

E M E R G I N G



V O I C E S

A Future of Europe Anthology



Future of the **EU27**





Designed by Dáire O’Driscoll, supported by Ellen O’Leary and Sarah Burke.

Edited by Donal de Butléir, Jill Donoghue, Róisín Smith, Clare Gray and Andrew Gilmore.

The views and opinions expressed in the text belong solely to the authors and do not necessarily reflect the views of the IIEA, Institute for International and European Affairs.

This project is supported by the Department of Foreign Affairs and Trade. The Department is not responsible for any use that may be made of the information it contains.



Contents

Foreword	iv
Minister Helen McEntee TD, Minister of State for European Affairs	
Introduction	vi
i. Citizen Engagement and the European Union	1
Clodagh Bergin	
ii. Out of the Harbour’s Mouth: The Common Fisheries Policy and Brexit	17
Ciarán O’Driscoll	
iii. What Future for Social Europe?	33
Ursula Quill	
iv. ‘Our Gallant Allies in Europe’. Irish Diplomacy in a post-Brexit EU	51
Aaron Burnett	
v. Placing Citizens at the Heart of Policy Making: Fair Climate Action	65
Brian Denvir	
vi. ‘The Court is not for turning’ – Citizen Access to the Court of Justice of the European Union	79
Anne Fitzpatrick	
vii. ‘A stake in the outcome?’ External Voting Rights for Irish Citizens	95
Conor O’Neill	
viii. GDPR: What Now for the Future of Personal Data?	111
Anna Nichols	

EMERGING VOICES

- | | | |
|---------------|--|-----|
| ix. | Re-Imagining the African Continental Free Trade Area and the Future of the EU-Africa Partnership
Chinedum Muotto | 125 |
| x. | The Case for a European Mortgage Market
David Higgins | 143 |
| xi. | Possibilities for a ‘Just Transition’ for Agriculture
Nadia Reeves Long | 159 |
| xii. | Why Ireland should include Socio-Economic Status in Equality Legislation
Paul McKeown | 171 |
| xiii. | Greening the Future: Policy Options for Greener Cities
Paul Kilgarriff | 181 |
| xiv. | EU Counter-Terrorism Policy after-2015
Christine Andreeva | 193 |
| xv. | Opportunities for Ireland in Climate Change Leadership
Eimhin McEvoy | 213 |
| xvi. | Can the EU become a Global Leader in Technology Regulation?
Róisín Costello | 227 |
| xvii. | Money Matters: Who Issues Money?
Simon Twist | 241 |
| xviii. | Building Inclusive Societies
William Quill | 251 |



Foreword



This is a year of change in Europe. We have just elected a new European Parliament; soon a new European Commission and President of the European Council will be appointed; and a new Strategic Agenda will guide the work of the institutions for the next five years.

Here in Ireland, we have been preparing for the new Strategic Agenda since the launch in November 2017 of the citizens' dialogues on the future of Europe and our National Statement on the European Union, which was published in April, was the outcome of a whole-of-Government consultation process.

The IIEA has been a valued partner in our preparations and I want to commend the Institute for making the exercise even more inclusive with the 'Emerging Voices' initiative.

The European Union is relevant to almost every aspect of people's lives and I never cease to be impressed by the enthusiasm and passion which many of our citizens, and particularly our young people, have for our membership.

iv



Foreword | Emerging Voices

Every generation needs to have its say on the future of Europe and it is clear from the breadth and depth of the papers in this anthology that the ‘Emerging Voices’ group has much to offer.



A major strength of the exercise has been the freedom offered to each contributor to present their own ideas. My engagement with the group has been an inspiring experience, one which has left me with no doubt about the current generation’s capacity to tackle creatively the big issues that are best addressed at a collective, European level.

I am confident that reading this anthology will be just as stimulating, with much food-for-thought on a wide variety of topical issues such as climate action, migration, social policy and citizen engagement.

The European project is in constant need of new momentum. The Schuman Declaration of 1950 said that: “Europe will not be made all at once, or according to a single plan.” The same could, perhaps, be said of any given book. But, here in Ireland at least, the debate on the future direction of the European Union would be incomplete without a careful perusal of the thoughts and opinions expressed in these pages.

Helen McEntee T.D.
Minister of State for European Affairs





Introduction



Future of the **EU27**

The Future of the EU27 is a three-year IIEA project, supported by the Department of Foreign Affairs & Trade, which aims to contribute to the debate on Ireland's future in an EU of 27 Member States, by providing in-depth analysis of emerging trends, and insights into the major challenges facing Ireland and the European Union.

Since 2017, the project has embarked on a series of initiatives, including research, publications, speaker events and nationwide public engagement, sharing ideas and connecting with diverse audiences to contribute to shaping Ireland's role in the Future of Europe. An essential feature of this project is engaging with and listening to the concerns and ideas of Irish citizens.

The IIEA Emerging Voices group is a pivotal part of this engagement, which brings a fresh perspective to the work of the IIEA. The purpose of this initiative is to bring together a diverse group of emerging leaders, from a range of different backgrounds. Over the past year the group has met on a monthly basis to share their views on Ireland's place in the future of the EU and to further their understanding of European affairs.

vi

Drawing on their professional expertise and personal experiences, acquired in their wide-ranging work environments, from the legal and financial sectors to





Introduction | Emerging Voices

NGOs and academia, members of the group are keen to contribute to both the national debate and the IIEA's work.

vii

This Emerging Voices Publication therefore, brings together a collection of papers written by members of the group, reflecting an interrogative approach to EU affairs and proposing forward looking recommendations. The aim of this publication, however, is not to pursue a deep exploration of any one policy area, but to present a broader, varied collection of snapshots of what the next generation of leaders in Ireland are concerned about. Their views challenge policy makers and politicians to adopt a more inclusive bottom-up approach.

This anthology will engage a wide variety of readers, and the range of topics covered include climate change, migration, social policy, economics, and citizen engagement, offering a fresh outlook and an opportunity to consider some of the most important issues facing Ireland and the EU today.

The Institute wishes to acknowledge the commitment of the Emerging Voices group members, who have dedicated their time, energy and talents to this project.







Citizen Engagement and the EU?

This paper argues that the European Union needs a new way of relating to citizens and contends that neither the traditional narrative of peace and security nor the narrative of economic prosperity adequately address the gap between citizens and European leaders today. Following the financial crisis, the Brexit crisis, and more recently the protests of the yellow vest movement in France, and the rise of nationalism and populism, the challenge to policy makers and politicians is to listen to the concerns of EU citizens and to ensure that their voices are heard and their views are represented in the EU's priorities and processes. After analysing the current challenges to European identity and mind set, the paper closes with a series of recommendations as to how to better respond to citizens' concerns in EU policy-making and politics.



Introduction

The European Union has often been portrayed in the media as having a democratic deficit. Its founders, on the other hand, envisaged it as a unique democratic experiment in sharing and pooling sovereignty. If the representative function of EU decision-making is sufficiently undermined in the public consciousness, the result might be the collapse of the Union's legitimacy. In the current geopolitical climate, such a negative spiral should be avoided at all costs. The European Union, through individual Member States, must encourage “buy-in” from European citizens.

Although the 2019 European Parliament elections may tell a different tale, to date, the European Parliament elections have been moments when citizens are afforded a precious opportunity to have their voice and vote heard. Citizen engagement must be a priority item on the EU agenda in order to avoid a repeat of the UK's Brexit vote in other Member States and to ensure that the Union maintains a secure basis from which to develop and mature in the new international political landscape.

Opportunities for citizens to engage in debate and have their say at a European level are, at present, few and far between.

2 The Council of the European Union often deliberates privately, and Commissioners are selected by national governments rather than by the people directly. Even the public representatives elected by Member

State voters, MEPs, often fail to communicate effectively with their constituents on EU affairs. This is due, in part, to the perceived complexity of EU matters but also, and perhaps more significantly, because open dialogue on EU issues is not rewarded by their political party or considered advantageous for re-election strategy.¹ Indeed, as research carried out in Ireland by Senator Catherine Noone suggests, voters may even struggle to identify their elected MEPs.²

It seems that not only is the individual's voice lost in this process but communicating the European issues that MEPs were elected to address is often not the basis or rationale for their re-election strategy to the Parliament. EU issues therefore tend to fall off the agenda, and this has the unintended consequence of decreasing the legitimacy of European political concerns and preventing European-centric public discourse, particularly in respect of legislative matters.

The Political Narrative

Despite this, European-wide issues have never been of more relevance to, or had greater impact on, the individual European voter. In 2018, the European Commission published a list of the key issues, which were identified by European voters in the EU: *immigration, terrorism, the economic situation, public finances, and unemployment*.³ Recent political trends across Europe have also demonstrated a need and desire for these precise issues to be addressed by Member State governments. It is essential however that these issues are not addressed in the absence of genuine voter engagement at a European level, as they will inevitably involve European policy responses.

Following the Brexit vote, there has been a lot of media commentary on the future of the European Union, and its place in the world. The rise of China and the retreat of the US from multilateral cooperation, coupled with debate concerning the global financial crash and recent trends towards nationalism, provide both a challenge and an opportunity for the EU and its policy-makers to reassert the European narrative.

In turn, when local circumstances become adverse in EU Member States, a powerful narrative of ‘blaming Brussels’ has tended to develop in domestic politics.⁴ When all of these challenges are considered, it becomes apparent that the EU needs a new manner of defining itself in order to better respond to the criticisms levelled at it, to facilitate its changing role in the global geopolitical landscape, and crucially, to ensure it can represent itself to the European citizens.

Andrew Moravcsik’s identification in 2000 of the EU’s size and distance from the citizen, its lack of common history, culture and symbolism as reasons for concern, appears to have been prescient.⁵ Although the EU has changed exponentially in the intervening years, European Commission President Jean-Claude Juncker, in recognition of such concerns, called on European citizens in Maastricht in December 2016 to question “What is Europe today and what will Europe be tomorrow?” When we consider the origins of the European Union, born of an extraordinary agreement between France and Germany united in a sense of vulnerability in the wake of the devastating conflict of World War II, it appears that as European memories of conflict have become more faint amongst younger generations, the EU must renew the importance of its vision in the public consciousness.

“The European project has become entangled in recent years with the crises brought about by the financial crisis, and the near collapse of the Eurozone”

The European project has become entangled in recent years with the crises brought about by the financial crisis, and the near collapse of the Eurozone. Reasserting the core purpose of the EU and communicating this ‘mission statement’ to its citizens is vital in bringing about the citizen engagement upon which the Union’s legitimacy depends.

4 The Economic Narrative

The Economic narrative offers further potential for direct citizen engagement with the broader European

system. Aside from the obvious ease of travelling from one Member State to the next without the concern of conversion rates, the advent of the Euro brought with it business engagement, eliminating much of the risk and cost of trading across borders that existed prior to the Single Market. The advantages of the single European currency brought with it an additional sense of tangible and positive engagement of citizens with the European project.

However, the financial crisis that began in 2008 has tarnished the initial positivity that seemed to accompany the introduction of the single currency and has contributed to a sense of domestic political unease around the single currency in some member states. Prominent critics, such as Joseph Stiglitz, have pointed to an imbalance in the structure of the Eurozone, through which large Member States, primarily Germany, reaped trade benefits at the expense of peripheral nations like Greece. Such criticism, coupled with the suggestion of further pooling of economic sovereignty contributed to a sense of political unease around the single currency. However, advances in banking and capital markets union, designed to mitigate future crises in the Eurozone are generally perceived to benefit both citizens and businesses in the Single European Market.

The Social Narrative

The near collapse of the Eurozone at the beginning of the decade threatened to undermine European citizens' faith in a social union. The European institutions' commitment to preserving the single currency, and ECB President Mario Draghi's vow to do "whatever it takes" to save the Euro, however, allowed Draghi to calm the markets and create economic stability for the Eurozone, which is the prerequisite for a functioning social policy.

However, critics suggested that Europe's priorities lay with powerful economic interests over the social conditions of its people, citing the damaging effects of austere monetary policy on the living standards of several Eurozone countries, particularly in struggling southern Member States including Spain, Portugal and Greece.⁶

Draghi's policies were ultimately successful in averting financial catastrophe, yet for many regardless of the economic realities of the financial crisis, the European Union has become synonymous with protecting distant economic interests at the expense of European citizens' employment, social services and economic security. The EU therefore still faces fundamental challenges in convincing its citizens that it is working for them and that it shares their priorities.

Effective Communication and a Citizen-led Engagement Policy May be the Answer

To counteract this, this paper proposes a cross-Union, Member State-led, citizens engagement policy. Such a policy would bolster accountability and legitimacy in the democratic process, emphasise transparent governance and increase participation in the European project.

As argued by McEvoy, having a belief that one's voice is heard and one's view is represented is influential in explaining public attitudes to democratic institutions, even in the absence of (or indeed, alongside) structural or institutional reforms.⁷ Furthermore, McEvoy finds that citizens are less inclined to withdraw their support for the EU during the cycle of an economic downturn if they have reason to believe or feel that the system is, at the very least, listening to their opinions.

One answer may lie in the work of Huller and Kohler-Kock who have identified effective communication as a means of making citizens feel that their democratic processes are more transparent.⁸ Once again, such research demonstrates the importance of publicity and political communication even in the absence of structural reform in engendering a greater confidence and legitimacy in the democratic system.

Recommendation I: Proactive citizen engagement to formulate policy more responsive to local concerns.

6

Transparency in respect of decision-making and political discourse is vital in order for policy making and the associated political process to be commonly understood by electorates. Such basic understanding is,

in turn, vital for the European Union's governmental legitimacy. Too often, the issue of transparency of decision making and effective communication is characterised as an endemic shortcoming of the European project, or one determined by the structure of the European institutions.



It could, however, be argued that questions of legitimacy and representation arise in relation to the EU due to the poor quality of communications between the EU institutions and the citizens of Europe.⁹ If this is the case, then the EU must go to the citizen, aiding and encouraging active participation, in part by effectively communicating the processes of EU institutions to the citizens they govern. As noted, Member State political parties perceive little electoral value in couching debate in European terms. In order to create an environment in which such debate is fruitful for national representatives, the EU must, at least initially, play the lead role in emphasising the relevance of Brussels to the local concerns of national discourse.

One interesting example of a forum to enable European public discourse is the Citizens' Dialogues, launched by Ireland's Minister of State for European Affairs, Helen McEntee. In response to President Juncker's call for a dialogue on the future of Europe, the Department of Foreign Affairs and Trade undertook an exercise in listening to Irish citizens, to understand the priorities of Irish society in order to develop and feed back to the European Union a vision of what Ireland, as embodied by its electorate, wants.

The benefit of these meetings, attended by the Minister of State for European Affairs, lies in providing the space that McEvoy suggests is necessary to engage European citizens in the European project.¹⁰ These meetings gave the public an opportunity to contribute to the debate on European issues, and furthermore, it opened effective dialogue, where Irish citizens

felt that they were listened to and consulted on EU issues that matter to Irish and European society.

Inspired by the format of the Citizens Assembly, the idea of a public roadshow to accurately capture the views of Irish citizens across the country was agreed upon. In order to capture a representative sample of Irish views, Dialogues were organized by the European Movement Ireland in Galway, Cork, Donegal, and Meath, culminating in a final National Citizens' Dialogue in Dublin in May 2018. The purpose of the Dialogues was to facilitate the sharing of ideas and opinions, informing Ireland's European priorities, and the format of the sessions reflected this. Following registration and teas/ coffees, attendees were seated in groups of 8-12 people, with tables exhibiting diversity in gender and age. Each group was assigned a facilitator to ensure that all voices were heard fairly, and to encourage active participation. Topics discussed included sustainability, defence, the future of employment and a "responsible Union". All participants were provided with information about the topics to be discussed, as well as a glossary of EU words to enable everyone to speak accurately about the topics at hand.



However, there were concerns that the meetings which were advertised on the European Movement in Ireland's social media channels, the Department of Foreign Affairs and Trade (DFAT) website and local newspapers, might have targeted those who already have a keen interest in asserting their voice in the European Union conversation and that in order to draw a broader cross-section of Irish society in future programmes, citizens could perhaps be selected at random from the voting register, for example, and be invited to participate at their local Dialogue.

8

The DFAT report that emerged from the Dialogues is an invaluable litmus test of where Irish opinion is at present and its relationship with the EU.

In particular certain key themes emerged in the discussions, namely fairness to citizens, the environment and Europe's approach to the rest of the world in respect of immigration, security and foreign policy.¹¹ Citizens were keen to talk, with participants raising issues such as investment in education and skills, developing innovation and supporting entrepreneurs, ensuring the continuation of subsidies which benefit the consumer and EU investment in the under-developed regional areas. Significantly, some called for EU regulation to be simplified into lay language.

In tandem with this initiative, the Institute for International and European Affairs, IIEA, which provided facilitators for the EMI citizen dialogues, also initiated a series of regional events operating taking a different but complementary approach, whereby a panel of experts, including Minister McEntee, engaged with citizens in targeted regional areas, where relevant macro issues such as the Common Agricultural Policy (How does the EU spend Your Money") or Social Policy ("What does the EU do for you?") could be discussed within a local context. Local print and broadcast media, were used to attract a wide local audience and events were held in pubs, hotels or university venues.

While just one example of an effective outreach effort by a single Member State, Ireland's initiative may well provide a blueprint for future projects across Europe, aimed at cultivating the views of citizens in a direct setting, free from the "noise" of cross-cutting domestic political concerns that have, to date, dominated European parliament elections.

The benefit of the Citizens' Dialogues format cannot be overstated for increasing citizen participation and engagement with EU issues within a Member State, and even within discrete local communities. The reasons for this are two-fold – the credibility that is brought to the event by having the Minister present must be acknowledged, and secondly, the Citizens' Dialogue created a genuine forum for sharing information and ideas. Minister Helen McEntee presence at the Citizens' Dialogues legitimised

the process and proved to participants that their views and insights would be listened to and brought back to Government and policymakers. Without a doubt, bringing people into a room acts as a meaningful method of engagement – some in the UK, including former Prime Minister Gordon Brown, have even suggested this as a method to solve the Brexit impasse.¹²

An Tánaiste, Simon Coveney, commented on the importance of two way dialogue between government and citizens stating: “We have been listening. Our hope is that you feel you have been heard and that you may recognize something of yourself or the events you attended in the report.”¹³

Recommendation II: Increasing Specialist Knowledge

A second method of developing a more transparent Union and facilitating voter engagement with the decision-making process may be found in Europe’s lobbying framework. In light of the Commission’s relatively small staff, great value is placed on policymaker’s interaction with lobbyists and interest groups. The Commission employs only 40,000 people, only two-thirds of whom are dedicated to policy.¹⁴ It therefore relies on sourcing and collating accurate information for the formulation of informed policy that responds to the desires of European citizens, businesses, and interest groups alike. Furthermore, the place of business, society and government is constantly changing. These entities no longer exist in a hierarchy, but rather, business and government are now expected to engage with and respond to global challenges and opportunities. This is evidenced in the annual Edelman Trust Barometer 2019. This research found that 75% of respondents in Ireland felt that CEOs should take the lead on change rather than wait for government to impose it.¹⁵ In this context, lobbying has become more important than ever.

Currently, the European Union has a lobbying register in place, the Joint Transparency Register, to record those lobbying the European Commission and Parliament. According to Crepez and Chari, in their comparative study of lobbying regulation, the EU’s register falls at the lower to medium end of the scale.¹⁶ It lacks “teeth” from

an enforcement perspective and registration with the register is voluntary. If policymakers developed the register making registration mandatory and thereby levelling the playing field for all lobbyists and interest groups, the legitimacy of the system would be enhanced. The EU should seek to promote the register, not simply as a regulatory mechanism, but as an accessible tool that European citizens can use to connect with those groups whose views are similar (or indeed different) to their own. Such moves towards transparency could therefore facilitate pan-European engagement with those

“The EU should be cognisant of the advantages of cultivating an active civic society network at European level, with interest groups, and ultimately citizens”

interest groups that engage in the policy-making process and may help to combat the view that policy-making in Brussels is in the hands of powerful and distant interests.

The key roles of a lobbyist are to offer specialist knowledge, to aid policy formulation and to offer legitimatising support for policy.¹⁷ Should citizens be able to access details of the organisations lobbying by policy or interest issue, this increased transparency would assist

in legitimising the decision-making process and stimulate citizen engagement with the Union, not merely as individual voters, but through membership of interest groups.

The EU should be cognisant of the potential advantages of cultivating an active civic society network at a European level, with interest groups, and ultimately European citizens, engaging with issues from a supranational perspective. The contribution of such groups to the legitimisation and development of Member State democracies was enormously significant, there is no reason to believe that a similar dynamic at a Union level will not have the same positive effects.

Recommendation III: Educating the Citizens of the Future

Introducing modules on the history and policies of the EU in schools would give all citizens the opportunity to understand

the uniqueness of the EU as a model of democracy where power is shared in some area at the discretion of the member state and where it is retained in other areas by the member state. Such a programme could outline the social benefits which have accrued to citizens due to the EU such as women's equality, equal pay, an awareness of the common European culture and history, the emergence of European values, which distinguish Europe from other regions of the world, the development of social rights and the protection of human rights, to name but a few.

Recommendation IV: Role of the Media

Another opportunity presents itself in terms of the role of the media. While most journalists have a deep knowledge of the Common Agricultural Policy because the farming lobby is highly political, has a deep understanding of the implications of the CAP for their daily lives, and uses the media to broadcast its concerns to national and European policy makers, perhaps this model could be extended to other policy areas, which also impact directly on the ordinary citizen. A well informed media, for example, could lead a balanced conversation on immigration or European Defence Policy and what it means rather than provoke a controversy about this topic. Clear, informative unbiased materials could be provided to radio and TV moderators to enable them to better steer conversations about the EU where the interlocutors represent opposing views on the EU spectrum. Developments on European issues could perhaps be included as the final part of the daily news programmes



Recommendation IV: Public Opinion Research

The importance of the Eurobarometer research should not be underestimated when it comes to increasing citizen engagement with the European Union. Investment in public opinion research enables policymakers to act with a degree of certainty of the views of the citizens that they serve, legitimising the policy-making process and shaping the policy agenda to reflect the values and views of European

citizens, ensuring representation by European decisions. Take the Spring 2018 European Barometer survey which revealed that Europeans believe that peace, human rights and democracy best represent the EU.¹⁸ European politicians, policy makers and communicators alike should take these statistics into consideration when engaging in debate on the future of the EU and in setting a policy agenda that reflects the needs of the European public.

A vulnerability of the European project has always been a sense that the EU's focus has been on issues that matter little to its citizens. While such criticisms have regularly been exaggerated, the sense that the EU concerns itself with obscure regulation rather than the pressing issues of the day has become increasingly significant. Indeed, the potency of such criticism was demonstrated all too clearly in the Brexit referendum, during which the "out of touch" bureaucrats of Brussels were charged with ignorance of the daily lives of ordinary Europeans. Using the EU's extensive public opinion research to respond to such criticism will serve to strengthen the legitimacy and democratic credentials of the European project, and protect the place of the citizen as central in all policy decision making.

It is, of course, necessary for the EU to lead, rather than merely follow the whims of domestic Member State policy debates. However, it is equally important that the Union is always well-positioned to meet the concerns of its people with a truly "European" response, one that addresses the issues that matter to citizens whilst also asserting the values and principles that have underpinned the European project. This flexible approach to asserting the European vision, one that listens carefully in order to lead, can proactively counteract critics that seek to convey an image of a distant, disengaged "super-state".

Conclusion

Democracy is in the DNA of the EU. The very project was founded on the desire to maintain and encourage the democratic process in the aftermath of two devastating World Wars. However, this article has argued that European citizens' ability to engage with, and derive a sense of ownership of, EU politics

and policy-making has been eroded and put citizen engagement at risk.

While the institutional structure of the EU has regularly been the source of criticism, this paper suggests that methods to re-engage with its citizens could go far in counteracting the view that EU that is out of touch with its people, initiatives such as the Citizens' Dialogues in Ireland signal possible avenues to renewing the relationship between Europeans and the Union. Furthermore, efforts to reform and bring to light the manner in which interest groups engage with the policy making process could provide a catalyst for fostering pan-European civil society, whilst combating the view of Brussels as a servant of elite, economic interests. Finally, the use of more extensive and proactive public opinion research to achieve greater congruence between the priorities of European citizens and the EU policy agenda may serve to bolster the EU against critics who claim that it is disengaged from its people.

As a Union, we must depend and rely on one another as we traverse the challenging geopolitical times ahead. Involving and empowering citizens in a genuine way in the European process, ensuring that they can access politicians, business and lobby groups, and creating policy that responds to citizens' opinions and concerns is vital for the future of the Union. As the Irish government prepares for the summit in Sibiu, on 9 May 2019 to discuss the future of the EU 27 and for the June European Council to discuss the Union's Strategic Agenda for 2019-2024, An Taoiseach, Leo Varadkar has indicated the value of the citizens' dialogues to the Irish government in its preparations for the summits. He said: "They will be guided by what we have heard in our citizens' consultations. They will be guided by you".

Clodagh Bergin is a communications marketing professional working in the Public Affairs Strategy team in Edelman Ireland. Prior to this, Clodagh worked in Ibec, the largest business lobby group in Ireland, and in the European Parliament with Seán Kelly MEP.

Endnotes

1. Pollak, & Slominski. (2014). The silence of the shepherds: How the Austrian parliament informs its citizens on European issues. *Journal of Legislative Studies*, 109-124.
2. O'Connell, H. (2013, November 20). Can you name one of your local MEPs? 91 per cent of Dubliners can't. Retrieved from *The Journal*: <https://www.thejournal.ie/who-is-my-local-mep-1182002-Nov2013/>
3. European Commission, S. B. (2018). Top Issues Facing the EU. Retrieved from Politico: https://app.powerbi.com/view?r=eyJrIjoieYmUzNmU5YmEtZjhjNC00MDU1LWJlNTAtM2ZiMjBlZjAwOWI2IiwidCI6ImMyOGQyZTEyLTA5ODgtNGFjZi1iZGJhLTEXOTU4MmU4ZDA4ZCIsImMiOjI9&utm_source=POLITICO.EU&utm_campaign=3572e6951c-EMAIL_CAMPAIGN_2018_12_05_02_36&utm_medium=email&utm
4. Innerarity, D. (2018). *Democracy in Europe: A Political Philosophy of the EU*. Palgrave Macmillan.
5. Moravcsik, A. (2000). *The Origins of Human Rights Regimes*. Retrieved from <https://www.princeton.edu/~amoravcs/library/origins.pdf>
6. Fatás, A. (2018, September 28). What Has the Eurozone Learned from the Financial Crisis. Retrieved from *Harvard Business Review*: <https://hbr.org/2018/09/what-has-the-eurozone-learned-from-the-financial-crisis>
7. McEvoy, C. (2016). The Role of Political Efficacy on Public Opinion in the European Union. *Journal of Common Market Studies*.
8. Hüller, T., & Kohler-Koch, B. (2008). Assessing the democratic value of civil society engagement in the European Union. In B. Kohler-Koch, D. d. Bièvre, & W. Maloney, *EU-governance to civil society: gains and challenges* (pp. 145-181). Mannheim. Retrieved from *Open Access Repository*: https://www.ssoar.info/ssoar/bitstream/handle/document/19531/ssoar-2008-huller_et_al-assessing_the_democratic_value_of.pdf?sequence=1
9. Power, A. (2010). EU Legitimacy and New Forms of Citizen Engagement. *Electronic Journal of e-Government*, 45-54.
10. McEvoy, C. (2016). The Role of Political Efficacy on Public Opinion in the European Union. *Journal of Common Market Studies*
11. Department of Foreign Affairs and Trade, 2018.
12. Brown, G. (2019, January 20). A citizens' assembly is now the only way to break the Brexit deadlock. Retrieved from *The Guardian*.
13. Ibid.
14. McCormick, J. (2014). *Understanding the European Union: A Concise Introduction* (The European Union Series). Palgrave Macmillan. p.79-80
15. Edelman. (2018, October). 2018 Edelman Earned Brand Global Report - Brands Take a Stand. Retrieved from https://www.edelman.com/sites/g/files/aatuss191/files/2018-10/2018_Edelman_Earned_Brand_Global_Report.pdf
16. Crepaz, M., & Chari, R. (2014). The EU's initiatives to regulate lobbyists: good or bad administration? Retrieved from <http://ced.revistas.deusto.es/article/viewFile/807/939>
17. Ibid. The author would like to give a special mention to Ambassador John Neary for his contribution to the paper.
18. European Commission, S. B. (2018). Top Issues Facing the EU. Retrieved from Politico: https://app.powerbi.com/view?r=eyJrIjoieYmUzNmU5YmEtZjhjNC00MDU1LWJlNTAtM2ZiMjBlZjAwOWI2IiwidCI6ImMyOGQyZTEyLTA5ODgtNGFjZi1iZGJhLTEXOTU4MmU4ZDA4ZCIsImMiOjI9&utm_source=POLITICO.EU&utm_campaign=3572e6951c-EMAIL_CAMPAIGN_2018_12_05_02_36&utm_medium=email&utm



Out the Harbour's Mouth: The Common Fisheries Policy and Brexit

How will the departure of the UK from the EU's Common Fisheries Policy (CFP) bring change to this decades old policy? This question will be answered by analysing three key issues. The first is access of the EU fleet to UK territorial waters, which will replace the CFP's principle of "equal conditions of access" by a more restrictive legal framework of the UN Conference on the Law of the Sea. Second, how will the UK set quotas for stocks in its territorial waters that the EU fleet rely on? Finally, it will assess the likely impacts on Ireland such as fishing catches and trade in seafood. However, a brief overview of the CFP and its role in the UK's referendum will be presented first in order provide context to how Brexit will impact the policy.



Introduction

The Common Fisheries Policy and the UK Referendum:

Today's CFP was introduced in 1983 and sets EU-wide rules that aim to manage the fishing practices of the EU fleet. It has four pillars; (i) fisheries management, (ii) international cooperation with non-EU states, (iii) trade policy and (iv) funding for fishing communities. However, the CFP was not one of the initial policies at the inception of the EEC. There was just one reference to fisheries in the original 1957 Treaty of Rome, where Article 38 stated that “agriculture products” refer to “products of the soil, of stock-farming and of fisheries”. This reflected how coastal states held little influence in the way of territorial waters to require a formal policy at that time.

The Freedom of the Seas Doctrine

Prior to the end of World War II, the oceans had long been subject to the freedom-of-the-seas doctrine, a principle originating in the 17th Century. This limited a coastal state's national rights and jurisdiction, to just a narrow belt of only a three nautical miles (nm) (5.5km), with the ocean beyond deemed the high seas, to be free to all. In Europe, this was altered with the 1964 European Fisheries Convention (EFC), which included a number of EEC¹ and non-EEC states². The agreement gave rise to a system of two zones, first where 0–6nm was an “exclusive zone” for the coastal

state, and second with a 6–12nm zone, that allowed those who had fished in that zone from 1953 – 1962 the right to continue.

The Principle of Equal Access

The first applicant states³ to join the EEC had territorial waters that were resource-rich in fish stocks. To ensure continued access to these waters the original Member States agreed in 1970 to Regulation (EEC) No 2141/70, establishing the principle of “equal conditions of access”. The principle would allow any EEC flagged vessel to operate freely in the territorial waters of another Member State. To highlight the priority this received in light of the applications to join, the regulation was put into force just six hours after negotiations began with applicant states. As a result, it formed part of “*acquis communautaire*”, which the new Member States had to accept upon accession. In the case of Ireland, with the potential benefits for agriculture and other aspects of the economy, it was never going to remain outside the EEC on the issue of fisheries. This was due to its small share of the Irish economy, and how it never played a part in Ireland’s collective narrative which agriculture has. Although the accession treaty had a derogation of ten years until 1982 on the principle, where the EFC zones continued, many in the Irish and British fishing industries objected.⁴

However, change came during that 1970s through the ongoing United Nations Conferences on the Law of the Sea (UNCLOS), which had commenced in 1958. UNCLOS aimed to achieve what the League of Nations could not in the 1930s, to codify an international framework of laws for the world’s oceans. Extending territorial claims to a 200nm Exclusive Economic Zone (EEZ) became a key issue for UNCLOS in the 1970s, so much so, that a number of non-EU coastal states unilaterally declared their own. In response to this the EU formally extended its territorial waters on the Atlantic and North Sea to 200nm in 1977, with equal conditions of access applying to waters between 12nm–200nm, and the EFC rules continued to applying within the 12nm zone. As a result, the EU’s responsibility for fisheries was transformed overnight. The UNCLOS was signed in 1982.

The Common Fisheries Policy

Since the introduction of the CFP in 1983, fishery ministers attend the Agriculture and Fisheries Council of the EU each December to set the total allowable catches (TACs) for the following year for most commercial stocks in EU waters.⁵ TACs set the quantity of fish that can be taken and landed from each stock each year. TACs have been shared among Member States by the principle of “relative stability” since 1983.⁶

However, recent academic literature on the performance of the CFP highlights its many policy design failures. One key stumbling block is where TACs are agreed with a greater focus on short-term political concerns, rather than long-term sustainability. Frequently, there is a gulf between what fishery ministers agree on one hand, and the actual levels of sustainable levels that are required on the other. In 2003, the European Commission itself published a report which found that 94% of the fish stocks it assessed in the some waters around the UK were being overfished. It has been estimated that 86% of agreed TACs from 1990–2007 were set above scientific advice.⁷ Similarly, Carpenter has found that from 2001–2018, two-thirds of TACs were set above scientific advice.⁸

The Principle of Relative Stability

The principle of relative stability has proven to be another deeply unpopular aspect of the policy. At hearings in the UK’s House of Lords European Union Committee (2016), UK fishery representatives stated that relative stability is “unfair and disadvantaged the UK” where there are “gross anomalies in the quota share arrangements”.⁹ From example, quota share arrangements for cod in the English Channel, allot the UK 9% of the stock, and France 84%, despite that the majority of catches were made in UK waters. Another report found that 96% of UK fishers surveyed believed the balance of quota between the UK and EU was unfair.¹⁰

Fishing for Leave

20

From a British industry perspective, with a poor share of quotas and largely unlimited access by the EU fleet into UK waters, many UK fishers viewed themselves

as the worst affected by the UK's membership of the EU. It came as no surprise that 92% of UK fishers surveyed had indicated that they would vote to leave the EU in the referendum.¹¹ In May 2016 Fishing for Leave (FFL) was founded and campaigned to restore the “sovereignty to the British Parliament and with that national control over the 200nm limit and all waters and resources therein”, while the Scottish Fishermen's Federation (SFF) refers to Brexit as a “sea of opportunity”.

"From a British industry perspective with a poor share of quotas and largely unlimited access by the EU fleet into UK waters, many UK fishers viewed themselves as the worst affected by the UK's membership of the EU"

Fisheries became a particular political issue of focus during the referendum campaign, despite the UK fishing and fish processing industries accounting for 0.12% of the all UK economic output. A defining moment of the referendum was due to FFL organising a flotilla of largely Scottish vessels up the River Thames to Westminster, in the week before the referendum. The CFP

encapsulated all the characteristics of what UK fishers and the leave campaign, thought of the EU: as bureaucratically meddlesome, dysfunctional, and unyielding to remedy. The fishing industry saw the referendum as an opportunity to right a wrong, to “take back control” of their waters, to be rid of the CFP, where they could limit who has access to UK waters, and to set out a more favorable quotas for UK fishers, issues which will be now be explored.

Key Issue 1: Access to Territorial Waters

The UK Fisheries Bill

The key question here, is whether the UK can exclude the EU fleet from its traditional fishing grounds around the UK? The UK Government has stated that UNCLOS will be the new legal baseline which the UK will employ for fisheries, once it leaves the EU. It is therefore free to establish its own access

regime to replace the CFP, just as others coastal states have their own, such as Norway. The UK's Fisheries Bill, which proposes to replace the CFP post-Brexit, specifically revokes Article 5 of the CFP's base legislative instrument Regulation 1380/2013, which outlines the principle of equal access. The Fisheries Bill further states how non-UK fishing vessels will only be able to enter UK waters to fish, if they hold a UK-issued sea-fishing license. Further to this, the UK announced in July 2017 that it was withdrawing from the EFC and the access rights it granted to the Convention's parties.

Cod Wars and Scallops Wars

Such exclusionary actions by the UK, will impact Ireland and its fishing patterns. When Iceland unilaterally, but gradually, extended its EEZ from 4nm–200nm from the 1940s–1970s, it excluded the UK's distant-water fleet from Icelandic fishing grounds it had traditionally exploited. It sparked several



instances of interstate clashes between the Iceland and the UK, referred to as the 'cod wars', until the latter recognised Iceland's 200nm EEZ. It resulted in Iceland gaining exclusivity over those stocks, depriving the UK of access right it had previously relied on. While Iceland is in relative geographical isolation with the rest of Europe, the UK borders six EU and two non-EU countries. A more recent example was the 'scallop war' in 2018 between British and French vessels in the Baie de la Seine, over UK access rights to French waters. The 1990s also saw tensions between Irish and Spanish fishers in Ireland's EEZ, again over the issue of Spanish access rights to Irish waters.

UK Fishermen Post Brexit

Brexit complicates the lack of clarity in the delimitation of maritime borders in both Carlingford and Lough Foyle, between Ireland and the UK.¹² (Northern Ireland Affairs Committee 2018). Additionally, there are potential divergences in the environmental regulatory

regimes between Ireland, under the EU regime, and the UK. The unique functions of regulating cross-border activities in both loughs is laid out in the Good Friday Agreement, with the Lough's Agency. With Brexit, the Agency could face difficulties, if it is required to balance two increasingly diverging sets of environmental standards. Furthermore, there is the issue of devolution in Northern Ireland with the UK on fisheries which will further complicate post-Brexit fisheries governance within the UK.

Over all, on the issue access, it is unlikely that the UK would insist on a policy that excludes all EU vessels from its EEZ, as this would automatically trigger reciprocal measures by the EU. The UK Government's 2018 White Paper on UK fishery governance post-Brexit has stated that any decisions about giving vessels from the EU access to UK waters will be a matter for negotiation. However, there is no detail on the criteria that will be used to determine access or the extent to which access will change after Brexit. However, it is certain that the EU fleet with access rights within the UK EEZ will do so under UK regulations, but under what terms? The answer to that question is found in another: how will TACs be set by the UK for UK waters?

Key Issue 2: Setting Total Allowable Catches

Sovereign Rights or Cooperative Might

As indicated earlier in this paper, if the UK leaves the EU, the UNCLOS will be the new framework within which it operates. According to UNCLOS, a coastal state has within its EEZ sovereign rights in exploiting, conserving and managing its natural resources, in addition to determining how fishing resources can be exploited and by whom. Upon leaving the EU the UK will be responsible for determining TACs of fisheries resources within its EEZ, however, under UNCLOS and the 1995 UN Fish Stocks Agreement, the UK has obligations to coordinate conservation measures with migratory stocks that it will share with other coastal states.

The UK Government has stated that with “virtually all stocks fished by the UK” being highly migratory species, it will require a process of cooperative conversation and management with other coastal states, such as the EU. But just how much change will the UK’s departure from the Common Fisheries Policy bring in terms of Total Allowable Catches?

The Principle of Relative Stability

The 2018 UK Government White Paper has highlighted how the UK “will be seeking to move away from the principle of “relative stability” and that it “will seek to secure increased fishing opportunities” through a process of “annual exchanges” in the form of negotiations with other coastal states. These exchanges will be shaped by three approaches; determining the TAC; negotiating allocations; and controlling access to waters, which has been described by former Minister of State for Agriculture, Fisheries and Food, George Eustice, as the UK’s “trump card”.

The Principle of Zonal Attachment

The White Paper presents research on replacing “relative stability” with the concept of “zonal attachment”. Carpenter has highlighted this concept, which involves identifying the biological share of a fish stock found in an EEZ, and setting a quota share based on that.¹³ The White Paper goes further, and uses three approaches to evaluate if a fish stock resides in the UK EEZ; (i) ‘landings’, that involve the percentage of a given stock that was caught and landed inside the UK’s EEZ; (ii) ‘bathymetry’, the percentage of a stock’s total habitable area that lies within the UK’s EEZ; and (iii) ‘swept-area biomass’, the percentage of a stock that lies within UK’s EEZ based on scientific trawl survey data. Celtic Sea cod is mentioned in the White Paper, where in 2018 the UK received 7% share of the TAC, however, it would have been higher under ‘landing’ (51%), ‘bathymetry’ (35%) and ‘swept-area biomass’ (43%).

that both the EU and the UK “should cooperate bilaterally and internationally to ensure [...] rational management and regulation of fisheries” and other environmental objectives, “including to manage shared stocks”. However, it specifically states that “within the context of the overall economic partnership the Parties should establish a new fisheries agreement on, inter alia, access to waters and quota shares”. Critically, the non-binding declaration states that future negotiations on fisheries will be conditional on a comprehensive trade agreement between the EU and UK. To what extent this will be accomplished will only be determined once the UK has exited the EU.

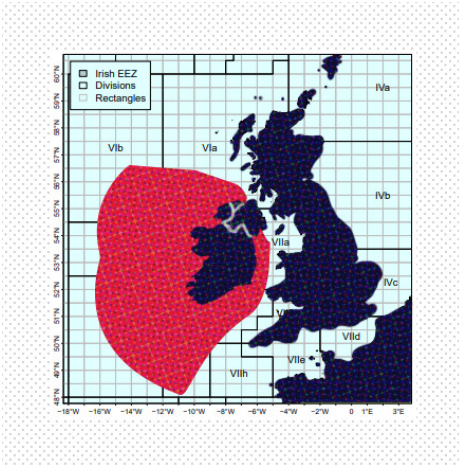


Image 1: Ireland's EEZ with ICES divisions and rectangles.
 Source: Marine Institute

**Key Issue 3.
 Conclusion: The Potential Impacts for Ireland – Access, Catches and Seafood**

The CFP, although divisive among its stakeholders, has at least provided a relative sense of stability in at least the process in how fisheries management is conducted in EU waters. With the UK

exiting the policy, the previous principle of equal conditions of access within EU waters by the EU fleet will cease to apply to the resource-rich waters of the UK. It can be expected that the

UK will apply a more restrictive access regime for the EU fleet under UNCLOS, but to what extent will only be revealed once the UK has left and formal negotiations begin. As highlighted earlier with cod in the Celtic Sea or English Channel, the UK could claim additional shares of TACs, in the c. 40 TACs that are commercially important to Ireland. But what is at stake with key stocks that Ireland peruses in UK waters? To provide insight, the European Commission’s Scientific, Technical and Economic Committee for Fisheries (STECF) has published data

on fishing activities of the EU fleet over 10 meters.

The data is divided into 'divisions' set down by the International Council for the Exploration of the Sea (ICES), as presented in Image 1 from the Marine Institute's Atlas of Commercial Fisheries around Ireland (2014). For example, the area that is the Irish Sea is known as division VIIa or the area west of Scotland is known as VIa. These divisions are then further broken down into rectangles, where c. 20 exist in division VIIa and c. 75 in VIa. By selecting rectangles based on Ireland and the UK's EEZ, it is possible to gain an understanding of fishing patterns. Image 1 highlights that the two do not align neatly along the political lines of the EEZ. It should therefore be stated that the figures are only indicators of tonnes caught rather than clear and conclusive evidence. The data, downloaded in January 2019, takes an average of the top ten leading Irish catches from 2014 – 2016 in ICES rectangle areas, that incompletely conform to Ireland's and the UK's EEZ, as presented in Table 1.

