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Possible implications of ‘Brexit’ for transport and water policy

1 Background

The Department for Infrastructure (DfI) and its arms-length-bodies maintain and develop infrastructure and services that support economic and social activity in Northern Ireland. This includes our water and sewerage networks, rivers and flood defence, roads and footpaths, and public transport services. Significantly, these areas (broadly speaking transport and water) are subject to substantial input from the EU in the form of policy and regulation, financial support and knowledge exchange. Transport and water body policy/management are also areas that require a significant amount of cross-border co-operation. Therefore, Northern Ireland has a unique position among the UK regions in that it shares a land border with another EU Member State; this will require special consideration.

The extent to which ‘Brexit’ will impact on the way these issues are dealt with, and ultimately on the work of DfI, is unknown and will depend entirely on the outcome of negotiations between the UK Government and the EU. The purpose of this section is to briefly outline the influence of the EU on the work of the DfI and to highlight issues that may require further consideration.

2 Transport

Transport has been a key element of European Union (EU) policy since the signing of the Treaty of Rome in 1958. The Common Transport Policy (CTP) is fundamental to achieving basic ideals of the EU: the free movement of goods, services, capital and labour.

The direction of the EU's CTP is set out in the decennially published Transport White Papers. The policies proposed in the white papers have had a significant impact on the wider EU transport sector. For example:

- The 1992 White paper emphasised the opening and integration of the EU transport market – this paved the way for 'low cost airlines' in Europe;
- This 2001 White Paper sought the creation of a modern sustainable transport system. This led to the introduction of road safety measures including digital tachographs for haulage vehicles and a target to reduce road fatalities by 50%;
- The most recent (2011) White Paper entitled, *Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system* was published in 2011. Whilst the general objective of this Roadmap is to define a long-term strategy to make the European Union (EU) transport system more efficient, safe and secure, it also includes a number of ambitious targets for a more resource-efficient transport system, which supports the EU's wider greenhouse gas (GHG) emission reduction targets.¹

2.1 The legal framework governing transport policy

The EU and its Member States have concurrent powers to enact legislation under Articles 70 of the EC Treaty. In so far as, and as long as, the European Union has not availed itself of its powers under Article 71 of the Treaty, the regulation of matters relating to transport policy remains the responsibility of the Member States.

In the legal practice of the past twenty years, however, the European Union has generally been the main legislator in many areas of transport policy. As a result, only a few transport matters are now regulated independently by the Member States; even the remaining national laws – or at least their basic premises – must, as a rule, be constructed within a framework comprising the various thematically relevant European transport directives.

2.2 EU transport directives

Broadly speaking, the main areas of EU regulation concerning the UK transport sector include:

- rules on market access;

¹ EC [online] EU Climate Action. Available from:

- safety;
- security;
- state aid;
- the environment;
- employment conditions; and
- passenger rights.

The impact of 'Brexit' on the regulation of these areas is not known but it is unlikely that 'Brexit' will lead to significant changes. The assertion is based on the fact that UK law often exceeds the requirements set in EU law on issues such as safety, consumer and employment rights and the environment. For example, the UK Climate Change Act 2008 has more ambitious targets for cutting emissions than the EU target, so these are probably unlikely to change. Transport represents almost a quarter of Europe's greenhouse gas emissions and is the main cause of air pollution in cities.² Therefore, policies which successfully reduce the emissions from transport will be critical if the overall targets are to be realised and are arguably more likely to be effective if constructed at a supranational level.

That said, 'Brexit' negotiations could potentially enable the UK government to adapt regulations relating to market access and state aid. A relaxation of rules relating to state aid could, in theory, create the circumstances whereby Air Passenger Duty (APD) in Northern Ireland could be reduced or abolished. The Northern Ireland Assembly has passed up the opportunity to do this in the past as under state aid rules governing taxes the NI Executive would have had to pay for the loss of tax revenue from its block grant. Indeed, the removal of state aid restrictions, and their ability to constrain connectivity via support for airlines and airports, have been identified as a potential post-'Brexit' opportunity by the First Minister.³

2.2.1 Current arrangements between EU and non-EU countries

The EU already has a number of agreements which deal with multi-modal transport links between EU and non-EU countries. For example:

- the Agreement on the European Economic Area (EEA Agreement) outlines the EU's relationship with Norway, Iceland and Liechtenstein; while
- there is a bi-lateral Agreement between the EU and Switzerland on land transport (road and rail).

Both agreements require signatories to apply the full body of accumulated legislation, legal acts, and court decisions which constitute the body of European Union law (referred to as the 'road acquis') in their respective countries.

