification to save Northern Ireland within the EU.

According to the former Prime Minister of Ireland Andy Kenny, it is time for the United Kingdom to start preparing for a possible referendum on the unification of Ireland. He stated that if there were the clear evidence that the majority of Northern Ireland would want to stay in the EU and leave the United Kingdom, a referendum is needed. Kenny was supported by the party's leader, Sinn Fein Gerard Adams, who said Brexit had opened up new constitutional opportunities for Ireland. In his opinion, there is 'a great opportunity to achieve unity' in the context of the referendum [17].

According to the former British Prime Minister Tony Blair, the membership of the United Kingdom and Ireland in the EU and the open border with Northern Ireland were fundamental things for the Good Friday Agreement. It was signed by representatives of all the parties of the negotiations on April 10, 1998. The deal helped to put an end to the bloody clash of Catholics and Protestants, the opponents and the supporters of the region's independence from the United Kingdom. It implies London's rejection of direct government in the region and the transfer of power to local self-government bodies created on a coalition basis [18, p. 99]. One of the points was about the creation of the ministry of the North/South Ministerial Council for the establishment of cooperation between the Republic of Ireland and Northern Ireland. The document also states, 'The European Council recognizes that, according to international law, the whole territory of the united Ireland may be a part of the European Union (in the case of the Irish association)' [19].

In this regard, the prospect of introducing the so-called 'hard' border after Brexit creates the problems for stability. On BBC broadcaster on December 3, 2017, Tony Blair said, 'If there is a tight bound for the end, then obviously it will trigger tension. This does not mean that you need to abandon the Good Friday Agreement, but it creates a real threat to it' [20].

On April 29, 2017, at the first Brexit summit, the 27 leaders of the EU member states unanimously approved a statement stating that the 'whole territory' of a united Ireland would become a part of the EU in the event of a successful future referendum on unification, and that decision would 'comply with international law' [21]. This statement is intended to ensure the future accession of Northern Ireland to the EU in the event of its reunification with Ireland.

Some British politicians condemned this declaration, accusing the EU of trying to endanger the future of the UK, using Northern Ireland as a pressure factor in the Brexit deal. The former secretary of Northern Ireland, Owen Peterson, argued that the EU was interfering with problems that 'were not their affairs'. A British parliamentarian from the Tory, the co-chair of the British-Irish Parliamentary Assembly Andrew Rosindell said, 'The statement about the united Ireland is another funny blank threat from the EU leaders who still cannot agree with the choice of British voters in the historic referendum' [22].

The EU declaration does not look strange. It is based on the consent in jurisdictions of both Northern Ireland and the Republic of Ireland and takes into account the provisions of the Good Friday Agreement. The withdrawal agreement must reflect this and ensure the integration of Northern Ireland back into the EU in the case of united Ireland.

The withdrawal agreement implies that in the case of future unification of Northern Ireland and Ireland, Northern Ireland would be able to integrate into the EU without application of the Article 49 of the Lisbon Treaty. This could be a similar way to the approach of the GDR, agreed in 1990, but on the principle adopted in advance in the withdrawal agreement.

Of course, a transitional treaty will be possible, according to which Northern Ireland temporarily remains a member of the EU for referendums on both sides. It would be legally possible for such a procedure for Northern Ireland temporarily to remain a part of the EU, pending a referendum in an uncertain future [15, p. 61–62].

However, a recent poll showed 62% of Northern Ireland residents would vote to remain in the UK, only 22% favor union with Ireland. Asked if they voted in a referendum, if the price of the unification of Ireland were EUR 9 billion per year, only a third of the respondents answered 'yes'. One-third is ready to vote sharply against, and the rest are not determined [23].

3. CONCLUSIONS

The Irish border problem remains the central one to Brexit. Its solution will be on the agenda right up to Britain's withdrawal from the EU. We have mentioned the 'reverse Greenland' and the 'reverse Cyprus' models among the most probable forms of Northern Ireland's future. It provides the presence of the certain parts of a sovereign state in the single market and the EU customs union. In this case, the UK's border will de facto pass along the Irish Sea. Residents of Northern Ireland would be both British and the EU citizens in any case, as they are eligible for the second Passport of the Republic of Ireland which will remain a member of the EU.

No examples above provide a precise analogy since Brexit is an unprecedented event. All of them relate to the certain parts of the states' withdrawal from or staying outside of the EU, but not an entire country.

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У статті висвітлено одне з головних питань, пов'язаних із виходом Великої Британії з Європейського Союзу – новий статус Північної Ірландії, зокрема, статус кордону між нею та Республікою Ірландія. Саме він став яблуком розбрату на першому етапі й залишається ним на останньому етапі обговорення Brexit. Проблема майбутнього “жорсткого” чи “м'якого” ірландсько-британського кордону є проблемою не лише в перемовинах Сполученого Королівства і Європейського Союзу, а й серйозним внутрішньополітичним викликом для уряду Терези Мей. У контексті цього питання розкрито можливі моделі майбутнього статусу Північної Ірландії. Зазначено, що найбільш імовірними рішеннями можуть бути “обернена Гренландія”, “обернений Кіпр” або “Німецький варіант”.

Після Угоди Страсної п'ятниці 1998 р. ЄС інвестував значні кошти у підтримку прикордонних спільнот із метою розвитку малого бізнесу і промисловості, що покращило економічну ситуацію в зоні колишнього конфлікту та сприяло прикордонному діалогу. Але це привело до того, що багато підприємств орієнтувалися саме на ринок ЄС чи прикордонну торгівлю. У статті резюмовано, що модель “оберненої Гренландії” дасть можливість Північній Ірландії залишитися в єдиному ринку і митному союзі окремо від решти Великої Британії, що дозволить запобігти встановленню жорсткого кордону між двома ірландцями. Автор окреслив можливі наслідки моделі “обернений Кіпр”, яка передбачає, що Сполучене Королівство технічно залишиться частиною ЄС, а діяльність загального законодавства товариства буде призупинено лише на окремих її частинах (наприклад, Уельсі й Англії). Дослідник акцентує на тому, що “Німецький варіант” може бути застосовано у випадку майбутнього воз'єднання обох Ірландій, а Північна Ірландія залишатиметься частиною ЄС, поки не буде вирішено її новий статус на референдумі.

У статті підсумовано, що жоден із наведених вище прикладів не може забезпечити точну аналогію, оскільки сам Brexit є безпрецедентним, а найбільш імовірним моделями майбутнього Північної Ірландії визначено варіанти “обернена Гренландія” та “обернений Кіпр”.

Ключові слова: Brexit, моделі, ірландсько-британський кордон, прикордонний контроль, митний союз, єдиний ринок.