The Department of Agriculture, Food and the Marine (DAFM) have stated that 36% in the value of Irish TACs are caught in UK waters. Two key stocks for Ireland's fishing industry is that of mackerel and Dublin Bay prawns. In terms of the data from the European Commission collected for this paper, 74% of mackerel caught by the Irish fishing industry was done so in in UK waters, while for Dublin Bay prawns it was 21%. However, Dublin Bay prawns exist on the dividing lines between the UK and Ireland's EEZ in the Irish Sea (VIIa), which from Image 1 shows how the ICES rectangles do not correspond neatly with EEZ. If there is an imposition of 'hard EEZ borders' regarding fisheries or UK TACs which are revised under "zonal attachment", Ireland's share of these stocks will be negatively impacted.

Stock	IE EEZ	UK EEZ	Total	IE EEZ	UK EEZ
Mackerel	29,502	82,560	112,062	26%	74%
Horse Mackerel	23,440	14,198	37,638	62%	38%
Blue Whiting	23,357	0	23,357	100%	0%
Herring	17,072	3,741	20,812	82%	18%
Boarfish	7,943	9,459	17,402	46%	54%
Norway Lobster	7,897	2,106	10,002	79%	21%
Whiting	6,738	670	7,408	91%	9%
Sprat	5,945	0	5,945	100%	0%
Crab	5,178	642	5,820	89%	11%
Whelk	3,642	853	4,495	81%	19%

Not only will there be consequences for Irish TACs as a result of Brexit, but in Irish trade in seafood as a whole. As seafood involves perishable goods, where the quality (and therefore value) quickly deteriorates with time. Such products are thus particularly vulnerable to non-tariff barriers, to the likes of inspections or border delays. The absence of such barriers inside EU's Single Market (SM) has allowed for effective supply-chains to develop to meet market demands. While the Customs Union (CU) ensured uniformity on tariffs on goods entering and leaving the EU. Brexit will bring change to this stable trading environment. Data for 2018 from the European Commission's European Market Observation for Fisheries and Aquaculture Products (EUMOFA) is presented in Table 2.

	EU Exports €'000	% Share	EU Imports €'000	% Share
Ireland	€ 415	69%	€ 288	89%
UK	€ 1,900	70%	€ 3,500	35%

Both Ireland and the UK export similar percentage levels to the EU, where it accounted for 69% of all Irish exports (€415 million), and 70% for the UK (€1.9 billion). However, for imports, there is sizable differences; Ireland relies on the EU for 89% of its imports (€288 million), while for the UK it is 35% (€3.5 billion). France is the largest EU export market for both Ireland and the UK, account for 35% (€464 million) of UK-EU exports, and 30% (€123 million) in the case of Ireland.

Ireland is the UK's second largest EU export market worth 17% (€227 million). For Ireland the UK is also its second largest EU export market worth 20% (€85 million). Key non-EU countries for UK imports include Iceland (14%, €327 million), Faroe Islands (9%, €211 million) and Norway (7%, €64 million).

For EU imports, Ireland relies heavily on the UK at 72% (€207 million), which amounts to 64% in terms of both EU and non-EU imports. The absence of barriers within the SM has allowed both Member States to transport much of its seafood fresh. For example, the largest share in the value of seafood trade in Ireland (61%) and UK (45%) is defined as 'whole/gutted', where for Ireland 87% (€167 million) of that category is exported to the EU as 'live/fresh'. In terms of EU imports for Ireland, 99% (€83 million) of 'whole/gutted' is 'live/fresh' seafood. In the UK for the same instances of 'live/fresh', 64% (€961 million) was exported to the EU, while 52% (€572 million) was imported from the EU.

Further, in the case of Ireland's inshore fleet, which targets shellfish (brown lobster, crab, etc.), the majority of it is exported live, as that is where the added value is to the consumer. The use of the UK as a landbridge to EU markets is key aspect of this supply-chain. A study by the Irish Maritime Development Office¹⁴ in 2018 highlighted the shorter transit time of c. 20 hours in crossing the UK landbridge¹⁵ as a key decision making factor in using it, over direct sea services of up to c. 38 hours to the EU. The addition of time delays due to such barriers as a result of the UK leaving both the SM and CU will likely result in reassessments of trading model options to the EU. However, in the case of seafood's time sensitiveness, constraints exist within respective supply chains.

This paper has presented the challenges the UK's exit from the EU brings to the Common Fisheries Policy, and fisheries management in the North East Atlantic. The current EU system for access will likely end, resulting in a more restrictive regime in the EU fleet accessing UK territorial waters. In the case of TACs, no longer will the UK be at the table negotiating collectively on setting TACS. Instead,

a new formal negotiating process will be introduced between the EU and UK in reaching annual fishery agreements. The outcomes of that negotiating process remain unknown, bringing about uncertainty for many in Ireland's fishing industry, and the coastal communities which depend on their livelihoods. The abundance of fish stocks in UK waters, the migratory patterns of species that straddle its borders, and the UK's close geographical proximity to the EU and Ireland will result in considerable challenges to how the TACs will be agreed. Additionally, with the UK leaving the EU's Single Market and Customs Union, a new environment for the sensitive trade and movement of seafood will arise. With the UK heading out the harbour's mouth of the Common Fisheries Policy, a new course is being set for this policy.

Ciarán O'Driscoll is an Economic Researcher at the Irish Maritime Development Office. He is also pursuing a Master's degree which focuses on Brexit and Irish maritime trade.

References

Carpenter, G., (2018) *Landing the Blame: Overfishing in the Atlantic in 2018*, Available: <https://goo.gl/tAqbU3>, Accessed 14.12.2018

Gerritsen, H. D., Lordan, C., (2014) *Atlas of Commercial Fisheries around Ireland*, Available: <https://bit.ly/2UGrqzv>, Accessed: 04.02.2019

Endnotes

1. Belgium, West Germany, Italy, Luxembourg, and the Netherlands.
2. Denmark, Ireland, Poland, Portugal, Spain, Sweden, and the United Kingdom.
3. Denmark, Ireland, Norway and the United Kingdom
4. The principle of equal conditions of access within the 0 – 12 nm zone has never been enacted. Instead, the derogation under the EFC-type zones has been renewed every ten-years. This has meant this deadline to become the factor for a ten-year cyclical reform of the CFP. It has taken place in 1992, 2002 and most recently under Ireland’s presidency of the Council of the EU in 2013.
5. The proposals are based on scientific advice from the Copenhagen-based International Council for the Exploration of the Sea, and the European Commission’s European Commission’s Scientific, Technical and Economic Committee for Fisheries.
6. Relative Stability was established on the following three factors; historic catches from 1973 – 78; preferential treatment for fishing dependent regions; and losses incurred following the extension of the 200nm EEZ by non-EU countries in the 1970s.
7. Villasante, S., Do Carme García-Negro, M., González-Laxe, F., Rodríguez, G. R., (2011) ‘Overfishing and the Common Fisheries Policy: (un)successful results from TAC regulation’, *Fish and Fisheries*, 12:1, pp 34 – 50
8. Carpenter, G., (2017) Not in the same boat: The economic impact of Brexit across UK fishing fleets, Available: <https://goo.gl/BUU4qp>, Accessed: 09.02.2019
9. European Union Committee, House of Lords (2016) Brexit; fisheries, Available: <https://goo.gl/xrQeBt>, Accessed: 03.02.2019
10. Thorbek, S., (2017) The Management of UK Fisheries Post Brexit: a fisherman’s perspective, Available: <https://goo.gl/tpB3tq>, Accessed: 17.11.2018
11. McAngus, C., (2016) Report on initial analysis of a survey of UK fishermen ahead of the referendum on the UK’s membership of the EU, Available: <https://goo.gl/a67FNh>, p.3. Accessed: 14.11.2018
12. Northern Ireland Affairs Committee, House of Commons, (2018) Brexit and Northern Ireland: fisheries, Available: <https://goo.gl/xLvYsj>, Accessed: 13.12.2018
13. Carpenter, G., (2017) Not in the same boat: The economic impact of Brexit across UK fishing fleets, Available: <https://goo.gl/BUU4qp>, Accessed: 09.02.2019. p.22
14. The author was one of the co-authors behind this study, which was commissioned by the Department of Transport, Tourism and Sport, and was published in November 2018: <https://bit.ly/2qOaSVn>
15. The UK landbridge refers to a route to market that connects Irish importers and exports to international markets via the UK road and ports network.



Future Possibilities for Social Europe

This policy paper addresses the future of Social Europe in light of the latest agreement on the European Pillar of Social Rights (the Pillar) in November 2017. Does the Pillar have the potential to significantly enhance the social dimension within the European institutions and its laws with a particular focus on working conditions? Looking first at the development of the social dimension, and its evolution in more recent times, this paper will then look at the Pillar's reception and application since its introduction, before considering how it can be integrated effectively with other long-term frameworks including Europe 2020 and the UN 2030 Agenda for Sustainable Development and the Sustainable Development Goals (2030 Agenda). This paper recommends an integrated approach to social policy and sustainability.



Introduction

The austerity years in the aftermath of the economic recession diverted the EU's institutions and political leaders away from social and economic equality. While the severity of the economic challenges facing the EU has been reduced more recently, the Brexit crisis undoubtedly poses a serious existential challenge and may continue to do so for some time. Post-Brexit Europe presents an imperative and an opportunity for the remaining 27 EU member states to address social cohesion, inequality and long-term sustainability.

The rise of right-wing populism in the face of the collapse of centre left and social democratic parties across Europe has meant there is a lack of leadership on these issues. The perception of increasing economic inequality within Member States, has not been politically addressed.¹ The challenges of climate change, demographics, and the changing nature of work will all ultimately challenge the post-war consensus of centrist politics in exchange for a fair allocation of the benefits of economic growth. The very future of the European project depends upon political leadership effectively delivering on the values expressed by the Pillar but should also go beyond that and develop on the progress made by Europe 2020 and the wider, transformative ambitions of the SDGs (Sustainable Development Goals).

The Development of Social Europe

35

While the Economic Community (EC) was formed primarily based on economic cooperation between European states, solidarity through social policy has always been a fundamental tenet, in principle, if not always in practice. In 1941, the *Manifesto of Ventotene for a Free and United Europe* by Altiero Spinelli, set out post-war duties for Europe with regard to social reform and European unity. In the post-war era, the visionaries Robert Schumann and Jean Monnet sought to integrate social and economic policy in the Schuman Declaration of 1950 and it has continued to be a theme within the European project throughout its history. There is no doubt that the Social Europe agenda has brought huge benefits to the citizens of Europe, with its harmonisation of working conditions, and social benefits to name just a few. However, at this juncture in European history, we ask what capacity the EU genuinely has to give effect to declarations about its commitment to Social Europe?

President Michael D. Higgins, speaking at the launch of the Jean Monnet Centre of Excellence in the New Political Economy of Europe in UCD on 28 March 2019 referred to these visionaries when he stated in relation to the current juncture facing Europe, that:

The summons to give prominence to social policy, as a principle of integration for the Union, is I suggest, as appropriate today as it was when first articulated by Jean Monnet. It is inextricably linked to the aspiration of ensuring peace, stability, inclusion and sustainable economic life on the wider European continent.

The remarkable achievement which is the European Union of today is a worthy one - a Union in which, to borrow Robert Schuman's phrase, war is "not merely unthinkable but materially impossible". It serves as a reminder too that the European Union in invoking shared possibilities is the very antithesis of any amplification of fear within nations and peoples. This is ground we must hold.²

The competences of the European Economic Community in the social field as defined in the Treaties of Rome in 1957 were very limited, and to a large degree those competences have remained the same, as is emphasised in the Irish government's response to the Social Pillar, discussed later in this paper. The extent of supranational involvement in internal social affairs was a matter of tension between Member States. The Council of Europe's European Social Charter (1961) which was revised in 1996 already provided the outline of what has been articulated in the Social Pillar. The issue of subsidiarity and Member State competence, is to this day, central to this debate around Social Europe.

The Impact of Social Europe

The 1970s witnessed a significant increase in the discourse around the establishment of a Social Europe with a growing consensus that economic activity alone would not sustain the Community. The enlarged Community met at the Paris Summit in 1972 and set out a clear statement of intent to focus on the social dimension alongside economic development, noting that Members States placed as much importance to vigorous action in the social fields as to the achievement of the Economic and Monetary Union:

Economic expansion is not an end in itself. Its first aim should be to enable disparities in living conditions to be reduced. It must take place with the participation of all the social partners. It should result in an improvement in the quality of life as well as in standards of living. As befits the genius of Europe, particular attention will be given to intangible values and to protecting the environment, so that progress may really be put at the service of mankind;³

The Council Resolution of 21 January 1974 on the Social Action Programme⁴ sought to strengthen the role of the European Social Fund and had three aims:

1. *Attainment of full and better employment in the Community*
2. *Improvement of living and working conditions so as to make possible their harmonization while the improvement is being maintained*
3. *Increased involvement of management and labour in the economic and social decisions of the Community, and of workers in the life of undertakings*

“Economic expansion is not an end in itself. Its first aim should be to enable disparities in living conditions to be reduced.”

These aims sought to progressively involve workers and trade union organisations in the economic and social decisions of the Community. The language of the Resolution is striking: the objectives sought to ‘humanise’ the living and working conditions

of workers in the Community. The Resolution considered these social objectives to be of constant concern to Community policies and objectives which should be progressed simultaneously with other objectives. It also expressed the need to protect the environment. The Resolution further expressed the political will to further the objectives. These social objectives were embedded within

the free movement of workers, one of the four fundamental freedoms of the Community, at a time when the free movement of persons was inextricably linked to their status as a worker. The coherence of social policy was crucial for the free movement of workers to be successful. This is worth emphasising: social policy and the economic development of the Community were very much consistent with one another, particular with regard to workers’ rights.

It is important to highlight the many real and practical benefits that the Social Europe agenda brought for EU citizens. The Irish Government’s response to the proposed Social Pillar, acknowledges that Ireland’s ascension to the EEC enabled Irish citizens to benefit from key basic social advances such as paid maternity leave and equal pay. The 1974 Resolution undertook

action to achieve equal pay for men and women, resulting in EU Directive 75/117/EEC on Equal Pay. Another important development of this era was the Regional Development Fund, aimed at correcting regional imbalances within the EU which would remain a crucial mechanism with further expansion.

Further Development in the Treaties

The European Treaties clearly outline the centrality of the social dimension to the aims and principles of the EU. The Preamble to the Treaty of the European Union (TEU) confirms the Contracting Members'

attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

And their determination,

to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market...⁵

The high point of Social Europe was the adoption of the Charter of Fundamental Rights which, while appended to the Maastricht Treaty, was only formally drafted in 2000. Chapter IV entitled 'Solidarity', set out rights regarding working conditions, collective bargaining, paid leave and other protections.⁶



The Charter proved particularly controversial with the UK under Margaret Thatcher's government. The UK opposed the Charter on the grounds that it would restrict enterprise. This impasse led to the Social Policy Protocol which was adopted by the 11 Member States who accepted the Charter. It was not until the adoption of the

Lisbon Treaty (2009) that the Charter was given full and equal weight to the other Treaties.

The continued reticence of the UK about the Charter would remain relevant in subsequent years. The UK found the social benefits of European unity to be superfluous to economic activity. It has been suggested that post-Brexit, the EU has a new opportunity to refocus on the social model, perhaps in the manner envisioned in the early 1970s.

Stress and Evolution: Social Europe During the Global Financial Crisis

The Global Financial Crisis and subsequent Eurozone Crisis produced significant limitations to the progress of the Social Pillar as Member States engaged in financial retrenchment. The European Social Model suffered a serious setback, both to its reputation and tenability as austerity policies were put in place across the EU-28. The significant economic divide between countries in Northern Europe and Southern Europe put great strain on the concept of solidarity between Member States. The high rates of unemployment and most especially of youth unemployment in Greece, Italy, Spain and Portugal demonstrated the limits of Member States' capacities to adequately deal with their internal social welfare systems. The numbers were stark. In 2016, more than 6.3 million young people (aged 15-24 years) were neither in employment nor in education or training (NEETs) in the EU. The youth unemployment rate in 2017 stood at 16.8 per cent within the EU-28 countries, with highs of 43.6 per cent in Greece and 38.6 per cent in Spain (Eurostat).⁷ The Youth Guarantee sought to address this by committing Member States to training, education and employment schemes for young people.

Meanwhile, the role played by European institutions such as the ECB (European Central Bank) and the Commission, in enforcing austerity measures in countries facing economic recession, including in Spain, Portugal, Greece and Ireland, called into question the credibility of the EU institutions on the social dimension. The capacity for the mutual survival of the single currency and the European Social Model was put in

doubt and their ability to coexist after the crisis was met with scepticism when some pro-European politicians and parties such as in Italy, were ejected from office. Furthermore, the very fact that those markets were so fragile to the crash and economic setbacks, with great consequences for their populations, called into question the strength and capacity of Europe to hold onto the values outlined above in the Treaties.

There was a response by Brussels. In March 2010, at the height of the financial crisis, then President of the Commission José Manuel Barroso, launched Europe 2020, “a strategy for smart, sustainable growth”.⁸ There was some recognition that to successfully survive the crisis, and regain the confidence of the European population, the EU would need to once again turn its eye to the social dimension. The ambitions were on increased employment opportunities, poverty reduction and the promotion of renewable energy for the low carbon economy. It is significant to note how even during economic collapse, that the plan recognised the need for sustainable growth in the context of climate change.

The European Social Policy Network (ESPN), founded in 2014, supports the Commission in monitoring progress towards the EU social protection and social inclusion objectives set out in the Europe 2020 strategy, including the European Pillar of Social Rights, and in the European Semester. It is important to note that the European Semester and the wider Eurozone budgetary process is a parallel track for the Social Pillar, as fiscal coordination and the mutualisation of economic risks is at the core of ensuring the ongoing success of the Eurozone and the banking union.

The European Pillar of Social Rights

President Juncker meanwhile announced the establishment of a European Pillar of Social Rights in his State of the Union address in the European Parliament on 9 September 2015.

40

This initiative is part of the work undertaken by the Commission for a deeper and fairer Economic and Monetary Union (EMU) and part of the Commission’s 2016 Work Programme. He called for social partners

to be a part of the process of building the pillar of social rights. The focus was on labour mobility, with the key principle being the same pay for the same job in the same place, intrinsic to the founding Treaties. This has the advantage of acting as a support to the free movement of labour and the further integration of the Single Market. The integrity of the single market relies on social cohesion across the EU and vice versa. Juncker was restating the fact that the reciprocity of both the single market and the social dimension is at the very heart of the European project.⁹

The Jacques Delors Institute issued a policy paper ‘A New Start for Europe’ during the consultation phase in 2015. Delors wrote in the preface that:

“If European policy-making jeopardises cohesion and sacrifices social standards, there is no chance for the European project to gather support from European citizens.”¹⁰

The paper had several policy recommendations, noting the divergence of European economies which threatens the political stability of the EU. While maintaining that social policy remains a core competence of member states, it noted that the EU should play a coordinating role by facilitating dialogue and reciprocity among national institutions for social security by ensuring that fiscal consolidation and Country Specific Recommendations do not endanger social justice and cohesion in the EU.

In particular, the paper raises an issue which still remains after the introduction of the Pillar. That is, the mainstreaming of Social Europe in all areas of EU policy making:

The European strategy for Europe 2020 has to be revised accordingly and should remain at the heart of EU mission. Besides that, the existing



tools of the European Semester can be used to bring together economic and social targets, particularly for the euro area.

This essential role for the European Semester is to complete the economic union of Europe, and with that create the capacity for deeper intercountry solidarity.

On the 17 November 2017, EU leaders signed up to the European Pillar of Social Rights which claims to be about delivering new and more effective rights for citizens. It has three main categories:

1. Equal opportunities and access to the labour market;
2. Fair working conditions;
3. Social protection and inclusion.

While the social pillar is a valuable tool of highlighting areas of inequality within Member States which need most attention, as a structure designed to measure existing systems the social pillar has limited potential to exert change where most needed due to the limited competencies of the EU.

The Social Pillar and Ireland

The Irish Government responded to the Commission's consultation process on the proposed Social Pillar with a comprehensive paper, detailing why it believes that the Social Pillar, strays into many areas firmly under Member State competence.¹¹ With regard to the three areas above, it welcomes the inclusion of areas such as social dialogue, health and safety and equal



opportunities, noting that these have been areas of policy which have always benefitted from the EU's unified cooperation. However, on areas such as skills, education and conditions of employment, Ireland

finds the Pillar is too ambiguous and strays beyond its competencies. On the area of social protection and healthcare, Ireland notes that the Treaties have designated these as exclusive national responsibilities.

In putting its paper together, the Irish Government had consulted with 179 Irish-based stakeholders on the Social Pillar and thirteen Government Departments contributed to the response. While welcoming the Social Pillar in principle, the response paper is critical of the Commission's aspiration to have effect in areas outside of its control. It is also critical of the lack of concrete, financial consideration given to the practical burden of implementing aspects of the Social Pillar. The paper also notes that the Social Pillar "should be consistently expressed as a set of principles at a high level while leaving matters of detail and modes of achievement to be determined by mean of EU 'hard' or 'soft' law instruments or to Member States as competence dictates." The paper also anticipates the problematic language of "rights" as opposed to "policy objectives", for instance in the area of the right for assistance in seeking employment, that "Identifying as a "right" something that cannot be delivered will tend to bring the whole concept of rights into disrepute". However, the Irish government does welcome certain aspects of the Social Pillar, such as the inclusion of Health and Safety at Work, as well as the inclusion of social dialogue and partners in the design of employment policy.

One year later, the implementation of the Pillar across all EU member states can be monitored using the "Social Scoreboard". Using any one of the 12 indicators, progression by Member States can be tracked and compared. The Commission's Country Report for Ireland published in March 2018 notes that Ireland performs relatively well on most indicators of the Social Scoreboard supporting the European Pillar of Social Rights, while challenges remain. Those main challenges include the rapid house price increases countrywide, the lack of access to affordable childcare, and a costly healthcare system. The report also notes the challenge of a favourable tax regime for multinationals which it finds contributes to a much

higher economic activity among multinationals than domestic companies and it recommends broadening the tax base. These country specific recommendations, of which these for Ireland are just an example, provide tailored policy recommendations for each Member State, making the Pillar relevant to policymakers across Europe. Ireland states that it does not support the use of CSRs to press for the implementation of Social Pillar areas within Member State competence.

However, as noted in the Irish Government's response to the Pillar in the consultation phase, the Government is critical of attempts by the Social Pillar to oversee areas outside of EU competence such as healthcare and social benefits. It is strongly critical of the Pillar's proposal to extend the right to sick leave and it is notable that this aspect does not feature in the final draft of the Pillar. Such a proposal would breach the subsidiarity principle according to the Irish Government. Noting again the national competence of such policy areas, the Irish Government says it is "important that the Pillar avoids being overly prescriptive and recognises that diverse approaches may be more effective in dealing with specific policy objectives in each Member State".

The UN 2030 Agenda for Sustainable Development & the Sustainable Development Goals

Another opportunity for the further integration of social and sustainable policy into EU policymaking is the UN 2030 Agenda, to which the EU has committed to fully implementing. Indeed, the Irish Government response to the Social Pillar also says that the EU needs to clarify what relationship the Pillar will have with the EU's implementation of the Sustainable Development Goals. The 2030 Agenda for Sustainable Development was adopted by the UN General Assembly on 25 September 2015. President Higgins terms the 2030 Agenda, along with the Paris Climate Agreement, transcendent and inspiring projects that 'hold on to the hope that transformative approaches are possible'.

European action for sustainability, states that the EU embraces and along with all EU Member States in line with the principle of subsidiarity, is fully committed to the 2030 Agenda:¹² indeed, the Commission states that the EU was instrumental in shaping the 2030 Agenda, and notes that the values of peace, security and development, are European values, which are expressed globally for the first time, as applying equally to developed and developing countries.

“The Irish Government is critical of attempts by the Social Pillar to oversee areas outside of EU competence such as healthcare and social benefits”

In June 2018, the EU Multi-Stakeholder Platform on the Implementation of the Sustainable Development Goals published a document entitled, *How the European Pillar of Social Rights can support the achievement of the 2030 Sustainable Development Goals (SDGs)?*¹³ If two long term social development

plans are to be implemented effectively by EU Member States, it is vital that the two frameworks operate in harmony with each other and are mainstreamed in EU policymaking. Indeed, in instances where the SDGs aim higher, that should take precedence, as all EU Members States, as countries within the EU and as UN Member States, have already agreed to the SDGs. As with Europe 2020, the focus of the 2030 Agenda is not just on social development but on tackling climate change and planning for the future that will be impacted by climate change. This includes the crucial area of Just Transition, where workers previously engaged in the fossil fuel industry should be equitably treated in the transition to a zero-carbon economy. This is an area lacking from the Social Pillar.

The seventeen 2030 Sustainable Development Goals work on the guiding principle that no one is left behind. The 17 goals are framed in the five interlocking themes of sustainable development into “people”, “prosperity”, “peace” “partnership” and “planet”. This assists in seeing the commonality between the SDGs and the Pillar: the SDGs aim to achieve no poverty, zero hunger, good health and well-being, quality education,

gender equality, affordable and clean energy, decent work and economic growth, reduced inequalities, and sustainable communities. A crucial element of the SDGs is that they work in synergy with one another, so that poverty reduction and climate action work side by side with another. This is to avoid the prioritisation that happens in the development sphere.

Eurostat published its first statistical analysis of the SDGs across EU Member States alongside the Commission's paper referenced above. This was in line with existing Eurostat policy of regular reporting on the EU Sustainable Development Strategy, but now taking in the Global 2030 Agenda. The report notes that the 2030 Agenda, more than previous global development goals provides for review at national, regional, and global level. Indeed, Eurostat is assisting in the development of an DGS monitoring system as the EU is perhaps the most statistically advanced region of the world.



Mainstreaming Sustainable Development: Integrating Policies for Achieving a Social Europe

It is vital that social policy is coherent and achievable for Member States while also setting ambitions for societies to develop and thrive sustainably. Both frameworks of the SDGs and the Pillar reflect the values set out in the EU Charter of Fundamental Rights and the EU Treaties as outlined above. Article 3 of the Charter emphasised sustainable development, full employment and social progress along with protection of the environment. The EU will need to provide leadership through the European semester on key policies, including educational development and the Youth Guarantee, all of which allow the Pillar and SDGs to work in harmony with one another.

precariousness and in-work poverty by ensuring fair working conditions and access to social protection for all workers. While legislative action has been proposed to support the implementation of the Pillar, the principle of subsidiarity and the limit of EU competences may act as barrier to real change. The role of Eurostat in monitoring the implementation of both the Pillar and the 2030 Agenda will be crucial. As the 2016 Eurostat report on the 2030 Agenda demonstrates, it has the capacity to give a broad and detailed picture of development across all EU Member States.

However, beyond reporting and monitoring, engagement by civil society will also play a vital role in ensuring the success of both the 2030 Agenda and the Social Pillar. The necessary condition highlighted here is that the civic space must be allowed to develop and thrive by including civil society and social partners. The most recent report from CIVICUS, on the State of Civil Society Internationally (March 2019) notes the rise of government attacks on humanitarian groups and on NGOs. Neither the Social Pillar nor the 2030 Agenda can be fully implemented across the EU without this civil and policy space being transparent and participative. Goal 17 in particular emphasises the global partnership required for all other goals to be successful: ‘A successful sustainable development agenda requires partnerships between governments, the private sector and civil society.’¹⁴

In conclusion, as the EU moves beyond *Europe-2020*, it needs to integrate social policy throughout various areas of EU policymaking. As the Commission sets out in its own communication, the mainstreaming of the 2030 Agenda is key to its success. The three areas of sustainable development, social, economic and environmental, should be incorporated into new and existing EU policies. The efficacy of social policy across the EU and at Member State level will depend on leadership and governance at both national and international level. The cross-sector approach of the 2030 Agenda provides a roadmap for the EU after 2020 in a post-Brexit environment that may be more receptive to international cooperation on social and developmental matters. Finding ways to integrate

the Social Pillar and the 2030 Agenda in such a way that leaves no one behind will place the social dimension once again at the heart of EU decision making.

While bearing in mind the principle of subsidiarity as fundamental to the EU Treaties and the functioning of the EU, the principle must not be allowed to create a culture of lowest common denominator across social goals, nor should we endorse a two-tier social policy framework for countries who are or who are not in the Eurozone. The solidarity between and across all Members States is fundamental to the European project and will be ever more important as the EU-27 moves on post-Brexit.

Without making a clearer commitment to social and economic equality, the EU institutions will remain a convenient target for rhetorical attack from populist politicians on both left and right across Europe. EU leaders need to address this challenge in a more coherent and effective manner in future. Europe has the opportunity to be a global leader in social and sustainable development. If it embraces that opportunity while reengaging with its citizens, it will regain the trust of Member States.

Endnotes

1. This question of inequality is more complex in EU Member States. Inequality has risen in some countries, remained unchanged or significantly decreased in others. See Brian Nolan 'Globalisation, Inequality and the Rise of Populism Globalisation, Inequality and Populism'. Journal of the Statistical and Social Inquiry Society of Ireland Vol. XLVI Symposium 2016-2017: p.110-116
2. 'Making a new Mind for Europe - Of the Discourse that we need' - Speech at the launch of the Jean Monnet Centre of Excellence in the New Political Economy of Europe UCD, Thursday, 28th March, 2019 <https://president.ie/en/media-library/speeches/making-a-new-mind-for-europe-of-the-discourse-that-we-need>
3. Statement from the Paris Summit (19 to 21 October 1972), p. 1
4. Council Resolution of 21 January 1974 concerning a social action programme
5. Preamble to the Treaty of the European Union (TEU)
6. Charter of fundamental rights of the European Union (2000/C 364/01), Chapter IV
7. Eurostat, Youth unemployment figures, 2007-2017 [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Youth_unemployment_figures,_2007-2017_\(%25\)_T1.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Youth_unemployment_figures,_2007-2017_(%25)_T1.png)
8. Communication from the Commission, Europe 2020: A strategy for smart sustainable and inclusive growth. COM 2010 2020 FINAL
9. Jean-Claude Juncker, President of the European Commission, Speech - State of the Union 2015: Time for Honesty, Unity and Solidarity, Strasbourg, 9 September 2015,
10. Jacques Delors Institute, A New Start for Social Europe, preface, February 2016
11. Ireland's Response to the European Commission Consultation on the proposed European Pillar of Social Rights, November 2016
12. Commission Communication on Next steps for a sustainable European future, Tuesday, 22 November, 2016
13. How can the European Pillar of Social Rights support the achievement of the 2030 Sustainable Development Goals? Recommendations to the European Commission by the subgroup on "Equality, Justice, Inclusion and Decent work" of the Multi-Stakeholder Platform on the Implementation of the Sustainable Development Goals in the EU, June 2018, see more here: https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/multi-stakeholder-platform-sdgs_en
14. 'Making a new Mind for Europe - Of the Discourse that we need' - Speech at the launch of the Jean Monnet Centre of Excellence in the New Political Economy of Europe UCD, Thursday, 28th March, 2019 <https://president.ie/en/media-library/speeches/making-a-new-mind-for-europe-of-the-discourse-that-we-need>



“Our Gallant Allies in Europe” Irish Diplomacy in a post-Brexit EU?

“To be blunt, Germany is now an indispensable partner for Ireland.”¹

This paper examines recent developments in the German-Irish bilateral relationship, and the implications that Ireland’s recent alliance-building with the Nordics, Baltics, and the Netherlands may have for Dublin’s relationship with Berlin. It analyses three aspects of German-Irish ties and explores the extent to which that bilateral relationship can help advance Irish interests in a post-Brexit EU. These aspects include economic preferences, common action globally through the UN, and transatlantic relations. It concludes with recommendations in each area.



Introduction

Even with the fraught process of the departure of Ireland’s previously closest EU partner, the UK, recent polls suggest Irish people are decidedly in favour of remaining part of the European project.² How then, should Ireland adjust to losing a partner such as the UK—one which happened to have an influential European Council vote and the diplomatic capacity to back it up?

“Germany” is an integral part of an obvious—if complicated—answer. The Irish Government’s *Global Ireland* plan announced intentions to boost diplomatic staff in Berlin and open a consulate in Frankfurt.³ The recent Department of Foreign Affairs and Trade (DFAT) review on German-Irish relations offers 24 recommendations for how to deepen ties.⁴ However, some policy positions that enjoy broad support in Ireland are hotly debated in Germany—within and between political parties.

The East German precedent is sometimes cited in United Ireland debates⁵ and Chancellor Angela Merkel pledged “unconditional” support for Ireland early on in Brexit negotiations.⁶ At the same time, Ireland’s Finance Minister, Paschal Donohoe, co-signed letters with other EU finance ministers that were widely interpreted as direct challenges to French President Emmanuel Macron’s eurozone reform agenda.⁷ The Dutch Government dubbed the

second of these letters a “Hanseatic Statement,”⁸ reflecting the name sometimes given to the recently-formed coalition of smaller, economically liberal Member States.⁹

Viewed from Berlin, the letters help illuminate Germany’s own European choice. Should it pursue a European policy that prioritises wide engagement and consensus-building—the option Ireland would prefer—or should it double down on Franco-German cooperation above all else?

This chapter draws upon—among other sources—the Irish Government’s recent strategies, interviews with both German and Irish officials and experts, and independent research on Ireland’s European coalitions. The objective is to assess the current state of Ireland’s relationship with Germany and to provide some analysis and recommendations for where that relationship can go in a post-Brexit EU. Firstly, the paper commences with some context before looking at the German-Irish relationship through three policy lenses. These include EU-level economic policies, global multilateralism, and transatlantic relations.

“Peripheral Ireland” and “Core Germany”—Ireland’s Current EU Coalition Context

Since the two countries joined the EU on the same day in 1973, Ireland and the UK have worked together to advance common interests within European institutional frameworks. Although the UK did not follow Ireland into the euro, the two states stood firmly in the Union’s economically liberal camp on issues like trade, fiscal policy, and in opposition to overregulation—even as Ireland often allied with the French and Spanish against British positions on the Common Agricultural Policy.¹⁰

The comprehensive “EU Coalition Explorer” study on bilateral relationships between Member States by the European Council on Foreign Relations (ECFR) identified the UK as one of the states Ireland contacted most often on EU matters. Irish diplomats and independent experts who were polled

also named the UK as one of the “most responsive” states to the Irish Government, and one with which it had a high level of “shared interests.”¹¹ Crucially however, ECFR’s study finds that the UK was the only Member State that reciprocally placed Ireland among its top partners in the same three categories. Irish diplomats and experts polled by ECFR gave high vote shares to both Germany and the Netherlands for “most contacted,” “shared interests,” and “most responsive.” Yet, their German and Dutch counterparts did not generally reciprocate these votes. Given Ireland’s previous alignment with the UK as an EU partner on some issues, Brexit presents Ireland, the Union’s most Europhile state, with challenges extending much further than Brexit.

By contrast, Germany is named among the “most contacted” of every single other EU Member State, is considered to have a high level of “shared interests” by all but three of its counterparts and is listed as one of the “most responsive” by all but one Member State. ECFR notes “Germany is a singular player. It has the most dense networks of interactions, tops most countries’ list of ‘essential partners,’ and is ranked as the most influential member in the EU overall.”¹² Thus, Ireland’s present work to deepen its bilateral relationship with Germany is key to strengthening its overall EU network.

For its part, the German Foreign Office has signaled new reciprocal interest in closer ties through its “Like-Minded Initiative,” identifying Ireland and Finland as the first two fellow EU Member States with which to pursue stronger engagement.¹³ The German Foreign Office notes Ireland’s “decidedly pro-European” orientation as a reason for being one of the first Member States chosen, while the German Embassy in Dublin highlights common German-Irish outlooks on free trade, multilateral commitments, and African development.

evaluate its EU network.¹⁵ The mutual German-Irish interest in stronger bilateral ties has already progressed to some steps at concrete implementation, beginning with a Joint Plan of Action announced in November 2018.¹⁶ DFAT's recommendation of regular bilateral contact at a State Secretary level has begun, with Germany also being interested in more exchange between the Bundestag and the Dáil.¹⁷ Outside of government institutions, the IIEA and the German Institute for International and Security Affairs (SWP) have initiated the annual Irish-German Joint Vision Forum to discuss EU matters in detail at bilateral level, involving both foreign ministries. Yet forging a mutually beneficial Irish-German partnership within the EU is about more than

“The German Foreign Office notes Ireland’s “decidedly pro-European” orientation as a reason for being one of the first Member States chosen”

straight bilateral links. In their paper on “Minilateralism in the EU,” SWP’s Kai-Olaf Lang and Nicolai von Ondarza note how coalitions between small and mid-size states with shared interests are much harder for Berlin to ignore.¹⁸ Yet, as Lang and von Ondarza note, Ireland has historically remained outside most of the EU’s “minilateral” coalitions, (such as the EPPO. However,

Ireland does participate in the Eurozone, PESCO, and Opting in to Justice and Home Affairs, where possible—perhaps also reflecting a general Irish scepticism of fixed intra-EU coalitions, as opposed to alliances that can shift, depending on the policy issue being discussed.¹⁹

Ireland’s alignment with the new “Hanseatic League,” or “Hansa,” is not without controversy. Because its positions challenge French eurozone reform ambitions—a hotly debated topic among the German political class—the Hansa presents both opportunities and risks for Dublin’s relationship with Berlin. Because Dublin’s economic preferences will be more readily appreciated by some German political parties than others, there is a risk of Irish positions being drawn into

domestic German debates. At the same time, a shift in Irish EU alliance thinking potentially presents Berlin with a more indispensable European partner.

Ireland's Economic Interests and German Debates

The Hansa's March 2018 EMU statement opposed large transfers of fiscal competence to the European level, calling instead for Member States to commit to structural reforms at national levels that would respect the fiscal guidelines agreed in the Stability and Growth Pact.²⁰ German *Financial Times* columnist, Wolfgang Munchau, referred to the Hansa as “the Dutch and seven other dwarfs,” while HTW Berlin international economics professor Sebastian Dullien lamented how countries with less than 10 percent of the EMU's population could “block meaningful eurozone reform.”²¹ The Hansa's November ESM statement particularly clashes with French positions by calling for strict conditions for any Member States needing support—including for the state concerned to improve its debt sustainability.²² Such measures could well resemble the conditions placed on Greece and indeed on Ireland itself during the euro crisis. France regards such conditionality as “unacceptable.”²³



Although Chancellor Merkel initially stayed relatively quiet, Ireland's alignment with the Hansa has not escaped Berlin's attention. Long-time Merkel ally, Peter Altmaier, was even present at the meeting where the first Hansa letter was written. “Germany has noticed us tilting,” says Irish Ambassador to Germany Michael Collins; “And so they're increasingly seeing us as a bridge into the Nordic and Baltic groups, for example.”²⁴

Chancellor Merkel's eventual eurozone position stakes out a middle ground—not just between France and the Hansa—but also domestically.

In an extended June 2018 interview with *Frankfurter Allgemeine Sonntagszeitung (FAS)*, Merkel essentially supported Hansa positions, although without explicitly mentioning the group. “Solidarity from European partners should never lead us into a debt union,” she told FAS.²⁵ Just prior to the interview, 154 German economics professors signed a joint letter expressing their reservations over French fiscal union proposals.²⁶ These sentiments resonate well with Merkel’s Christian Democrats, even as her 2017 Social Democrat opponent Martin Schulz accused her of slowing down eurozone reform during his campaign, pledging that under him, Germany would be less of a “northern disciplinarian.”²⁷

German reactions to France’s eurozone reform drive show that there is no uniform consensus—either between France and Germany, or within Germany itself—on what direction Europe should take on economic questions like the euro or taxation. Indeed, there are many German voices sympathetic to Ireland’s economic liberalism. Irish engagement with Germany should focus on their connections with these voices—rather than accepting Franco-German “dominance” as some sort of inevitability.

Being a Team Player: Germany, Ireland & Europe on the Global Stage

“Irish-German relations are, right now at least, very transactional,” says *Irish Times* Germany Correspondent Derek Scally,²⁸ who penned a critical op-ed following Foreign Minister Simon Coveney’s June 2018 visit to Berlin.²⁹ This prompted Irish Ambassador Collins to write a rebuttal defending the results of Minister Coveney’s trip.³⁰ “If Ireland decides it wants to do more than sell more to Germany, it needs to think about the relationship in a longer-term way, because this is a country that, culturally, thinks long-term,” says Scally.

Part of that long-term investment involves taking opportunities to be a team player. Should Ireland succeed in its campaign for a non-permanent UN Security Council seat starting in 2021, it will have such an opportunity—one that has not escaped German notice, with Foreign Minister, Heiko Maas, declaring

at a conference of Irish Ambassadors; “We would be delighted to hand over our seat to Ireland.”³¹ On common European foreign policy, Merkel told FAZ: “We need much more common action. In the medium term, I would suggest we develop non-permanent Security Council seats held by EU Members increasingly as ‘European seats.’ We should act together as Europeans, also with France—the only remaining EU member with a permanent seat following Britain’s exit.”³² With Germany on the Council until the end of 2020 and Ireland as the only EU Member running for a non-permanent seat for the 2021–2023 period, a successful Irish campaign would give Ireland the opportunity to both work together with Germany in advancing common UN priorities and to carry the European torch within the Council.³³ Embracing and making the most of such a chance will be well-received in German policy circles, including early preparation and a handover process for common priorities. On this, Ireland can do well by following some established best practice, such as the common agenda-setting between Dutch and German diplomats even before Germany’s seat was confirmed; dialogues between Swedish, Dutch, and German civil society organisations on Security Council topics; and dedicated handover events at both embassies.³⁴

The mutual German-Irish interest in EU-Africa policy, heralded by both Simon Coveney and Heiko Maas, suggests a joint visit by the two foreign ministers and an EU delegation could be scheduled to coincide with the “handover” period, allowing Ireland to send a particularly strong signal bilaterally, as well as in European and international arenas.

From London to Dublin: Becoming Europe’s Transatlantic Bridge

Perhaps Ireland’s biggest contribution to “Team Europe” is a connection it already has. “Ireland is a vital partner for discussions on transatlantic issues,” says Ambassador Potzel. “It has strong contacts and a deep understanding that can greatly help all of us in Europe.” Accompanying those contacts is also a level of access that few others have—even if policy influence is not always guaranteed. The Irish Ambassador to Washington

can often get a hearing on Capitol Hill more easily than most others, alongside an annual full-day visit to the White House for the Taoiseach and a large Irish delegation. Taoiseach Leo Varadkar visited Berlin only days after the 2018 US trip, with Chancellor Merkel reportedly having shown keen interest in his impression of the Trump White House. As a diplomatic asset, the St Patrick’s Day White House visit is noted by others and perhaps even more significant than generally acknowledged, given America’s recent isolationist turn. In addition, few other national holidays are as globally recognised or culturally appreciated.