² EC [online] A European Strategy for low- emission mobility. Available from: <http://nia1.me/35l>

³ Official Report (Hansard) Monday 27 June 2016. Volume 114, No 10 [online] available from: <http://nia1.me/35m> (Page 31)

2.3 Infrastructure – TEN-T

Trans-European Networks (TEN-T) policy is central to the functioning of the single market, designed to interconnect national transport, energy and telecommunication infrastructure networks and ensure their interoperability (i.e. setting standards which remove technical barriers).

Effectively the TEN-T is a network of key routes through the EU which support the functioning and connectivity of the single market. It comprises infrastructures such as roads, railways, waterways, ports, airports, navigation aids, intermodal freight terminals and product pipelines.

2.3.1 Financial support

There are two sets of funding instruments from which the NI Executive may seek financial support for TEN-T projects:

- the [Connecting Europe Facility](#); and
- the [European Regional Development Fund \(ERDF\)](#).

These funding instruments have a timespan of seven years, to coordinate with the spending programme of the EU budget, the current EU multiannual financial framework (MFF) for which runs from 2014 to 2020. This begs the question that if the 'Brexit' negotiations conclude within this timeframe⁴, what access would the UK have to these funding mechanisms? Presumably if the UK remains in the EU for the remainder of the current MFF and continues to make contributions towards the EU budget, access to funding will be unaffected. Again, however, this is likely to be subject to negotiation.

2.3.2 EU funding in Northern Ireland

In the last 10 years (2006-2015) the former Department for Regional Development (DRD) sourced a total of £98.57m of European Union funding. This includes £58.12m of funding secured from 'Competitive' funding sources such as TEN-T and the Connecting Europe Facility (CEF).⁵ This funding has made a significant contribution to a number of key infrastructure projects during the past decade, including a number of road and rail enhancement schemes. A full breakdown of this funding is included in Annex 1.

Uncertainty around the impact of 'Brexit' on the relationship between Northern Ireland and the Republic of Ireland will undoubtedly be a significant element of the 'Brexit' negotiations. As part of the 'Fresh Start' agreement, the Irish government has committed to contribute a total of £75m, paid in three instalments of £25 million, towards the construction of 'the New Buildings to Strabane section of the A5 Western Transport Corridor'. Will Brexit have any impact on this commitment and, even if it does

⁴ The Lisbon Treaty, Article 50 [online] available from: <http://nia1.me/350>

⁵ AQW 53804/11-16 (15th February 2016)

not, what will the future be for cross border co-operation on this corridor and on other infrastructure projects?

There are a number of other capital schemes that may have benefited from EU funding but which may now be jeopardised. Already the DRD has secured funding for a technical development study for the proposed Belfast Transport Hub⁶; the capital element of this scheme may have met the eligibility criteria for CEF and ERDF monies, had successful bids been submitted. However, the role of the EU in supporting this scheme and others, like the York Street Interchange scheme⁷, is now unclear, even though the UK has yet to trigger Article 50 of the Lisbon Treaty. The Infrastructure Minister has himself suggested that the EU referendum result is likely to have an effect on the delivery of major infrastructure projects⁸. However, the extent of this effect is currently unknown

3 Water and sewerage

The DfI is the sponsoring Department of Northern Ireland Water (NIW), the company responsible for the delivery of water and sewerage services in Northern Ireland. NI Water, like all UK water companies, is heavily regulated with strict standards for drinking water emanating from EU Directives. But while UK regulations do follow the EU directives in terms of drinking water, some aspects are stricter than, or in addition to, those defined by the directive, reflecting the high standards of water supplies in the UK. It is unclear therefore what impact 'Brexit' would have here other than to eliminate the potential for infraction proceedings, should discrepancies in the application of the regulation be found.

3.1 Water charges

Article 9 of the Water Framework Directive (WFD) requires EU member states to recover the cost of providing water and sewerage services by imposing tariffs on consumers. The rationale for this policy is twofold:

- It facilitates continuous investment, thereby ensuring a high quality of service now and in the future; while
- It makes the user cognisant of water conservation in the context of the increasing pressures of water scarcity across the EU⁹.

The Northern Ireland Executive has consistently resisted the introduction of domestic water charges, deciding instead to fund NI Water by means of a subsidy provided previously by the DRD and now the DfI. This is in spite of the fact that this decision

⁶ Translink [online] Belfast Transport Hub at Great Victoria St. Available from: <http://nia1.me/35p>

⁷ DfI [online] York Street interchange – overview. Available from: <http://nia1.me/35q>

⁸ AQW 1086/16-21

⁹ European Commission [online] Water scarcity and drought. Available from: <http://nia1.me/35r>

may contravene Article 9 of the WFD, potentially exposing itself to the risk of infraction proceedings.