Given the soft power attached to what we might call “St Patrick’s Day diplomacy,” is there a way for Ireland to get more out of it—indeed also with its partners in a post-Brexit EU? “Where is it written that the US President enjoys a monopoly on a bowl of shamrock from Ireland? Munich has Europe’s largest St Patrick’s Day parade. Why shouldn’t it be visited by the Taoiseach?” asked Scally in a 2017 op-ed.³⁵ Both are valid questions, as the

Munich parade happens the Sunday before 17 March and thus would not conflict with the Washington visit. But rather than simply send more senior ministers to continental Europe, why should Europeanising St Patrick’s Day diplomacy also not include inviting Europe to Ireland? How might a fellow European leader respond to the Taoiseach inviting him or her to Dublin a week before St Patrick’s Day to be presented with a bowl of shamrock—a gift previously only given to American presidents? With enough advance planning, it may prove a hard offer to refuse. The German Chancellor could be a natural choice for the inaugural recipient, with a different EU partner—or group of partners—to be invited each year. The Taoiseach would then be able to meet with that year’s guest of honour to discuss the upcoming Washington visit, listening to that partner’s

perspectives while subtly reminding him or her that Europe's voice in the Oval Office on St Patrick's Day is Irish. The guest of honour could also bring a delegation of his or her country's business leaders, academics, and artists for a two-day conference. A hypothetical "St Patrick's Day Convention" would be a natural March successor to January's World Economic Forum in Davos and February's Munich Security Conference. It would give Ireland the opportunity to use its soft power assets to bring Europe closer, while making its transatlantic role more structured and strategic—for the mutual benefit of Ireland and Europe as a whole. Coupled with an effort to help fund an independent German-based centre of expertise on Ireland, it could provide a way to solidify links culturally, as well as politically and economically.

Concluding Recommendations

Even given its challenges, a UK departure from the EU would present Ireland with the opportunity to develop further its reputation as a committed European, English-speaking Member State—in order to advance Irish interests, not only in Brussels, but also in Berlin and other capitals. Doing so would require Ireland to go beyond thinking of its EU membership in largely economic or utilitarian terms, and even further in the direction of a core member of "Team Europe." In order to amplify its voice alongside other small states in an increasingly powerful Berlin, it would be well-advised to further drive its economic and trade preferences as a core member of the new Hansa, while also understanding how the Hansa's sometimes controversial eurozone stances play into domestic German politics. It should also take advantage of opportunities like a potential Security Council seat to represent both itself and Europe on the world stage, and to use "handover" possibilities with Germany as a way to boost bilateral ties on global issues. Finally, Ireland's St Patrick's Day soft power diplomacy presents it

“One of Ireland’s greatest European chances post-Brexit may be determined by its capacity to dance and deal with both Boston and Berlin”

with the chance to position itself as a key European interlocutor with the United States. In the end, one of Ireland's greatest European chances post-Brexit may be determined by its capacity to dance and deal with both Boston and Berlin.

Aaron is a German-Canadian Writer and Policy Analyst specializing in European politics and international security. He holds a Bachelor's Degree in Journalism from the University of King's College in Halifax, Canada, and Master's Degrees in Public Policy and International Peace & Security from the Hertie School of Governance and King's College London respectively.

Endnotes

1. Coveney, Simon. "Ireland, Germany and Europe: Shaping the EU post-Brexit." Walter Hallstein-Institut für Europäisches Verfassungsrecht, Berlin, 13 June 2018.
2. European Movement Ireland/Red C Poll (2018). Ireland and the EU 2018. Retrieved from <https://europeanmovement.eu/news/em-ireland-red-c-poll-2018-support-for-irelands-eu-membership-at-all-time-high/>
3. Ireland. Department of the Taoiseach. Global Ireland: Ireland's Global Footprint to 2025. June 2018.
4. Ireland. Department of Foreign Affairs and Trade. Embassy of Ireland, Berlin. Ireland in Germany: A Wider and Deeper Footprint. April 2018.
5. Walker, Brian. "On Enda's fondness for the precedent of German reunification, be careful what you wish for." *Sluggie O'Toole*. 29 April 2017. Retrieved at <https://sluggerotoole.com/2017/04/29/on-endas-fondness-for-the-precedent-of-german-reunification-be-careful-of-what-you-wish-for/>
6. Murray, Shona. "Ireland can rely on Germany's 'unconditional support' during Brexit negotiations – Angela Merkel." *Independent.ie*. 20 March 2018. Retrieved at <https://www.independent.ie/irish-news/politics/ireland-can-rely-on-germanys-unconditional-support-during-brexit-negotiations-angela-merkel-36725215.html>
7. Sweden. Government Offices of Sweden. Finance Ministers from Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden underline their shared views in the discussion on the architecture of the EMU. 6 March 2018. Retrieved from <https://www.government.se/statements/2018/03/finance-ministers-from-denmark-estonia-finland-ireland-latvia-lithuania-the-netherlands-and-sweden/>
8. Netherlands. Hanseatic Statement on the ESM. 1 November 2018. Retrieved from <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/11/02/hanseatic-statement-on-the-esm>
9. Khan, Mehreen. "EU's New Hanseatic League picks its next battle." *Financial Times*. 19 July 2018. Retrieved at <https://www.ft.com/content/aedbe32a-8af7-11e8-bf9e-8771d5404543>
10. Laffan, Brigid and Jane O'Mahoney. *Ireland and the European Union*. London: Palgrave Macmillan, 2008.
11. European Council on Foreign Relations. *EU Coalition Explorer: Results of the EU28 Survey 2018 on coalition building in the European Union*. London. ECFR. October 2018.
12. ECFR. "The end of Angst: Germany is ready to lead in Europe." Available at https://www.ecfr.eu/article/commentary_the_end_of_angst_germany_is_ready_to_lead_in_europe
13. Auswärtiges Amt. "Gemeinsam für ein starkes Europa." Available at <https://www.auswaertiges-amt.de/de/aussenpolitik/europa/like-minded-initiative/2142272>
14. German Ambassador to Ireland H. E. Deike Potzel. Personal Communication. 16th November, 2018.
15. See ECFR <https://www.ecfr.eu>
16. Auswärtiges Amt. "Germany—Ireland: Joint Plan of Action for Enhanced Bilateral and EU Cooperation." 15th November, 2018. Available at <https://www.auswaertiges-amt.de/blob/2164090/c5fb4a3337df25df9339c23e9a026fc4/181115-d-irischer-aktionsplan-data.pdf>
17. German Ambassador to Ireland H. E. Deike Potzel. Personal Communication. 16th November, 2018.
18. Lang, Kai-Olaf and Nicolai von Ondarza. "Minilateralism in der EU." *Stiftung Wissenschaft und Politik*, 2018.
19. Cian McCarthy, *EU Decision-making after Brexit: QMV and the balance of power*. Institute of International and European Affairs: 2019.
20. Sweden. Government Offices of Sweden. Finance Ministers from Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden underline their shared views in the discussion on the architecture of the EMU.
21. Dullien, Sebastian. Twitter Post. 7 March, 2018, 16:29 CET. <https://twitter.com/SDullien/status/971407606874083328>
22. Netherlands. Hanseatic Statement on the ESM.
23. Brunsden, Jim and Mehreen Khan. "Hawkish European capitals lobby to beef up eurozone bailout fund." *Financial Times*. 2 November 2018. Retrieved at <https://www.ft.com/content/2975a1ca-ddc3-11e8-9f04-38d397e6661c?kbc=82645c31-4426-4ef5-99c9-9df6e0940c00>
24. Irish Ambassador to Germany H. E. Michael Collins. Personal Communication. 5th October, 2018.
25. Gutschker, Thomas and Eckart Lohse. "Kanzlerin Merkel im

- Gespräch: ‘Europa muss handlungsfähig sein – nach außen und innen.’ Frankfurter Allgemeine Zeitung. 3 June, 2018. Retrieved at <http://www.faz.net/social-media/instagram/kanzlerin-angela-merkel-f-a-s-interview-europa-muss-handlungsfahig-sein-15619721.html?premium>
26. “Der Euro darf nicht in die Haftungsunion führen.” Frankfurter Allgemeine Zeitung. 21 May, 2018. Retrieved at <http://www.faz.net/aktuell/wirtschaft/eurokrise/oekonomen-aufruf-euro-darf-nicht-in-haftungsunion-fuehren-15600325.html>
 27. Eder, Florian. “Schulz to Macron: Forget Merkel, I’m your man.” Politico Europe. 21 July, 2017. Retrieved at <https://www.politico.eu/article/martin-schulz-emmanuel-macron-forget-angela-merkel-im-your-man/>
 28. Derek Scally. Personal Communication. 14th November, 2018.
 29. Scally, Derek. “Finding that critical time to re-engage with Germany.” The Irish Times. 15 June, 2018. Retrieved at <https://www.irishtimes.com/opinion/finding-that-valuable-time-to-re-engage-with-germany-1.3530835>
 30. H.E. Michael Collins, Ambassador of Ireland to Germany. “Deepening relationship with Germany.” The Irish Times. 19 June, 2018. Retrieved at <https://www.irishtimes.com/opinion/letters/deepening-relationship-with-germany-1.3534856>
 31. Maas, Heiko. “Address by Foreign Minister Heiko Maas on the occasion of the Meeting of Ireland’s Ambassadors and Consuls General.” Dublin, 8 January 2019.
 32. See FAZ: www.faz.net
 33. Burnett, Aaron. “Europe’s Security Council Seat: Pipe Dream or Promising Potential?” The Geopolitics. 5 January 2019. Retrieved at <https://thegeopolitics.com/europes-security-council-seat-pipe-dream-or-promising-potential/>
 34. “Sweden and the Netherlands UN Security Council Handover to Germany: Lessons Learned and the Road Ahead.” Event at the Embassy of the Netherlands to Germany. 14th November 2018, Berlin.
 35. Scally, Derek. “Time to rethink our relationship with Berlin and Boston.” The Irish Times. 25 September, 2017. Retrieved at <https://www.irishtimes.com/opinion/time-to-rethink-our-relationship-with-berlin-and-boston-1.3232028>



Placing Citizens at the Heart of Policy Making: Fair Climate Action

Public support for climate action in Ireland is currently high and increasing. However, maintaining this support will be challenging as measures to bring about much deeper decarbonisation of the Irish economy are introduced. Homes and businesses will be expected to shoulder additional costs to support action whilst often not perceiving the direct tangible benefits arising from these measures. Sustained support from the electorate will be essential to ensure that climate action is a political priority, driving the government to take meaningful action. This paper argues that continued support for action will rely on the public's perception of policy measures as being 'fair.' A case is made for policy makers to include 'fairness' as an essential attribute in the design of policies for climate action. In practical terms, this means that the process of policy development should be open and transparent. Several specific policy examples currently under consideration in Ireland are explored with this approach in mind. While policies designed under such a framework may be sub-optimal from a purely economic standpoint, there is evidence that provisions to address fairness can strengthen social acceptance and help to nurture longer-term societal support for action.



Introduction

Public support for climate action

In autumn 2017, Ireland's Citizens' Assembly considered the topic of action on climate change. The members delivered recommendations which overwhelmingly supported strong government action to tackle climate change, with 80% expressing a willingness to pay higher taxes on carbon intensive activities. Nationally, representative surveys have also identified this apparent widespread recognition among the Irish public of the significance of climate change and the need for meaningful action¹.

Strong public support for climate action will be essential in empowering governments to set policy which delivers on national climate commitments. If electorate support for action is high, policy makers can feel reassured that their interventions will bolster rather than erode their political capital.

Diverging forces

As awareness has grown among the Irish public of the scale of harm arising from climate change, so too has the support for action. The European Commission's (EC) *Eurobarometer* environmental surveys track the changing attitudes of Member States towards climate change through time and highlight growing support for action not just in Ireland but across most Member States¹.

Evolving public attitudes can be understood by considering the effects of two sets of public concerns, each acting in opposing directions.

The first is the growing concern over the negative impacts of climate change. The causes of this rising concern are much-debated² but are the primary driving force behind growing support for action.

The second force, which acts in the opposing direction, is concern over the personal costs of action. Research has identified the significance of income as a determinant of support for climate action, and has identified marked reductions in support for climate action during periods of economic recession³.

Policies and measures that impose financial costs on consumers and businesses have a tendency to negatively impact their attitudes towards action. This can manifest itself at the individual level, for example where a household is hit by a carbon tax. Or it can manifest itself collectively, where specific policies are perceived to threaten the livelihood or welfare of a particular community. Such stakeholder groups in Ireland could include workers in peat extraction, professional drivers (including the freight industry), farmers, and local objectors to wind turbines / pylons.

These divergent forces, concern regarding negative impacts vs. concern for the personal costs of action, will continue to work against one another over the coming years. Whilst the effect of the former to increase public support has so far dominated, there is a real risk that the growing concern over the costs of action could reverse this trend.

Higher costs

While the long-term economic benefits of climate action are well-established, it is generally recognised that measures to reduce greenhouse gas emissions will result in higher costs for consumers and businesses in the short term⁴. Many of the most impactful measures introduced to reduce greenhouse gas emissions in Ireland so far have resulted in only modest costs

to the consumer⁵ as policy makers have focused efforts on the so-called ‘low hanging fruit.’

However, as deeper emissions savings are called for, the costs will increase. Homes and businesses will be expected to shoulder additional costs to support action whilst often not perceiving the direct tangible benefits arising from these measures. Delivering a policy programme in which costs are growing and the direct benefits to individual citizens are difficult to communicate will be challenging for any government.

Perceptions of unfairness

Public policy research has highlighted the significant role that the public perception of a policy plays in determining its success⁶. A perception of a measure as creating unfair outcomes, which disproportionately affect a particular group in society, can be met with a negative response from that group and create political risks for those responsible.

“If electorate support for action is high, policy makers can feel reassured that their interventions will bolster rather than erode their political capital.”

Furthermore, negative public perceptions of a specific climate policy can erode trust in the wider climate mitigation agenda. The example of the handling of the Renewable Heat Incentive scheme in Northern Ireland, demonstrates the potential for one poorly implemented policy measure to negatively reflect on the entire renewable heat sector.

In extreme cases, dissent against a measure that is perceived to be unfair can snowball into something much bigger. The actions of the *gilets jaunes* in France serve as a cautionary example. Steps taken by an initially small affected minority to oppose an

increase in fuel taxes (including a carbon tax) grew to encompass a much wider movement. Whilst the *gilets jaunes* movement in France is highly heterogeneous in

its demands, it has had partial success in preventing the fuel tax increases that initiated it. In the process, it has galvanised public opposition to fuel tax increases, and has arguably eroded public confidence in the state's approach to climate action.

If the affected groups can point towards an obvious source of unfairness in a policy measure, then they can appeal to peoples' sense of injustice and potentially derail the effort to curb climate change. Support for climate action can be precarious, and losing the buy-in of key constituencies could undermine a state's ability to deliver a decarbonisation agenda.

Policy appraisal

Ex-ante policy evaluation exercises will often assess new measures against key criteria such as cost, environmental impact and ease of implementation. Whilst attributes related to 'fairness' such as distributional effects and social acceptance are sometimes considered, these are not always taken into account, nor are they sufficient to ensure that a measure will be unambiguously perceived as fair.

It is possible, for example, for a measure to have positive distributional effects but to be perceived as unfair by affected stakeholders. The decision of the UK government to remove mandatory feed-in-tariff (FiT) payments for homeowners who export excess solar electricity to the national grid is a good example. This is arguably a positive intervention from a distributional perspective, since the costs of a FiT are shared equally between all electricity consumers, while the benefits are enjoyed primarily by homeowners with solar panels on their roofs, typically wealthier households⁷. However, removing this obligation was perceived as unfair by those who intended to install solar panels and who would now not be guaranteed a payment for electricity that they exported⁸.

Similarly, whilst social acceptance is sometimes factored in to policy design, often this criteria is not afforded the same weight as the core evaluation criteria. Evaluations have been shown

to rarely factor in the complex community, socio-political and market issues that social acceptance research argues should be accounted for.⁹

A cursory consideration of social acceptance issues and distributional effects will not be sufficient to prevent a perception of costly climate action measures as being unfair by affected stakeholders.

Options

Fairness as a key attribute in policy design

Given the importance of maintaining public support for climate action and the dangers of alienating key groups of stakeholders, a strong case can be made for bringing the quality of fairness to the centre of policy design for climate action.

This idea has been proposed by several bodies in the context of climate policy, including researchers at the EU's Joint Research Centre¹⁰. They identify fairness in policy making as 'an ethical obligation to take a plurality of social values, perspectives and interests into account in a coherent and transparent manner.'

In practical terms, this means that the process of policy development should be open and transparent, make concerted efforts to take into account a plurality of views, and identify ways to mitigate negative impacts on particular groups. Through meaningful engagement with affected stakeholders, policy makers can better understand how their measures are perceived and how they might be adapted to secure buy-in.

Maintaining a sense of fairness is also about ensuring that the costs or other downsides of action do not fall disproportionately on any one group without commensurate benefits or mitigating supports where transitions are required.

70

Fairness-focused policies in Ireland

A wide range of climate action measures designed with this framework for fairness in mind have

been implemented across other EU Member States. While differing sociocultural conditions may call for adaptations to specific policies, there is a lot that Irish policy makers can borrow from their neighbours. Three examples of such ‘fairness focused’ measures that are currently under consideration in Ireland are examined below:

1. Community ownership and engagement

Ireland’s Renewable Energy Feed-in-Tariff (REFIT) scheme has been its flagship policy for renewable energy deployment, subsidising the development of most of Ireland’s wind farms. While it has been effective in increasing renewable energy, the scheme has faced opposition from local objectors to wind farm developments¹¹. Furthermore, discourse from NGO groups has drawn attention to a perception of the subsidy, which is paid for by electricity consumers in the form of a levy on bills, as being an unfair transfer from households to corporate wind farm developers¹².



A proposal which could address this perception of unfairness is a new policy package intended to support community ownership of and engagement with renewable electricity developments¹³. Taking inspiration from successful schemes in Denmark, Germany and Scotland, the proposed package includes an obligation for all new renewable projects to offer the local community a chance to invest and own part of the assets. It also proposes funding and technical support for communities to develop their own wind and solar farms so they can generate their own electricity.

Furthermore, the package would make it mandatory for project developers to engage meaningfully with the local community, as well as to share some portion of the project profits with them. Whilst this may not be sufficient to address all sources of local objection, there is evidence that these provisions can help to develop a so-called Social License to Operate (SLO), securing widespread local support for projects¹⁴.

Whilst all of these provisions undoubtedly add to the cost of the scheme, experience from other jurisdictions demonstrates their value in addressing concerns about the fairness of the wider subsidy regime, and in minimising resistance to the policy by allowing citizens to share in the benefits⁴⁵.

2. Mandatory export payments for homeowners

Ireland is currently host to a source of perceived unfairness for homeowners with solar photovoltaic (PV) panels installed on their roofs. While most Member States oblige electricity suppliers to pay homeowners for the excess electricity that they generate from solar panels but cannot use themselves, there is currently no such obligation in Ireland. As a result most homeowners do not receive a payment.



Templederry Community Wind Farm in Co. Tipperary, Ireland's first community owned wind farm (photo credit: SEAI)

As with the RHI in Northern Ireland, there is a risk that cases like this could erode public confidence in the wider efforts to decarbonise energy, as this example fuels a perception that the benefits are flowing to large businesses to the exclusion of ordinary citizens⁴¹. Introducing a mandatory export payment would likely result in a small additional cost to all electricity consumers, but it could help address this perceived source of unfairness among affected homeowners. Member States that have introduced such payments have much higher instances of citizen and community renewable ownership, allowing people to share in the benefits of action in a very tangible way.

Such a provision is now expected to be introduced in Ireland thanks to a piece of European legislation. The European Commission's *Clean Energy for all Europeans* package, the EU's legislative framework for decarbonising energy, includes a requirement for all Member States to ensure that such 'renewable self-consumers' are paid

for their export¹⁶. While this measure may only have a modest impact on renewable energy deployment, its effect in fostering a sense of fairness around renewable energy could prove to be significant.

3. Carbon tax redesign

Ireland currently has in place a carbon tax set at €20/tonne of CO₂ which applies to fossil heating and road fuels. Despite evidence for and advice from Ireland's Climate Change Advisory Council to increase this tax¹⁷, it has been maintained at this level since 2012, in part due to a political concern over public reactions to increases in the tax in its current form¹⁸.

A recent agreement¹⁹ by the Joint Oireachtas Committee on Climate Action (JOCCA), has recommended increasing the carbon tax to at least €80/tonne by 2030. Such an increase is essential in adequately accounting for the increased cost of carbon and changes to transport technology. Given the impact on fuel prices which will ultimately affect households and motorists, skilful political communication is undoubtedly needed to sell the importance (as well as benefits) of this increase. However, with some thoughtful policy design it is possible to rethink how the proceeds from the carbon tax are distributed and reimagine the measure as one that is rooted in fairness.

One example which has been considered by the JOCCA is the idea of redistributing the proceeds of the carbon tax equally among citizens in the form of a 'carbon dividend'²⁰. In this way, the carbon tax constitutes a transfer from the biggest carbon emitters to the smallest and can be perceived as a fair approach to taxing carbon emissions. By sending homeowners regular 'carbon cheques', the government could help engender positive attitudes towards climate action. Survey data suggests strong public support for such an approach in several major economies²¹.

However, whilst fairness should be given due consideration in policy design, accommodating it should not unduly compromise the effectiveness of the policy at reducing

emissions which is the ultimate goal of the carbon tax. Whilst returning all of the revenue through dividends may make the carbon tax more palatable, it means that this revenue cannot be ring-fenced for investment in environmental measures, an approach which is considered the most environmentally effective²².

It is possible to strike a balance between the effectiveness of the measure and its perceived fairness by, for example, retaining some share of the revenue to contribute towards environmental measures. A hybrid approach like this has been proposed in Ottawa, where the intention is to retain 10% of the proceeds²³. As an example for Ireland, funds could be used to pay for home energy retrofits for low income households (as well as an increase to the fuel allowance as suggested by the JOCCA). Ultimately, the JOCCA has opted to consult the public on the carbon tax redesign so there is an opportunity to understand which approach is most amenable.

Conclusions

Maintaining public support for climate change as the burden of deep decarbonisation grows will be a considerable challenge for policy makers. Public concerns over the personal cost of action will need to be carefully managed in order to maintain a level of electorate support strong enough to compel political leaders to continue to act.

By paying particular attention in the policy design process to measures which enhance the ‘fairness’ of any policy, it may be possible to mitigate this effect and secure broader support. Including attributes in multi-criteria policy evaluation methods which address fairness will oblige decision makers to consider how measures will be perceived by the public, and hopefully give rise to more innovative designs for overcoming these challenges.

policies examined in section 2 would be considered optimally designed based solely on the criterion of reducing emissions at least cost. However, a level of willingness to compromise on economic or environmental efficiency in return for ensuring widespread social acceptance may be beneficial in nurturing longer-term societal support.

Ultimately, however, the effectiveness of a policy measure to mitigate emissions should not be unduly compromised due to a preoccupation with satisfying every stakeholder. No policy can hope to win over all objectors and tolerating a level of dissatisfaction from some quarters may be unavoidable to ensure the effectiveness of the policy in limiting environmental damage.

It is critical as well that the debate around policy action is not limited to scrutinising the costs and disruptions. Effectively communicating the myriad benefits of action for citizens will help support a narrative of a ‘just transition.’ These include improved local air quality, improved comfort via building upgrades, new ‘green jobs,’ and new revenue streams for citizens investing directly in renewables. Any debate on the costs of action should begin with an acknowledgement of these benefits.

The EU’s Clean Energy Package sets out a vision for a European energy transition featuring a central role for ‘renewable energy communities.’ Evidence from Member States with strong track records in supporting citizen and community energy programmes suggests that such measures foster positive attitudes towards renewable energy and climate action¹⁴. Implementing policies which place citizens and communities at their heart could form the backbone of a policy approach rooted in fairness, and help to ensure that elected representatives keep their mandate to take meaningful action on climate change.

Brian Denvir is an Energy Policy and Technology Specialist working for the Sustainable Energy Authority of Ireland, Ireland’s state energy agency.

Endnotes

1. DG CLIMA (2017) Special Eurobarometer report on climate (<https://bit.ly/2wGnsGP>); DG COMM (2009) Special Eurobarometer report on Europeans' attitudes towards climate change (<https://bit.ly/2RwolBk>)
2. Capstick et al. (2015) International trends in public perceptions of climate change over the past century (<https://bit.ly/2TEadGq>)
3. Shum (2012) Effects of economic recession and local weather on climate change attitudes (<https://bit.ly/2UC0i1n>)
4. OECD (2015), The Economic Consequences of Climate Change (<https://bit.ly/2NZjXps>)
5. Baringa (2019) Cost benefit analysis of wind energy in Ireland, 2000-2020 (<https://bit.ly/2XU2Olm>); Clifford & Clancy (2011) Impact of Wind Generation on Wholesale Electricity Costs in 2011 (<https://bit.ly/2H-hEEw6>)
6. Burstein (2003) The Impact of Public Opinion on Public Policy: A Review and an Agenda (<https://bit.ly/2McDpxO>)
7. Bondio et al. (2012) The technology of the middle class (<https://bit.ly/2XSpti8>); Feger et al. (2017) Welfare and Redistribution in Residential Electricity Markets with Solar Power (<https://stanford.io/2NYIACw>)
8. The Guardian (2018) Subsidies for new household solar panels to end next year (<https://bit.ly/2LzxDW0>)
9. Devine-Wright (2017) A conceptual framework for understanding the social acceptance of energy infrastructure (<https://bit.ly/2UvchgN>)
10. Giuseppe (2017) Dealing with fairness in public policy analysis (<https://bit.ly/2FCjffu>)
11. Hickey (2017) Opposition to wind turbines on the rise, Irish Independent (<https://bit.ly/2JalicZ>)
12. Ruddock (2019) Opening statement to JOC on Communications, Climate Action and Environment - Kate Ruddock, Deputy Director, Friends of the Earth Ireland (<https://bit.ly/2XUprpO>)
13. DCCAE (2018) Renewable Electricity Support Scheme (RESS) (<https://bit.ly/2NMCBzu>)
14. Hall (2014) Can the SLO concept enhance engagement and increase acceptance of Renewable Energy? A case study of wind farms in Australia (<https://bit.ly/2Uzqjhs>)
15. Bauwmens (2018) Positive energies? An empirical study of community energy participation and attitudes to renewable energy (<https://bit.ly/2HgLiZQ>)
16. Council of the European Union (2018) Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (<https://bit.ly/2v3Bjck>)
17. CCAC (2018) Climate Change Advisory Council Annual Review 2018 (<https://bit.ly/2NL430o>)
18. Irish Times (2019) Varadkar keen to avoid 'yellow vest' effect with carbon tax (<https://bit.ly/2XXAH55>)
19. Tithe an Oireachtais (2019) Report of the Joint Committee on Climate Action – Climate Change: A Cross-Party Consensus for Action (<https://bit.ly/2OvmlED>)
20. Irish Times (2019) Debate on carbon-tax increase divides Climate Action Committee (<https://bit.ly/2BsLnPh>)
21. Carattini et al. (2019) How to win public support for a global carbon tax (<https://bit.ly/2EZ9je0>)

22. Curtin (2019) Pragmatism over purism: how to design a carbon tax to win political and social support (<https://bit.ly/2VTHE50>)
23. Financial Post (2018) Ottawa to return 90% of money it collects from carbon tax to the Canadians who pay it (<https://bit.ly/2OKHI83>)



“The Court is not for turning” – Citizen Access to the Court of Justice of the European Union

In this paper, I propose to examine the narrow interpretation by the Court of Justice of the European Union (“CJEU”) of ‘legal standing’ i.e. who can gain access to the CJEU in order to challenge EU acts and to highlight the denial of “standing” to individuals, groups and companies in key policy areas such as agriculture, fisheries and the environment. I will review recent international criticism of the CJEU’s approach to legal standing and will outline two potential alternative avenues open to litigants. Finally, I will provide an overview of potential reforms in relation to the approach of the Court of Justice to date.



Introduction: Who Can Gain Access to the CJEU?

Access to justice is a fundamental right of EU citizens and is central to the functioning of the Court of Justice of the European Union (“CJEU”). Article 263 TFEU outlines the procedure which facilitates direct access to the CJEU, providing a mechanism for the Court to review EU acts and declare them null and void. This procedure empowers different categories of litigants to bring direct actions before the CJEU. The legal action therefore begins and ends in Luxembourg, home to the CJEU.

There are several conditions attached to bringing an action before the Court but the main criteria in accessing the Court is “legal standing”, i.e. the ability of **an individual, a group of individuals or a company** to demonstrate sufficient connection to and harm suffered by a piece of legislation. This aspect has generated much controversy over the years.

There are three categories of litigant in a direct action before the CJEU:

- i. The first category includes Member States, the European Commission, Parliament and Council who have automatic rights of access and enjoy the status of “privileged applicants” under the Treaties.

- ii. The second category of “semi-privileged applicants” includes the ECB, the Court of Auditors and the Committee of the Regions;
- iii. The third category of individual litigants are referred to as “non-privileged applicants”, whose task is more onerous. There are three conditions under which they may institute proceedings at the CJEU are (i) where an act is addressed to them; (ii) where an act is “of direct and individual concern” to them; or (iii) finally, where their challenge refers to a “regulatory act” and if a Member State has not taken any steps to implement such an act at national level. The latter category was added under the Lisbon Treaty, however the scope of this ground of challenge has been somewhat curtailed by the CJEU’s narrow interpretation of the term “regulatory act” and its interpretation of Member State implementation at national level.

Although there has been an expansion of this test in the aftermath of the Lisbon Treaty, the threshold for asserting standing remains high. From the perspective of the EU institutions, the lengthy process by which legislation is adopted at EU level justifies the need to insulate EU laws from challenge once they have been adopted. According to this logic, any concerns as to the legality of EU laws can be raised by MEPs in the Parliament or Member States in the Council as the law is slowly making its way through the ordinary legislative procedure. The CJEU, for its part, has always been mindful of the risk of opening the floodgates and dramatically increasing the volume of direct actions coming before it.

While this might sound like institutional wrangling, the question of “standing”, in fact, goes to the heart of the right of access to justice, which is cornerstone of EU law. The strict test applied by the CJEU to grant access to their Courts affects the fundamental right of individuals, groups of individuals and companies to challenge EU acts which affect their livelihoods and industries and may require substantial investment and changes to their practices, and even, their ways of life.

Plaumann – Setting a High Bar for Access to the CJEU

In cases where a citizen seeks to annul such an EU act, and that act is not directly addressed to them by name, they must prove that the act both *directly and individually* concerns them.

The concept of “*direct concern*” is relatively straightforward and can be successfully demonstrated when an act directly affects the legal situation of the individual, group or company i.e. the EU act caused damage to the litigant. Direct concern is relevant where a measure adversely affects the litigant’s legal position. A good illustration of this is the case of the *Front National v. European Parliament*¹ where a number of MEPs, sought to establish a political grouping known as the TDI in the European Parliament (“EP”). While the contested act was found to have deprived TDI group members directly, the Front National party, headquartered in France, which also sought to challenge the decision was found not to be directly concerned. The Court held that while it was natural for a national political party which puts up candidates in the European elections to want its candidates to exercise their mandate under the same conditions as the other MEPs, that aspiration did not confer any right for its elected representatives to form their own group or to become members of one of the groups being formed within the Parliament.² Thus, the measure did not contain a legal entitlement to create a political grouping in the EP.

“From the perspective of the EU institutions, the lengthy process by which legislation is adopted at EU level justifies the need to insulate EU laws from challenge once they have been adopted”

The second criterion of “*individual concern*” was defined by the CJEU in a seminal case known as *Plaumann & Co v. Commission*.³

82

The applicant, a company importing clementines, sought to annul a Commission decision refusing to allow Germany to partly suspend customs duties on clementines imported from third countries. The Court

declared the company's challenge to be inadmissible on the basis that while the company was undoubtedly *directly* concerned, it was not *individually* concerned by the decision. The Court took the opportunity to define individual concern so narrowly as to make it virtually impossible for 'non-privileged applicants' (i.e. individuals or groups of individuals or a company) to assert their legal standing.

One of the most controversial areas, where the strictures of the individual concern test are magnified is in the context of interest groups. In *Greenpeace v. Commission*⁴ a well-known environmental NGO was refused standing to challenge a Commission decision granting aid for building power stations on the Canary Islands. The General Court held that Greenpeace did not have standing to bring the action.

The Court again affirmed the *Plaumann* doctrine, holding that **an association** formed for the protection of the collective interests of individuals could **not** be directly and individually concerned by the Commission's decision and was therefore not entitled to bring an action for annulment where its *members* could not do so individually.

The Court did concede, however, that special circumstances, *might* justify its admissibility. As no such special circumstances applied here, the Court decided that the legal position of the members of the association was no different from that alleged by the individual applicant.⁵

Revolt against the Individual Concern Test from within the Court's ranks

The Court has respected and abided by individual concern, adhering to the *Plaumann* test and in two high profile cases, attempts to overturn the test failed rather spectacularly.

One case was *Unión de Pequeños Agricultores v. Council*⁶ ("UPA"), where a trade association, representing the interests of small Spanish farmers, sought to challenge a regulation amending common organisation of the olive oil market. The challenge to a regulation was itself significant, as regulations do not require

any domestic legislation to implement them and it is therefore impossible to challenge them in the domestic courts.

A challenge to the General Court of the European Union was therefore the only recourse open to the farmers here. Yet the General Court declared the action inadmissible on the basis of failure to establish individual concern under *Plaumann*. When the case came before the CJEU on appeal, UPA argued that the dismissal of its application infringed its right to effective judicial protection for the defence of its own interests or those of its members, given they had no legal remedies under national law.

The case is famous for the Opinion of Advocate General Jacobs (“AG Jacobs”), who gave a robust critique of the *Plaumann* ruling, and questioned whether it was *out of step with the times*, noting the time was “*ripe for an evolution in the interpretation of the notion of individual concern*”.

He noted that the Court had relaxed the requirements for standing to some extent⁷ and that the gradual movement towards wider access for individuals to the Court suggested a growing acceptance that strict standing requirements for individual applicants were no longer acceptable.

It was also acknowledged that the Court’s case-law had the effect of encouraging individuals to bring issues of validity to the CJEU via the well-known procedure called the “**preliminary reference procedure**” at **Article 267 TFEU**, i.e. where a judge in the national court refers a question on the validity of EU law to the CJEU and stays the domestic proceedings pending the CJEU’s ruling, thereby circumventing the strict direct action procedure. However, he noted the shortcomings of Article 267 TFEU, i.e. an applicant had no right to decide *whether* a reference was made, *which* measures were referred or what *grounds* of invalidity were raised, as that is a matter for the national court to decide.

to gain access to the national court in the first place, speculating that this could lead applicants taking the rather drastic step of deliberately breaking the law in order to forge a path to the national court, so as to later challenge the validity of the regime underpinning any such prosecution. This example ought to have focussed minds, as it was not unreasonable to suggest that an applicant should not be forced to break the law to gain access to justice before the CJEU.

However, AG Jacobs' proposed test for the relaxation of the existing rules, based on proving a *substantial adverse effect on an applicant's interests*, fell on deaf ears, as when the Court convened to rule on this matter some four months later, it chose not to follow the Advocate General's Opinion, opting instead to merely restate *Plaumann*, and asserting that the Treaty provided a complete system of procedures designed to ensure judicial review of the legality of acts of the institutions, and had entrusted such review to the Community courts. *Plaumann* therefore remains as a key decision in relation to Community law.⁸



A mere five weeks after the delivery of the Advocate General's Opinion in *UPA* (but before the judgment of the CJEU), the General Court also proposed relaxing the *Plaumann* individual concern test in

Jégo-Quéré v. Commission,⁹ a challenge by a French fishing company to an EU Regulation which sought to reduce catches of juvenile hake and set a minimum mesh size for fishing nets. Its attempt at re-defining *Plaumann* deemed a litigant to be individually concerned where a measure “*affects his legal position in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him.*”

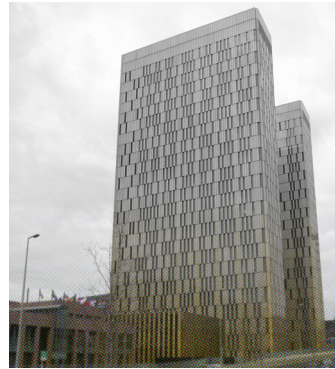
Yet the General Court decision here was appealed to the CJEU, and in the intervening period, the CJEU had opted not to follow AG Jacobs' Opinion in *UPA*; therefore, by the time of CJEU's judgment in *Jégo-Quéré* some two years later, the outcome was

a foregone conclusion, and Plaumann was upheld.¹⁰ The CJEU cautioned that it was up to the Member States to establish a system of legal procedures to ensure effective judicial protection and that the right to an effective remedy could not have the effect of setting aside a condition laid down in the Treaty.

Thus, this judgment sought to send out a clear message—the Court was constrained by the Treaty, notwithstanding the fact that it was the Court itself that opted for a narrow interpretation of individual concern in the first place, and Treaty change would be required to overcome the limitations of the Plaumann test.

Lisbon innovations – Attempts to Broaden Access to the Court under Article 263 TFEU

Prior to the Lisbon Treaty, individuals, groups and companies were thwarted not only by the strict interpretation of “direct and individual concern” by the CJEU, but by the wording of Article 230(4) EC itself, which limited the scope of measures that could be challenged to decisions or decisions which were formulated as regulations. The Treaty has corrected this situation as it now empowers applicants to challenge all EU acts which have an effect on third parties.



A new third test of legal standing was also added to Article 263(4) TFEU, which granted standing to individuals who sought to annul “regulatory acts”, which directly concerned them, and which did not require any implementing measures by Member States under domestic law.¹¹ While this amendment sought to provide a road to the CJEU, it confined such challenges to “regulatory acts” and a clear definition of what that means remains elusive. Furthermore, in subsequent case, *Inuit*,¹² the Court took the opportunity to reaffirm that the “individual concern” test had not been altered under the Lisbon Treaty and that *Plaumann* remained the law.

The Grand Chamber in the recent case of *European Union Copper Task Force v. European Commission*,¹³ sought to confirm that the objective of this third test was to ensure that individuals did not have to break the law in order to have access to a court and a means of enhancing the right to effective judicial protection. Yet in the ten years since its entry into force, the case-law of the court does not provide a single example of successful recourse to this new route to Court.

Alternative Avenues under the Lisbon Treaty

The CJEU has emphasised in many of the seminal judgments on legal “standing” that the Treaty provides a sufficient and complete system of remedies designed to ensure that acts of EU institutions can be subjected to judicial review.

In particular, reference is made to two procedures, (i) the preliminary reference procedure and (ii) the plea of illegality.

- a. Preliminary Reference Procedure—Judicial Review by the back door?

One of the key alternatives which was also discussed at length by Advocate General Jacobs in *UPA* is recourse to the preliminary reference procedure under Article 267 TFEU, whereby a national judge poses a question to the CJEU on the interpretation of validity, where this is necessary in order to give a ruling in the domestic proceedings.

Yet as referenced above, this is an imperfect solution to the limitations on standing as the applicant has no right to decide *whether* a reference is made, *which measures* are referred for review or *what grounds* of invalidity are raised. These matters are largely within the discretion of the referring court, and more particularly, the presiding judge or judges in any given case.

Furthermore, despite the attempts under Lisbon at expanding the test, litigants are still bringing proceedings before the national court or deliberately seeking to trigger proceedings before the national court so as to raise the

validity of EU laws and compel national judges to refer such questions to the CJEU. This could be interpreted as “*judicial review by the back door*” and is a means of circumventing the need to assert individual concern in cases where this would clearly not be made out.

In one of many examples of this phenomenon, *Schrems v. Data Protection Commissioner*, an Article 267 TFEU reference on the validity of the Safe Harbour Privacy Principles led to declaration that the regime governing transfers of personal data between the EU and the US was invalid. This was the result of a reference from an Irish Court.

Yet, it is unlikely that Mr Schrems would have succeeded in bringing an action for annulment under Article 263 TFEU—as one of approximately one billion Facebook users affected by transfers of personal data from the EU to the USA. It is unlikely he would have successfully demonstrated individual concern under the *Plaumann* test. Yet, by bringing judicial review proceedings against the Irish Data Protection Commissioner (“DPC”) before the Irish High Court, Mr Schrems was able to circumvent the more stringent test for standing in Article 263 TFEU by raising the validity of an EU act before the national court.

b. Plea of illegality

An additional avenue open to litigants is a plea of illegality, (Article 277 TFEU) which allows the assertion that an act of an EU institution, body, office or agency is inapplicable to them. This has constraints, however, in that it can only be pleaded as an argument in an existing action before the Court, and then, only incidentally.¹⁴ The legal effect of a ruling as to illegality results only in the measure being rendered inapplicable. Yet this has the potential to place considerable pressure on the EU institutions to repeal the act and adopt new legislation, given that subsequent decisions would risk being similarly held to be unlawful.

International criticism – Aarhus Compliance Committee (ACC)

89

Scrutiny of the test for standing under Article 263 TFEU is no longer confined to the EU courts. The Aarhus Compliance Committee (“ACC”), an international environmental law mechanism for ensuring compliance with the Aarhus Convention, has now issued its findings on the CJEU’s strict standing rules.¹⁵



The ACC allows members of the public to communicate concerns about a Party’s compliance directly to a board of independent experts, tasked with examining the merits of any such case. The Committee adopts findings and if non-compliance is found, may make recommendations either to the Meeting of the Parties (“MOP”), or, with the Party’s agreement, directly to the Party concerned.

In 2008, an environmental NGO, ClientEarth complained that by mandating a strict “individual concern” criterion to assert standing in challenges to EU environmental laws, the EU failed to comply with access to justice requirements under the Aarhus Convention.

The ACC’s conclusions focussed on the Court’s judgment in *Plaumann*, and found that it was too strict to meet the criteria of the Aarhus Convention. The Committee also noted the shortcomings of the preliminary reference procedure and warned that it could not be “a basis for...denying members of the public access to the EU Courts to challenge decisions, acts and omissions by EU institutions and bodies” nor an appellate system.

The Committee recommended that *all* relevant EU institutions within their competences take the steps necessary to provide the public with access to justice in environmental matters. However, these findings were not well received by the European

Commission,¹⁶ which stated that the findings “*challenge[d] constitutional principles of EU law that are so fundamental that it is legally impossible for the EU to follow and comply with the findings.*” The Commission contended that to fully safeguard its institutional specificities and the autonomy of the EU legal order, it had no option but to cast a negative vote on the endorsement of these findings.¹⁷ The Council took a more measured stance, opting to “take note of” the findings.¹⁸ In the end, it was agreed that the discussion on compliance by the EU would be postponed until the next ordinary session of the MOP in 2021¹⁹. Therefore, the can has essentially been kicked down the road for a number of years to come.

Options for Reform of Rules on Legal Standing

The possibilities for reform of the current rules on legal standing appear rather limited.

Option 1:

Treaty change would be a difficult option, crafting a new Article 263(4) TFEU which include a broad definition of the terms “individual concern” and “regulatory act” within the body of that Article. It is clear that there is little enthusiasm for such a change. Furthermore, given the key priorities of the EU at present, such as negotiating a future trading relationship with the United Kingdom post-Brexit, tackling climate change and securing the EU’s external borders, it is unlikely that such a modification would be seen as a political priority. Indeed, given the rising levels of Euroscepticism across the continent, it is arguable that this is also not the time to propose Treaty modification and any change would have to come within the scope of the existing Treaty provisions.

“the findings challenged constitutional principles of EU law that are so fundamental that it is legally impossible for the EU to follow and comply with the findings.”

Option 2: Changes to the Court

As to changes within the CJEU itself, this also seems unlikely. The Statute of the Court of Justice is annexed to the Lisbon Treaty at Protocol No 3 and pertains to the overall organisation of the Court. It does not include a section on standing. As the Protocol has the same legal status as the Treaty, any proposed amendment to the Statute would encounter the same difficulties outlined above. In addition, the Court's Rules of Procedure²⁰ are limited in scope to the practical operation of cases before the Court of Justice, thus it does not appear to be the appropriate mechanism by which to propose reforms. While the CJEU is unlikely to conduct a volte face of its own accord, there have been high profile cases in the past where the Court has changed direction.²¹ Yet all the indications are that this is unlikely. Finally, the EU institutions cannot compel the Court to do so—it is the judicial organ of the EU's inter-institutional balance and acts independently in carrying out its functions.

The reticence to broaden the standing test does not appear to relate to resources either—the General Court will have doubled the number of judges to hear cases by 2019²², thus the resources and capacity to deal with an increased workload are already in place, it is the will to change the law that appears to be absent.

Option 3: The European Ombudsman

A third option which has been suggested in some quarters is that the European Ombudsman might take complaints from aggrieved potential applicants. However, the remit of the EU Ombudsman expressly excludes the Court of Justice of the European Union acting in its judicial role, this option can be dismissed without any further discussion.

Finally, while the ACC recommended amendment of the Aarhus Regulation, or the introduction of new EU secondary legislation, it is clear that to merely amend the Aarhus Regulation would confine any improvements on standing to the environmental sphere, leaving litigants in

other sectors open to the same difficulties as previously encountered. Thus, the reach of the Plaumann problem is broader than in one particular policy area and any secondary legislation proposed by the Commission would have to take this into account.

In conclusion, it is arguable from the above that there are still difficult hurdles to overcome to gain standing or access the CJEU to challenge EU acts. Whilst alternative judicial remedies remain open to individuals, groups and companies within the EU and/or Member State legal order, it seems that for the foreseeable future, the CJEU is “not for turning” as to the binding nature of the Plaumann test.

Endnotes

1. [2004] ECR I 6289 (Case C-486/01P).
2. Para. 38.
3. [1963] ECR 95 (Case 25/62).
4. [1995] ECR II 2205 (Case T-585/93).
5. Para.s 60 -63.
6. [2002] ECR I 6677 (Case C-50/00 P).
7. Extramet- Case C-358/89; Codorniu Case C-309/89 [1994] ECR I-1853.
8. A. Arnulf, Private applicants and the action for annulment since Codorniu, *Common Market Law Review* 2001, p. 5.
9. [2002] ECR II 2365 (Case T-177/01).
10. Commission v. Jégo-Quééré et Cie. SA [2004] ECR I 3425 (C-263/02P).
11. For a discussion of the definition of “implementing measures” under Article 263(4), which was defined narrowly in the CJEU’s case law, see in particular *T & L Sugars Ltd v. European Commission* (Case C456/13 P) ECLI:EU:C:2015:284.
12. *Inuit Taparitt Kanatami and Others v. European Parliament and Council* [2013] ECR I nyr, 3 October 2013 (C-583/11P)
13. C-384/16P (ECLI:EU:C:2018:176).
14. Craig and de Búrca, *EU Law Text, Cases, and Materials*, 6th ed, p. 540.
15. Findings And Recommendations Of The Compliance Committee With Regard To Communication ACCC/C/2008/32 (Part I) Concerning Compliance By The European Union, Adopted On 14 April 2011; Findings And Recommendations Of The Compliance Committee With Regard To Communication ACCC/C/2008/32 (Part Ii) Concerning Compliance By The European Union, adopted by the Compliance Committee on 17 March 2017.
16. COM (2017) 366 final.
17. *Ibid.* at p. 7.
18. Council Decision (EU) 2017/1346 of 17 July 2017 on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention as regards compliance case ACCC/C/2008/32.
19. *Ibid.* at para. 62.
20. Rules of Procedure of the Court of Justice of 25 September 2012 (OJ L 265, 29.9.2012), as amended on 18 June 2013 (OJ L 173, 26.6.2013, p. 65) and on 19 July 2016 (OJ L 217, 12.8.2016, p. 69).
21. See, for example, joined cases C-267/91 and C-268/9, *Criminal proceedings against Bernard Keck and Daniel Mithouard* at para. 16.
22. Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.



“A Stake in the Outcome?” External Voting Rights for Irish people

Despite a long history of emigration, Ireland remains one of a decreasing minority of democracies to disenfranchise its citizens abroad. The legitimacy and sustainability of this position has been challenged over decades, most recently by high profile campaigns of citizens returning ‘home to vote’ in successive referendums. This paper will assess the lack of voting rights for non-resident Irish citizens and make the case for an extension of the franchise in line with modern, international democratic norms.



Introduction

A central feature of the global spread of democracy has been an ongoing reassessment of a core question - who should have a say? Over time, this has seen voting rights slowly expanded, as formal restrictions on suffrage based on factors like wealth, gender and race were challenged and gradually lifted.¹ Under an emergent conception of universal suffrage, the right to vote was established as a key feature of democratic citizenship, but its exercise was generally conditional on residence.²

This began to change from the 1960s onwards. International migration increased and technological advances made it easier to move, return and remain connected with home. Over a fifty-year period, the number of international migrants trebled, challenging traditional conceptions of citizenship aligned neatly with territorial boundaries.³

Faced with an increasingly mobile citizenry, a majority of democracies established systems whereby those citizens could travel and work abroad, but still be accounted for politically in their absence. As temporary migration became more common, emigrants were increasingly perceived as continuing stakeholders in the affairs of their home country. Today, the clear and continuing trend is towards external enfranchisement: over 120 countries and

counting now extend the right to vote to non-resident citizens.⁴

Ireland in an EU context

Ireland is a notable outlier in this regard. Unlike the majority of democracies, no general facility for external voting exists – bar minor exceptions such as diplomatic and military personnel – and under the Electoral Act 1992, returning to vote beyond 18 months abroad constitutes a criminal offence.

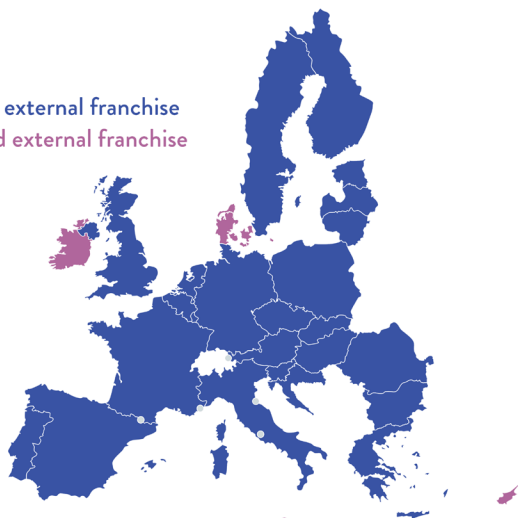
This position is considerably starker when viewed in a European context. Of the 28 EU Member States, only four states deny their citizens of voting rights while abroad, generally after a short period of time has elapsed: Cyprus, Malta, Denmark & Ireland.⁵

Member State	General method of external voting	Disenfranchised after
Cyprus	Polling stations abroad	6 months
Ireland	None	18 months
Malta	Subsidised return flights	18 months
Denmark	Voting through embassies	24 months

Ireland is also notable in that, of the four EU countries to disenfranchise citizens abroad, no general system has been established to facilitate the limited number of eligible external voters. Within the prescribed time limits, Denmark facilitates external voting through its embassies, Cyprus establishes polling stations abroad (although this is dependent on demand), and Malta has controversially subsidised flights home to vote through its national airline.⁶

Of the other 24 EU Member States, Germany previously set a 25-year time limit on external voting, but this was relaxed in 2012. The United Kingdom currently sets a time limit on external voting, but at a relatively generous 15 years, and after a high profile case at the European Court of Human Rights, announced plans to remove it. Minister Chris Skidmore

- Extensive external franchise
- Restricted external franchise



stated that “the Government’s principle is clear: participation in our democracy is a fundamental part of being British, no matter how far you have travelled or when you left.”⁷

Ireland and emigration

Ireland’s anomalous position on this issue is also notable given its long, well-documented history of emigration and the general importance afforded to the Irish abroad in the country’s national image. Emigration has been a defining feature of the State since its foundation, and shaped its social, political and cultural life since long before that point. On a State visit in 1963, U.S. President John F. Kennedy famously remarked that while “most countries send out oil or iron, steel or gold, or some other crop, Ireland has had only one export and that is its people”.⁸

Irish policy towards citizens abroad has also shifted over time, moving from relative disengagement towards more recent embrace. From President Mary Robinson lighting a symbolic candle in the window of Áras an Uachtaráin in 1990, to the establishment of a dedicated Irish Abroad Unit and Emigrant Support Programme within the Department of Foreign Affairs & Trade in 2004, and the appointment of the State’s first ever Diaspora Minister in 2014, successive Governments have increasingly emphasised the need to engage with the Irish abroad. This is reflected in numerous policy documents, most recently ‘Global Irish – Ireland’s

Diaspora Policy', published March 2015.

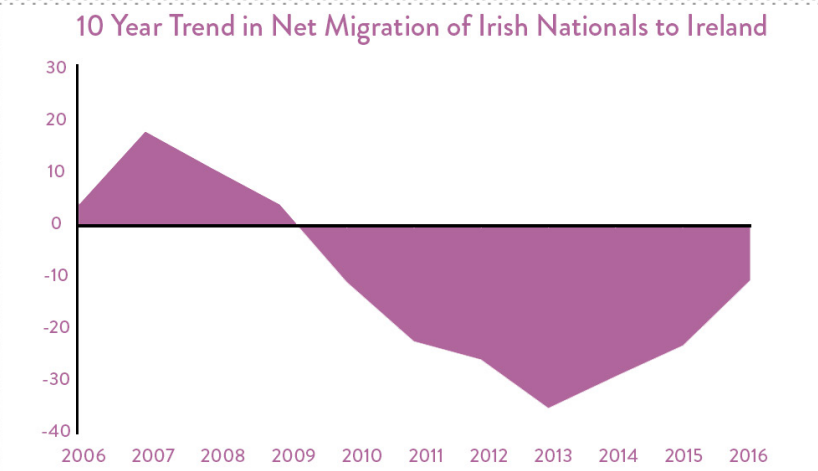
This engagement has had a distinctly economic focus, however. Building on a history of diaspora contributions through remittances and State support for vulnerable groups abroad, Ireland has increasingly sought to harness state-emigrant relations for economic advantage – boosting Ireland's export market, developing the country's international profile and attracting foreign direct investment.⁹

The Global Irish Economic Forums were established in 2009, in the words of then-Foreign Minister Micheál Martin, to “shape a more strategic relationship which will bring benefits both to Ireland and to our global community and which has a more developed economic focus”, recognising that the Irish abroad “constitute one of the most powerful and far-reaching resources at our disposal”.¹⁰ A Strategic Review of Ireland-US relations remarked that “our single greatest asset in the US is our diaspora” which remain “a resource of incomparable benefit.”¹¹

However, while the economic relationship between the State and citizens abroad continues to deepen, the political relationship remains comparatively underdeveloped. Irish emigrants are still denied the voting rights afforded to the vast majority of EU citizens, and emigrant organisations have criticized an outlook emphasising their economic value but overlooking the political rights increasingly associated with citizenship.¹² The current practice of disenfranchisement has been highlighted consistently by such organisations, generally in line with periods of increased emigration. It remains, according to the Department of Foreign Affairs & Trade, “an issue of enormous importance to many Irish citizens abroad.”¹³

The need for reform

Calls for reform of voting rights have been reflected at the European level. While national voting rights remain a competence of the Member States under the EU Treaties, the European Commission has repeatedly criticised a minority of EU countries for disenfranchising their citizens abroad.¹⁴



The changing nature of migration and “socio-economic and technological realities” mean that “people can move around more easily...residing in another EU country no longer requires a definitive severing of ties with the country of origin, as may have been the case in the past.”¹⁵ In this sense, the disenfranchisement of citizens abroad denies them an important democratic right in a country where they remain an active stakeholder.

In 2014, then European Commission Vice-President, Viviane Reding, strongly criticised the practice, suggesting a potential legal challenge in the Court of Justice of the EU: “*The right to vote is one of the fundamental political rights of citizenship. Depriving citizens of their right to vote once they move to another EU country is effectively tantamount to punishing citizens for having exercised their right to free movement.*”¹⁶

Similarly, while EU state practice has generally only afforded voting rights to immigrants after a period of time, the lack of external voting rights in the interim has left a minority of EU citizens with no effective national suffrage rights. The head of the European Commission Representation in Ireland summarised the position in 2014: “Ireland is at the extreme end of the five member states that do not give their citizens a

right to vote when they move outside the country. The Commission’s view is that this represents a gap in the rights of EU citizens... we are pointing out what we see as a lacuna in the current arrangements.”¹⁷

#HomeToVote

101

What has this rights 'gap' meant in real terms? Most recently, its implications were cast into stark relief by two high profile referendums on same-sex marriage (2015) and abortion rights (2018). These ballots also offer a useful context in which the traditional arguments proposing and opposing an external vote can be assessed.

Over the past decade, Ireland experienced a period of exodus not seen since the 1980s. From 2008-2014, almost a quarter of a million citizens emigrated, against a backdrop of economic downturn and rising unemployment. Research from UCC has indicated that over 70% were in their 20s at the time of departure, a youthful picture of emigration consistent with surveys conducted through Ireland's network of Embassies and CSO estimates.¹⁸

This new cohort of younger emigrants also reflect the changing nature of migration, which "tends to be more temporary than in the past."¹⁹ Research commissioned by the Department of Foreign Affairs & Trade in 2018 noted that "emigration is increasingly seen as temporary rather than permanent for many, albeit not all emigrants, and it is no longer uncommon for people to leave and return to Ireland, even to do so a number of times."²⁰ For this cohort of emigrants, the possibility of return is live and ongoing, and over 40% of those surveyed by UCC researchers stated their intention to return within three years.²¹

In this context, Ireland held referendums on highly topical social issues that were particularly resonant with younger voters. Lacking any system for casting a ballot abroad, thousands of citizens travelled 'home to vote' in public campaigns that garnered widespread international and domestic attention.

Print and social media were covered with images of returning citizens draped in the rainbow flags of the LGBT rights movement (2015) and pro-choice slogans (2018). On the BBC in May 2018, one voter described her 20,000km, 36-hour round trip from Tokyo to Dublin, just to cast a ballot.²² Given that so many had to travel long distances to exercise their ballot,

however, demonstrates how restrictive and exclusive Irish democracy can be.

The political response reflected an overwhelmingly positive welcome: in 2015, then-Taoiseach Enda Kenny thanked those had “travelled from wherever to wherever, to put a single mark on a paper”; and in 2018, Taoiseach Leo Varadkar and Health Minister Simon Harris commended those who “made the effort to travel home”, holding ‘#hometovote’ placards aloft as voters celebrated the result of the referendum.²³

This response is contrasted, however, with the fact that these voters were circumventing, and in many cases likely breaking, the State’s electoral laws. Those who returned beyond 18 months abroad risked committing a criminal offence, punishable by up to two years in prison.



What would an external vote look like?

Beyond this, questions have focused primarily on what a system of external voting rights would look like in practice – the potential size of the electorate, which elections they’d be entitled to vote in, and how the process would be managed.

Within the Oireachtas, an all-party Committee called on the Government in 2014 to “accept the principle that voting rights should be extended to Irish citizens abroad” and “design a system that would be workable in an Irish context”.²⁴ However, while that principle has historically been accepted by successive Governments, little consensus has emerged regarding the most appropriate system.

A 1991 Labour Party bill would have enfranchised emigrants in all elections for a period of 15 years, but was defeated by four votes. Both Fine Gael and Fianna Fáil have suggested emigrant representation in Seanad Éireann, while more recently external voting

rights in Presidential elections have dominated the political landscape.²⁵

In 2013, the Government referred the question of an external vote in Presidential elections to the Convention on the Constitution. It voted overwhelmingly in favour (78%) of extending a presidential vote to citizens abroad, including those resident in Northern Ireland (73%), and “predominant was the idea that in many cases emigrants still retain an interest, stake and attachment in Ireland”. However, this poses several challenges when it comes to the issue of voting rights in Northern Ireland and could raise many concerns on a domestic level.

There is no ‘set’ answer to these questions internationally, and systems of external voting vary around the world. However, decades of research and state practice have shown that workable models exist through which citizens abroad can be represented politically, and the various challenges can be met. In assessing these models, the Institute for Democracy and Electoral Assistance suggests three core questions: who can vote, in which elections, and how?

Who can vote?

When an external vote is extended, the majority of countries don't limit it to certain categories of citizens. While some countries require prior residence within a specific timeframe, such as Canada (5 years) and Australia (6 years), this is less common, particularly across the EU. In the majority of the 28 EU Member States, citizenship alone is sufficient:

- 22 place no residency requirements or time limits.
- 2 require some prior residence: the UK (within the previous 15 years) and Sweden (resident at any point)
- 4 have limited external voting rights in the first place, circumscribed by a short time limit: Cyprus, Denmark, Ireland, and Malta

However, scholars have noted that the size of the electorate is important, amid concerns that that a disproportionately high number of external voters could 'swamp' the domestic electorate.²⁶ This is particularly true in countries like Ireland, with a long history of emigration and comparatively generous entitlements to citizenship.²⁷

Estimates published by the Department of Foreign Affairs & Trade in 2017 put the population of the state at roughly 4.7m people. Approximately 1.7m Irish citizens are currently resident abroad, with a further 1.9m potential citizens in Northern Ireland, putting the rough figure at 3.6m citizens' resident outside the State.²⁸

These figures are significant, but while emigration has been an important feature of Irish life, it is not a uniquely Irish phenomenon. Numerous models exist around the world to adequately account for it. Research commissioned by the Department of Foreign Affairs & Trade in 2018 estimates a population of roughly 800k external voters, if a condition of prior residence was required (as is the case in Sweden) and this figure would be lower still if it was time-bound (as is the case in the UK).²⁹

In addition, this is compounded by the fact that, while external voting systems vary around the world, one of the few consistent features is a low turnout rate and marginal electoral impact.³⁰ Generally, only external voters with a particular interest in the political affairs of their home country go through the steps necessary to exercise and maintain their vote, such as continued re-registration. This is the case in several EU countries, such as Austria and Sweden, where citizens abroad must re-register every 10 years.

Drawing on both domestic and external turnout rates in Ireland and around the world, research presented to the Oireachtas Joint Committee on EU Affairs estimated that a time-bound emigrant vote of five to six years (as in Canada and Australia), would result in roughly 30k

extra voters.³¹

This demonstrates the importance of distinguishing clearly between an expansive, often nebulous conception of a '70m diaspora', and a more precise focus on citizens abroad and how they would actually be enfranchised in practice. To the extent that return migration is seen as an important basis for extending voting rights abroad, and citizenship entitlements are comparatively generous, conditions of prior residence allow states to take such factors into account.

In which elections?

Beyond this, several states have sought to further manage the impact of external voters through the creation of specific 'reserved constituencies' in **parliamentary elections**. In this manner, a limited proportion of seats are set aside for external voters, which controls for the size and influence of the external voting population relative to the domestic electorate.



They are used in five EU Member States (Croatia, France, Italy, Portugal & Romania) and demonstrate how countries with a comparatively high proportion of emigrant citizens (such as Croatia) and similarly extensive entitlements to citizenship (such as Italy) have been able to adequately deal with these factors.³² As central as emigration has been to Irish society, ultimately we are not alone in our experience of it. A majority states

have managed to incorporate citizens abroad in a manner that does not undermine the legitimacy of domestic democratic institutions and national parliaments.

More recently, citizens landing 'home to vote' in Dublin airport made the case emphatically that such **referendums** concerned them. Their arrival itself questioned and challenged current policy: did young LGBT citizens, years away but back in May 2015, deserve a say on marriage equality? Is it right that Ireland's

electoral laws could criminalise many of the young women who flew home to vote on the eighth amendment? Those citizens demonstrated a clear, continuing stake in the country.

Finally, in terms of Irish **presidential** elections, it's worth noting that external voting rights tend to be extended for parliamentary/presidential 'executive' ballots, and no EU Member State has restricted them to 'non-executive' elections. If a vote is extended in this manner, in line with current proposals for the Irish Presidency, the necessity for controls based on factors like prior residence would seem much less apparent.

"That suffrage is awarded to a privileged minority of citizens based on their status as university alumni seems wholly at odds with modern democratic norms and egalitarian principles"

How do they vote?

If an external vote is granted, managing the process poses logistical challenges, discussed at length in several Government briefing papers.³³ Ultimately it's a question of resources and organisational capacity, and States generally rely on a combination of five methods:

- Postal voting: receiving and returning ballots by post (Germany, Italy)
- In-person voting: normally at a State's embassy (Portugal, Croatia, France)
- Proxy voting: nominating a resident citizen to cast your ballot (UK)
- E-voting: through electronic means (Estonia)
- Return voting: to cast a ballot in your country of citizenship (Greece)

The first two options are most common. While in-person voting brings greater secrecy and control, it's relatively costly, placing a significant burden on Embassy networks and potentially requiring voters to travel long distances to polling stations.

A postal vote is comparatively low cost and allows for reasonable secrecy, but can be administratively challenging and reliant on varying international postal standards.³⁴ In the Irish case, a postal vote is already available for the limited number of eligible emigrants, such as diplomatic staff posted abroad. The election of six out of sixty Senators by graduates of the National University of Ireland and Trinity College Dublin is also conducted by postal vote, and remarkably this makes no distinction as to residence. In effect, this means that a small number of Irish emigrants have actually been able to retain a vote in Irish Parliamentary elections, simply by registering a foreign address with the relevant university and returning their ballot by post from abroad.

That suffrage is awarded to a privileged minority of citizens based on their status as university alumni seems wholly at odds with modern democratic norms and egalitarian principles. This could indicate also that while alumni seats maybe outdated, with the right political will and organisation, external voting systems could be extended to citizens on a more general and inclusive basis.

Conclusion

Ultimately, both research and state practice show that across the international community, workable models exist through which citizens abroad can be afforded meaningful representation as they leave and return – what is required is an assessment in light of the historic factors specific to any particular state, and the political will to choose. Given the overwhelming support of the Constitutional Convention for an external vote in Presidential elections, a referendum on that proposal has been scheduled for late 2019. Similarly, a Government-established Oireachtas Committee on reform of Seanad Éireann has proposed genuine emigrant representation in the Upper House, but whether the concurrent legislation will be tabled and passed remains to be seen.

Overall, these are very positive steps in the right direction, bringing the State further in line with an increasingly

well-established international democratic norm and breaking the deadlock on decades of fruitless debate on external voting rights.

Conor O'Neill is a Researcher based in Seanad Éireann, focusing on issues of foreign affairs, human rights and migration.

Endnotes

1. Rhodes, S. & Harutyunyan, A. (2010) 'Extending Citizenship to Emigrants: Democratic Contestation and a New Global Norm', *International Political Science Review*, 31:4
2. Honohan, I. (2011) 'Should Irish Emigrants have Votes?' *Irish Political Studies*, 26:4
3. Caramani, D. & Grotz, F. (2015) 'Beyond citizenship and residence? Exploring the extension of voting rights in the age of globalization', *Democratization*, 22:5
4. Lappin, R. (2016). 'The right to vote for non-resident citizens in Europe', *International & Comparative Law Quarterly*, 65:4
5. Hutcheson, D. & Arrighi, J. (2015) 'A comparative inquiry into the institutional limits of external voting in EU Member States', *Democratization*, 22:5
6. Poptcheva, E. (2014) 'Disenfranchisement of EU citizens resident abroad', European Parliamentary Research Service
7. 'Voting at presidential elections by citizens resident outside the State', Government Options Paper, March 2017
8. MacÉinrí, P. et al. (2013) UCC Émigré Report, pp. 1-3
9. Boyle, M. et al. (2013) 'Ireland's diaspora strategy: diaspora for development', *Migrations Ireland in a Global World*
10. 'Cowan to host major economic forum', *The Irish Times*, April 28th 2009
11. 'Ireland and America: Challenges and Opportunities in a New Context' Department of Foreign Affairs & Trade, 2009
12. Hickman, M. (2017) 'Emigrants still have a stake in Ireland', *Irish Times*, Nov 7th: <https://www.irishtimes.com/life-and-style/abroad/emigrants-still-have-a-stake-in-ireland-so-why-can-t-they-vote-1.3281978>
13. 'Ireland's Diaspora Policy', DFA&T, pp. 21; MacÉinrí et al. pp. 93-94
14. See the EU Citizenship Reports 2010, 2013 & 2017
15. EU Citizenship Report 2013, pp. 36
16. Disenfranchisement: Commission acts to defend voting rights of EU citizens abroad, 29th January 2014, available at: http://europa.eu/rapid/press-release_IP-14-77_en.htm
17. Oireachtas Joint Committee on EU Affairs, Tuesday, 11th March 2014. The fifth EU Member State referred to here is the UK, for disenfranchising citizens after 15 years abroad.
18. MacÉinrí, et al. (2013); Global Survey for the Fifth Convention on the Constitution
19. Caramani & Grotz (2015)
20. Indecon Economic Report (2018) 'Addressing Challenges Faced by Returning Irish Emigrants'
21. MacÉinrí, et al. (2013)
22. "Irish abortion referendum: the people traveling #hometovote", BBC News, 26th May 2018
23. 'Kenny welcomes palpable movement in Irish society', *The Irish Times*, 23rd May 2015; Minister Simon Harris on Twitter
24. Joint Committee on EU Affairs, Report on Voting Rights of Irish Citizens Abroad, November 2014
25. MacÉinrí et al. (2013), pp. 93-95
26. Hutcheson & Arrighi (2015)
27. Honohan (2011), pp. 553
28. 'Voting at presidential elections by citizens resident outside the State', Options Paper, March 2017
29. Indecon (2018)
30. Hutcheson & Arrighi (2015)
31. Joint Committee on EU Affairs, 13 May 2014
32. Honohan (2011), pp. 552-556; Hutcheson & Arrighi (2015), pp. 891
33. Voting at presidential elections by citizens resident outside the State', Options Paper, March 2017
34. Reidy, T. (2013), Presentation to the Convention on the Constitution



GDPR: What next?

This paper examines the approach to data protection enforcement in Ireland, and whether it is tougher or more lenient now that the General Data Protection Regulation (GDPR) and Data Protection Act are in force? It will explore the merits of these two approaches, and their immediate and more long-term consequences for Ireland as an actor in the EU sphere, and as a country of destination for the future of the global tech industry.



Introduction

After years of consultations and negotiations in the EU, the General Data Protection Regulation (GDPR) came into force on 25 May 2018. It was primarily designed to modernise laws that protect the personal information of individuals. The previous data protection rules across Europe were in place since the 1990s and failed to keep up with the changing technological environment which people and companies operate in today.

The main changes relate to the use of personal data and include:

1. The fact that the regulation applies to **all** companies that process personal data of people residing in the EU, regardless of the company's location;
2. The requirement to give data subjects more information and more control when their personal data is being collected and to delete any data that is not used for the original purposes;
3. Increased regulation around gaining consent to collect personal data. (Both consent and explicit consent now require clear affirmative action. People can revoke their consent to data processing at any time, and it must be easy for them to do so);

4. Significant fines from any data breaches;
5. The requirement for large data users to employ a Data Protection Officers (DPO), and;
6. that all complaints will be handled by a single national office.
7. The timeframe for notification of any breaches need to be communicated to regulators within 72 hours, unless there is no risks to individuals.¹

The first big test of the enforceability of the GDPR in Europe, and in Ireland specifically, since GDPR came into existence was announced on 3 October 2018. The office of the Irish Data Protection Commission announced the commencement of an investigation under the Data Protection Act (DPA 2018) into a data breach by Facebook. The breach related to the data of almost 90 million accounts, is alleged to have been compromised by a failure by Facebook to comply with its obligations to ensure the security and safeguarding of the personal data processes. If Facebook is found by the DPC to have violated the GDPR's rules by mishandling data, it could be issued with a fine of up to €2.2 billion, potentially making it the largest ever privacy fine worldwide.

The Irish response to GDPR implementation and enforcement is important internationally for several reasons. Large multinationals such as Facebook and Google, which the GDPR will primarily affect,² have their European bases in the Irish jurisdiction. Consequently, laws at an Irish level are often the first line of defence for data protection enforcement in the EU.

Ireland appears to be caught straddling the gap between the EU's tough stance on privacy violations, and the tech giants, the majority of whom are of US origin, who are often reluctant to take such regulation seriously.³ The avenue Ireland decides to pursue here is therefore significant for both international perceptions of the legitimacy of EU crackdowns on huge

international companies circumventing the law, and the extent to which those firms consider Ireland a desirable place to do business and maintain a European headquarters. The latter is an important factor in the government's bid to make Ireland an international technology hub and Dublin "the tech capital of Europe".⁴

Process Overview

Before commencing an analysis of the status of these two approaches, the operation of the relevant law enforcement mechanisms will be outlined.

Decision to Sanction

At a European level, enforcement of the GDPR is facilitated by a new body known as the European Data Protection Board (EDPB). The EDPB is composed of the European Data Protection Supervisor (currently Giovanni Buttarelli), the head of each national data protection authority (NDPA) and the European Commission, which participates without voting rights. Ireland's national data protection authority is represented by the Data Protection Commissioner.

"Ireland appears to be caught straddling the gap between the EU's tough stance on privacy violations, and the tech giants"

The EDPB has the power to issue binding decisions between countries regarding cross-border data matters⁵, and non-binding opinions and guidelines on matters such as the industry codes of conduct or the interpretation of a specific point of law.

The new decision-making process is set out in Article 65 of the GDPR and aims to reduce legal uncertainty for countries operating in different member states. Under the process, a "leading" NDPA will be designated to draft the decision where several NDPAs have noticed a similar data protection issue in their relevant country.⁶ If there is consensus between all the relevant authorities, they each adopt the national decisions on the basis of the draft prepared by the lead authority. If consensus is not reached, a decision

is instead taken by the EPDB. The relevant NDPAs must adopt this decision if it passes by a majority of two-thirds. However, NDPAs are competent to handle a complaint or infringement unilaterally where the subject matter relates only to an establishment in its Member State, or if the issue only “substantially affects” data subjects in its Member State.⁷

Sanction Implementation

If there is a suspicion that a company in an EU Member State does not respect new data protection rules, the NDPA in that country analyses the case. If the NDPA concludes that the company in question has not breached any rules, it takes no further action. If the NDPA concludes that there has been a breach by the company, it adopts a decision to sanction that company. Sanctions can be monetary (a fine for up to 20 million EUR or 4% of that company’s worldwide turnover⁸), non-monetary (a suspension of data flows to a recipient in a third country, reprimands to a company, or a temporary or definitive ban on the processing of the data⁹), or a combination of both. In determining the amount of a fine, NDPAs must take into account the nature of the infringement by the company, actions taken by the company to mitigate the damage suffered, and any relevant previous infringements done by the same country.¹⁰

Crucially, the content and extent of the sanction is at the discretion of the prosecuting NDPA. It is this discretionary element of GDPR enforcement that will be the focus of the hard and soft approaches below.

Citizens’ Complaint Mechanism

If a citizen identifies that their data protection rights have been violated, they must first contact their NDPA. The NDPA then guides that citizen on how best to take the case forward based on the specific national procedure in place.¹¹ Alternatively, citizens have a right to an effective judicial remedy under Article 79 of the GDPR, and are entitled to advance proceedings in their national courts against a controller or processor in a jurisdiction where the controller or processor

in question has an establishment. This is an example of the EU choosing to adopt a decentralised means of enforcing its law through the use of national courts; here cases will only go on to the European level, if the national court in question decides that there is a point of law it would like the Court of Justice of the European Union (CJEU) to interpret.¹² The CJEU acts as a final arbiter on the issue in question.

The Role of Ireland

While Article 83 of the GDPR sets out the general conditions for Member States in imposing administrative fines for breaches of the Regulation, Article 84 stipulates that Member States are responsible for laying down their own rules on other penalties. In both cases these penalties are required to be “effective, proportionate and dissuasive”.

The powers and maximum penalties for GDPR breaches are laid out in the Data Protection Act 2018. It should be noted that the decision regarding the initial content and subject of the penalty imposed remains the responsibility of the DPC, and that the courts only become involved in the enforcement process where a data controller or processor *appeals* a decision by the DPC¹³, or where there is no infringement, *to confirm* the penalty decision of the DPC.¹⁴


Paul Nemitz, Principal Advisor of the Director General of DG Justice, the directorate of the Commission responsible for drafting the GDPR, recently published a paper outlining the rationale behind the fining system.¹⁵ Specifically, he notes that the harmonisation of fining processes was a deliberate move away from the “diversity of fines” that existed under the pre-GDPR laws for data protection, and that Article 83’s ability to functionally operate in practice will depend on its implementation by NDPAs.

A Tougher Stance

116

Given the concentration of tech companies choosing to locate their headquarters in Ireland, Irish enforcement practices—particularly the sanctions, monetary or otherwise, that the DPC decides to impose—are

likely to come under considerable scrutiny and media attention compared to other European Member State jurisdictions. It is likely that this scrutiny will only be further bolstered by an adoption of similar data protection regimes worldwide; both Brazil and Japan are currently in the preliminary stages of drafting legislation that closely mirrors the enforcement and supervisory structure of the GDPR.



With those developments in mind, a hardline approach to enforcement has the potential for Ireland to position itself as a global norm-setter for high data protection standards and allow it to establish itself as a leading jurisdiction for litigation for citizens. This would also align Ireland with the enforcement standards the EU and its Member States expect should be upheld in the area of data protection. These positions are likely to continue to prevail after the European Parliament elections in May 2019, and with the new Commission when they take up their mandate later this year. The Commission has made it clear that it expects strong and responsive compliance with the GDPR, recently outlining its stance at the WebSummit in Lisbon in November 2018:

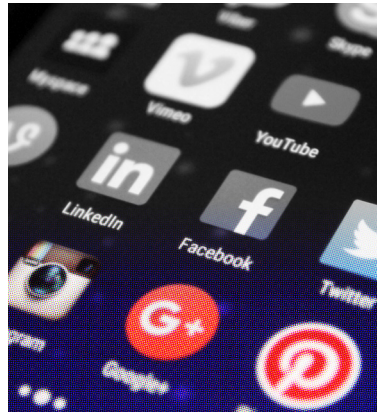
“An architect needs to respect and comply with the building code and a number of safety legislations. For the digital world we should think of a similar system, a mix of ethical, legal and societal norms that would ensure continuing trust in the greatest revolution of our lifetimes.”¹⁶

Further to this, Carlos Moedas, Commissioner for Research, Science and Innovation, stated that he wanted to address what he calls a “growing gap between tech and democracy”,¹⁷ while Justice Commissioner Věra Jourová has officially stated that she is keen to see Facebook held sufficiently accountable for failing to manage the data and for making a profit “from using our privacy as a commodity”.¹⁸ Given that the crucial elements of

the enforcement process for that accountability will take place in Dublin, rather than Brussels or Luxembourg, the Commission has made it clear that it expects the DPC to deliver sufficiently dissuasive penalties where necessary.

The merits of a hardline approach are amplified by several factors which indicate that a tougher approach to enforcement would not necessarily imply a harmful outcome for Ireland.

- First, the DPC is an entity entirely independent from other sectors of the government, including politicians advocating for a lax approach to enforcement in order to attract tech companies to Ireland.



- Second, the degree to which data protection enforcement is a prevailing factor for choosing where to locate a HQ varies amongst significant tech players. For example, Apple, who are currently ranked as the world's most valuable company and have their European headquarters in Cork, are predominantly focussed on selling hardware such as laptops and phone handsets, as opposed to intangible goods such as data, (the principal means of revenue for Facebook and Google), making tougher policy rules on privacy a less pressing concern for conducting their business. This is a sentiment that appears to be echoed in Europe, with Mr Buttarelli himself noting that *"Apple is a different animal compared to Google's search engine or a social network."*¹⁹ Privacy and data protection regulations present more of an issue for the likes of Facebook and Google, particularly in the wake

of the aforementioned tech backlash which they are facing.

A More Lenient Approach

The arguments supporting a more lenient approach to enforcement are primarily centred around making the Irish jurisdiction as attractive as possible for technology companies establishing their European headquarters in Dublin. Such an approach is considered particularly important in sectors where Ireland's economy is currently relatively highly dependent on local employment being provided by technology companies, many of whom have originated in the US and tend to advocate for a softer approach to legislation.²⁰

Alongside this, there has been some international media criticism in the media of Ireland, labelling it as a jurisdiction with a reputation for “soft touch” enforcement. Following a more lenient approach would likely serve to solidify that reputation, particularly when coupled with concerns about practical obstacles to enforcement in Ireland.²¹

However, the cogency of this approach demands further examination, in order to establish whether it has any substantive merit beyond being the safest means to avoid driving technology companies out of the country. For a technology company seeking to establish a headquarters within the EU, it only matters how *relatively* lax the Irish regime would be.

Enforcement is not the only factor determining a company's choice of jurisdiction; if other Member States adopt a commensurate approach to enforcement, then differences between them and the Irish regime may be relatively negligible. The adoption of similar data protection regimes outside the EU are also worth noting here. It is important, therefore, to reflect on what it now means to be “competitive” in a world where data (and its handling) are becoming an increasingly important currency. If non-EU jurisdictions are seeking to emulate the GDPR as a means for guaranteeing rights and encouraging technological development through clear, transparent and comprehensive rules, then Ireland's regime

may already be considered the gold standard. For multinational companies, this implies two things: one, that their choices of jurisdiction for establishment are increasingly going to offer models for data protection similar to that which Ireland has already implemented, and two, that perceptions of competitiveness may be increasingly linked to coherent data protection regimes in order for companies to be able to take advantage of a wider number of countries whose data transfers are assimilated into intra-EU transmissions.

Also relevant here is the role of public opinion in influencing technology company policy. As the user numbers of tech firms such as Facebook and Google continue to grow, so too does the degree of scrutiny they receive in the exercise of their perceived dominance. The firms coming under the most intense examination appear to have responded in kind in the last eighteen months. Erin Egan, privacy chief at Facebook, stated in an address to the European Parliament on Wednesday 24 October 2018 that the company would “unequivocally” back a US version of the GDPR.²² These remarks are significant, as they suggest that Facebook may have recognised that being seen to comply with data protection regulation may be equally advantageous for them in maintaining the user trust crucial to the engagement (and power) of their platform. This suggests that a lenient approach is not the only means for avoiding a loss of international competitiveness due to data protection rules, and that there is potential for having a hard-line approach to enforcement without sacrificing a competitive edge against other jurisdictions.

Conclusion

Whichever approach Ireland’s enforcement authorities decide to take, the decision will necessitate a balancing of European expectations and intent, particularly from the Commission. An investigation and sanctioning process that does not deter technology firms which are a notable source of local employment and clout for Ireland as an international technology hub will be a consideration. While many of the leading companies in this field have recently demonstrated an understanding of the need to address accountability

concerns in order to retain user trust, it is submitted that the DPC's findings in its Facebook investigation will still prove to be first "test" of the efficacy of the new European data protection regime. The Commission has indicated that it views effective GDPR enforcement as an important catalyst for asserting the legitimacy of the EU as a protector of citizens' rights; aligning with that stance would allow Ireland to capitalise on the positive implications this would imply.

However, the potential impact for businesses, of significant sanctions or fines may not necessarily be as dramatic as feared. Global trends towards adequacy decisions with the EU and the growing importance of maintaining user trust for technology firms which rely on data as a source of capital, both underscore the idea that more stringent enforcement without compromising competitiveness is a viable option for Ireland.

Anna is currently undertaking a Master's Degree in European Law from the College of Europe. She also holds a LLB in Law and Political Science from Trinity College Dublin.

Endnotes

1. For more information on the regulation see for example EU GDPR Portal: <https://eugdpr.org>; <https://gdpr-info.eu> and www.dataprotection.ie
2. GDPR: noyb.eu filed four complaints over “forced consent against Google, Instagram, Whatsapp and Facebook, noyb European Centre for Digital Rights (25 May 2018). https://noyb.eu/wp-content/uploads/2018/05/pa_forcedconsent_en.pdf
3. The Test for GDPR will be in its enforcement, Financial Times (24 May 2018). <https://www.ft.com/content/f9a273a6-5e92-11e8-ad91-e01af256df68>
4. Press Release: Taoiseach launches plans to develop new Grand Canal Innovation District (12 July 2018). https://merriionstreet.ie/en/News-Room/News/Taoiseach_launches_plans_to_develop_new_Grand_Canal_Innovation_District.html
5. GDPR Article 65.
6. The relevant criteria are laid out in Article 56(1) of the GDPR.
7. GDPR Article 58.
8. GDPR Article 83(4)-(6).
9. GDPR Article 84.
10. GDPR Article 83(2).
11. GDPR Article 77.
12. TFEU Article 267.
13. Data Protection Act 2018, s142.
14. Data Protection Act 2018, s143.
15. Paul Nemitz, Fines under the GDPR CPDP 2017 Conference Book (21 October 2018). <https://ssrn.com/abstract=3270535>
16. Věra Jourová, Commissioner for DG Justice, 6 November 2018.
17. Panel debate: “More Social Good in Tech, More Tech in Social Good”, WebSummit (7 November 2018). <https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I163072>
18. Economic and Financial Affairs Council, 3639th meeting: Arrival and Doorstep by Věra Jourová (2 October 2018). <http://ec.europa.eu/avservices/video/player.cfm?ref=I161280>
19. Apple’s Tim Cook heads to Brussels to talk privacy amid ongoing tax fight, Politico (24 October 2018). <https://www.politico.eu/article/tim-cook-apple-privacy-data-protection-digital-tax-moscovici/>
20. Privacy Rights: “It’s natural Facebook would choose Ireland”, The Irish Times (22 Feb 2018). <https://www.irishtimes.com/business/technology/privacy-rights-it-s-natural-facebook-would-choose-ireland-1.3400531>
21. Schrems says “insanely high” Irish legal fees threaten cases against online firms, The Irish Times (6 June 2018). <https://www.irishtimes.com/news/social-affairs/schrems-says-insanely-high-irish-legal-fees-threaten-cases-against-online-firms-1.3521758>
22. Apple and Facebook call for EU-style privacy laws in US, Financial Times (24 October 2018). <https://www.ft.com/content/0ca8466c-d768-11e8-ab8e-6be0dcf18713>



Re-imagining the African Continental Free Trade Area and the Future of the EU-Africa Partnership

Africa is in trouble. Its future is once again on the diplomatic table and as so many times before in its troubled history, Europe holds the ace. The EU approach to Africa, via so-called economic partnership agreements, is the equivalent of the 1884–1885 Berlin Conference that divided the continent among the great powers. At stake is whether Africa should be allowed to conduct policies for its own development—or for the development of Europe.¹



Introduction

Exploring possibilities to examine the complex relationship between EU/African trade relations presents several challenges. However, given that this is the UN declared International Decade for People of African Descent (2015–2024), it was important for me to utilise my voice within the Emerging Voices panel to speak about EU relations with the African Continent. In this paper, I will investigate historical EU-Africa trade/aid relations in the context of the development of the African continent and argue that trade agreements between the EU and Africa through the Economic Partnership Agreements (EPA) are underpinned by a paternalistic and neo-colonial approaches towards Africa, premised on the fact that *‘the economic cannot be understood in abstraction from the social and the cultural.’*²

This paper will therefore contend that the EPA is not only detrimental to the African continent both on paper and in practice, but is also misaligned with the Africa 2063 agenda towards continental integration and socio-economic transformation.³ EPAs are also detrimental to some EU member states like Ireland, which aspire to create sustainable and equitable relations on the African continent.

relations that exist between Africa and the EU, as they undermine modes of government and real development on the African continent. As a consequence, the EU must now engage in truly constructive relations with Africa that allow for the development of the continent and people. The paper will conclude by exploring alternative possibilities to re-imagine Africa/EU relations, briefly exploring the implications of Brexit in the context of the creation of the (African Continental Free Trade Area) AfCFTA and the role of China in Africa.