While it would be reasonable to assume that 'Brexit' will remove this immediate threat, it may not be that straightforward. For instance, there may be circumstances which arise from UK/EU negotiations that would require the UK's full compliance with the WFD, as is the case with Norway and Switzerland.

3.2 Waste water

One of NI Water's primary functions is to implement the capital works programme required to upgrade wastewater treatment works and sewerage networks across NI. The increasing standards arising from the WFD and its related directives have driven sustained and substantial investment in this area since 2007. However, the need for a clean and safe water environment will not cease in a post-'Brexit' NI – regardless of whether the UK continues to be subject to the WFD or not. Indeed, a situation could potentially arise whereby the UK will have to comply with the EU's regulations with regard to water and waste water without having access to any of the financial support mechanisms it would previously have enjoyed as a member state.

Annex 1 Department for Regional Development Funding Sourced from the European Union 2006-2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Grand Total
DETI European Sustainable Competitiveness Programme							5,800,000.00	10,735,500.00	7,185,000.00		23,720,500.00
A2 Upgrade – Belfast Shore Road to Greenisland								5,485,500.00			5,485,500.00
A2 Upgrade – Belfast Shore Road to Greenisland extension									3,450,000.00		3,450,000.00
Extended bus replacement project								5,250,000.00			5,250,000.00
Optares and Goldlines									3,735,000.00		3,735,000.00
Replacement of Goldline and Metro fleet							5,800,000.00				5,800,000.00
FP7 Research and Development – People Programme				177,247.23							177,247.23
Advanced Technologies for Water Resource Management				177,247.23							177,247.23
INTERREG IVA			2,591,969.50		424,334.00		2,400,000.00	10,278,882.00			15,695,125.50
ANSWER (Agricultural need for sustainable willow effluent recycling)					424,334.00						424,334.00
Cross Border Rural Infrastructure Development Schemes (CBRIDS) – Upgrade to roundabout and project extension			2,518,419.00								2,518,419.00
Drogheda Viaduct								3,168,072.00			3,168,072.00
Enterprise Phase 3 Overhaul programme – Stage 2								7,110,750.00			7,110,750.00
Redevelopment of Portadown Railway Station							2,400,000.00				2,400,000.00
Small Ferries Project			73,550.50								73,550.50
INTERREG IVB (AA)						284,000.00					284,000.00
BATTERIE Project						284,000.00					284,000.00
START											
INTERREG IVB (NWE)				568,194.00							568,194.00
The sustainable stations project – Antrim Integrated Transport Centre				568,194.00							568,194.00
TEN-T	13,460,203.67	1,408,254.00	3,312,045.79			2,440,505.83	15,724,594.80		2,860,472.67	18,917,874.86	58,123,951.62
Ballymena – Derry: Track life extension			1,408,254.00								1,408,254.00
Belfast inter-modal transport hub									2,860,472.67		2,860,472.67
Bottleneck alleviation and cross border connectivity works Knockmore to Lurgan										7,576,200.15	7,576,200.15
Coleraine to Londonderry Track relay phase 1						1,309,005.95					1,309,005.95
Dualling of A1 Beech Hill to Cloughue		12,958,808.40									12,958,808.40
Dualling of A6 Derry to Dungiven				1,141,222.75							1,141,222.75
Dualling of A8 Belfast to Larne – Coleman’s Corner – Bally Rickard Road (Study)				1,933,994.50							1,933,994.50
Dualling of the A8 Coleman’s Corner to Ballyrickard Roundabout							15,724,594.80				15,724,594.80
EASYWAY I		501,395.27									501,395.27
EASYWAY II				236,828.54							236,828.54
Installation of rapid charge points for electric vehicles and a supporting IT system						110,232.08					110,232.08
Technical Equipment and Infrastructure Upgrade: Londonderry to Coleraine Line									11,341,674.70		11,341,674.70
York Street Interchange – Improvement to Belfast Port Hinterland Connections (Scheme Development Studies)						1,021,267.80					1,021,267.80
Grand Total	0.00	13,460,203.67	4,000,223.50	4,057,487.02	424,334.00	2,724,505.83	23,924,594.80	21,014,332.00	10,045,472.67	18,917,874.86	98,569,018.35

Source: AQW 53804/11-16 (15th February 2016)