The Economic Partnership Agreements

The African continent has been hailed as fertile ground for economic and industrial development, with a growing population of over 1 billion people and a Gross Domestic Product (GDP) of \$2.5 trillion, across all 55 member States of the African Union).⁴ Current proposals for the creation of the African Continental Free Trade Area would make it the largest trading block in the world. So far, 44 countries have signed the framework and according to Carlos Lopez, UN Special Representative for the AU; African leaders have rarely been as unified on such an issue.

AfCFTA has the potential to unify and strengthen disaggregated markets, while increasing inter-African trade through the removal of tariffs across African countries and the creation of cross border infrastructure which is essential for supply chains for intra African trade. As greater calls for a diversification of Africa's trade are made, AfCFTA on paper truly has the potential to reimagine trade on and for the African continent. What would a unified African market mean for EU - African economic relations, given the current trade agreements that have been established in the form of EPAs?

The Economic Partnership Agreements were initiated in 2002, based on existing aid – trade relations between the EU and Africa in the form of The Lomé Convention and The Cotonou Agreements, the latter is set to expire in 2020. The EPAs were envisaged as a replacement to align with WTO Article 37.1 towards the removal of barriers to trade. It is argued that the

Study	ACP Liberalisation Year	Region	Welfare (€m.)	Real GDP (€90)	Real GDP (%)	Loss in tariff revenue (%)	Fiscal loss (% of GDP)	Trade Creation (%)	Trade Diversion (%)	ACP exports (€m.)	ACP Imports (€m.)	
Perez (2006), CGE	80% in 2008	All ACP	-851	-183			0.7					
		CARICOM	-81			0.2		162 ^a	2238 ^a			
		Pacific	-134			1.6		136 ^a	1254 ^a			
		SADC (rest of)	-24			0.4		118 ^a	677 ^a			
		SSA	-612			1.0		954 ^a	6417 ^a			
Bouët et al. (2007), CGE	80% in 2035	ALL ACP			05 ^b	13.5					≈9000	
		Carribbean & Pacific			2.3	17.1			6000			
		ESA							3000			
		Rest of Africa			-0.1	39.3			-100			
		Rest of West, Central and Eastern Africa							4800			
		SADC			5.1 ^b	-1.8			7100			
Fontagne et al. (2008) PE	80% in 2022, excluding mainly agricultural products	All ACP					25.4	0.7	17.7	3.6	10.7 ^a	17.7 ^a
		Carribbean					15.5	0.8	27.1	3.1	25.2 ^a	27.1 ^a
		CEMAC					41.2	0.8	17.2	7.2	7.3 ^a	17.2 ^a
		COMESA					20.5	0.7	20.7	3.4	25.5 ^a	20.7 ^a
		Pacific					8.5	0.2	-0.2	-0.2	37.1 ^a	-0.2 ^a
		SADC					22.0	0.4	10.6	2.5	6.6 ^a	10.6 ^a
		ECOWAS					37.8	0.7	15.1	4.6	4.0 ^a	15.1 ^a

Figure 1—Summary of selected results of recent inclusive EPA studies (€ m. and %):³⁴

majority of the long-term benefits of the EPAs favour the EU, nonetheless these agreements yield some short-term benefits for African producers whilst still navigating “some limitations and onerous rules of origin.”⁵ During the negotiations of the Economic Partnership Agreements the European Commission “has been in the driver’s seat to propose the overall strategy”⁶ (given the disunity & disinterest amongst member states and contrived unity amongst DGs within the commission itself).⁷ Nonetheless, the EPAs for the African continent were established between the EU and African regional BLOCs such as Central Africa, East and Southern Africa, the Southern African Development Community & West Africa.

On paper, the EPA “is a legally binding bilateral contract between the 28 nations of the EU collectively and each country in Africa individually”.⁸ In 2014, the EU recorded GDP at US\$18.526 trillion, whilst in comparison Nigeria the largest economy in West Africa recorded GDP at US\$521.8 billion, one must question

whether President Jean Claude Juncker's assertion of a "partnership between equals" ⁹considers the fact that "*between unequals, equity requires not reciprocity but proportionality*".¹⁰

Figure 1 outlines the results from several studies in relation to the EPAs. It emphasizes some losses that African BLOCs will incur in relation to welfare and tariff revenue to highlight a few. A UNECA study highlighted that Nigeria will account for 21% of an estimated aggregate revenue loss for African EPA regions within the first year of implementation.¹¹

The EPA: EU - Africa Agriculture trade

Africa currently runs a trade deficit with the EU, even with policies introduced to increase trade between seemingly equal powers, EU goods still enjoy far greater ease of access to the African continent. The push for trade liberalisation within the EPAs stem from the development discourse around aid for trade, which legitimized trade liberalisation as a means of promoting greater development and alleviating poverty on the African continent.¹²

However, liberalisation of EU markets does not extend to its Agricultural market, which it has sought to protect by all means through its Common Agricultural Policy (CAP), to the detriment of African countries.¹³ Since 2002, Economic Partnership Agreements have offered preferential economic agreements to countries in certain regions, as part of the Cotonou Agreement. It ensured that "account is taken of the vulnerability of the economies of the [partner] region and that the liberalization process incorporates the principles of progressivity, flexibility and asymmetry in favour" of the partner (EU-Ghana EPA, Art. 2). As part of the deal, signatories to the EPA trade agreement must eventually open over 80% ~ 90% of their markets to tariff free goods coming from Europe.¹⁴

Although African states receive somewhat reciprocal customs and tariff free access to the EU markets, with financial support to meet EU market specified requirements, certain tactics were used by European officials, such as the implied or in

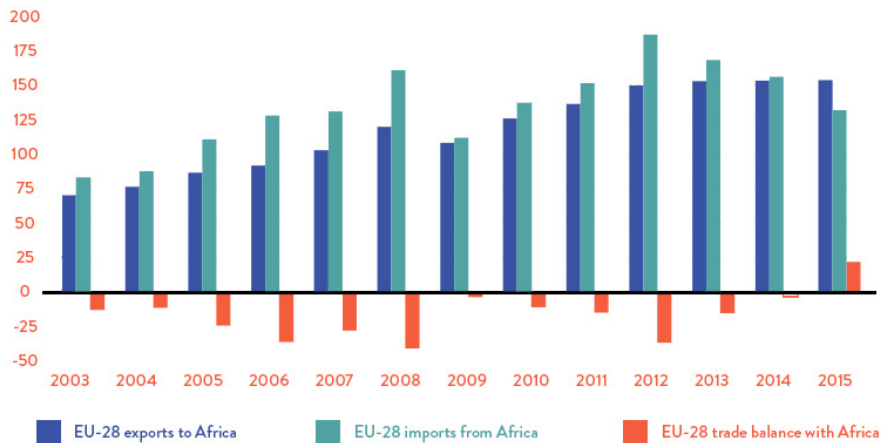


Figure 2 - EU-28 trade in goods with Africa³⁵

some cases imposed increases in tariffs and barriers in a bid to pressurise African countries in order to ensure that the deals were signed on a timely basis.¹⁵ These agreements exist counter to the interests of the African continent and in some cases promote unhealthy relations between African states within the same region. Furthermore, in some cases, the EPA has been used as a precondition for continued developmental support from the EU, in the form of aid.¹⁶ Other cases highlight what Africans perceive to be the insidious nature of these EU deals with its African Institutions, as funds are directed at State Ministries in order to suppress local dissidence towards EU deals and projects.

The EPA has been criticized for its exploitative nature, as most of the long-term benefits are in favour of private European entities. Several activists and organizations claim that African countries have been forced into unfair trade agreements that in no way fulfil the aims or reap the benefits that were claimed by EU negotiators.¹⁷ The EU's position, nonetheless, is that the EPA will alleviate poverty, stimulate economic growth, and improve the livelihood and employment prospects of Africans in the long run.

and market share due to EU tariff free exports, to lost industrial sectors that can never materialise. Historically, economic interventions by multilateral bodies and foreign powers sought to liberalize the national economies within the global south but this has had continuous devastating effects within the African context. Most of the Less Developing Countries (LDC) as they are termed within these reports, already had preferential trade agreements for their exports with the EU through initiatives such as Everything-But-Arms. Some countries which were beneficiaries of the preferential agreement could not fulfil the quotas afforded by the EU and were still met with protectionist tariff on sugar and cocoa produce coming into the EU through the EBA initiative.

So why is such a deal, which bares resemblance to previous economic arrangements aimed at stimulating growth still being advocated by the EU? It is claimed that the EPA has very little to do with trade, and more to do with control, especially given the greater importance of China on the continent at present, as an investor and economically. Brexit also offers an opportune moment for the creation of new trade agreements, primarily for commonwealth countries given their previous colonial ties. Some African countries have leveraged Brexit as a means to possibly secure better trade deals with the European Commission,¹⁸ whilst in the case of EAC (East African Community) it meant rejection of the EPA in its entirety.¹⁹

There were some alignments between the UK and Africa, which might be diminished within the European Council decision-making processes, such as the calls for greater market integration and the alteration of the CAP.²⁰ Prime Minister Theresa May on a recent trip to several countries on the African continent, most notably Nigeria, South Africa and Kenya, pledged to boost investments on the continent with support from the private sector also. In her closing remarks, she mentioned, *“As a prime minister who believes both in free markets and in and businesses acting in line with well-established rules and principles of conduct, I want to demonstrate to young Africans that their brightest future lies in a free and thriving private sector”*.²¹ Nonetheless, initiatives such as New Alliance for Food Security and Nutrition (NAFSN) which

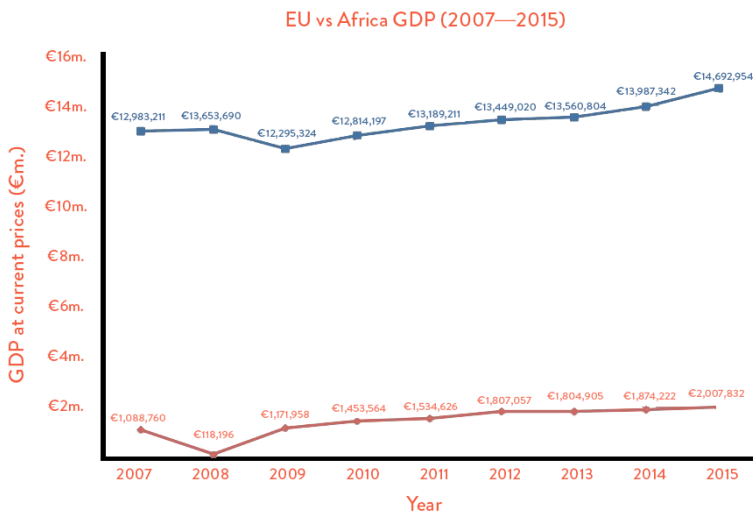


Figure 3 – EU 28 GDP versus Africa 55 GDP.³⁶

currently facilitate land grabs within Sub-Saharan Africa could occur with little to no accountability for the UK's involvement.²²

The Impact of the CAP on Africa

Agriculture in on the African continent contributes greatly to national GDP for respective African economies, although majority of the farms are still run by small holders. It is hard to imagine how these smallholdings can match or compete with the industrialized farming capabilities of Europe or subsidies that these farmers directly and indirectly receive. Through the CAP, EU farmers are provided with subsidies and higher prices for the goods which they produce and also for land in their possession. CAP has allowed for EU to produce certain commodities in excess and to dump surpluses at low prices in LDCs, and this has continued with negative effects on global agricultural prices.

Simulations have shown that CAP distorts world prices for food commodities, and as a result of the weak institutions in some African countries, farmers are not protected or supported against price volatility. The coupling of the EPA and CAP act as strong mechanisms for EU Agricultural exports, as it means EU exports are not only subsidized but also exempt from tariff and customs duties.

The CAP embodies EU protectionism within the agricultural sector and now with the UK as a potentially autonomous player within global trade, favourable trade agreements with Commonwealth countries would force countries to reconsider current EU–Africa status quo.²³ Furthermore, the EPA does not incentivize African farmers to move their products up the value chain to provide finished goods, because the cost of processing compared to EU food producers would not make them profitable or competitive. This is clear when we look at the production of cocoa, which, once processed, will be subject to high EU tariffs in contrast to raw cocoa which can be exported to the EU tariff free.²⁴

Instead, the EPA has been perceived by Africans as colonial initiative, given that it segments its trading partners into blocs and gives EU transnational corporations access to the raw materials in Africa for a fraction of their worth. A good example is the case of the Kenyan flower industry. In securing the signatures of members of the East African bloc, the EU targeted Kenya's flower production industry by imposing tariffs until the EPA was signed. Once this tariff was imposed, the flowers became less competitive, which forced Kenya to sign the agreement, yet the tariff was later lifted and marketed as “Christmas gift for Kenyan exporters”.²⁵ These inefficient and protectionist EU policies means that most small-holder farmers cannot compete with their European counterparts. It becomes evident that some EU trade agreements are in direct conflict with the EU's Policy Coherence for Development that involves “minimising contradictions and building synergies between different EU policies towards the development of LDCs.” As such there is a high probability that the partnership agreements will solidify the position of African farmers as mere exporters of raw materials.

African Development through EPAs

Through the EPA, the EU is perceived by Africans to be actively undermining the progress and development of its partners, whilst also promoting favourable models of government that benefit the motives of private European organizations. In my view, such tactics are inherently imperialist and paternalistic,

but the options afforded to African countries are limited, given that they are also recipients of Aid for Trade from the EU.²⁶ Post the ‘Washington Consensus’, such aid programmes have been proven to be detrimental for developing nations, contrary to the popularised Moral Political economic doctrine, which presupposes a common -sense logic of how economic processes should function, disregarding the impact on human well-being.²⁷

African Development through EPAs

When examining the nature of aid vs. trade in Africa, it becomes overwhelmingly clear that these “economic relations are products of unequal power, there are generally attempts to legitimise them as just and fair”.²⁸ Even with new declaration from EU officials for renewed political relations and trade based on equal partnership, the language remains aspirational but European engagements on the continent remain the same. Aid has been used as a mechanism to push the agenda of neo-liberalization and facilitating ‘boomerang-aid’ which subsidizes European firms undertaking projects on the continent.²⁹ In Uganda, both parliamentary and civil society have highlighted the ‘third-world roads’ as being the standard output of European construction firms even with EU-road building assistance input of over €155 million.

The impact of such barriers and tariffs are outlined in the Commission text are as follows: “*For the West African region, for example, more than €1 billion of trade would potentially be lost, as the average tariff to be paid under GSP is in average 20 per cent; similarly, 36 per cent of today exports from Ivory Coast (€700 million) would face a tariff of 27 per cent against Cotonou; and EPAs, for Ghana are assessed as 25 percent of exports (€240 million). For Central Africa, about €360 million of exports would potentially be lost*”.³⁰

UN Concerns Regarding the EPAs

Several UN bodies have expressed concerns regarding the current terms and conditions of the EPA as it stands, The United Nations Economic Commission for Africa (UNECA) predicts that it will result in a 20 per cent increase in EU manufacturing and a loss of

revenue from the removal of tariffs of up to 40 per cent for African countries. UNECA also highlighted the possible reduction of intra-African trade and a definite increase in the trade deficit between the African blocs and the EU. One must therefore conclude that the EPA directly serves the EU's desire for unrestricted access to the East African Community as part of its 2008 EU Raw Materials Initiative.



Further questions have been raised regarding the EU stance to pursue the EPA and disband the EBA, as both were established to serve the same purpose of poverty alleviation, the main difference being that the EBA was not a reciprocal agreement. This meant that it gave access to the EU market, but didn't provide any immediate benefits for the EU towards exporting. The switch towards the

EPA was based on the premise that it was contrary to the rules of The World Trade Organization (WTO). In recent times the EPA has been compared to the Structural Adjustment Programmes that were hailed as the key to development for so many of the Less Developed Countries (LDCs).

Ireland's Engagement with Africa

In relation to Ireland's engagements with Africa, Tanaiste Minister Simon Coveney has called for dialogue guided by *"respect, empathy and an openness to listening and responding to each other's concerns"* and these intentions have been concretely backed through initiatives such as The Africa Agri-Food Development Programme (AADP).³¹ This initiative aligns with 3 out of the 5 priority areas within the Africa Development Bank Hi5 programs towards Africa's development and showcases Ireland's commitments to increased trade with Africa as part of the 2011 Africa Strategy.

Nonetheless, Ireland's membership of the EU and its involvement as one of several countries predicated within the EPAs, could possibly hamper its image, given the unpopularity of the agreement amongst African nations. Some may recall that Irish involvement on the African continent dates as far back as

the 1890s, as maps of the Niger Delta produced by the young Irish recruit Roger Casement were used by the British towards its exploits on the West Coast of Africa.³² Since then, Ireland has developed a rich and deep tapestry of relationships in its bilateral development cooperation programmes and focusing on poverty reduction, education for women and girls, nutrition and health programmes, energy diversification and many other key sectors. Although Ireland has no colonial history in Africa, but was itself a colonised country, I would propose that Ireland, now more than ever, should first reflect on its position within the EU, and on the power it wields as an EU member state in respect of the relations it seeks to foster on the African continent. Ireland's voice has already been significant alongside that of Germany in promoting the spirit of Abijan (the EU/Africa summit in Abijan), which advocated a new way for the EU and Africa to work together in a partnership of equals.

Conclusion

The relationship between the EU and Africa when it comes to trade and aid has been a testing and challenging one, particularly given the long history of EU engagement in the African continent. If one were to omit historical power relations implicit in EU Africa relations, such a push towards the development of another nation state would seem great. Some EU states are now offering help to their previous colonies on an equal basis bilaterally. It would have been difficult a few years ago to imagine how the coloniser and colonised could set out an agreement on equal terms, given that both parties, in my view, entered into discourse with their respective inferiority and superiority complexes.

In conclusion, I suggest that it may be timely for the EU to undertake a re-evaluation of the EPAs, (given that several countries have delayed or refused to sign them) and to examine whether they undermine modes of government and the real development of the continent. Andrew Mold, the UN's economic analyst for east Africa, has said: "African countries cannot compete with an economy like Germany's. As a result, free trade and EU imports endanger existing industries, and future industries

do not even materialise because they are exposed to competition from the EU”.³³ The EPA also perpetuates tension amongst African Union members that have been categorised into LDC & non-LDC countries, as LDC countries will still have access to the EU market under already existing preferential agreement and non-LDCs will be subject to the unfavourable tariffs for its exports.

EU member states should be cognisant of the fact that the attractiveness of the EU for Africans in the context of Brexit is limited, as the UK is already a significant trading partner for several African countries and the UK’s expected departure from the EU, could allow it to possibly forge new trade relations with LDCs in the wake of the African Continental Free Trade

Agreement. On the other hand, Brexit could also ignite banal nationalism on the continent and challenge the common economic agenda of the AfCTA.

“African countries cannot compete with an economy like Germany’s. As a result, free trade and EU imports endanger existing industries, and future industries do not even materialise because they are exposed to competition from the EU”

Furthermore, any proposed EU engagement with Africa must be embedded in truly constructive relations partnership with Africa to allow for the development of the continent and the people. An example of this is the recent proposal by EU HRVP (High Representative for Foreign Affairs and Security Policy and Vice-President) Mogherini on an EU/African Partnership which is based on the concept

of equal ownership of the partnership agenda by Africa and Europe, and holds out the prospect for closer relations between the continents of Africa and Europe in the future. In a speech in January 2019 at the First EU African Union Ministerial meeting, Mogherini acknowledged the historical burdens which appertain between the EU and Africa but closed on a positive and pragmatic note, highlighting that the EU wishes to

hear the voice of Africa and their proposals for new avenues for cooperation in the future:

- *“This does not mean ignoring our divergences – that by the way we sometimes also have inside our two organisations;*
- *This does not mean ignoring our history – and sometimes the heavy history that we share –*
- *But it means to address them (Africans) as partners do – through engagement and consultation, **talking and listening to each other**”.*

This echoes the views expressed by the Irish Minister for Foreign Affairs and Trade, Simon Coveney T.D., on the next phases of conversations between the EU and Africa and if equitable, will truly determine the relationship that will be formed.

Endnotes

1. Soludo C. C. (2012), 'Africa needs honesty from Europe over trade deals', *Financial Times*, 11 April 2012. Available at: <https://www.ft.com/content/106452b4-8233-11e1-9242-00144feab49a> [Accessed 6 Apr. 2019]
2. Sayer A (2004) *Moral economy*. Lancaster University online resources, Department of Sociology, Lancaster University. Available at: www.lancs.ac.uk/fass/sociology/papers/sayer-moral-economy.pdf (accessed 30 March 2019).
3. Sanders R. (2015) 'The EU, Economic Partnership Agreements and Africa', *The Round Table*, 104:5, 563-571, DOI: 10.1080/00358533.2015.1090815
4. United Nations Economic Commission for Africa. (2019). *African Continental Free Trade Area - Questions & Answers*. [online] Available at: <https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers> [Accessed 6 Apr. 2019].
5. Stevens C. (2006) 'The EU, Africa and Economic Partnership Agreements : unintended consequences of policy leverage' *Journal of Modern African Studies*, 44, 3 (2006), pp. 441–458.(p.442)
6. Elsig, M. (2007) 'The EU's choice of regulatory venue for trade negotiations: a tale of agency power?' *Journal of Common Market Studies* 45(4): 927–48)p.932),
7. Elgström O. & Larsén M. F. (2010) 'Free to trade? Commission autonomy in the Economic Partnership Agreement negotiations', *Journal of European Public Policy*, 17:2, 205-223, DOI: 10.1080/13501760903561674
8. Sanders R. (2015) 'The EU, Economic Partnership Agreements and Africa', *The Round Table*, (104:5, pp.563-571), p.564. DOI: 10.1080/00358533.2015.1090815
9. Commission, E. (2018). *President Juncker at the High-Level Forum Africa-Europe*. [online] European Commission - European Commission. Available at: https://ec.europa.eu/commission/news/president-juncker-high-level-forum-africa-europe-2018-dec-18_en [Accessed 6 Apr. 2019].
10. Aristotle in Sanders R. (2015) 'The EU, Economic Partnership Agreements and Africa', *The Round Table*, 104:5, 563-571, DOI: 10.1080/00358533.2015.1090815. p.564
11. United Nations. Economic Commission for Africa (2005-07). *Economic and welfare impacts of the EU-Africa economic partnership agreements. Meeting of the intergovernmental committee of experts (9th: 14-18 March 2005: Kigali)*. Addis Ababa.: © UN. ECA, <http://hdl.handle.net/10855/15806>
12. Langan, M., & Scott, J. (2014). *The Aid for Trade Charade. Cooperation and Conflict*, 49(2), 143–161. <https://doi.org/10.1177/0010836713482880>
13. CEC (Commission of the European Communities). 2005. *The European Consensus on Development: Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting within the Council, the European Parliament and the Commission*. Brussels: Commission of the European Union.
14. Curran, L., Nilsson, L., & Brew, D. (2008). *The Economic Partnership Agreements: Rationale, Misperceptions and Non-trade Aspects*. *Development Policy Review*, 26(5), 529–553. <https://doi-org.dcu.idm.oclc.org/http://onlinelibrary.wiley.com/journal/10.1111/%28ISSN%291467-7679/issues>
15. Moulds J. (2015) "EU trade agreements threaten to crush Kenya's blooming flower trade" Accessed online at: <https://www.theguardian.com/sustainable-business/2015/jan/16/kenya-flower-trade-eu-pressure>
16. Langan, M. (2014), 'Decent Work and Indecent Trade Agendas: The European Union and ACP Countries', in: *Contemporary Politics*, 20, 1, 23-35.

17. Grain (2017) 'Colonialism's new clothes: The EU's Economic Partnership Agreements with Africa'(<https://www.grain.org/article/entries/5777-colonialism-s-new-clothes-the-eu-s-economic-partnership-agreements-with-africa>)
18. Aglionby, J. (2016) Kenya feels Brexit effect as UK vote threatens Africa trade deal, *Africa economy*, 28 July 2016, <http://www.ft.com/cms/s/0/01beeb54-5347-11e6-9664-e0bdc13c3bef.html#axzz4KtentlPU>, [accessed 3 April 2019]
19. Langan M. (2016) 'Brexit and Trade Ties between Europe and Commonwealth States in Sub-Saharan Africa: Opportunities for Pro-poor Growth or a Further Entrenchment of North–South Inequalities?', *The Round Table*, 105:5, 477-487, DOI: 10.1080/00358533.2016.1233758
20. Fasan, O. (2016) Brexit: why Africa will lose a voice in Brussels but gain the best of both worlds, *International Growth Centre*, 18 July, <http://www.theigc.org/blog/brexit-why-africa-will-lose-a-voice-in-brussels-but-gain-the-best-of-both-worlds/>, [accessed 3 April 2019] Oxfam (2002) Stop the dumping! How EU agricultural subsidies are damaging livelihoods in the developing world, *Oxfam Briefing Paper*, No. 31, <http://policy-practice.oxfam.org.uk/publications/stop-the-dumping-how-eu-agricultural-subsidies-are-damaging-livelihoods-in-the-114605>, [accessed 3 April 2019].
21. Merrick, R. and Osburne, S. (2018). Brexit: Theresa May claims trade deal success in Africa – but critics say it's a 'rollover' of existing EU agreement. [online] *The Independent*. Available at: <https://www.independent.co.uk/news/uk/politics/uk-trade-deal-africa-theresa-may-trip-post-brexit-eu-rollover-a8511871.html>
22. Action Aid, CAFOD 2008,, Christian Aid, Tearfund, Tradecraft, Partnership under pressure : an assessment of the European Commission's conduct in the EPA negotiations, p. 18-20; European Parliament (2015) European parliament resolution of 7 June 2016 on the New alliance for food security and nutrition:<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0247+0+DOC+XML+V0//EN>, [accessed 3 April 2019].
23. Lilley, P. (2016b) Post-Brexit free trade helps the world's poorest, *Comment Central*, 4 July, <http://commentcentral.co.uk/its-time-to-trade-out-of-poverty/>, accessed 3 April 2019.
24. Langan, M. and Price, S. (2015) "Extraversion and the West African EPA Development Programme: realising the development dimension of ACP–EU trade?" *The Journal of Modern African Studies*. Cambridge University Press, 53(3), pp. 263–287. doi: 10.1017/S0022278X15000579.
25. Moulds J. (2015) "EU trade agreements threaten to crush Kenya's blooming flower trade" Accessed online at: <https://www.theguardian.com/sustainable-business/2015/jan/16/kenya-flower-trade-eu-pressure>
26. Hurt, S. R (2013) 'African agency in world trade undermined? The case of bilateral relations with the European Union', (49-64), p. 61, in: William Brown and Sophie Harman (Eds.), *African agency in international politics*, London & New York: Routledge, 2013; Gerrit Oliver, 'From colonialism to partnership in Africa-Europe relations?', *The International Spectator*, Vol. 46, N° 1, March 2011, (53-67), p. 61. See also; Action Aid (2014) *The Great Land Heist*, http://www.actionaid.org/sites/files/actionaid/the_great_land_heist.pdf, [accessed 3 April 2019]
27. Langan, M., & Scott, J. (2014). *The Aid for Trade Charade. Cooperation and Conflict*, 49(2), 143–161. <https://doi.org/10.1177/0010836713482880>
28. Sayer A (2004) *Moral economy*. Lancaster University online resources, Department of Sociology, Lancaster University. Available at: www.lancs.ac.uk/fass/sociology/papers/sayer-moral-economy.pdf (accessed 30 March 2019)
29. Eurodad (2011) Press release: boomerang aid: billions of development aid diverted to companies in rich countries. Available at: <http://eurodad.org/4640/> (accessed 30 March 2019).

30. European Commission, Economic Partnership Agreements: questions and answers, 11 September 2007
31. See Department of Foreign Affairs. <https://www.dfa.ie/news-and-media/speeches/speeches-archive/2018/july/tanaiste-si-mon-coveney-ireland-africa-iaea/>
32. Feldman A (2015) Diasporic entanglements: the African diaspora in (of?) Ireland. Beyond Ireland: Boundaries, Passages, Transitions, European Federation of Associations and Centres of Irish Studies Conference, Palermo, 4th-6th June; Feldman A (2016). "We're here because you were there": Re/Entangling Irish and Nigerian diasporic histories, decolonising post-colony Ireland. Unpublished paper; Mitchell A. (2006) 'Casement's Maps of the Niger Delta', History Ireland, Vol. 14, No. 4, Ireland & Africa (Jul. - Aug., 2006), pp. 50-55
33. Samardi D. 2014 "EU-Africa free trade agreement 'destroys' development policy, says Merkel advisor" Access Online at [<https://www.euractiv.com/section/development-policy/news/eu-africa-free-trade-agreement-destroys-development-policy-says-merkel-advisor/>]
34. Development Policy Review, Sep 2008, Vol. 26 Issue 5, p.539
35. EUROSTAT, The European Union and the African Union: A statistical portrait (2016 edition)
36. EUROSTAT, The European Union and the African Union: A statistical portrait (2016 edition)



The Case for a European Mortgage Market

Ireland faced a severe banking crisis in 2008, with 25% of its GDP being used for bailouts of a number of banks. These bailouts not only restored stability to Ireland, but also had a stabilising impact on the EU as a whole. It is imperative that in any future crisis the mechanisms to restore stability operate at a European level. The EU's Banking Union is a set of policies towards that aim, with the Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM) already in operation. This paper will therefore review the current situation in the mortgage markets of Members States and the policy steps that could be taken to develop a European mortgage market.



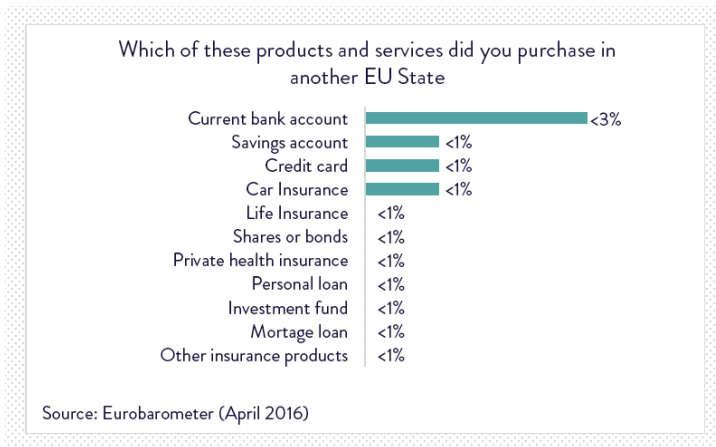
The Banking Union is currently incomplete. The missing pillar is a European Deposit Insurance Scheme (EDIS) which would complement national measures to protect deposits up to €100,000 in the event of a failing bank. Once complete, the EU's Banking Union should, in theory, provide a more comprehensive solution to a future European financial crisis.

It is also worth examining what further measures may be needed after the EU's Banking Union is complete. One such policy should be the removal of barriers to the cross-border selling of financial services. Only 7% of consumers have purchased a financial service from another Member State. Mortgage rates in Ireland are currently the highest in the Eurozone. Our market is not large enough to provide adequate competition, but access to a European market would be increasingly competitive.

This paper will also examine the various legal and practical steps that are needed to create such a European market. Citizens and businesses should be able to access the full range of financial services (current and savings accounts, mortgages, consumer and business loans, etc.) from their own domestic banks, and other European banks. There are very large potential cost savings from such a policy. The introduction of more competition to the Irish banking market should result in reduced costs for the consumer.

Introduction

Cross-border lending is not a new phenomenon. In the early 1340s, Edward III of England borrowed 1.5 million gold florins from the Peruzzi and Bardi families of Florence to fund the Hundred Years War. This was one of the first large historical examples of cross-border lending. It is also a cautionary tale, as the loan was never repaid and both families went bankrupt. Throughout the industrial revolution,



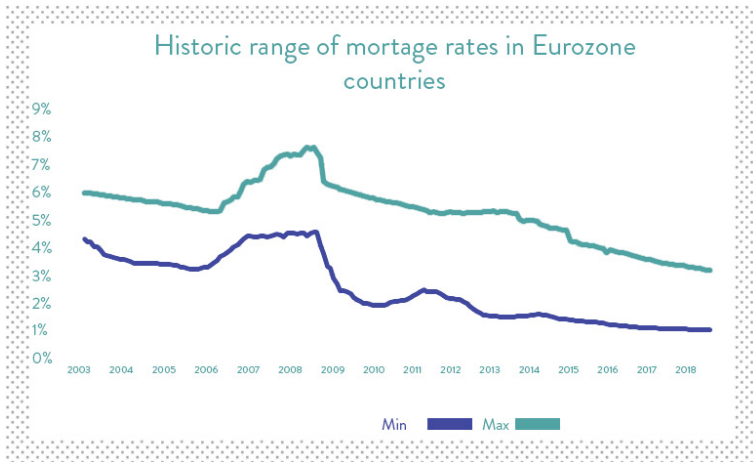
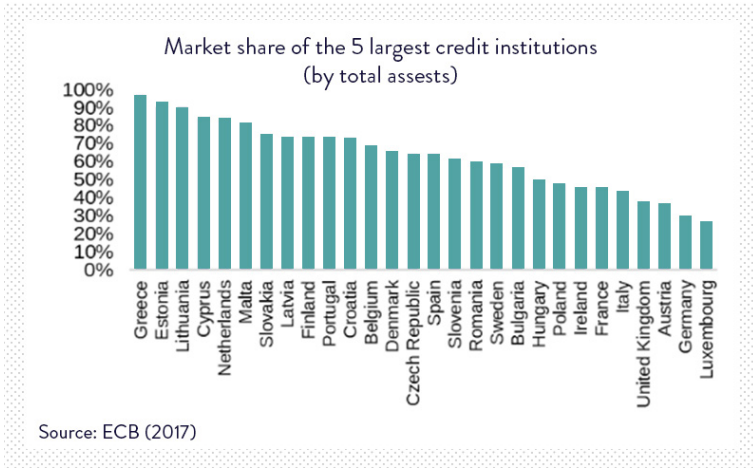
large companies such as carmaker Ford secured debt from the many global finance houses at the time. What Edward III and Henry Ford shared in common, aside from power and fame, was the right to shop around the world for the most cost effective financial services. If either was unable to find the right price for a loan in their home countries, they could try to avail of a better deal from abroad.

Despite the great democratisation of our world today, the arena of global finance remains the preserve of governments and large corporations. Great progress has been made to integrate the EU’s financial markets, but that integration has yet to reach the average customer.

The current situation

According to Eurobarometer, only 7% of EU citizens have purchased a financial service from another Member State¹. Perhaps the least integrated financial market is that of mortgages, despite its overwhelming size and importance. 27% of EU

citizens currently have a mortgage. This ranges from 61% of people in the Netherlands to just 1% in Romania. The remainder includes those who have already paid off their mortgages, or renters who will take out a mortgage at some point in the future. A home is the most expensive investment that many people will purchase in their lives. A close second is the mortgage that finances this investment.

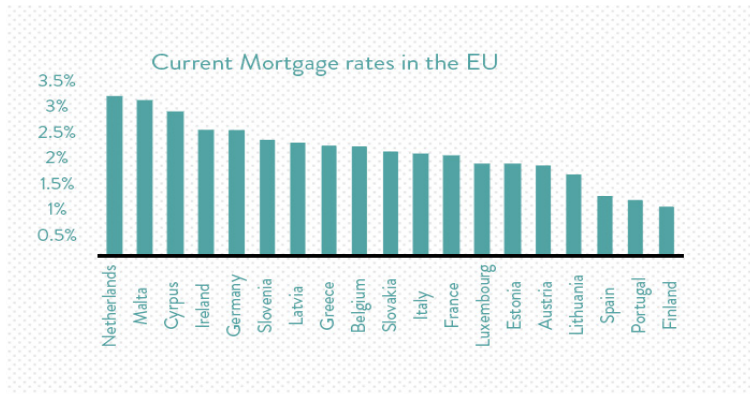


The same Eurobarometer survey shows that less than 1% of EU citizens have their mortgage with another Member State, compared to 3% for current accounts. This figure is highest in small countries

with large financial industries such as Luxembourg (3%) and Ireland (2%), where the percentage of citizens with cross-border current accounts are 13% and 7% respectively.

Many European mortgage markets are uncompetitive

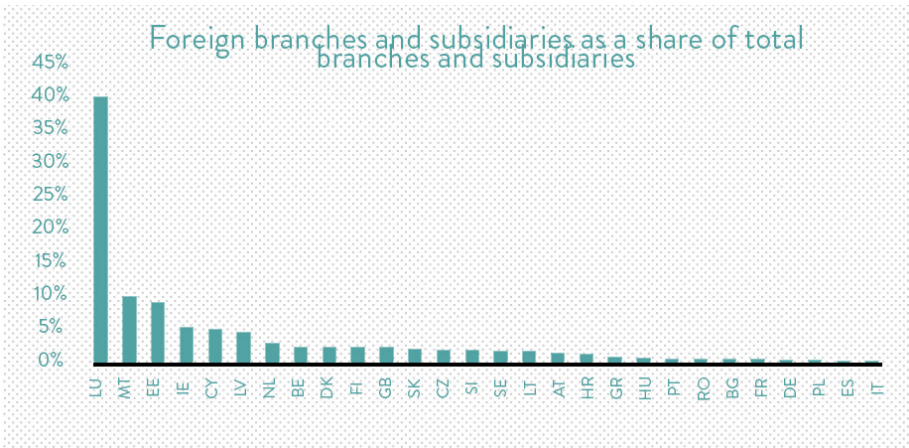
In 20 EU Member States, over half of the total banking assets are controlled by the five largest credit institutions. In reality, this figure is much higher for distinct financial products. In Ireland, 46% of total banking assets are held by the five largest credit institutions, yet 60% of mortgage assets are held by the



two largest².

The cost of a mortgage varies greatly across the Eurozone

As previously stated, Ireland has the highest mortgage rates in the Eurozone and mortgage rates currently range between 1.0% and 3.2%, a gap of 2.2%. At its 2010 peak, this gap was 3.9%. This suggests that the gap has narrowed, but this is only due to low base rates set by the ECB. If interest rates rise in the coming years, this gap is likely to increase again.



A European mortgage market would be more competitive and would cause convergence of prices

A European mortgage market would narrow the dispersion in loan rates and potentially drag them down. This would save Eurozone consumers many billions in saved interest costs. A 2005 study³ on integrating EU mortgage markets points to potential savings of 0.7% of EU GDP and 0.5% of private consumption over ten years with mortgage interest rates falling by up to 47 basis points. This would reduce the interest payable on a €300,000 mortgage by up to €1,000 annually.

Barriers to a European mortgage market

Banks and borrowers have been historically reluctant to engage with cross-border loans. The reasons for this are numerous. Borrowers are reluctant to commit to a long-term loan outside of their home country and believe they are already getting sufficient consumer choice among their local lenders. Banks face different regulations when operating in different jurisdictions. Both borrowers and banks are deterred by language barriers.

The deeper integration of deposit products over loans highlights the relative difficulty in integrating these two sets of financial products. Current accounts typically aren't a long-term commitment. Customers can withdraw their funds quickly and end their involvement with the bank. Loans, especially mortgages, are a long-term commitment, sometimes as long as forty years in

duration. Banks and consumers are usually locked-in for this period and can only terminate the relationship if the keys to the house are handed over to the bank, or if they switch to a different lender.

For this reason, both banks and consumers are cautious about cross-border mortgages. Banks that currently service other Member States typically do so through a subsidiary or branch where staff have knowledge of local laws and can arrange face-to-face meetings with borrowers in the local language. This is favoured by both parties.

Lack of foreign branches and subsidiaries

At present, very few EU countries have a substantial presence of foreign branches and subsidiaries. Small countries dominate the list (Malta, Estonia, Ireland, Cyprus and Latvia) since a small number of branches can appear large relative to the total, and these countries have large internationally focused financial sectors. Among these small countries, Luxembourg stands out due to its unique funds industry.

The rush to establish foreign branches and subsidiaries across the EU post-Brexit highlights the hurdles banks go through to establish themselves cross-border.

Differences in product types

The mortgage products on offer across the EU differ greatly among Member States, not just the rates on offer:

- Fees are typically charged at the start of a mortgage, including notary fees and registration taxes (including stamp duty). On average, these represent 3% of the loan amount.
- Some Member States allow floors or caps on mortgage rates to ensure that banks earn a minimum rate of interest or to protect borrowers from rising rates.

Country	Public credit register?	Number of private credit bureaus
Austria	Yes	1
Belgium	Yes	
Bulgaria	Yes	2
Cyprus		1
Czechia	Yes	1
Denmark		4
Estonia		2
Finland		2
France	Yes	
Germany	Yes	1
Greece		1
Hungary		1
Ireland	Yes	1
Italy	Yes	4
Latvia	Yes	
Lithuania	Yes	1
Luxembourg		
Malta		1
Netherlands		3
Poland		1
Portugal	Yes	2
Romania	Yes	3
Slovakia	Yes	3
Slovenia	Yes	1
Spain	Yes	3
Sweden		11
United Kingdom		6

- Most Member States allow “tracker” mortgages linked to Euribor. This is a form of indexation. Some Member States allow indexation to other variables. In Spain, the Mortgage Loan Reference Index (IRPH) is common.

- Irish banks have recently been offering “cash back” to customers. This is forbidden in some Member States as it distorts pricing.

- Some Member States (especially Germany) restrict the prepayment of loans for a certain period. Others allow prepayment penalties to protect banks against interest rate risk.

- Product tying is common in some Member States. This is where a mortgage can only be sold if the borrower has a current account with that bank, or where they purchase an ancillary product such

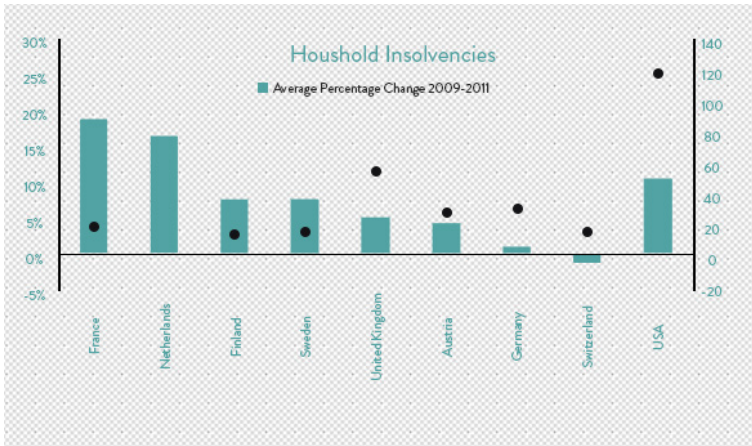
as insurance. It is forbidden in other Member States.

Availability of mortgage switching

150

Mortgage switching procedures also differ greatly. In Italy, 32% of new mortgages are customers switching. This is due to a simple process where most of the paperwork is carried out by the banks themselves.

Borrowers are allowed to switch between fixed and variable rates and to change the term of the mortgage. There are no fees, and the process takes at most 30 days. The majority of other European countries lack this process, meaning most borrowers are stuck with their current mortgages.



Availability of credit history

Lenders face the challenge of adverse selection when granting a mortgage. Borrowers typically have to disclose their credit history and details about their current financial standing. Lending to customers who ultimately won't be able to afford repayments is one of the greatest risks banks face in the mortgage market.

The level of available credit history differs across Member States. This not only poses challenges to domestic lenders, but it reduces the attractiveness of cross-border mortgage lending. Without accurate credit history, foreign lenders could be used disproportionately by those who have been denied credit by a domestic lender.

The European Consumer Organisation (BEUC) has highlighted that some Member States do not have a public credit register and instead rely on private credit bureaus. These credit agencies differ in the types of organisations that provide them with data, the types of credit, and variables recorded.

Differences in personal insolvency regimes

Most borrowers pay their mortgage back in full. For those that can't, lenders may need to pursue repayments from insolvent borrowers through the legal system. Each EU country operates different legal proceedings for resolving insolvency. From the perspective of lenders, the legal system should be quick and it should be low cost.

Resolution of personal insolvency tends to take two forms. The first is foreclosure. This is commonly used in the US and Spain. Foreclosure is seen by some Member States as too drastic and it can face strong political opposition. Ireland's personal insolvency regime is an out of court procedure where borrowers are put on a payment plan, allowing them to keep their home. These systems are more common in western European countries than in eastern European countries, and there is no consensus on a best practice model⁴.

Proposals for a European mortgage market

A number of changes should take place before a European mortgage market can develop. Not all of these measures are necessary, but each would make the mortgage market more attractive to foreign lenders.

Increased sale of non-mortgage products

Banks should first increase the cross-border selling of other financial products in the Eurozone, including deposit products and personal loans. This would allow customers to build up trust with foreign institutions. This in turn should increase the likelihood of customers committing to a mortgage with one such institution. There is a separate suite of policy changes which would enable this development to take place, including increased awareness among consumers of the option of foreign lenders and legislative changes.

Establishment of branches and subsidiaries

The number of foreign branches and subsidiaries in EU Member States is likely to increase if greater legislative harmonisation takes place between Member States. Nonetheless, national Central Banks can play

a role in facilitating a streamlined process for their establishment. The ECB should also act to harmonise the process.

Harmonisation of product types

For a European mortgage market to operate, a harmonised set of rules for mortgage products should apply. Changes to national consumer law would be required, most likely in the form of a directive. Decisions would have to be made as to whether a European mortgage market would permit certain product features, including floors/caps on rates, indexation, cash back offers, prepayment restrictions and product tying, among others.

Once this decision has been made, there are several choices for its implementation. One option is to implement these product types across all new mortgages in the EU. Another option is to allow for harmonised and non-harmonised products within each Member State. Arguably, this option would provide the

most choice to consumers who would have the option of harmonised products (mainly from foreign lenders), and familiar products (mainly from domestic lenders). Domestic lenders may ultimately choose to harmonise their products over time if the harmonised products gain popularity. Harmonised financial services are already being developed at the EU level, such as the pan-European pension product⁵.



A European register of credit history

In 2014, the ECB began the AnaCredit (Analytical Credit Datasets) initiative, a pan-European credit register for business loans above €25,000. This central database will be used to support monetary policy analysis and operations, risk management and financial stability surveillance across the Eurozone. It will also

record important data such as a loan's performance status and any collateral supporting the loan.

The key change for banks in the establishment of AnaCredit is that they are now feeding individual loan information up to the ECB. It would not represent a significant further burden for AnaCredit to be expanded to include consumer and mortgage loans. This could transform AnaCredit into a pan-European register of credit history. Foreign lenders could be given access to this data as they enter a new market.

An expanded AnaCredit may not necessarily replace the existing array of public and private credit agencies in Member States. They may collect more granular data than AnaCredit. These agencies would therefore complement AnaCredit, providing lenders with extra information as required. This would leave a somewhat uneven playing field between Member States. It's therefore important that an expanded AnaCredit includes a wide variety of credit types and variables in its database.

"It is crucial we begin the debate now and refine this policy so that the EU is best placed to implement what could be one of the most revolutionary changes for the European consumer since the introduction of the euro"

Harmonised personal insolvency regimes

Harmonisation of personal insolvency is likely to prove the most politically difficult step towards a European mortgage market. Considering the lack of a best practice model, and a lack of procedure in some Member States, any harmonised regime would represent a big change.

One option is to replicate the Irish model across the EU. Under this model, a registered personal insolvency practitioner (PIP) is appointed to mediate between a creditor and

a distressed debtor. Borrowers disclose the details of their financial situation to the PIP. A deal is often reached with some write-off or extended term of the loan. This usually means borrowers can keep their homes.

A stricter option would be to permit an EU wide system for home foreclosures, similar to that in the United States. Strong legislative changes would be required and the Courts in each EU Member State would need to be reformed to allow for quick decisions to permit the transfer of property. The adoption of this process appears unlikely considering the political sensitivity surrounding home foreclosures over the past decade across Member States.

Harmonised mortgage switching rules

This proposal isn't necessary for a European mortgage market, but it may help speed up integration. Borrowers are cautious towards cross-border mortgages because of the multi-decade commitment. The right to switch back to domestic lenders or another foreign lender would encourage take-up among new borrowers. Existing borrowers would have the right to switch from their domestic lender to a foreign lender. This would encourage more foreign lenders to enter each domestic market. The Italian system appears to be the best practice model from the perspective of the consumer (32% of the market is switching). This could be replicated across Member States through legislation or EU directives.

Conclusion

With the Single Market in goods largely complete, now is the time to focus on the Single Market for services. Financial services should be the largest area of focus considering the significant potential savings for consumers and businesses.

Although this paper has reviewed the benefits of, and barriers to, a European mortgage market and outlined the steps towards realising this policy, it is likely to be a number of years before Europe is ready to complete these steps. Nonetheless, it is crucial we begin the debate now and refine this policy so that

the EU is best placed to implement what could be one of the most revolutionary changes for the European consumer since the introduction of the euro almost two decades ago.

Endnotes

1. Special Eurobarometer 446, July 2016
2. <https://www.irishtimes.com/business/financial-services/aib-and-bank-of-ireland-are-the-big-beasts-of-banking-again-1.3584698>
3. <https://pdfs.semanticscholar.org/a9c5/46be92295c8699bca83b2dc65f0ace7b5c91.pdf>
4. <https://www.imf.org/external/pubs/ft/wp/2013/wp1344.pdf>
5. http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/615656/EPRS_IDA%282018%29615656_EN.pdf



Possibilities for a ‘Just Transition’ for Agriculture

This paper explores the prospects of a ‘Just Transition’ to a low carbon economy in the Irish agricultural sector, within the context of the European climate policy landscape. Ireland is consistently amongst the worst performers in emissions reductions efforts of European countries and if ambitious targets are not met in the near future, significant fines will be incurred. As a consequence, this paper analyses some of the ways Ireland can adapt, change and implement climate policy, investigating specifically possibilities for a ‘Just Transition’ for agriculture.



Introduction

Globally, extreme weather events linked to a changing climate are making the human and economic cost evident. While Ireland can be viewed as a resilient country to climate change¹ in that it will not suffer to the same extent as other countries from extreme wildfires, droughts, floods, it will not be exempt. Ireland is a small, open economy with a significant agricultural sector, making it vulnerable to unpredictable and severe weather.

Like most sectors of the economy, Agriculture is susceptible to climate change,² and as Europe has committed to cutting its emissions by 80% based on 1990 levels by 2050 in all sectors, the challenges in applying effective climate policies to this sector must be addressed and mitigated.

There is a circular relationship between agriculture and climate change. Agriculture is highly important for climate change; first, through emitting GHGs (greenhouse gas) and second, through the removal of GHGs from the atmosphere (sequestration). Climate change is also important for agriculture, as changing weather patterns can negatively impact on crop and livestock production. Despite the sector having a key role in climate emissions and in the future of climate mitigation, agriculture remains largely unreached by climate policies (in proportion to the weight the sector bears).³

For some European countries, where agriculture makes up a modest proportion of emissions, simply implementing efficiencies and new technologies will be sufficient to meet their targets.⁴ However, with such a high proportion of livestock farming, Ireland requires deep, structural changes. Structural changes are difficult to implement in any sector, and agriculture compounds these difficulties with its sector specific challenges. There is an alternative to implementing these changes by drawing on the pillars of *Just Transition* to develop new opportunities for the sector and ensuring that rural Ireland is not left behind.

The role of 'Just Transition' in a transitioning economy

Just Transition is a model for decarbonisation that is based on social dialogue⁵ where workers, employers and the government are collaborative partners in designing an appropriate transition. The transition can include policy directives, up-skilling and/or re-training, infrastructure investment and social protection. Through all stakeholders working together, it ensures that there is a fair distribution of the costs and benefits of the carbon transition as workers and communities can advocate for themselves.

The model is gaining in popularity as policy makers and communities are reluctant to repeat the poorly designed economic model changes in the 1980s which left the coal communities in the UK decimated. The Just Transition framework highlights that climate change will disproportionately affect the poor and marginalised⁶ and that the required economic transition is likely to result in job losses, particularly for those who are less skilled, or with a skill set unprepared for a low carbon economy

Ireland's Agricultural Sector

Ireland is in a unique position in Europe in mitigating its climate emissions from agriculture. Its high dependency on the livestock sector⁷, coupled with lower than average land for forestry⁸ mean that agriculture is representing an increasingly large proportion of overall emissions; and as other sectors in Ireland begin a low carbon transition, this upward trend is

expected to continue. Underpinning this outlook in this sector is a lack of substantive action in all sectors towards climate targets, which will result in high fines when targets are missed.

It is likely that the increasing role of agriculture in Irish emissions will result in a spotlight on the sector; a vision has already been set for the agricultural sector to be carbon neutral by 2050⁷. However, policy makers will find it difficult to develop responses that don't threaten the €7 billion beef and dairy exports and the fabric of rural Ireland which is dependent on farming.⁹ While the vision for carbon neutrality may have been set, the ambitions for the sector as set out by the FoodWise 2025 project are to increase output of the sector. There is an inherent dichotomy in that the industry cannot decouple growth from emissions¹⁰ and as substantive innovations have already been implemented making Irish farms amongst the most climate efficient in Europe, a significant structural shift to the sector is required.

Possibilities for a 'Just Transition' for the Agricultural Sector and Rural Ireland

Just Transition is relatively new in international climate policies, and was originally formed in response to the energy sector transformation. While this has been the primary focus of the Just Transition movement, exploring the possibility of applying the model to the agricultural sector in Ireland could perhaps yield opportunities not previously considered and engage rural communities in building their own solutions to transition to a lower emissions sector.

Any structural change to an industry has the potential to have lasting effects on people and communities, making them politically difficult to engage with, and implement. Agriculture, with its sector specific challenges makes policy changes even more difficult. Traditionally, change can be effectively brought about through pricing the negative behaviour. For example, the plastic bag levy in Ireland led to annual bag usage dropping from almost 350 to 14 per person in 2012.¹¹ However, the dependency of the agricultural sector on subsidies means market-based instruments cannot

be used effectively as the market is too distorted; coupled with an unwillingness by policy makers to use stick approaches, it is unlikely that a carbon tax or similar instrument to incur a change in the sector will be used. This is where the opportunity for Just Transition lies, as the focus is to recognise that climate action does not have to result in economic pain or community breakdown¹⁷, rather it is about recognising and taking advantage of the opportunities that are created in a transitioning economy.

“The focus is to recognise that climate action does not have to result in economic pain or community breakdown”

Recognising the opportunities in a transitioning economy is important for consensus, but also to ensure that communities and rural areas that may be impacted by a structural change to the economy are maintained and can pursue different avenues of growth. This is crucial as rural Ireland is built around the agricultural sector and measures to limit its growth could leave already marginalised communities in an increasingly vulnerable position.

There are both macro and micro approaches to a *Just Transition* for agriculture in Ireland. From a macro perspective, the government can draw from the example of Scotland and Canada where Just Transition Commissions have been implemented. These are made up of experts in the field, set up to advise the governments on the transition to low carbon economy. Having such commissions ensures that there is a high-level focus on Just Transition guiding policy. Given the importance of agriculture in Ireland, any commission should include a representative from the sector, and have a mandate to include agriculture as a high priority. In conjunction with this, a Just Transition fund could be set up. The European Parliament proposed a Just Transition fund in 2018 to support the energy transition away from fossil fuels and a similar approach could be taken in Ireland on a national level which earmarks funds for an agricultural transition.

From a more micro level perspective, the onus is on individuals and communities. Just Transition does not have to focus on moving farmers away from farming and into separate industries. Though it could provide alternative sources of incomes for farmers. It is important that any replacements are environmentally sound e.g. moving to low impact organic farming. Forestry could be a first step. Ireland has on average less land under forestry than the EU average, and yet forests are crucial to reducing emissions through sequestration. The current forestry programme provides grants and premiums to farmers who plant forests. However, planting is below target. Training and upskilling in forestry could be provided in communities to encourage more engagement in this area, which in turn, would lead to a diversification of income sources for farmers.



There are opportunities in the development of on farm renewables in particular wind energy, solar PV and bio-digesters; these could be developed by individual farmers and small community led groups.¹² Over half of total investment in distributed renewables in Denmark and Germany has come from local citizens and community groups.¹³

The Renewable Energy Support Scheme

Currently, the RESS (Renewable Energy Support Scheme) auction scheme does not cater for the development of farm scale community-based projects¹⁴, despite the fact that an expansion of the scheme for this would allow farmers to diversify and develop a separate source of income that would not be contributing to greenhouse gas emissions. The solar energy grant is another example of where the opportunities for a Just Transition are not being harnessed.

success in other European countries.¹⁵ Rural Ireland is rich in renewable energy and expanding these schemes to allow small scale farmers be a part of this industry could offer a more sustainable future. However, it is important to note the resistance that wind turbines have faced, which should act as a reminder that communities are key in leading and driving the transition.

Financial Investments in the Just Transition

Financial investments into Just Transition are another key micro opportunity. Climate change is increasingly representing a systemic risk to the global economy and to long term return, which investors are aware of. Already there are numerous examples of asset management funds and pension funds shifting their focus to sustainably responsible funds, green bonds, low-carbon indices. Some are going further, by actively seeking Just Transition opportunities, for example the Ircantec pension fund in France which has focused on energy transition investments.¹⁶ Recently, a start-up fund was launched by Enterprise Ireland which specialises in the agri-business space to encourage diversification in the farming space.

The Role of Trade Unions

In the promotion and researching of Just Transition, trade unions have been crucial. Recognising that trade unions are a key driving force behind the Just Transition impetus introduces challenges to the agricultural sector as it is less unionised. The vast majority of work is carried out by farm holders and their family members,¹⁷ limiting the potential a single organisation to take on the mantle and enforce this direction for the sector. Moreover, the vast majority of successful Just Transition examples such as the town of Tonawanda or Port Augusta occurred where a power plant on which most of the community depended closed down. By contrast, rural farmers are by their nature more geographically dispersed, and of course, dispersed by economic activities, depending on the type of farming. These dispersions pose challenges, as they represent many different small communities with individual needs. In this vacuum, this could open the potential for agricultural lobbying groups

to prioritise just transition as a key message; lobbying the government to research and implement policies and sharing awareness with members.

There are many opportunities for the principles of Just Transition to be explored in the Irish agricultural sector from both a macro and micro led perspective. The model may not apply in its entirety to the farming sector but given the uncertain future facing this sector, it could provide valuable alternatives when approaching the climate action debate.

A Just Transition in the European Policy Debate

In Europe, CO₂ emissions from agriculture were largely dealt with under the Land Use, Land Use Change and Forestry (LULUCF) Decision¹⁸ where emissions do not count towards the 2020 targets. Under the new Effort Sharing Regulation (EFR)²⁶, agriculture along with other sectors not previously included in the emissions trading scheme are being subject to climate targets. Non-ETS sectors must reduce their targets by 30% by 2030 on 2005 levels¹⁹ setting a high demand on the Irish agricultural sector. However, the regulations will allow for carbon sequestration to be included for the first time towards carbon calculations.²⁷ Sequestration was previously excluded due to the complexities involved in measuring the level of sequestration. The inclusion of sequestration means that a focus on forestry will yield significant benefits for Ireland's emissions. In addition to climate regulations, Europe's agricultural sector is dependent on the Common Agricultural Policy and the Rural Development Programme, and the subsidies that go with them.

The EU is committed to its climate targets and a policy landscape to support the achievement of same. Within this environment, a Just Transition in the agricultural sector is well placed in Europe as it offers ample opportunity to be implemented. First, the EU recognises the importance of financing the adaptation of the agricultural sector to climate policies as a crucial element²⁰, ensuring that a Just Transition in agriculture has access to funds to support initiatives. For the 2014-2020 budget, at least 20% of expenditure was climate-related and it is likely for climate

spending to continue on an upward trend in the next budget. Second, the EU framework means that Member States can use national cooperation to meet objectives²¹ through the sharing of knowledge and best practice. Ireland can use the experiences of Denmark and Germany in community energy to effectively design similar schemes. Third, European policy has highlighted the requirement for farmers to be supported in their adaptation, identifying the CAP and Rural Development Programmes as key instruments²² and recognising that the nature of climate impacts means that local and regional adaptation responses will need to vary and demonstrate an understanding at a high level of the policy development.²³



Considering the favourable environment, Just Transition is already taking hold in Europe. Climate lobbyists ensured its inclusion in the Paris Agreement, as signed by all EU countries. Trade unions across Europe are working together to build Just Transition into climate policies, and calling for a Just Transition Structural Fund which would oblige the EU to provide funding to cushion the social impact of climate policies²⁴. The European Parliament voted in favour of such a fund in early 2017, ensuring that financing will exist for labour transition measures. Budget talks with the Council are ongoing, though expectations that climate related expenditure will increase could result in the fund's approval, setting the Just Transition concept firmly in the European framework.

Conclusion

Proposing a deep structural shift to any sector is unpopular, though the agricultural sector in Ireland is more resistant than most, due to complex reasons, including technology challenges, growth and distribution considerations, and the lobbying power of the sector. First, the possibility of using technology in the agriculture is relatively unknown and tools to measure the emissions at the farm level remain crude. While there is significant interest and research in this area, no

clear technologies are on the market. Second, growth in the agricultural sector cannot be decoupled from emissions even with efficiency gains²⁵ and it is very difficult for any government to implement any mitigation strategies that would threaten output and growth for any economic sector. Any de-growth strategy in agriculture has the potential for rural communities to become 'stranded', at a much faster rate than they are already experiencing. Third, the agricultural lobby is very powerful and has so far, come out strongly against any climate action that might impact beef or dairy farms. Joe Healy, the President of the Irish Farming Association has described agriculture as "the whipping boy of in the debate on climate change,"²⁶ insisting that Irish farmers are amongst the most efficient in Europe. Agricultural lobbyists have so far argued that focus should be on farming efficiencies,²⁷ despite evidence that there is little scope to become more efficient.

Many industries are undergoing a reassessment of their resilience to climate related challenges as well as evolving their practises to achieve emissions targets. Agriculture, through its nature is affected more than most. The complexities involved in the relationship between agriculture and climate change has resulted in an almost impasse, as policy makers and farmers struggle to reach consensus on what the future of agriculture will look like in a net carbon emissions environment. A Just Transition is a useful framework to engage stakeholders at all stages of the sector transition and to ensure that communities and workers can continue to thrive. It is recommended that this framework is explored at the government level to drive policy decisions and also that it is shared at the farming level so that the agricultural community can explore the opportunities and determine whether it is a useful model to apply as it faces an uncertain future.

Endnotes

1. Impact Trade Union & IIEA (2018). A just transition to a low-carbon economy.
2. Ippc.ch. (2018). IPCC - SR15. [online] Available at: <http://www.ipcc.ch/report/sr15/>
3. European Parliament (2017). Research for Agri Committee – The Consequences of Climate Change for EU Agriculture. Follow-up to the COP21 – UN Paris Climate Change Conference.
4. European Commission (2017). Capacity building, programmatic development and communication in the field of environmental taxation and budgetary reform. Brussels.
5. Just Transition Centre (2017). Just Transition: A Report for the OECD.
6. SIPTU (2017). 'There are no jobs on a dead planet: What a just transition means for workers.'
7. European Commission (2017). Capacity building, programmatic development and communication in the field of environmental taxation and budgetary reform. Brussels
8. IIEA (2018). A Climate-Smart Pathway for Irish Agricultural Development: Exploring the Leadership Opportunity
9. Joint Committee on Agriculture, Food and the Marine (2018). Climate Change and Sustainability in the Agriculture and Food Sectors.
10. Matthews, A. (2018). Carbon Tax in Irish Agriculture
11. Curtin, J. (2018). Ireland can lead charge in war against plastic. Irish Times
12. IIEA (2018). A Climate-Smart Pathway for Irish Agricultural Development: Exploring the Leadership Opportunity
13. Curtin, J. (2018). 'From Prices and Machines to citizens and communities: Making Climate action more effective.'
14. Rural regions are Ireland's green energy engine of the future. (2018). [Blog] Green News.
15. Mixed reaction to rooftop solar grant over exclusion of commercial and farm builds. (2018). [Blog] Green News.
16. The Grantham Research Institute on Climate Change and the Environment, 2018
17. European Parliament (2013). How many people work in agriculture in the European Union?
18. European Commission (2017). Capacity building, programmatic development and communication in the field of environmental taxation and budgetary reform. Brussels.
19. European Parliament (2018). Effort sharing regulation, 2021-2030: Limiting Member States' carbon emissions
20. European Commission (2017). Capacity building, programmatic development and communication in the field of environmental taxation and budgetary reform
21. European Commission (2017). The Future of Food and Farming. Brussels.
22. Climate Change Advisory Council (2018). Annual Review 2018.
23. European Parliament (2017). Research for Agri Committee – The Consequences of Climate Change for EU Agriculture. Follow-up to the COP21 – UN Paris Climate Change Conference.
24. SIPTU (2017). 'There are no jobs on a dead planet: What a just transition means for workers.'
25. Healy, J. (2018). Agriculture is now the whipping boy in debate on climate change. Irish Times.
26. Ibid.
27. Finnerty, C. (2018). Recommendation to impose a carbon tax on Irish agriculture is deeply flawed.



Why Ireland should include Socio-Economic Status in Equality Legislation

This paper will present the case for the inclusion of socio-economic status as a 10th ground in Irish Equality Legislation. The paper will first look at the current state of play of Equality Legislation in Ireland. The second section will explore the current options available to include socio-economic status as a protected ground in Irish Equality Legislation. The final section of the paper will examine the implications that the continued exclusion or inclusion of socio-economic status will have on the Irish Equality landscape. The concluding section will present recommendations



Relevance

The relevance of this issue is that individuals and groups in Irish society who experience discrimination on the ground of socio-economic status, are prevented from having any type of acknowledgment of the discrimination they face. Unlike other protected grounds, there is no complaint procedure or mechanism available that allows an individual to lodge a complaint relating to this area of discrimination.

Issues

When you think of equality, what comes to your mind? Do you think of equal treatment and opportunities for all? What about equality issues with regard to individuals, who are treated unfairly due to their accent, social status, family, geographical background or their economic and financial means? Would you be aware that discrimination which relates to these areas is not recognised? For example, where an individual has evidence that indicates that he/she has experienced unfair treatment by employers or a service on the grounds of socio economic status, there is no legal remedy available that would allow him/her to lodge a complaint.

Currently, the Employment Equality Acts 1998-2015 (“the EEA”) and the Equal Status Acts 2000-2015 (“the ESA”), provide for protection against nine grounds of discrimination: gender, civil status, family status, sexual orientation, religion, age, disability, race and

membership of the travelling community.

Calls for a further ground to be included date back to 1998, when the former Equality Authority called for the inclusion of socio-economic status. A report from the Department of Justice in 2004 entitled “Extending the scope of Equality Legislation”, acknowledged that discrimination on the grounds of socio-economic status was a reality for a large section of Irish society. However, there was hesitation and reluctance in its final comments around how it could use legal instruments or definitions to prohibit such acts of discrimination. However, experience from abroad suggests that it is possible to convincingly answer the sometimes justified hesitation and opposition to introducing a socio-economic status ground.

Since 2004, there have been dramatic developments in Equality Law in relation to socio-economic status. The European Commission has noted a significant move across Europe towards extending the mandate of equality bodies to cover socio-economic status grounds. The most recent overview of Equality Legislation, prepared by the European Network of Legal Experts in Gender Equality and Non-Discrimination, shows that legislation in twenty of the thirty five European countries provides protection against discrimination on a ground related to socio-economic status.

Article 21 of the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties of the European Union, prohibits discrimination on an open list of grounds, explicitly naming the grounds of social origin and property. The provisions of the Charter are binding for Member States when they are implementing Union law.

Furthermore, in an Irish context, in the second cycle of the UN’s Universal Periodic Review (UPR) mechanism, in May 2016, Ireland received three recommendations from the Working Group on the UPR to adopt comprehensive anti-discrimination legislation that would cover all grounds of discrimination including “social origin, property, birth or other status”.

Options

In 2017, a private members bill called the Equality (Miscellaneous Provisions) Bill 2017 was proposed. This sought to amend the EEA and the ESA to introduce socio-economic status as a new protected ground in Equality Legislation.

The new Equality Bill defines ‘socio-economic status’ as ‘a socially identifiable status of social or economic disadvantage resulting from poverty, level or source of income, homelessness, place of residence, or family background.’ The bill is currently awaiting committee stage in the Oireachtas to amend Irish Equality Legislation to include socio-economic status as a ground for discrimination. The bill has widespread support in the House.

However, despite its minority status, the Government is against making the change, and the legislation has been blocked as a money bill. After the adoption of this first step in June 2017, the ‘second stage’ debates took place in the Parliament on 8 and 9 November 2017. Eighty-five voted in favour of the bill, to forty-eight against. Although the bill passed to the next stage, the Government has blocked it from moving any further. Under Article 17.2, the Constitution provides that the Dáil shall not appropriate public money for any purpose unless the Government has first recommended that purpose to the Dáil by a Money Message signed by the Taoiseach. Similarly, under Dáil Standing Orders, amendments to bills appropriating public money or imposing taxation are confined to a member of the Government.

Can it be legally implemented?

Recent research published in October 2016 recommends the addition of a new ground under Equality Law that will prohibit discrimination and promote equality on the basis of socio-economic status. Entitled ‘An analysis of the introduction of socio-economic status as a discrimination ground’, the report examines the existence and use of the ground in Equality Law and policies across Europe. The Equality and Rights Alliance (ERA) which commissioned the report, called on the Irish Government to introduce

a new socio-economic status ground in Equality Legislation following legislative and case law trends across Europe and to ensure that Ireland meets its obligations under EU and International Law.



The Equality and Rights Alliance report found that discrimination on the grounds of socio-economic status has grown in importance in both Human Rights and Equality Law, with growing case law from courts and tribunals on this ground. Experience from abroad shows that there are important gains to be made by Ireland from introducing this ground.

Casework on the socio-economic status ground, identified in the report, shows that this form of discrimination is predominantly reported in employment, social services, public and private housing, healthcare, and social protection systems.

Implications and Recommendations

To conclude, discrimination on the grounds of socio-economic status has grown in importance in both Human Rights and Equality Law, with an increasing number of jurisdictions and international and European institutions prohibiting it.

1. First, the inclusion of this ground has the potential to radically strengthen Equality and Anti-Discrimination Law in Ireland. Furthermore, it presents an opportunity for the law to embrace a substantive conception of equality, capable of redressing material disadvantage by tackling systemic poverty and social exclusion, as well as combatting prejudice, stigma and stereotyping. It will also resolve any perception in society that there is a hierarchy of equality emerging, in other words, that some forms of discrimination are protected whereas others are not.

2. Second, it will provide a remedy for individuals, who will be able to lodge a complaint with the Workplace Relations Commission, as is the case for other protected grounds.
3. Third, by adopting this measure, Ireland would also be bringing its domestic law into line with its International Human Rights Law obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Committee on Economic, Social and Cultural Rights (CESCR)'s last review of Ireland in 2015, advised Ireland to extend its prohibited grounds of discrimination to cover discrimination based on 'social origin' and other related characteristics in order to comply with the Covenant. The inclusion of 'disadvantaged socio-economic status' as a protected characteristic in Equality Legislation will ensure that anyone subject to less favourable treatment in the exercise of their rights because of their inherited social status or economic situation, can avail of legal protection, as required by Article 2(2) of the ICESCR. The Irish Human Rights and Equality Commission (IHREC) has also commented that, 'a new prohibition in law to provide equal opportunities for people irrespective of their socio-economic status in seeking and securing employment, can be a catalyst in breaking cycles of deprivation.'
4. Finally, the difficulty in defining discrimination based on socio-economic status is a poor reason to allow this form of discrimination to legally continue. Nuanced and abstract definitions have not prevented other grounds for discrimination from being included in Equality Legislation. For example, an individual's religion or faith may be as intangible, subtle or unclear at a job interview as their socio-economic background,

“The difficulty in defining discrimination based on socio-economic status is a poor reason to allow this form of discrimination to legally continue”

yet religion is firmly established as an equality ground.

Therefore, in order to prevent the perception that a hierarchy of equality is emerging and also to keep up to date with European and International equality protections, this paper recommends that the Irish Government take further action to keep in line with best practice and at the forefront of ensuring equality, by prohibiting discrimination and unfair treatment on the ground of socio-economic status. This can be achieved by making our current Equality Legislation more comprehensive through the passage of the Equality (Miscellaneous Provisions) Bill 2017 and through the inclusion of socio-economic status as a new protected ground in Irish Equality Legislation.

References

1. Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of Discrimination, Shane Kilcommins, 2002 https://www.academia.edu/10131012/Extending_the_Scope_of_Employment_Equality_Legislation_Comparative_Perspectives_on_the_Prohibited_grounds_of_Discrimination
2. An analysis of the introduction of socio-economic status as a discrimination ground, Tamas Kadar, 2016.
3. Equality bodies contributing to the protection, respect and fulfilment of economic and social rights, EQUINET European network of Equality bodies, 2015.
4. Proposal to make 'disadvantaged socio-economic status' a prohibited ground of discrimination under Irish law, Jamie McLoughlin, 2018
5. <https://ohrh.law.ox.ac.uk/proposal-to-make-disadvantaged-socio-economic-status-a-prohibited-ground-of-discrimination-under-irish-law/>
6. IHREC endorses UN Committee recommendations to protect and promote economic, social and cultural rights in Ireland, Irish Human Rights and Equality Commission, 2015
7. <https://www.ihrec.ie/ihrec-endorses-un-committee-recommendations-to-protect-and-promote-economic-social-and-cultural-rights-in-ireland/>
8. Ireland and the International Covenant on Economic, Social and Cultural Rights, Irish Human Rights and Equality Commission, 2015.
9. Speech by Minister Stanton on Equality (Miscellaneous Provisions) Bill 2017, 2017. https://merrionstreet.ie/en/News-Room/Releases/Speech_by_Minister_Stanton_on_Equality_Miscellaneous_Provisions_Bill_2017.html
10. Deputy Jim O'Callaghan asked the Minister for Justice and Equality the steps that have been taken to conduct research into the implications of the Equality (Miscellaneous Provisions) Bill 2017; and if he will make a statement on the matter. Parliamentary questions, 2018
11. <http://iop.gov.ie/en/JELR/Pages/PQ-14-11-2018-166>
12. Seeking the socio economic status ground, Niall Crowley of the Equality and Rights Alliance, Equinet 2018.
13. Challenging Employment Discrimination Directly Can Boost Disadvantaged Areas Such as Dublin Inner City, Irish Human Rights and Equality Commission, 2017
14. <https://www.ihrec.ie/challenging-employment-discrimination-directly-can-boost-disadvantaged-areas-dublin-inner-city/>



Green Talk: Policy Options for Greener Cities

Increasing levels of urbanisation, is one of the biggest challenges facing Europe. It is expected that 88% of the population of the EU will live in urban areas by 2050. This raises a number of inter-related policy challenges, such as road congestion, sustainability, the environment, well-being, income, housing and accessibility of regions.

While the expansion of urban areas can lead to more jobs, higher incomes and higher standards of living, the negative impacts of urbanisation can, on the other hand lead to increased greenhouse gas emissions, urban sprawl, higher crime levels and destruction of ecosystems. This paper will examine the increasing levels of urbanisation experienced at a European level from 1990 to 2018 and consider what the potential impact will be for Europe into the future (2050). This will have important implications related to the sustainability, economic prospects, environmental outcomes and quality of life



Introduction: Urban population Rising, Land Use Changing, Cities as Centres for Employment

While 50% of the world population lived in cities at the beginning of the twenty-first century, it is estimated that by 2050 66% of the world's population will live in cities (OECD, 2015). Europe is more urbanised with 75% of the population living in cities, compared with a global figure of 55%. The EC's Joint Research Centre predicts that EU urban populations is set to reach 88%.

As the urban population grows, land use is changing. In Europe between 1990 and 2006, 1,000 km² of land was converted to be used for housing, roads and industry. Half of this land was artificial land use or was subject to soil sealing. Soil sealing involves the covering of soil with impermeable materials such as concrete to create roads and parking spaces and has several associated negative impacts such as: loss of water retention, leading to flooding, loss of biodiversity and unsustainable living patterns. It is regarded as one of the main factors threatening the state of soil in Europe.

182 Cities are also becoming ever important centres for employment and output in an economy and cities are disproportionately large producers of GDP. In Europe, predominantly urban areas represent 43% of the population, and businesses concentrated in

urban areas benefit from agglomeration economies such as labour market pooling, input sharing and knowledge spill-overs.

High wages, in turn, result in higher costs to firms but are attractive to workers. However, the theory of spatial equilibrium suggests there are advantages to firms in high wage areas which offset the costs of conducting business in cities.

The Spatial Equilibrium: Trade-offs between commuting costs and price of living space

According to traditional urban economic theory, cities can be analysed in relation to distance to and from the city centre. Von Thünen (1875) recognised that an interaction exists between space and the economy. The rent for agricultural land was modelled as a function of yield per unit of land and transport costs. Other models were based on the idea that differences in commuting costs are traded off with differences in the price of living space. Such models have aided policy makers in organising places of residence in relation to places of work.

The Impact of Urban Sprawl on agricultural land and ecosystems

Another negative side-effect of urbanisation can be urban sprawl. Planning becomes difficult for polycentric cities where, there is a main centre with the highest population density co-existing with other sub-centres. Poor planning can lead to increasing levels of urban sprawl, which makes provision of utilities, water supply, energy, waste management, and public transport more difficult. The European Environment Agency (EEA) has described urban sprawl as the pattern of low-density expansion of large urban areas into surrounding areas which are mostly agricultural. Increasing urban sprawl means that built-up areas are dispersed over a given landscape but there is low utilisation intensity in the built-up area. Other negative effects include loss of agricultural land, increasing fragmentation, destruction of ecosystems, higher transport costs and increases in greenhouse gas emissions.

Increased Emissions have Serious Health Implications

As city population increases, so do CO₂ emissions. Due to the dense nature of cities, and higher population density compared to rural areas, emission density will also be higher. Cities are currently responsible for over two-thirds of energy consumption and more than 70% of CO₂ emissions globally according to the OECD. This can have serious health implications for city dwellers as a result of these higher emissions. In European cities, up to 30% of citizens are exposed to levels of air pollution which exceed EU air quality standards. Given the amount of GHG produced by cities, through transport in particular, sustainable development is required in order to minimise the negative impact of growing cities on the environment.

How to Create Sustainable Cities

The need for environmentally sustainable development is recognised in the UN's 'New Urban Agenda.' Sustainable development will require analysis not around city size but also the changing internal structures of cities, in other words how a city distributes its population and structures across the urban space will determine the sustainability levels of that city.

Some argue however that bigger cities are 'greener', as there is a critical mass which cities reach, making them more efficient at providing public services such as utilities and mass transport. Competing uses for water resources in cities can also improve efficiency in use and cities can also provide better services in the delivery of health, education and governance.

Despite this, others have demonstrated that people living in cities were 2.3 times more likely to live in an area with pollution, grime or environmental issues compared to rural areas.

Impact on rural areas

With decreasing shares of the population living in the countryside, the importance of rural areas would appear to be diminishing, although the current Common Agricultural Policy (CAP) represents 41% of the total EU expenditure.

Country	Rate %
Austria	5.40
Belgium	2.25
Bulgaria	1.78
Cyprus	1.98
Czech Republic	3.71
Germany	2.04
Denmark	1.40
Estonia	5.02
Greece	2.17
Spain	0.53
Finland	3.08
France	4.42
Croatia	4.14
Hungary	3.22
Ireland	5.45
Italy	1.65
Lithuania	5.23
Luxembourg	8.26
Latvia	5.45
Malta	n/a
Netherlands	0.69
Poland	5.23
Portugal	1.38
Romania	3.76
Sweden	2.29
Slovenia	3.83
Slovakia	2.99
United Kingdom	0.92
EU 28	2.55

Table 1: Rate of Urbanisation by EU 28 – 2010-2050

Source: European Commission, Joint Research Centre (JRC) (Lavalle, 2014)

Increasing urban development is of relevance to rural areas as expanding cities place pressures on the demand for and loss of agricultural land. There is a belief that smaller cities/towns and rural areas will be the main subject of urbanisation in the future. As cities expand, is it also crucial to have locally produced food. Efficient urban development and more efficient food production will also benefit from lower fragmentation of the land.

Methodology

In this paper, the data on trends in land use and urbanisation across Europe during the period 1990-2018 is examined using CORINE and LUISA data. Given the increasing numbers living in cities and projections that a greater proportion of people will live in cities in the future, we discuss how this should be managed.

To improve life for all citizens, it is important to analyse both past and future trends and to consider how a number of attributes of the land will be impacted by urbanisation.

Table 1 shows the projected annual rate of change in urban population proportion for the EU28 from 2010–2050. **Urban land use is expected to increase** across all member states with the highest levels in Austria, Estonia, **Ireland**, Lithuania, Luxembourg, Latvia and Poland.

Of the newly joined EU member states only Cyprus and Bulgaria have rates below the EU average (There is no data available for Malta), whereas established countries such as Germany, Spain,

Italy, Netherlands and the UK have urbanisation rates below the EU average. These are countries which already have high levels of urbanisation.

Figure 1 shows the percentage of built-up areas for 2009 by EU NUTS-2 region. (NUTS is the geocode for referencing subdivisions of the country for statistical purposes)

The map highlights the high degree of urbanisation in Germany, England, Benelux and surrounding major European cities such as Paris, Rome, Turin and Madrid. There are clear disparities across Europe in the urbanisation of areas with a lot of areas relatively un-urbanised. Predominantly rural areas face challenges of accessibility and distance to labour markets. This makes it difficult for them to benefit from the spill over and agglomeration effects of cities and urban areas such as good employment opportunities, higher wages and an overall higher standard of living.

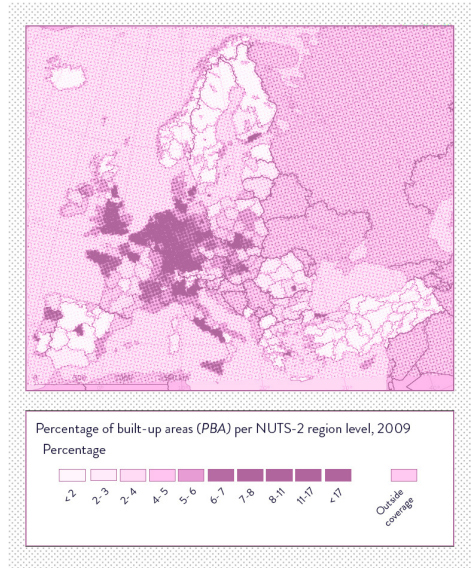


Figure 1: Percentage of built-up areas by NUTS-2 region 2009

Source: (EEA, 2016)

Figure 2 highlights the interconnectivity of EU regions. Regions in mainland Europe clearly benefit from proximity, having the highest levels of accessibility (road and public transport access). This map highlights the areas which are most vulnerable and that have both a low percentage of urban areas and also low accessibility.

Conclusion

An opportunity exists for policy makers at national and European level to play a key role in adapting to, and driving solutions to climate change. Europe currently faces a number of challenges as a result of urbanisation, and they will become more difficult as levels of urbanisation

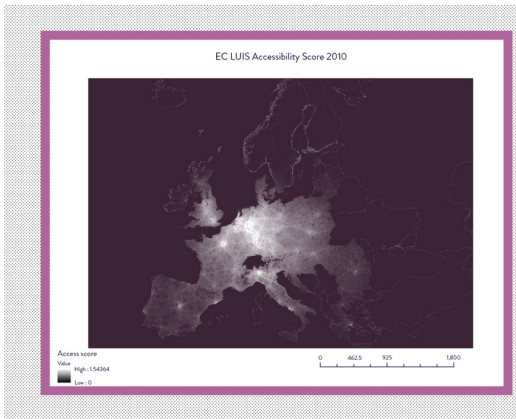


Figure 2: EC LUIS Accessibility Score 2010 - White areas indicate high connectivity
Source data: European Commission, Joint Research Centre (JRC) (Lavalle, 2014)

increase in the future. Among these challenges are traffic congestion, lack of affordable housing and pollution, which impact on public health, well-being, sustainability and quality of life. These challenges are interconnected and improvement in one will impact on the

others. Approaching urbanisation from the perspective of balanced land use creating supply chains for locally produced food, and intensification of the core of cities to provide for affordable housing and more

green spaces could lead to the creation of sustainable, resilient and carbon neutral cities in the future.

Recommendations

1. Reduction of Carbon Emissions by Generating Locally Supplied Food and by Carbon Sequestration through Forestry

The increasing levels of carbon is a problem for every global citizen and the current increasing levels of greenhouse gas emissions are unsustainable. Expanding cities will lead to increased levels of consumption. The CAP can play an important role in reducing these overall levels by generating a local supply of food (lowering transport costs by minimising distance from producer to consumer) but also by increasing the levels of carbon sequestration through forestry.

2. Protection of Green Spaces in Urban Planning

Urban Planning can also play a role in the protection of green areas and public spaces in our cities which give residents recreation value and reduced air pollution. Urban sprawl tends to replace public spaces with private space.

3. Creation of the Prerequisites for Sustainable Transport

Policy makers in Europe will have to ensure, that cities are attractive places in which to live and work. Less reliance on car as a mode of transport and more investment in sustainable methods such as walking, cycling and public transport will help to improve congestion levels. The deployment of public transport will, of course, depend on the initial urban development and that there is sufficient numbers of commuters to make it viable.

4. Management of the Sustainable Development of Cities

Policy makers may also wish to consider whether some form of city/urban directives are required at a European level to ensure that the expansion of our cities is controlled in a sustainable fashion. There is currently an overarching link across a number of existing portfolios that deal with climate change, transport, jobs, education and regional policy. The responsibility of such areas will have to be managed efficiently to ensure sustainable development in cities and provide best practice on how to manage development.

5. Development of Inner Core of Cities to Counteract Urban Sprawl

Policies could be developed to incentivise urban core development and living, redevelopment and densification of brown field sites help to reduce levels of urban sprawl.

6. Collection of more Data on the Socio-Economic Impact of Urbanisation

188

Data that examine land use and urbanisation could be enhanced by harvesting more data on socio-economic factors at the local level such as

well-being, income, house prices to name a few. That would give us more insight into the change in the levels of urbanisation. Models such as Von Thunen and Alonso are still relevant today as individuals trade off housing needs, income and transport costs during their decision making process. Land use is a part of this, however detailed information on the other components is lacking.

7. **Coordination at National Level between Government Departments**

All government departments should work in an integrated fashion to enable the urban transition in a climate-friendly manner. This should ensure that there are consistencies in overall strategies, for example the construction of motorways is shown to increase urban sprawl reducing sustainability of cities. It will be important to not only consider economic outcomes but also environmental consequences and impacts on individual well-being.

8. **Strategic Approach to Policy Making**

Every strategy and every policy and every financing mechanism should be future-proofed to be compatible with achieving the 1.5 degree goal of reducing climate emissions on target.

Paul Kilgarriff is a Post-Doctoral Researcher in the Luxembourg Institute of Socio-Economic Research, working in the area of spatial analysis and urban studies.

References

Alonso W (1960) A theory of the urban land market. *Papers and Proceedings of the Regional Science Association* 6: 149–157.

Batty M (2013) *The New Science of Cities*. MIT press.

Bettencourt LMA (2013) The origins of scaling in cities. *science* 340(6139). American Association for the Advancement of Science: 1438–1441.

Bettencourt LMA, Lobo J, Helbing D, et al. (2007) Growth, innovation, scaling, and the pace of life in cities. *Proceedings of the national academy of sciences* 104(17). National Acad Sciences: 7301–7306.

Brand S (2010) *Whole Earth Discipline*. Atlantic Books Ltd.

Brown LR, Kane H and Roodman DM (1994) *Vital Signs 1994: The Trends That Are Shaping Our Future*. WW Norton & Company.

Brueckner JK (1987) The structure of urban equilibria: A unified treatment of the Muth-Mills model. *Handbook of regional urban economics* 2: 821–845.

EEA (2006) *Urban sprawl in Europe — The ignored challenge*.

EEA (2013) *Understanding pollutant emissions from Europe's cities*. Available at: <https://www.eea.europa.eu/publications/understanding-pollutants-emissions-from-europes/download>.

EEA (2016) *Urban sprawl in Europe*.

EU Copernicus. (2018) CORINE Land Cover. Available at: <https://land.copernicus.eu/pan-european/corine-land-cover>.

European Commission (2018) CAP expenditure in the total EU expenditure. Available at: https://ec.europa.eu/agriculture/sites/agriculture/files/cap-post-2013/graphs/graph1_en.pdf.

Glaeser EL and Kahn ME (2010) The greenness of cities: carbon dioxide emissions and urban development. *Journal of urban economics* 67(3). Elsevier: 404–418.

Griffith DA and Wong DW (2007) Modeling population density across major US cities: a polycentric spatial regression approach. *Journal of Geographical Systems* 9(1). Springer: 53–75.

Jaeger JAG and Schwick C (2014) Improving the measurement of urban sprawl: Weighted Urban Proliferation (WUP) and its application to Switzerland. *Ecological indicators* 38. Elsevier: 294–308.

Jones A, Panagos P, Barcelo S, et al. (2012) The state of soil in Europe. *A Contribution of the JRC to the European Environment Agency's Environment State and Outlook Report*. (European Commission: Luxembourg) Available at.

Kates RW and Parris TM (2003) Long-term trends and a sustainability transition. *Proceedings of the National Academy of Sciences* 100(14). National Acad Sciences: 8062–8067.

Kenny JF, Barber NL, Hutson SS, et al. (2009) *Estimated use of water in the United States in 2005*. US Geological Survey.

Kompil M, Aurambout JP, Ribeiro Barranco R, et al. (2015) European cities: territorial analysis of characteristics and trends—An application of the LUISA Modelling Platform (EU Reference Scenario 2013-Updated Configuration 2014). *Luxembourg: Publications Office*.

Kotzeva MM and Brandmüller T (2016) *Urban Europe: Statistics on Cities, Towns and Suburbs*. Eurostat, Publications Office of the European Union.

Lavalle C (2014) *OUTPUT - Land-use/cover maps - LUISA Platform REF2014*. Available at: <http://data.jrc.ec.europa.eu/dataset/jrc-luisa-land-use-ref-2014>.

Lemoy R and Caruso G (2018) Evidence for the homothetic scaling of urban forms. *Environment and Planning B: Urban Analytics and City Science*. SAGE Publications Sage UK: London, England: 2399808318810532.

Mills ES (1972) Studies in the Structure of the Urban Economy.

Muth RF (1969) CITIES AND HOUSING; THE SPATIAL PATTERN OF URBAN RESIDENTIAL LAND USE.

OECD (2010) *Highlights of the International Transport Forum 2010 Transport and Innovation: Unleashing the Potential*. OECD Publishing.

OECD (2015) *The Metropolitan Century*. OECD Publishing. Available at: <file:///content/book/9789264228733-en> <http://dx.doi.org/10.1787/9789264228733-en>.

OECD (2016) *Rural Policy 3.0*. OECD Publishing. Available at: <file:///content/chapter/9789264260245-7-en> <http://dx.doi.org/10.1787/9789264260245-7-en>.

OECD (2018) *Rethinking Urban Sprawl: Moving Towards Sustainable Cities*. Paris: OECD Publishing. DOI: <http://dx.doi.org/10.1787/9789264189881-en>.

Owen D (2004) Green Manhattan. *The New Yorker* 80(31): 111–123.

Prokop G, Jobstmann H and Schönbauer A (2011) Report on best practices for limiting soil sealing and mitigating its effects. *Luxembourg: European Commission*.

Reiter C (2018) How Germany Is Defusing a Demographic Time Bomb. *Bloomberg*. Available at: <https://www.bloomberg.com/news/articles/2018-05-23/how-germany-is-defusing-a-demographic-time-bomb>.

Rosenthal SS and Strange WC (2004) Evidence on the nature and sources of agglomeration economies. *Handbook of regional and urban economics* 4: 2119–2171.

RROP (2016) *Das Neue Regionale Raumordnungsprogramm Region Hannover*. Hannover. Available at: https://www.hannover.de/content/download/712057/17903756/file/Heft+152_RROP_Broschüre.pdf.

UN (2017a) *New Urban Agenda*. Available at: <http://habitat3.org/the-new-urban-agenda/>.

UN (2017b) *The World Cities in 2016*. Data bookl. Economic & social affairs. Available at: http://www.un.org/en/development/desa/population/publications/pdf/urbanisation/the_worlds_cities_in_2016_data_booklet.pdf.

Von Thünen JH (1875) *Der Isolierte Staat in Beziehung Auf Landwirtschaft Und Nationalökonomie*. Wiegand, Hempel & Parey.



EU Counter-terrorism Policy after 2015—The Added Value of Harmonisation over National-based Approaches

This paper identifies the development of EU counter-terrorism policy at the critical juncture of 2015-2018, as driven primarily by three terrorist attacks occurring in less than 15 months. The paper will argue that in this timeframe the policy developed further towards a more integrated approach than it did in the previous 15 years. The paper gives an overview of the legislative and institutional updates introduced in these three years, and argues that the policy was driven by an unprecedented surge of political will, leading to the adoption of a large number of important instruments of a binding nature in counter-terrorism governance, which have the potential to deliver lasting impact on the way the policy will be conducted in the future.



Introduction

It seems apparent that EU member states have at last come to the joint conclusion that there is added value in cooperation and harmonisation on security issues. What a number of previous crises could have not invoked, has now been initiated through the compounded effects of several crises, the most significant of which being the jihadist terrorist attacks on European soil, the ISIL cells based in Europe and the over 5000 ISIL fighters with EU citizenship. As these coincided with several other crises challenging the EU's identity, it is impossible to separate them analytically from events, such as: 1) Brexit and the rise of far-right politics in Europe, 2) the migrant crisis (mistakenly conflated with the rise of terrorist activity in Europe) and 3) transatlantic tensions after the election of President Trump. All these events led to concerns at EU and national level and demonstrated the need for a common EU approach.

The European Commission, has used the political momentum, not only to push forward legal measures which had been stuck in the pipeline for years, but to propose new ambitious measures. Once the common threat subsides, the institutional architecture that is put in place should ensure the continuation of a common EU approach.

Brussels in March 2016. These 15 months generated more efforts on counter-terrorism on EU level than the preceding 15 years. The paper looks briefly at legislation adopted up to 2015 and then provides a timeline of legislative and operational measures adopted following each of the three attacks in the various sub-policy areas of counter-terrorism, such as information systems, border protection, radicalisation, regulation of firearms and explosives, etc.

EU counter-terrorism before 2015

Until 2015, EU counter-terrorism policy was driven by an incremental and reactive approach. At EU level, member states had only been able to adopt political declarations condemning terrorist attacks, as well as strategic guidelines for common action with no binding effect on national legislatures. The explanation for this is two-fold: 1) member states simply did not wish to grant the EU a mandate to deal with a topic, driven by national security considerations and 2) member states did not any see the added value of an EU mandate on counter-terrorism as national and bilateral efforts were considered sufficient. Legislation adopted between 2001 and 2008 was deemed satisfactory as a legal framework for the initial stages of EU counter-terrorism policy. The most important innovation in this timeframe was the introduction of the European Arrest Warrant (EAW)¹, which replaced national extradition systems with a European instrument, requiring each national judicial authority to recognise requests for the surrender of a person made by another member state's judicial authority. This operational instrument gives jurisdiction over arrests to multiple police authorities and significantly reduces the timeline and complexity of national extradition cases. Any EU output on counter-terrorism between 2008 and 2015 introduced marginal updates. In the absence of an ostensible terrorist threat in that timeframe, the need for output—as well as the likelihood that any legislative proposal would pass—was quite low.

Legislative Act	Date	Circumstance
Plan of Action to Combat Terrorism	21 September 2001	The first measure following the “9/11” attacks in New York City, condemning the attacks and acknowledging the common nature of the terrorist threat.
Framework Decision on Terrorism	13 June 2002	Following the “9/11” attacks in New York City. Provided the first EU definition of terrorism and aimed at aligning the member states’ positions on counter-terrorism measures.
European Security Strategy	12 December 2003	Following 9/11 and the US Iraq invasion; identified EU foreign policy priorities and outlined terrorism as a common priority for the first time.
Declaration on Combating Terrorism and appointment of EU Counter-terrorism Coordinator	25 March 2004	In the backdrop of the Madrid attack, a measure to consolidate national approaches and condemn atrocities.
Adoption of the Prüm network (originally not on EU level)	27 May 2005/2008	In the backdrop of the Madrid attack. Aimed at increased inter-state cooperation in the fields of security, cross-border crime and terrorism
Counter-Terrorism Strategy	30 November 2005	Following the Madrid and London attacks. Setting the priorities for common action in counter-terrorism, thus setting up de facto the EU counter-terrorism policy and its strategic pillars.
EU strategy for combating radicalisation and recruitment	24 November 2005	Following the Madrid and London attacks, recognized the issue of radicalisation for the first time.
Revision of Framework Decision on Terrorism	28 November 2008	Included several new terrorist offences to be transposed in national legislation.
Internal Security Strategy, “Towards a European Security Model” (2010-2014)	26 March 2010	Defining common EU threats and approaches, attempting to build a “European Security Model”.
Revision of EU strategy for combating radicalisation and recruitment	19 May 2014	Intended to revise the context of radicalisation in the consideration of anti-radicalisation measures.

Figure 1. Legislation adopted in EU counter-terrorism between 2001 and 2015.

EU counter-terrorism policy: 2015–2018

197

While terrorist attacks between 2001 and 2015 punctuated the equilibrium of EU counter-terrorism policy-making, each of the attacks having had its own specific effect on the development of EU counter-terrorism, none of them had the profound impact of the Paris (January and November 2015) and Brussels (March 2016) attacks. The three attacks initiated a cycle of policy making and operationalisation never before seen in EU counter-terrorism.

While academics often describe three conceptual phases of development of EU counter-terrorism policy: “post-9/11”, “post-Madrid” and “post-London”² as the three surges of policy-making that make up most of the policy’s governance structures, a new contextually significant phase has emerged since—the post-Paris phase. Until early 2015 EU governments and institutions did not consider terrorism to be amongst their top political priorities, even against the backdrop of the unforeseen sophistication of methodology used by Islamic State. Issues of radicalisation, home-grown terrorism and the susceptibility of soft targets around Europe were underestimated until the January 2015 “Charlie Hebdo” attack in Paris. Later attacks in Paris in November 2015 and Brussels in March 2016 further contributed to the realisation of vulnerabilities and simultaneously showed the need for proposals brought forward by the Commission and promptly adopted by the Council and Parliament.

Meanwhile, Eurobarometer research shows that public opinion supported stronger EU involvement in counter-terrorism. As can be seen in Fig.2, since 2015 terrorism has been among the top concerns for EU citizens as reported by Eurobarometer surveys. While there has been a decline in this concern, it has remained at second place, including in Ireland (at 27%), where respondents rated it on par with climate change and a close second to immigration (32%), scoring much higher than economic issues (14%) and higher than the EU28 average (20%). This demonstrates the concern of the Irish public on issues of terrorism, despite hitherto not having being the subject of a jihadist attack.

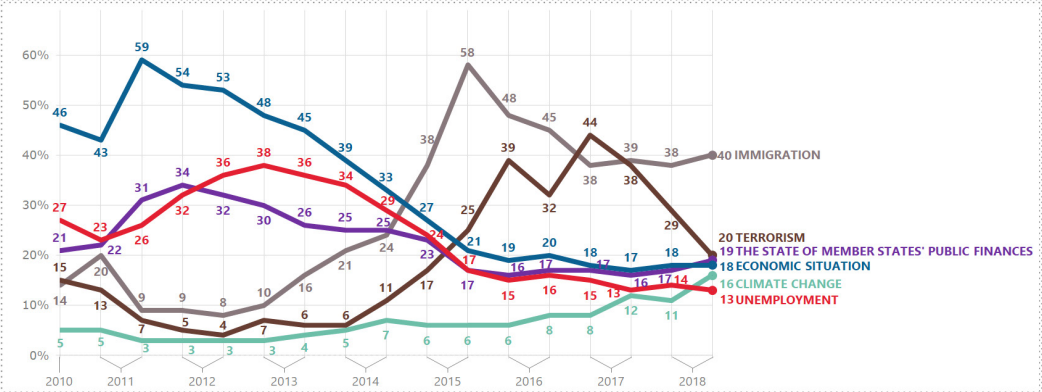


Fig.2. Eurobarometer statistic on the timeline of public opinion on the most significant issues for the EU.³

The next three sub-sections of this paper look at the aftermath of the three attacks in greater detail, discussing the legislative and institutional instruments resulting from each terrorist act in particular (while the effect of each incident can be said to be cumulative). The time-based analysis will discuss the comprehensive reforms undertaken in this domain and will demonstrate the decisive effect of the increased political will following each attack for the counter-terrorism governance in the EU.

The Aftermath of the Charlie Hebdo Attack, 7-9 January 2015

According to policy-makers, the Charlie Hebdo attack in Paris on 7 January 2015 served as the opening of the window of opportunity for harmonisation in the policy area. Three sets of Council Conclusions were adopted in January and February 2015, serving as the official mandate for the EU's new involvement in counter-terrorism:

1. The Justice and Home Affairs (JHA) Council Conclusions from 30 January,

3. The Informal Heads of State Summit Conclusions from 12 February 2015.

They led to the opening of the possibility for the EU to legislate in counter-terrorism, to a degree deemed inconceivable until then. The FAC Conclusions of 9 February 2015 took note of the external dimension of the terrorist threat and provided the mandate for strengthening external action on counter-terrorism, in particular with the Mediterranean and MENA countries, in combination with the Gulf and Regional strategy on Syria, Iraq and Daesh adopted on 16 March 2015.

In addition, the first targeted efforts towards cybersecurity and radicalization came after the January attacks too and led to the creation of an EU Internet Referral Unit (IRU) at Europol and an EU Radicalisation Awareness Network (RAN) Centre of Excellence, with the aim of connecting national practitioners and developing best practices. The EU IRU was set up as a sub-body of Europol, to tackle terrorist propaganda on the internet, advise member states, and to act as a platform for reporting of violent content. As of 2018, Europol reported more than 50,000 referrals processed, with a rather high removal rate of extremist content at 84.8%.⁴ By December 2015 an EU Internet Forum was set up as well, targeting terrorist content and hate speech online, while Europol was mandated to conclude EU-NATO and EU-third countries agreements on cyber security cooperation. A High-Level Expert Group on Radicalisation was set up to enhance coordination between stakeholders and practitioners and to report on “more systematic exchanges on anti-radicalisation between Member States, practitioners and researchers and stronger support structures at EU level.”⁵

The Aftermath of the Paris attacks of November 2015

The Paris attacks of November 2015 generated a wave of solidarity from other member states further enhanced by French President Hollande’s first-ever triggering of Art.42.7. TEU, also known as the EU’s mutual defence clause. It is important to note the political significance of Hollande’s choice

of the EU as a channel, over NATO and the UN, which arguably provide stronger security guarantees in such occasions. It is also interesting to note that as between two EU options, he decided on the mutual defence clause over the solidarity clause (Art.222. TFEU) which was specifically designed for cases of terrorist attacks. This act further enforced the mandate given to the EU in counter-terrorism. A myriad of legislative proposals followed.

On the legislative aspect of the policy, a number of important measures were passed in the immediate aftermath of the incident. Two weeks after the attack, the European Commission proposed a revision of the Firearms Directive, through the Directive on the control of the acquisition and possession of weapons:⁶ a few days later an Action Plan against illicit trafficking in and use of firearms and explosives followed⁷, and two months later the Action Plan on strengthening the fight against terrorist financing was adopted.⁸

“One of the most ambitious initiatives in internal security to date, the Security Union, was first announced during the minute of silence ceremony, a day after the Brussels attacks, on 23 March 2016.”

On the institutional side, less than two months after the attack, the new European Counter Terrorism Centre (ECTC) at Europol, aimed as a channel for information sharing and operational coordination, was agreed upon through a JHA Council Decision in November 2015 and was launched at Europol on 1 January 2016. Another initiative, indicated already—The EU Internet Forum—was launched by the Commission on 3 December 2015. This was meant to bring Europol, governments and technological companies together on the fight against online radicalisation. These initiatives were made possible by a Regulation on the increasing of Europol’s mandate which had been on the table since 27 March 2013. Regulation 2016/794 from 11 May 2016 repealing and replacing the Europol Regulations from 2009, aims to “to enhance Europol’s mandate as the EU’s central law enforcement agency and enable

it to respond more rapidly to emerging international terrorist threats and serious and organised crime”.⁹ The proposal was agreed on 26 November 2015, while the final text was adopted on 11 May 2016, in the aftermath of the Brussels attacks.

The Aftermath of the Brussels attacks of March 2016

The Brussels attacks brought further EU proposals. One of the most ambitious initiatives in internal security to date, the Security Union, was first announced during the minute of silence ceremony, a day after the Brussels attacks, on 23 March 2016. On 12 April 2016, a week before the launching of a Commission Communication¹⁰ on the Security Union, Jean-Claude Juncker said in a speech before the European Parliament: “The time for action has come. In the area of security, as in many other areas in Europe, fragmentation is what makes us vulnerable. Europe needs a genuine security union”¹¹. The Security Union, which was met with some chagrin among member states, was to have its legal basis in Art.67 TFEU, thus upgrading the Area of Freedom, Security and Justice (AFSJ), and had its new Commissioner appointed –Sir Julian King–on 19 September 2016. This initiative established hitherto the strongest reform framework for the policy area, whereby regular Progress Reports are published by the Commission, delineating progress accomplished on specific dossiers and reporting concrete timeframes for those still in the pipelines. Proposals have focused on terrorist financing, online content and radicalisation, access to firearms and explosives, forging of identity documents, and most of all, on databases and interoperability—all pieces of legislation that had been difficult to discuss until then.

The Brussels attacks were further the main motivator for the ultimate adoption of the Passenger Name Records (PNR) Package¹² on 21 April 2016—a piece of legislation that had been vetoed by the European Parliament but was suddenly agreed upon in a matter of weeks under immense political pressure. Legislation on the financing of terrorism has focused on stricter control of large cash flows and freezing of assets, while latter

documents have proposed further access of national authorities to bank records. The Fifth Anti-Money Laundering Directive Proposal is expected to provide enhanced access of Financial Intelligence Units (FIUs) to data, including from central banks.¹³ Several pieces of legislation on the process of obtaining firearms, explosives and chemical substances have been introduced as well.

The first EU-wide legislation on cybersecurity, the NIS Directive¹⁴ on security of network and information systems, was adopted on 6 July 2016, in order to “boost the overall level of cybersecurity in the EU”.¹⁵ The EU’s Cybersecurity Strategy has been reviewed at the end of 2017 and in September 2017 the Commission proposed the so-called the Cybersecurity Act, which would turn the European Union Agency for Network and Information Security (ENISA) into an EU cybersecurity agency and would introduce EU certification scheme for cyber secure products (currently in discussion among co-legislators). On 28 September 2017, the Commission presented a Communication¹⁶ on a Regulation on preventing the dissemination of extremist content online. This proposed measures to effectively tackle illegal content targeted at online service providers. After an Impact Assessment from 12 September 2018, the Commission Recommendation from 1 March 2018 on a set of operational measures, is currently in negotiation between co-legislators. The Commission has further proposed a €50 million pilot project aiming at the establishment of cybersecurity competence. Since 8 December 2017, it has also launched infringement procedures against member states which are non-compliant with the cybersecurity acquis, as well as on the Prüm framework for law enforcement data exchange, signed in 2008¹⁷ to enable nations to exchange data regarding DNA, fingerprints and vehicle registration in cases of cross-border criminality.

Perhaps the most far-reaching effort to date has been on the interoperability between databases and bodies tasked with collecting and sharing various types of information relevant to the prevention of terrorist incidents and pursuit of perpetrators. Such measures have included increase of mandates, revision of databases, increased

funding for agencies, and importantly, provided the latter with access to relevant databases. Due to the combined effects of the migration crisis and the increased number of terrorist attacks on European soil, in the timeframe between 2016-2018, the Commission has introduced proposals for the revision of all databases relevant for counter-terrorism: the European Criminal Records Information System (ECRIS), the Prüm Framework for operational police cooperation, the Schengen Information System (SIS), the Visa Information System (VIS) and the European Asylum Dactyloscopy Database (EURODAC), which are all currently in inter-institutional negotiations.



A wide-ranging reform of the Schengen Information System has been initiated in the aftermath of the Brussels attacks. The Schengen Agreement was signed in 1985 by France, Germany, Belgium, Luxembourg and the Netherlands, with the aim of relaxing

border controls on people and goods and thus complete the Single Market. It was complemented by the Schengen Information System (SIS) aimed at information exchange on internal security, and in the context of the preparation for the EU enlargements of 2004 and 2007. Currently the Schengen framework includes 22 EU member states, where Bulgaria, Romania and Croatia are not fully integrated yet, the UK and Ireland have an opt-out and several non-EU countries have an opt-in.¹⁸

A Regulation amending the Schengen Borders Code¹⁹ to reinforce checks against relevant databases at external borders and introduce systematic checks, and introducing a new Entry-Exit SIS system was announced in an April 2016 Commission Communication, which “identified major SIS II shortcomings—suboptimal functionalities, gaps in the system’s architecture, fragmented policy frameworks, and limited interoperability”.²⁰

A High-Level Expert Group on Information Systems and Interoperability was established for a consultation procedure in June 2016 to work on a joint strategy for more effective data management in the EU, with a view that “[a]ll centralised EU information systems for security, border and migration management should become interoperable” and including an ambitious proposal for a “single search portal for police and customs officers to search all databases in parallel and a common identity repository for all systems”.²¹ In December 2016 the Commission presented three legislative proposals, and the Regulation was adopted 14 December 2017. The new Schengen Entry-Exit System, together with the European Travel Information and Authorisation System (ETIAS) database and some other interoperability measures (such as access of Europol and other agencies to EU databases) are to be implemented by EU-LISA in the coming 3-5 years.

As has become evident from this overview, the EU and its institutions have introduced, negotiated and adopted a larger amount of legislation and targeted measures in the field of counter-terrorism in the period 2015-2018 than they have over the previous 17 years of existence of the policy, which indicates once again the relevance of a heightened security threat

as a critical for the policy’s progress. The speed of proposal, negotiation and adoption of legislative files, the large increase in cooperation and information-sharing and even the number of infringement procedures initiated by the Commission speak for the high potential of cohesion being built in EU counter-terrorism policy.



How does that relate to Ireland?

For Ireland, new technical and capacity-building measures will be introduced in coordination with the mandates of the European Commission and EU agencies. European security databases such as the

Schengen Information System and the European Criminal Records Information System have transformed how Ireland's security forces interact with other EU Member States and have opened up their scope for providing security to Irish citizens. Representatives from the Irish security services are present in the Internet Referral Unit, the Radicalisation Awareness Network, are on the boards of Frontex and EASO and are influential across the European security landscape. This exponentially raises Ireland's profile and abilities when providing security in Ireland and in partnership with the rest of the European Union.

Senior Garda officials been very vocal about the risk of lone-wolf attacks in Ireland, the concerns of hate speech and online radicalisation and the blurring boundaries between criminality and terrorism, urging for closer cooperation with European partners.²² An Garda Síochána's Ethnic Liaison Officers and community officers have played a valuable role in developing strong working relationships with minority and at risk communities in Ireland and were set up in line with best practise from other Member States.

Justice Minister Charlie Flanagan T.D. spoke in support of the EU Directive on online content and the need to harmonise other measures²³ and praised the EU's work in the domain of counter-terrorism. At the Justice and Home Affairs Council meeting in Bucharest on 8 February 2019, he stated²⁴:

"In today's highly connected world, counter-terrorism measures simply cannot be effective unless countries work together. Where policies fall under national competence only, we have an opportunity to learn from one another and emulate best practice. During the Romanian Presidency, I expect to see further analysis and discussion about new measures the EU can take to combat terrorism and ensure our citizens are best protected. Our European values are shared values and together we strive to continuously improve our defence of them against those that seek to undermine our freedom".

Conclusion

While EU counter-terrorism policy will probably never become an EU common policy, due in large part to the significant operational, functional and sovereignty hurdles to overcome in order to achieve that, it is well on its way to overcoming the gaps in governance that may have enabled an easier organisation and execution of terrorist attacks on EU territory until 2015. EU policy-makers appear to be very aware of member states' reservations as well as very adept and strategic about pushing forward important legislation in politically opportune moments. However, both the European public and national policy-makers needed to be convinced of the necessity and added value of the EU's role in issues of terrorism. While the policy continues to be a hybrid, with shared competence between the member states and the EU, it is well on its way of becoming a well-functioning one, through the clarification of mandates, proper utilisation of instruments, and certainly a necessary element in counter-terrorism policy-making – a high common threat perception, induced by rather symmetrical political pressure across member states.

The effects of the comprehensive reform in the policy have the potential to last, as it has put the experts and structures in place that were needed for a functioning EU counter-terrorism apparatus. The necessary relationships at both political and operational level have been established, and are considered to be transforming this policy area, and a political rationale and legitimacy for the need of such coordinated EU efforts has been created– with the EU as a proven and useful channel for such coordination. The real test of such lasting effects will be the subsidence of the terrorist threat in the future, when it will not be a matter of political pressure to share data and coordinate efforts, but rather a matter of good will, and subject to perceived necessity. It could be argued that the EU was successful in tackling the impediment posed by inward national-response reflexes and practices before 2015. The terrorist attacks of 2015–2017 have succeeded in forging a stronger sense of common European interests, where unless everyone in the EU is prepared for tackling security threats, then nobody is. The implications of the UK

with its vast network of intelligence and policing tools and expertise remains perhaps the biggest threat for the EU in 2019.

Christine Andreeva is a PhD Candidate at Dublin City University (DCU)

Changes after the Charlie Hebdo Attack in Paris in January 2015

An EU Internet Referral Unit (IRU) at Europol

An EU Radicalisation Awareness Network (RAN) Centre of Excellence

EU Internet Forum targeting terrorist content and hate speech online

A High-Level Expert Group on Radicalisation

A mandate for Europol to conclude EU-NATO and EU-third countries agreements on cyber security cooperation.

Changes after the November 2015 Paris Attack

Institutional Innovations

A new European Counter Terrorism Centre (ECTC) at Europol, aimed as a channel for information sharing and operational coordination

The launch of the above mentioned EU Internet Forum

Legislative Initiatives

The call for the triggering for the first time of the EU's mutual defence clause, Art. 42.7 TEU

A revision of the Firearms Directive

An Action Plan against illicit trafficking in and use of firearms and explosives followed, and An Action Plan on strengthening the fight against terrorist financing was adopted.

A Regulation 2016/794 from 11 May 2016 repealing and replacing the Europol Regulations from 2009, aims to "to enhance Europol's mandate as the EU's central law enforcement agency and enable it to respond more rapidly to emerging international terrorist threats and serious and organised crime.

Changes after the Brussels Attacks March 2016

Institutional Innovations

The Announcement of the Security Union based on Art.67 TFEU

The Appointment of A Commissioner for the Security Union, Sir Julian King

A Commission proposal for the Cybersecurity Act in September 2017 to turn the European Union Agency for Network and Information Security (ENISA) into an EU cybersecurity agency

Legislative Initiatives

A reform framework for the policy area, whereby regular Progress Reports are published by the Commission

Adoption of the Passenger Name Records (PNR) Package on 21 April 2016

Adoption of the NIS Directive on security of network and information systems -the first EU-wide legislation on cybersecurity

A review of the EU's Cybersecurity Strategy at the end of 2017

EU certification scheme for cyber secure products (currently in discussion among co-legislators)

A Communication on a Regulation on preventing the dissemination of extremist content online

A wide-ranging reform of the Schengen Information system (SiS) including:

- A Regulation amending the Schengen Borders Code,
- A new Entry-Exit SIS system
- A European Travel Information and Authorisation System (ETIAS) database

Commission proposals for the revision of all databases relevant for counter-terrorism:

- The Prüm Framework for operational police cooperation
- The European Criminal Records Information System (ECRIS)
- The Visa Information System (VIS) and the European Asylum Dactyloscopy Database (EURODAC), which are all currently in inter-institutional negotiations.

Endnotes

1. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant.
2. Javier Argomaniz (2009) Post-9/11 institutionalisation of European Union counter-terrorism: emergence, acceleration and inertia, *European Security*, 18:2, 151-172, DOI: 10.1080/09662830903460103
3. European Commission (2019). Standard Eurobarometer 90, Autumn 2018. Eurobarometer Surveys. [online] European Commission. Available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/standard/surveyky/2215> [Accessed 2 Feb. 2019].
4. Europol 2018 TE-SAT Report, retrieved on 1 December 2018 at <https://www.europol.europa.eu/activities-services/main-reports/europe-an-union-terrorism-situation-and-trend-report-2018-tesat-2018>
5. Communication from the Commission, Thirteenth progress report towards an effective and genuine Security Union from 24 January 2018, retrieved 1 December 2018 at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52018DC0046>
6. Directive (EU) 2017/853
7. COM [2015]624.
8. COM[2016]50.
9. European Commission, Press Release on the Europol Regulation (EU) 2016/794 from 29 April 2017, retrieved on 30 November 2018 at: http://europa.eu/rapid/press-release_STATEMENT-17-1169_en.htm
10. COM(2016) 230.
11. European Commission, Press Release on the Security Union from 20 April 2016, retrieved on 30 November 2018 at: http://europa.eu/rapid/press-release_IP-16-1445_en.htm
12. Directive (EU) 2016/681.
13. According to the 13th Progress Report on implementation of the Security Union from 24 January 2018 (COM(2018) 46).
14. (EU) 2016/1148.
15. Commission information on the NIS Directive, 28 August 2018, retrieved 1 December 2018 at: <https://ec.europa.eu/digital-single-market/en/network-and-information-security-nis-directive>.
16. COM(2018)640.
17. Prüm Council Decision 2008/615/JHA.
18. Iceland, Norway, Switzerland and Lichtenstein are associate members of the Schengen Area; Monaco, San Marino, and Vatican City have opened their borders, but are not members of the visa free zone. The Azores, Madeira, and the Canary Islands are special members of the EU and part of the Schengen Zone despite being outside Europe. Source: 2018 Schengen-VisaInfo.com, retrieved February 2019 at <https://www.schengenvisa.info.com/schengen-visa-countries-list/>
19. Regulation 2017/2226.
20. European Parliament, Legislative overview, JD - Revision of the Schengen information system in the field of police cooperation and judicial cooperation in criminal matters / 2017-11, retrieved 30 November 2018 at: <http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-jd-revision-of-sis-ii-for-law-enforcement>
21. European Commission, EU Factsheet on Closing the Information Gap, 2018, retrieved May 2018.
 22. The Irish Times 2019, Retrieved on 2 February 2019 at <https://www.irishtimes.com/news/world/terror-attacks/risk-of-lone-wolf-terror-attack-a-concern-says-senior-garda-1.3497434>
 23. Government of Ireland, Department of Justice and Equality 2019, retrieved on 23 February 2019 at: <http://www.justice.ie/en/JELR/Pages/PR18000395>

24. 24 Government of Ireland, Department of Justice and Equality 2019, retrieved on 23 February 2019 at: <http://www.justice.ie/en/JELR/Pages/PR19000031>



Opportunities for Ireland; Environmental and Climate Change Leadership

This paper examines areas where Ireland can demonstrate leadership in climate change by re-imagining what climate leadership involves and shaping public discourse. The policy of climate change will be analysed, exploring solutions for agriculture, transport, energy, waste and housing, based on the outcomes of the Citizen's Assembly on Climate change 2018 and the Oireachtas Joint Committee on Climate Action 2019. The paper concludes with some policy recommendations, where Ireland has both an opportunity and a responsibility to developing countries to create a sustainable and innovative policy approach which transcends party politics and provides a blueprint for the future.



Introduction

Ireland is a place of exceptional natural and cultural environmental heritage. The past forty years have been successful in environmental terms, with an enormous improvement on the recent past. The global economy has also developed, with trade liberalisation, technology, education and relative peace, which has lifted billions of people out of subsistence-level poverty. However, growing environmental threats to our air, watercourses, climate and finances have emerged, just as the traditional environmental threats of famine, drought, disease and deforestation are decreasing in severity.

Ireland's quick development from an isolated agrarian state into a prosperous globally incorporated service-based economy is an important influence in the development of Eastern European and African economies. Ireland therefore has a duty of care and responsibility to these countries to address some of the disequilibria brought about by economic change and to encourage sustainable development both at home and abroad.

Global responses to climate change as agreed by the international community in Rio de Janeiro, Copenhagen, Kyoto and Paris should be welcomed but their results have been interpreted by some as dubious at best, or at worst as mere semantic exercises. Ireland can become a leader in environmental protection and ultimately in climate change mitigation, but to do so, it must re-imagine

what it is to be a leader. Leadership is not merely being best, but it is acting in an innovative, experimental and results-orientated manner, taking into account the latest science, technology and thought leadership, while shaping the public discourse around the same. The Irish State can show leadership both at home and abroad by engaging and informing the public debate on environmentalism and climate change.

To succeed, Ireland's plans must curb greenhouse gas emissions, while increasing the quality of life. Most importantly, policy makers must not intentionally or unintentionally drive up the cost of living further, something current public policy in this area fails to curtail and which could provoke public backlash against those in charge. It could be argued that the only actual effects of climate change felt thus far have been economic in nature. Proposals such as the lowering of motorway speeds limits to 100km/h, and constraining certain economic sectors like agriculture will do little to appease the general public in the climate change debate.

According to the Environmental Protection Agency, Ireland's main sources of greenhouse gas emissions in Ireland were Agriculture (29%), Transport (21%), Energy (21%), Industry and Commerce (14.8%), Residential (12%) and Waste (2%).¹ While each of these economic sectors should in themselves warrant their own extensive report, a brief alternative viewpoint is discussed in this paper on each sector, in order to draw attention to the wide array of policy options available in the fight against climate change and environmental degradation.

Agriculture: Cut Emissions by Focusing Agriculture on Regional Basis

Agriculture holds a special place in the hearts and minds of the Irish people, a respect that appears disproportionate to its output in the modern Irish economy but fitting for what many regions and counties place at the very centre of their social, cultural and economic life. Given its position as Ireland's number one economic sector in terms of pollution, agriculture has been singled out for criticism by the Oireachtas Joint

Committee on Climate Action. However, possible solutions put forward such as diversification away from beef and dairy can be deemed reactionary on close analysis of the sector in a global context. The associated environmental damage caused by a growing demand for beef and dairy products worldwide can in fact be offset or limited by locating as much of that activity in Ireland - the Irish beef and dairy sectors being among the most sustainable and efficient in the world utilising a grass fed system which acts as a means of carbon sequestration in a country with very low levels of human population density and water stress. Diversification away from beef and dairy products as suggested by the Joint Committee could in fact increase our emissions nationally and globally by forcing us to refocus on less productive and efficient activity for which we have less of a competitive advantage. Any contraction in food production in one region, in order to meet national greenhouse gas emissions reduction targets, may simply displace that production elsewhere to far less efficient regions thereby causing “carbon leakage” and increasing net emissions globally.

“A displacement of 50% of current Irish beef exports to South America would result in a net increase of global emissions by between c. 3.6 Mt CO₂ per annum, equivalent to c. 20% of total current Irish agricultural emissions.”

To illustrate the point, a displacement of 50% of current Irish beef exports to South America would result in a net increase of global emissions by between c. 3.6 Mt CO₂ per annum, equivalent to c. 20% of total current Irish agricultural emissions.² The world’s population is expected to exceed 9 billion people by 2050 with the UN Food and Agriculture Organisation predicting agriculture production increasing by 70% with enormous demand for commodities like beef and dairy from a growing global urban middle class. While Ireland’s contribution to these markets might ultimately be small; for us as a global society to limit the environmental impact of this growth more of this production will have to

be refocused on areas where it is environmentally prudent to do so. Diversification away from beef and dairy as suggested by the Oireachtas Joint Committee on Climate Action appears short sighted in my view.

Complementing this regional efficiency drive in agriculture and utilising the Irish University's research network and specialised research centres like the UCD Earth Institute and the EPA, a climate change research fund should be set up to find commercial means of further lowering greenhouse gases from agriculture in areas where it is most apparent, namely bovine flatulence and diesel emissions from farm machinery, further giving a competitive edge to our agriculture sector vis-a-vis its international competitors. Leadership in beef and dairy production is not without its environmental issue but Ireland has more potential to further make efficiencies and environmental gains in agriculture through further farm consolidation and better management of nitrate pollution in our river basins making it even more competitive from a financial and environmental standpoint. Some of the latest breakthroughs indicate the introduction of a small amount of seaweed to cattle diets can help reduce their methane emissions by 99%.³ Ireland could potentially leverage its grass-based feed system (which already acts as a carbon sink) with its plentiful natural seaweed resources to create a very efficient and low emission national bovine herd, helping in turn to lower emissions globally. This move is in the spirit of cooperation embodied in the Paris Climate Accord but perhaps counters some of its lack of joined-up thinking and inclination towards nationally-based solutions.

Energy; Switch from Energy Mix of Renewables reliant on Fossil Fuels

Ireland's obligations under the 2020 framework made on foot of the 2009 EU Renewable Energy Directive (2009/28/EC) demand that 16% of final energy use come from renewable sources with Ireland facing steep penalties for non-compliance. The current strategy of encouraging renewables namely onshore/offshore wind and in the future solar power and possibly wave and tidal power through generous public subsidies, is a regressive form of taxation on the least well off – with the beneficiaries

being foreign owned manufacturers and operators, whose only economic interest in Ireland is the public subsidies on offer.

Current thinking is far too reliant on renewable energy while ignoring the real risks and ecological damage caused by it. The ecology of the river Shannon, has never recovered from the ambitious Shannon hydroelectric scheme of the 1920s with high mortality levels experienced by juvenile migratory fish species within the dam's turbines which impacts the ecology and biodiversity of the river basin further upstream. The technical limitations imposed by the isolated nature of renewable generation installations including the duplication of grid infrastructure and costs mean that much of the power is lost in transmission losses before its ultimate point of consumption.

These transmission losses are compounded by the requirement of spinning reserve; whereby fossil fuelled installations like coal, oil and gas need to be kept running in the background to provide a baseload for the national grid due to the intermittency of wind and solar power. In theory the intermittent nature of both sources could be smoothed out using pump storage however this is unfortunately limited in Ireland due to our topography.

This means that Ireland, based on current technology, will always have to rely on a hybrid fossil/renewable energy mix. To illustrate the point, the summer of 2018 caused an enormous drop off in wind output almost to the point of zero, creating a gap in the energy mix which had to be filled 90% by natural gas.⁴ The essential problem with our renewable strategy which has again been endorsed by the Oireachtas Joint Committee on Climate Action advocating increased utilisation of wind and solar power is that it completely locks in fossil fuels for the future, merely reducing our usage and not dependence, at an enormous cost to the tax and utility bill payer. Current renewables with the exception of hydropower, where Ireland has long exhausted all industrial level capacity, and which is not without ecological damage, are financially and operationally incapable of providing the required energy baseload at an affordable price to the national grid thereby failing

the #7 UN sustainable development goal⁵ of cheap and sustainable energy.

Hidden costs in the transmission of wind and solar energy with increased maintenance and infrastructure rollout to plug in isolated windfarms, are estimated to cost up to €4 billion, which again will be borne by the bill payer/tax payer.⁶ Some €200 million is through our electricity bills to support renewables and the soon to be phased out peat burning stations amounting to less than €50 per Irish household.⁷ This amount could at best be described as a regressive tax without any cost/benefit analysis, not to mention arguments regarding the visual impact of wind power on our countryside, natural heritage and resistance by local communities.

Energy: The Case for Nuclear Power

For renewables to ever make a viable contribution to the Irish energy mix, policy makers will have to rethink how we provide the energy baseload to support renewables. This calls for a frank reinvestigation and debate of the viability of nuclear power in Ireland which is currently forbidden by the *Electricity Regulation Act (1999)* and which saw successful opposition to proposed reactor construction at Carnsore Point, in Wexford in the late 1970s and later emerged in popular opposition to England's Sellafield reactor in the late 1990s.



In response to the dropping of the Carnsore nuclear project, ESB set about constructing Moneypoint the country's largest coal burning plant, which arguably had a more adverse impact on the environment and on our greenhouse gas emissions than the Carnsore nuclear project ever would have. Moneypoint which produces 21% of the national electricity supply is due to come to end of its operational life by 2025⁸ when it could potentially be replaced by a nuclear installation given its pre-existing on-site and transmission infrastructure, proximity to the Shannon Estuary with its abundant water supply for cooling and location within the

Shannon economic region. The latest nuclear fission generation IV and small modular reactors are proving to be the safest, most efficient and cheapest solution on par with natural gas and can count Bill Gates as an investor and proponent among others.

With the exception of hydropower, nuclear is the only carbon-neutral energy source capable of supporting renewables and decarbonising our national energy grid. France, a major economic, manufacturing and agricultural powerhouse has some of the best air quality and energy security in the EU, thanks in no small part to its utilisation of nuclear energy which supplies France with 75% of its energy needs.⁹ It must also be noted that Ireland is already partly powered by nuclear power by way of electricity interconnectors between Wales and Scotland. In 2016 we sourced 7.6% of our power from the UK mainland.¹⁰ The UK itself is 21% powered by nuclear power (with huge plans to ramp up reactor construction)



and is a net importer of French nuclear power itself,¹¹ Ireland, arguably, is already at least powered by 2% through nuclear energy. Only nuclear power can help Ireland lower its carbon emissions and regressive energy costs, while increasing air quality and energy security. A joint study last year by Harvard and MIT came to the conclusion that realising nuclear energy's potential will be essential to achieving a deeply decarbonised energy future in many regions of the world,¹² while a special United Nations science report—*The Special Report on Global Warming of 1.5°C*—published late last year modelled substantial increases in the rollout of nuclear energy, if we are to meet our international climate targets under the Paris Climate Accord of keeping temperature rises to below 1.5 °C. It is disappointing to see all mention of nuclear power negated by both the Citizen's Assembly and the Oireachtas Joint Committee on Climate Action.

Nuclear energy is enjoying something of a renaissance and growing popular support albeit from a very low base. Leadership by the State through deliberative democracy could be key in unlocking what is always a very emotional and sometimes irrational debate; grassroots advocacy campaigns have had some success of late in national polls and regional referenda in the USA, mainland Europe and Asia. Interestingly pro-nuclear advocates used the emotional arguments based on the environment and climate change to win the argument convincingly. Civil society is slowly awakening to the fact that nuclear power has a serious role to play in the fight against climate change with the 2015 Young European Council recognising its role in decarbonising the European economy. Were California and Germany to invest the \$680 billion they invested into renewables into new nuclear power plants, they would both already be 100% running on clean energy.¹³

With thousands of qualified energy workers at the ESB's coal plant at Moneypoint and Bord Na Mona's peat burning stations in the Midlands facing an uncertain future; now is the time for strategic planning for our clean energy future. At the very least repeal of s.18 of the *Electricity Regulation Act (1999)* pertaining to the prohibition of nuclear energy in Ireland would allow us to engage in a robust conversation on Ireland's future energy mix. If nuclear power were not to be included in our energy mix in the future, we would be wasting our time and resources solving the unsolvable.

Transport

Recommendation: Deal with Diesel

In recognising the fact that Ireland has a small low-density population spread over a large geographic area Ireland does not naturally lend itself to large scale sustainable mass transit system, which is something not rectifiable in the medium term. Irish transport has an environmental problem that can be solved and that is diesel; the issues of which are well publicised. Diesel was the darling fuel of environmentalists only 10 years ago, who embraced its carbon-efficient capabilities, while ignoring some of its more questionable emissions. Calls for a complete ban on the sale of vehicles with diesel combustion engines in

the coming years ignore the fact that diesel power has practical applications, few realistic alternatives outside of the car fleet and was long exploited in agriculture and haulage before the tax induced 'dieselification' of the national car fleet.

Ireland does not have a large industrial base or manufacturing capability in the transport sector, therefore attempts to ban such commercial vehicles would cause undue hardship to hundreds of thousands and would give manufacturers little incentive to invest in alternative powertrains given the relative size of the small Irish market. While carbon taxes certainly have their place within the climate change debate they cannot go without redistribution and welfare measures designed to protect families on lower incomes quartiles. This is especially important given the fact that the Oireachtas Joint Committee on Climate Action has proposed quadrupling the current tax to €80 per ton of carbon emissions by 2030.

While electric vehicle technology is advancing quickly, it has yet to prove itself as a viable alternative to combustion-cycle-powered vehicles both in terms of cost; being priced well above the means of the average car buyer, CO² output and convenience being severely limited in their range and recharging time. The Swedish Transport Authority found that as a result of the carbon intensive nature of their battery manufacturing, electric vehicles actually produce more CO² than an equivalent combustion-cycle-powered vehicle does in the first 8 years of driving.¹⁴ Neither can electric vehicles be said to be carbon-neutral in their operation as they rely on the same coal/gas/renewable powered national grid. Furthermore, surplus demand on the said grid, caused by the mass adoption of electric cars would cause further stress upon it, further increasing its consumption of fossil fuels. Depending on how you measure the national electricity mix, an electric vehicle being charged by the national grid would theoretically be powered 45% by natural gas, 14% coal, 18% wind (installed capacity), 9% peat and 8% by UK mainland sources including nuclear power.¹⁵

222

Questions also hang over the environmental damage caused abroad in the mining of the various heavy

metals (cobalt, lithium, nickel etc.) required for battery manufacturing and especially in their subsequent disposal for which there is no infrastructure. Electric vehicles are in no doubt the future though unless they are powered by a sustainable grid they have few environmental benefits over the combustion engine except removing emissions from urban areas.



Recommendation: Choose High Density versus Low Density Urban Planning

Residential efficiency is of paramount importance and the State's energy efficiency retrofitting program is warranted in achieving the efficiencies required under the 2020 framework as mentioned above. Looking outside of the home itself much of Ireland's residential development has and is continuing to be based on the defunct myth that *the car is king*. Ireland has pursued a low density decentralized urban planning strategy and the results have been adverse in terms of our greenhouse gas emissions and quality of life. Such development has led to an over-reliance on private vehicles which has led Dublin to be the 10th most congested city in the world.¹⁶ This has led to damaging side effects to both the quality of life in the city, the city's CO² footprint and to the cost of living there, as well as increasing the cost of providing public goods like municipal lighting, sewage, water and roads over a geographically large urban area. Large tracts of former port lands in the cities of Dublin, Cork, Limerick, Galway and Waterford should be utilised exclusively for high density urban and commercial development with associated electrified public transport systems, creating affordable, walkable, easy to cycle and environmentally sustainable cities.

Recommendation: Zoning Cities for Residential and Commercial Activity could Reduce Carbon Emissions

Ireland's success in the last 30 years has been marked by its transition from a traditionally agricultural and manufacturing

economy to a service-led economy at breakneck speed. However, in my view, Ireland's planning laws have failed to catch up and adjust to international best practices and trends in real estate. As is evident in most modern, dynamic and thriving cities, commercial activity can sit quiet comfortably and efficiently with both retail and residential activity and is important, as demand for city centre living and workspace is at an all-time high.

Recommendation: In tackling the causes of climate change and environmental degradation Ireland can show leadership by proposing innovative alternatives that both enhance our environment and protect our economy

To conclude, while the fight to curtail climate change to a minimum (ideally at the 2 degrees Celsius as outlined in the Paris Climate Accord) is a valid one, and one of the great challenges of our generation, we recognize that due care must be taken not to encroach on the cost of living and household incomes as much as it has to date. Both financial streams will experience enormous pressure in the coming years as the European social model tries to cope with rapidly changing demographics.

The fight against climate change and for a healthier environment needn't come at the expense of the wider economy. Irish leadership in the climate change debate can articulate an alternative means of decarbonisation and in many ways we are somewhat behind the curve. However, as a matter of intergenerational equity, we owe it to future generations to manage the man-made element of climate change to an absolute minimum by using a calm and collected policy approach where Ireland can take a lead. It is not too late to make a difference.

1. Environmental Protection Agency (2009), 'What Are Ireland's Greenhouse Gas Emissions?' Retrieved from EPA: <http://www.epa.ie/climate/communicatingclimatescience/whatisclimatechange/whatareirelandsgreenhousegasemissionslike/>
2. Teagasc, ed. RPO Schulte and G Lanigan (2011), 'Irish Agriculture, Greenhouse Gas Emissions and Climate Change: Opportunities, Obstacles and Proposed Solutions', Retrieved from Teagasc: https://www.teagasc.ie/media/website/publications/2011/61_ClimateBillSubmission.pdf
3. O'Brien, Tim (2017), 'Seaweed shown to reduce 99% methane from cattle', Irish Times (16 July)
4. O' Halloran, Barry (2018), 'Gas begins flowing through €100m pipeline linking Ireland and Scotland', Irish Times (19 December). Retrieved from Irish Times: <https://www.irishtimes.com/business/energy-and-resources/gas-begins-flowing-through-100m-pipeline-linking-ireland-and-scotland-1.3736137?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Fenergy-and-resources%2Fgas-begins-flowing-through-100m-pipeline-linking-ireland-and-scotland-1.3736137>
5. United Nations (2015), 'About the Sustainable Development Goals'. Retrieved from UN: <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>
6. O'Sullivan, Claire (2014), 'Special Report: A Look at the Wind Energy Debate', Irish Examiner (7 April), Retrieved from Irish Examiner: <http://www.irishexaminer.com/ireland/special-report-a-look-at-the-wind-energy-debate-264502.html>
7. PSO Decision 2018-19. Commission for Regulation of Utilities.
8. Ireland 2050 (2019), 'The Story of Coal in Ireland', Ireland 2050: Understanding Our Energy Choices, Retrieved from <http://ireland2050.ie/past/coal/>
9. World Nuclear Association (2018), 'Nuclear Power in France', Retrieved from: <http://www.world-nuclear.org/information-library/country-profiles/countries-a-f/france.aspx>
10. Ireland 2050 (2019), 'Where Does Ireland Get Its Electricity?', Ireland 2050: Understanding Our Energy Choices, Retrieved from <http://ireland2050.ie/questions/where-does-ireland-get-its-electricity/>
11. Energy UK (2019), 'Energy Industry', Retrieved from <http://www.energy-uk.org.uk/energy-industry/electricity-generation.html>
12. McCaffrey, Francesca (2018), 'MIT Energy Initiative study reports on the future of nuclear energy', MIT, Retrieved from: <http://news.mit.edu/2018/mit-energies-report-future-nuclear-energy-0904>
13. Schellenberger, Michael (2018), 'As Renewables Drive Up Energy Prices, Voters In U.S., Asia & Europe Are Opting For Nuclear Power', Forbes (8 November), Retrieved from Forbes: <https://www.forbes.com/sites/michaelschellenberger/2018/11/08/as-renewables-drive-up-energy-prices-voters-in-u-s-asia-europe-are-opting-for-nuclear-power/#7e9fc7d47646>
14. IVL (2017), 'New report highlights climate footprint of electric car battery production', Retrieved from: <http://www.ivl.se/english/startpage/top-menu/pressroom/press-releases/press-releases---arkiv/2017-06-21-new-report-highlights-climate-footprint-of-electric-car-battery-production.html>
15. Ireland 2050 (2019), 'Where Does Ireland Get Its Electricity?', Ireland 2050: Understanding Our Energy Choices, Retrieved from: <http://ireland2050.ie/questions/where-does-ireland-get-its-electricity/>
16. O'Brien, Tim (2014), 'Dublin is world's 10th most congested city', Irish Times (3 June), Retrieved from Irish Times: <http://www.irishtimes.com/news/environment/dublin-is-world-s-10th-most-congested-city-1.1818738>



Future Challenges for the EU's Ambitions to Become a Global Leader in Technology Regulation.

This paper examines the challenges Ireland and the European Union face in continuing to act as a global standard setter in the areas of privacy and data protection. It will investigate the shift away from a data protection landscape dominated by US actors towards one dominated by the EU. The next section then considers the Union's current regulatory structures for data protection, including the leading role played by Ireland in the current scheme and concludes by considering whether an alternative and centralised, regulatory structure would prove more effective.



Introduction

During the last ten years, the European Union has emerged as a global leader in advocating for privacy and data protection rights in the digital space—a development in which Ireland has played a leading role. However, the assumption of this role by Ireland and the EU, is not without its challenges. The enforcement burden which has fallen on Ireland is significant and although it presents an opportunity for Ireland to position itself at the regulatory frontier within the EU, and indeed globally, there are concerns about the capacity of a single Member State, whose economy is dependent on the technology companies it regulates, to evade regulatory capture.

From the California Effect to the Brussels Effect

The ‘California effect,’ identified by David Vogel in 1999, was initially used to describe the shift in regulatory standards in the United States resulting from California’s adoption of advanced regulatory standards¹ first in environmental policy and, later, in the regulation of digital technologies—with a specific concentration on information privacy.² Perhaps the best example of the California Effect is that state’s data breach notification legislation. The standard enjoyed broad support at a state level and was adopted at a federal level as part of measures applicable to health care information data with the 2009 HITECH Act.³ The Californian legislation also found favour in the EU which created a narrow data breach notification obligation for telecommunications

companies and Internet service providers in 2013⁴ and more recently echoed similar provisions in Articles 33 and 34 GDPR.⁵

The Shift Towards Brussels

Despite California's leading role at the beginning of the century, concerted legislative efforts from the EU have led to a global shift within the last half decade which has seen EU privacy and data protection regulations gain global influence. As a result, from the mid 2000s California's global influence on privacy and data protection standards began to wane even as the EU began to emphasise technology regulation and the rights to privacy and data protection as key concerns of the single market.⁶ While the 1995 Data Protection Directive saw the first hints of this coming influence, the Brussels Effect has become more firmly established with the General Data Protection Regulation (GDPR) whose impact has spread far beyond the traditional scope of influence enjoyed from European initiatives.

Australian lawyer and academic Graham Greenleaf, has estimated that some 120 countries have adopted privacy or data protection laws based on Europe's GDPR.⁷ Indeed, the GDPR's reception beyond the EU is perhaps the most telling indication of Europe's ambitions for a future role as a global leader in standard setting in digital technologies more generally, being reflected both implicitly and explicitly by many of the EU's trading partners following its 2017 implementation deadline.⁸

The impact of this adoption of European standards beyond the borders of the Union has led Jack Goldsmith and Tim Wu to posit that the EU has become 'the effective sovereign' in the area of data protection and privacy as a result of a combination of market power and concern for citizen privacy.⁹ Anu Bradford at Columbia Law School has gone a step further and dubbed this international adoption of and adherence to EU standards the "Brussels Effect."¹⁰

Unlike the processes of political globalisation, in which regulations are adopted after political agreement, or unilateral coercion, or in which regulations are adopted through

the threat or sanctions, Bradford suggests that unilateral regulatory globalization occurs through the operation of market mechanisms.¹¹ In charting the rise of Brussels' influence on the global stage, Bradford contends that the US has underappreciated the ability of Europe to leverage its market size outside its own jurisdiction, and to influence outcomes internationally—the big five technology undertakings, Alphabet, Amazon, Apple, Facebook and Microsoft, make some 25% of their sales in the EU.¹² More recently, in a complementary but distinct argument, Schwartz has noted that European dominance in the area of privacy and data protection is in fact a result of a more diffuse set of cultural processes which influence how the global community views the cultural role of privacy and rights protection.¹³

The Global Reach of EU Standards

Whether or not one believes that European standards should enjoy such broad influence, the result of EU insistence on data protection and privacy measures equivalent to its own post *Schrems* has been that other jurisdictions and corporate actors currently experience a functional incentive to adopt EU standards rather than adapt their business models for different markets and incur varying compliance costs as a result, particularly in light of ongoing uncertainty over the sufficiency of standard contractual clauses.

As a state level, South Korea is considering new privacy rules modelled on the GDPR,¹⁴ while Israel has adopted updated requirements for disclosures of data breaches including elements of the European rules.¹⁵ The most prominent example of European influence is Brazil's newly passed data protection law on which the Brazilian government actively sought advice from Brussels and which closely mirrors the GDPR, including consent requirements for the collection of personal data and special protections for information on political affiliation, religious beliefs, sexual orientation and health.¹⁶ In addition to these adoptions the California Consumer Privacy Act, the first overarching US data protection law at a state level, displays notable similarities with the GDPR.¹⁷

In parallel to adoption by states, the introduction of the GDPR was also accompanied by pre-emptive moves by private actors to adopt GDPR compliant standards across all platforms, not merely those dealing with EU citizen

“South Korea is considering new privacy rules modelled on the GDPR, while Israel has adopted updated requirements for disclosures of data breaches including elements of the European rules”

data. In the immediate run up to the entry into force of the GDPR, Facebook announced it would implement *parts* of the GDPR globally (though subsequent revelations indicate this to have been more a rhetorical than practical commitment),¹⁸ while Microsoft announced it would implement GDPR compliance for its customers in all jurisdictions.¹⁹ Most recently, in March 2019 CEO of Facebook Mark Zuckerberg voiced support for the adoption of stricter privacy laws, modelled on the GDPR, at a federal level in the

United States,²⁰ joining similar calls for the adoption of GDPR modelled federal rules by the CEOs of Apple²¹ and Microsoft²² in 2018.

Europe’s Future as a Global Leader in Tech Regulation

However, in the context of Europe’s apparent ambition to position itself as a regulatory leader on privacy and digital technologies regulation, the Union must go beyond these successes and address both the criticisms and shortcomings levelled at its efforts. The danger of the Brussels Effect, after all, is that Brussels’ mistakes become everyone’s. In this respect, Ireland has a unique potential to influence Europe’s continued success, or failure, in exporting its regulatory standards worldwide and ensuring their application and enforcement at home, as a result of its position as the jurisdiction of enforcement for complaints against several of the world’s leading digital technology actors.

The Regulatory Structure within the EU

At present, each Member State of the Union is governed by a national data protection authority for the purpose of data protection. These authorities operate in co-operation with the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS) at a Union level. The EDPB is an independent body, composed of representatives of the Member States' national data protection authorities, which seeks to ensure the **consistent application of the GDPR and the European Law Enforcement Directive**. The Board can adopt **general guidance** to clarify European data protection laws, and can advise, and make **binding decisions** directed to national supervisory authorities to ensure consistent application.



Separate to the Board, the EDPS acts as the EU's independent data protection authority and has, as its aim, monitoring and ensuring the protection of personal data and privacy when EU institutions and bodies process such information. The Supervisor also advises EU institutions on data protection matters, monitors new technologies and promotes the supervision of co-operation between national supervisory authorities to improve consistency in protecting personal information.

However, under the current regulatory schema national data protection authorities continue to act as the primary enforcers of data protection and privacy regulations. In particular, the provisions of the GDPR²³ provide that the supervisory authority of the jurisdiction in which a controller or processor of personal data has its main establishment shall be the competent authority for enforcement of the GDPR. As Ireland is the jurisdiction in which many of the world's largest digital undertakings have their European headquarters, and their main establishment for the purposes of the Regulation it thus falls to the Irish Data Protection authority to enforce the provisions of the Regulation.

Ireland's Role as a Regulatory within the Union

233

The result is that, at present, a majority of enforcement for the Union as a whole falls to the regulatory body of one Member State. This is both an opportunity and a challenge which requires attention to be afforded to the (i) funding and resources available to regulatory authorities, and (ii) the regulatory capacity and the potential for regulatory capture of regulatory authorities. Partly in order to address these challenges, changes have, and are due to be, made regarding the funding and independence of the Irish Data Protection Commission (DPC) in particular.

Funding and Resources

Until recently the DPC was financially under resourced. As recently as 2014 annual funding of the regulator was €1.9 million and, while total funding of the Commission has increased to a projected €15.2 million in the 2018 budget. It is questionable whether this sum affords the DPC a sufficient “equality of arms” with those companies they seek to regulate.

It also seems likely that there will be an ongoing need for further funding given that the workload of the Commission has yet to plateau—in May 2018 the Commission reported it had received 1,700 complaints and 2,500 breach notifications—figures which represent a doubling in complaints and a tripling in breaches from the previous year.²⁴ Moreover, the costs associated with larger Commission investigations for example the current inquiries into Facebook's use of standard contractual clauses and the controversial Public Services Card are not insignificant.

Regulatory Capture

Former EU Vice-President, Viviane Reding, has stated *‘[t]he independence of national data protection authorities is the very cornerstone of guaranteeing effective data protection rights for our citizens.’* In Ireland, and indeed in Europe more broadly, concerns have been raised in the media concerning the independence of the DPC and the Irish government from the technology companies located in the jurisdiction.²⁵ Concerns regarding the DPC's independence have to date

been based largely on the mechanism for the appointment of the Data Protection Commissioner which fell under the remit of the Department of the Taoiseach. However, to assuage concerns in this regard s.15 of the Data Protection Act 2018, now provides for the appointment of a three person panel of Commissioners based on the independent recommendation of the Public Appointments Service.

Capacity Building

The need for independence and regulatory capacity at a national level is particularly acute given the requirement for independence provided in Articles 51 and 52 GDPR. Moreover, while at a European level, both the European Data Protection Supervisor is independent, neither the European Data Protection Supervisor nor the European Data Protection Board enjoy powers to initiate investigations. While the Board does have the capacity to make **binding decisions** directed to national supervisory authorities there are currently no binding decisions listed on its website and it is unclear what criteria would be considered necessary for such a decision to be made.²⁶ As a result, regulatory capacity and independence at a national level remains critical.

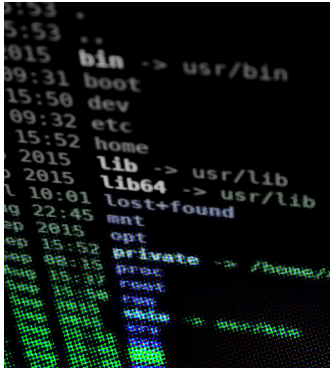
A New Model for Enforcement?

The enforcement requirements placed on the Irish regulatory authorities (and indeed the regulatory body of any Member State where a large proportion of undertakings were headquartered) in acting as the *de facto* regulator for European data protection more broadly require a reassessment of how enforcement burdens are apportioned within the Union if the EU is to practice the level of regulatory leadership it preaches.

At a European level the EDPB, while it enjoys relatively broad powers, does not have the capacity to instigate independent investigations nor does it have traditional enforcement powers. Similarly, the European Commission does not enjoy powers of enforcement in respect of the Union's data protection and privacy measures. While Commissioner for DG Justice and Consumers Vera Jourova²⁷ and the Director General of DG CONNECT Robert Viola²⁸ have both

been vocal on the need to hold technology actors to account, the means of doing so are currently dispersed among Member State and European bodies. As a result, they draw variously on the frameworks established within the Union for data protection enforcement, competition and interoperability of services.

In this context it is practical to consider whether there is an alternative, future model for the enforcement of digital technologies regulations within the EU.



In this respect a lesson may be drawn from perhaps the most enduring, and most successful, (though still controversial) area of regulation within the Union, namely the regulation of anti-competitive practices, governed by Regulations 139/2004 and 1/2003 in combination with Articles 101 to 109 and Protocol No. 27 TFEU.²⁹

The responsibility for enforcing competition law lies with the European Commission under Article 105 TFEU.³⁰ Alongside the Commission, national competition authorities have broad investigatory powers under the Article. The resulting dual enforcement power on the part of the Commission and national authorities has been effective in combatting anticompetitive practices and has reduced the enforcement burden on individual Member States while simultaneously obviating incidents of conflicting decisions³¹ at national level and attempts by undertakings to engage in jurisdictional arbitrage—locating their operations in jurisdictions where they are less likely to face strict or proactive regulatory enforcement.³²

The competition enforcement framework is not without criticism. However, the Commission's ability to instigate an investigation on its own initiative as well as following a reference from a national authority has proved effective, with the EU acknowledged globally as a strong and effective regulator in competition policy.³³ As the EU seeks to establish itself as

a similarly effective regulator in the digital sphere an equally effective model is needed. The competition model may be utile given the similarly influential actors which both regulatory regimes seek to restrain as well as the agglomeration of legal standards and consumer protection matters implicated.

Conclusion

A regulatory model for privacy and data protection which borrowed from the competition model employed by the EU could resolve some of the more entrenched issues raised by Europe's current regulatory model. A central authority acting in co-operation with national authorities but which itself enjoyed independent investigatory and enforcement powers would redress concerns with regulatory capture as well as inconsistent or selective investigation and sanctions by Member States.

More problematic, and less easily resolved, is the reality that the rise of the Brussel's Effect means that shortcomings which might arise in Europe's regulatory regime become globalised. The current European approach is far from perfect—as acknowledged by the attempts to hasten the passage of the e-Privacy Regulation to complement the aims of the GDPR as well as by the criticisms that the Union failed to appreciate the disproportionate burden the GDPR would place on small and medium sized businesses—an impact easily absorbed by large undertakings as a result of their ability to harness economies of scale.

Additionally, the complex layering of Directives and Regulations over national constitutional and legislative mechanisms produces a regulatory landscape which is unique and may be neither appealing nor available to other jurisdictions. The EU's vision is for a regulatory landscape in which legislative provisions, judicial decisions and fundamental rights guarantees interlock to produce a comprehensive regulatory system. While this may be enviable, attempts to emulate such a complex model absent the institutional will and resources required to support it may prove damaging rather than desirable—producing a regulatory landscape which is fractured, unnecessarily

burdensome due to duplication of guarantees and ineffective.

As a consequence, there are issues which the EU, and Ireland in particular, must address in order to forge a practically effective regulatory approach to privacy and data protection. But this internal necessity for clarification and reform must invariably sit alongside a requirement to understand the Brussels Effect and its influence beyond the borders of Europe. Although the Union would hardly be advised to shape its policies based on how they will be used or adapted elsewhere, it should be alive to the danger of exporting its approach – and any mistakes that might accompany it.

Endnotes

1. David Vogel, *Environmental Regulation and Economic Integration*, Yale Centre for Environmental Law and Policy (1999) https://www.iatp.org/files/Environmental_Regulation_and_Economic_Integrat.pdf
2. In this respect it is notable that other states, including Montana have also begun to develop more innovative regulatory approaches, to digital technologies in particular. On Montana's historical commitment to privacy rights see, Larry M Elison and Dennic Nettik Simmons, 'Right of Privacy' (1987) 48(2) *Montana Law Review* 1 and 'Toward a Historic Understanding of Montana's Privacy Provision' (1998) 61(5) *Albany Law Review* 1681. It is notably however that, these protections appear significant relative to the baseline standard in United States where privacy and data protection law and policy had been deployed on a sectoral basis which has produced an often fractured landscape of protection. See generally, Chris Hoofnagle 'Comparative Study On Different Approaches To New Privacy Challenges, In Particular In The Light Of Technological Developments' European Commission (May 2010) at http://ec.europa.eu/justice/data-protection/document/studies/files/new_privacy_challenges/final_report_country_report_b1_usa.pdf.
3. *The Health Information Technology for Economic and Clinical Health Act* 2009.
4. Regulation 611/2013/EC and Directive 2009/136/EC.
5. Regulation 679/2016/EC.
6. See for example, Directorate-General for Communications, Networks, Content and Technology, 'Strategic Plan 2016-2020' 3 June 2016.
7. Graham Greenleaf, 'European data privacy standards implemented in laws outside Europe,' (2017) *Privacy Law & Business International Report* 21. See also, IAPP Privacy Tracker series, www.iapp.org/resources/article/the-eu-general-data-protection-regulation/.
8. Not least as a result of the perception that such mirroring is more likely to generate a favourable outcome in any adequacy decisions made by the Union. See, European Commission Press Release, 'The European Union and Japan agreed to create the world's largest area of safe data flows' (17 July 2018).
9. Tim Wu and Jack Goldsmith, *Who Controls the Internet?: Illusions of a Borderless World* (Oxford University Press 2006), 176.
10. See, Anu Bradford, *The Brussels Effect* (2012) 107 *North-Western University Law Review* 1. See generally, 'Why the whole world feels the 'Brussels effect'' *The Financial Times* (16 November 2017); Daniel Michaels, *Hot US Import: European Regulations*, *The Wall Street Journal* (7 May 2018); Adam Santariano, 'GDPR A New Privacy Law Makes Europe World's Leading Tech Watchdog,' *The New York Times* (24 May 2018).
11. Anu Bradford, 'The Brussels Effect and the International Order,' *Columbia Law School*, at www.law.columbia.edu/news/2017/10/end-of-the-world-podcast-brussels-effect.
12. 'Why big tech should fear Europe' *The Economist* 23rd March 2019.
13. Paul M Schwartz, 'Global Data Privacy: The EU Way' (2019) 94 *NYU Law Review*.
14. 'Matchup: GDPR and South Korea's Personal Information Protection' IAPP (8 January 2018) <https://iapp.org/news/a/matchup-gdpr-and-south-koreas-personal-information-protection-act/>.
15. Yoheved Novogroder-Shoshanand Netanella Treistman 'GDPR and Israeli Privacy Law – Key Differences' *Lexology* (25 April 2018).
16. Renato Leite Monteiro, 'The new Brazilian Data Protection Law – a detailed analysis' IAPP (15 August 2018).
17. For a side by side analysis of the GDPR and the Californian Consumer Privacy Act see, Lydia de la Torre 'GDPR Matchup: The California Consumer Privacy Act 2018', July 31 2018 <https://iapp.org/news/a/matchup-gdpr-and-california-consumer-privacy-act-2018/>.

- org/news/a/gdpr-matchup-california-consumer-privacy-act/; James Clark and Jim Halpert, 'California's Consumer Privacy Act and the GDPR- where do they overlap' (2018) 18(7) *Privacy and Data Protection* 7.
18. Julia Fioretti, 'Facebook to hand privacy controls to users ahead of EU law' *Reuters* (23 January 2018).
 19. Julie Brit, 'Microsoft's commitment to GDPR, privacy and putting customers in control of their own data' *Microsoft* (21 May 2018) <https://blogs.microsoft.com/on-the-issues/2018/05/21/microsofts-commitment-to-gdpr-privacy-and-putting-customers-in-control-of-their-own-data/>.
 20. Mark Zuckerberg, 'Four Ideas to Regulate the Internet' <https://newsroom.fb.com/news/2019/03/four-ideas-regulate-internet/>
 21. Elizabeth Schulze, 'Microsoft CEO Satya Nadella: Tech Companies need to defend privacy as human right' *CNBC* 1st November 2018.
 22. 'Tim Cook calls for US Federal privacy law to tackle weaponized personal data' *The Guardian* 24th October 2018.
 23. In particular, see Recitals 36, 117 and Articles 4(16), 54, 55 and 56 GDPR.
 24. *Ibid.*
 25. Laura Kayali and Nicholas Vinocur, 'When Ireland did Facebook's work on e-Privacy' *POLITICO* 21 March 2019.
 26. EDPB, 'Binding Decisions' https://edpb.europa.eu/our-work-tools/consistency-findings/binding-decisions_en
 27. See, DG Justice and Consumers, 'Strategic Plan 2016-2020' at https://ec.europa.eu/info/publications/strategic-plans-2016-2020_en.
 28. See, https://ec.europa.eu/digital-single-market/roberto-violas_blog and, on DG Connect more generally, DG Connect, 'Strategic Plan 2016-2020' at https://ec.europa.eu/info/publications/strategic-plan-2016-2020-communications-networks-content-and-technology_en.
 29. See generally, Paul Craig and Grainne De Burca, *EU Law: Text, Cases, and Materials* (6th edn edn, Oxford University Press 2015).
 30. See generally, Craig and De Burca at p.1048 -1052.
 31. In accordance with Article 13 and Article 16(2) Regulation 1/2003.
 32. Though it should be noted that the Commission continues to identify some continuing conflicts between different national procedures and sanctions, see, European Commission 'Ten years of antitrust enforcement under Regulation 1/2003: Achievements and Future Perspectives,' (2014) 453; European Commission, 'Report on the functioning of Regulation 1/2003' (2009) 206.
 33. It is worth noting the data protection in particular has been increasingly viewed through a competition law lens by academics, perhaps heralding a more competition orientated approach emerging in the future, see Angela Daly, *Private Power, Online Information Flows and EU Law, Mind the Gap*, vol 15 (*Hart Studies in Competition Law*, Hart 2016); Francisco Costa-Cabari and Orla Lynskey, 'Family ties: the intersection between data protection and competition in EU law' (2017) 54 *Common Market Law Review* 11.





**“The focus is
to recognise that
climate action
does not have to
result in economic
pain or community
breakdown”**







Creating effective integration and inclusion policies

This policy brief will consider economic and demographic projections for the European Union in the coming decades. It will then consider the benefits to both origin and destination countries of programs that provide structure for training of prospective migrants. It will also consider social science research on perceptions of migration and cultural difference; this research should inform policy makers on the difficulties in designing programs that promote integration effectively. With the focus on the skill shortages arising from demographic change, it will focus exclusively on external migration, rather than migration within the Union itself. It is in this context that this policy brief will add to the case for more effective integration policies.



Introduction

Europe is shrinking, in both relative and absolute terms. The population of the Continent as a whole, and of the European Union within that, will decrease over the coming century, even as the global population continues to rise. The EU's share of the global economy will also shrink, with projections of a reduction from 15% at present to 9% by 2050. At a global level, this shift indicates a growing middle-class; for example, the total output of India is projected to surpass that of the EU in that period, and more immediately, the proportion of the population in India living in extreme poverty expected to fall below 3% this year. The economic trend is mostly positive at a global level, but if Europe is in decline and losing in its competitiveness with other regions, can that lead to an even greater risk a populist political backlash?

The twenty-first century can also be seen as a century of migration; even if the rates of migration stay steady, the increasing world population will mean greater numbers on the move. This must be recognised as a challenge and reality of a growing world population, just as the world will similarly face challenges in managing resources and combatting the effects of global warming with greater numbers.

considering these long-term trends. However, it is not simply enough to promote immigration as inevitable or necessary to satisfy economic or demographic concerns; that can lead to a reaction against it from those who fear that the nature of the home and the national culture and identity is changing. There will be an increased degree of heterogeneity in the cultures of European countries. Populist politicians have grasped the opportunity of these changes in population and flow of migration; policy analysts hoping to influence those in the political centre should engage with the evidence and focus on ensuring the best outcomes given the longer-term trends. Therefore, they must both present a positive case for migration in their rhetoric and design employment and integration programs that focus on the long-term population and employment changes.

Demographic change and relative economic strength of Europe

The statistician Hans Rosling noted shortly before his death, “Most business and political structures in Western Europe and North America have great difficulty handling the fact that they will be a tiny minority of mankind”.¹ According to the 2017 UN World Population Prospects figures, the EU-27 now has 5.8% of total world population (443 million in a world population of 7550 million). This share of global population is projected to decline over the course of the twenty-first century, with European population declining as global population increases. The study projects a proportion in 2050 for EU-27 countries of 4.3% of world population (427 million in a world population of 9.771 billion), and a proportion in 2100 of 3.4% of world population (381 million in a world population of 11.184 billion).²

Over the course of the twenty-first century, the EU-27 as a whole is projected to decline by 14%, but the demographic trends vary significantly by region: the population of the former communist member states is projected to fall by 38%, southern members states are projected to fall by 22%, Austria and Germany are projected to fall by 13%, whereas northern and western member states projected to rise by 15%. Where the population of Poland is projected to decline by 44% over the

course of the century, the population of Sweden is projected to rise by 35%. These differences mean that programmes that promote inward migration will need to be tailored towards skills shortages in sectors of these regions.

In a report by PwC, the global share of GDP from the EU was projected to fall from 15% in 2015 to 9% in 2050, with both the EU and the United States overtaken by India.³ The economic growth in India and China has lifted millions out of extreme poverty. However, it poses a challenge to the EU to stay competitive.

The Treaties of the European Union require the elimination of barriers to the free movement of goods, person, services and capital within the single market, recognising the benefits to all member states of competition in a diverse market. Through its external trade policy, the EU extends this principle, under agreed frameworks of free trade agreements, but rarely do these agreements include provisions on immigration. Clemens has found that restrictive nature of the “everything but labour” approach has failed to bring about general convergence, while estimating that the “gains to eliminating [barriers on immigration] amount to large fractions of world GDP—one or two orders of magnitude larger than the gains from dropping all remaining restrictions on international flows of goods and capital”.⁴ The EU itself would stand to gain significantly were it to take the lead in this. Clemens concluded a study on the global economic benefit of increased immigration with a plea that “it should be a priority of economic research to seek a better characterization of the gains to global labour mobility and to investigate policy instruments to realize a portion of those gains.”⁵



To maintain a position in a changing world, the EU will need to be open to flow of migration and the skills such people will provide to the economies of the Member States. Kerr and Kerr (2011) observe that

“while many observers conclude that immigrants cannot fully rectify these fiscal and ageing imbalances, it is clear that immigration will grow in importance for Europe over the next 50 years.”⁶ The European Commission recognises the fact that migration will continue, therefore, there is a need to be prepared for this continuing trend. In its Action Plan on the Integration of Third-country Nationals (2016) it noted, “Human mobility, in varying degrees and for a variety of different reasons, will be an inherent feature of the twenty-first century for Europe as well as globally, meaning the EU not only needs to step up gear when it comes to managing migration flows, but also when it comes to its integration policies for third-country nationals.”

Social attitudes

However, while there is a strong demographic case for increasing rates of migration, the political message cannot be formed around the demographic argument. To do so would risk contributing to the narrative of replacement used by those who argue most strongly against immigration; for one, Polokow-Suransky considers the effect this has had on discourse in France, from Renaud Camus’s writings on the great replacement to Marine Le Pen using it in her rhetoric against the EU.⁷ The fear is succinctly described by the French Republican Julian Aubert, saying that the driving force of the support for the National Rally is those who say, ‘we are declining, and we do not want to decline.’⁸

Policy-makers need not be reminded of the social and political tension this has caused; EU politics in recent years has been beset by difficulties in the reaction to migration. But it is not enough to be reactive; they must also plan for and anticipate this change. Palacio recently wrote that this is not something that the EU can “muddle through” or else it will continue to fester, “eating away at the Union’s foundations.”⁹ It is also an approach consistent with the report of United Nations Secretary General Antonio Guterres on improving the systems of migrations.

Europe is the continent where there is the least support for immigration, although there is significant regional variation

within the continent, with the larger population of Russia and the United Kingdom skewing the overall figure. In a 2015 Gallup survey for the International Organisation for Migration, 52% of Europeans surveyed thought the level of immigration in their country should be decreased, as against 34% with the same response in countries across the world. Majorities in southern European countries would like to see a decrease in immigration, with 84% of those in Greece, 74% of those asked in Malta, 67% in Italy and 56% in Spain. These figures arise in the context of the burden that has been placed on countries in Southern Europe as the country of first entry for large numbers of crossing the Mediterranean this decade.

Where integration and inclusion are not successful, it can cause resentment in both the new communities and the native population, which can lead in turn to support populist nationalism on the one hand or Islamic radicalisation on the other. The former can be tracked in the rise in support for populist parties in national elections in recent years.

The radicalisation of young Muslims is not uniform across Europe; it cannot therefore be ascribed to facets of the religion alone, and can be attributed to poor approaches to inclusion. Daniel Byman cautions the importance of effective integration of the refugees who left Syria fleeing the war there, ‘In addition, many European Muslims are alienated from their governments and societies, believing that as Muslims they never truly will, or should, belong. If the refugees are treated as a short-term humanitarian problem rather than as a long-term integration challenge, then we are likely to see this problem worsen.’¹⁰ To cite a participant at a recent Forum of the Migration Policy Institute: “We have to explain that the cost of integration is less than the cost of non-integration.”¹¹

In response to the effect and impact on the labour market of both globalisation and mechanisation, government programmes may be needed to assist those most affected and in need of retraining. Krugman has argued that support for a social safety net is an argument against open borders, looking to the New Deal period in US

history, ‘absent [restrictions on immigration], there would have been many claims, justified or not, about people flocking to America to take advantage of welfare programmes.’¹² But policy should be based on facts, rather than claims that the author concedes may not in fact be justified. Parties with conservative positions on welfare and redistribution but restrictive views on immigration have indeed won support from voters who had previously supported social democratic parties. This is not simply because these voters have put a greater priority on restricting immigration, but that migration itself affects popular support for redistributive social programmes. However, these views are shaped by inaccurate understandings of the true levels of migration, and of its impact on state resources.

“We have to explain that the cost of integration is less than the cost of non-integration.”

A recent study, analysed the perceptions of immigration and attitudes towards redistribution in France, Germany, Italy, Sweden, the United Kingdom, and the United States.¹³ In each of these six countries, respondents considerably overestimated the share of immigrants in the population, sometimes by as much as three times the actual proportion. Immigrants were perceived to be poorer, less educated, and more likely to be unemployed than the actual statistics in each country.

These misperceptions about immigration in turn affected political attitudes beyond the question of migration itself. Respondents who were first asked questions about immigration were more averse to redistribution in general, either by the state or through charity, even where this redistribution was not tied to assisting migrants. Porter and Russell queried in response to this study, “If immigration from the South continues apace, will support for the liberal market democracies with robust social safety nets, which have prevailed in northern countries since the middle of the twentieth century, hold in the twenty-first?”¹⁴ The increased salience of immigration as a political issue means that that measures should be taken to ensure that these misperceptions are not what erodes public

confidence in social programmes. Governments should also avoid a vicious cycle where reductions in spending reduce the state resources to make integration work.

This research contributes to explanations for the rise of nationalism and populism across many countries and should guide EU policy. A fact-based policy response to this should not be, as Krugman suggested, to concede to restrictions of immigration without good reason, but to use EU resources to shift these perceptions. There is then a need for the EU to provide tools and research to Member States to combat myths with facts. It has been argued that “ethnic diversity at the metropolitan level was related to greater prejudice, but if examined at the neighbourhood level...ethnic diversity predicted lower prejudice levels.”¹⁵ While this research was based in Canada and the United States, the similarity between various EU states and the US in the other research¹⁶ suggests that similar conclusions would be found in the EU. This work suggests that to combat prejudice, policy makers should prioritise measures that promote inclusion and integration.



The Financial Inclusion of Refugees

Batsaikhan, Darvas and Raposo make eighteen proposals which address the needs of both migrant and receiving states.¹⁷ The first of these is to address negative perceptions of migrants. Government policy-makers should certainly bear the significant discrepancy between the reality of migration and the public perception in crafting decisions and responding to public demands. A better solution to direct messaging, and one that would have a direct and immediate effect on immigrants' well-being is financial inclusion.

One measure in the study by Alesina et al. found that presenting respondents with stories of hard-working immigrants reduced their resistance to redistribution.¹⁸ While member states might fund specific programmes advertising the work of specific immigrants, this could not be done on a sustained basis to affect change in public perception. It could also risk feeding a narrative of a hard-working deserving immigrant, with members of the public continuing to hold a perception that many immigrants do not fall within such a description. Dempster and Hargrave discuss a range of approaches to enhancing public perceptions about the lives and contributions of immigrants. They find that overemphasising the role of migrants as role models could create an unrealistic expectation of a good immigrant and the contribution they can make, and that “if not considered carefully, strategies risk undermining efforts to move public attitudes in a more positive direction.”¹⁹ They further found that there can be a mistrust around government figures in a myth-busting model on immigration and that campaigns celebrating diversity can cause a backlash. Therefore, government efforts should focus more on initiatives that will directly assist in inclusion and meaningful contact between immigrants and host-country nationals. Dempster and Hargrave draw on contact theory and cite a review of 515 studies that found that intergroup contact reduces prejudice, regardless of the form of contact. This could be done by ensuring that training programmes for migrants and refugees are fully integrating into equivalent programmes in destination countries. Governments can employ simple measures to rethink their approaches. For example, in Ireland the minister of state for integration and immigration is a junior minister at the Department of Justice and Equality; if the role were perhaps a shared one across the Departments of Employment Affairs and Social Protection, and of Foreign Affairs and Trade, it could better design initiatives to integrate populations.

Strategic linking of migration to skills shortages

A concern about promoting immigration into Europe is that it could create a skills shortage in developing countries often characterised as a brain drain. However, the countries that

suffer most through a loss of skills are more likely to have deeper structural issues; for example, *The Economist* highlighted the case of Venezuela, which is experiencing an increasing poverty rate and an exodus of skilled workers, ‘It is precisely the country’s dysfunction and economic collapse that has driven its people abroad, among them around a third of its doctors [...] there is little sense that anything would improve if more people stayed.’²⁰

The very fact that so many developing countries have programmes to encourage highly skilled workers to emigrate suggests that their governments believe the benefits outweigh the costs. Legrain cites the instances of China, Cuba, India, the Philippines, Sri Lanka and Vietnam as countries with such programmes.²¹ The benefits of skilled workers migrating can be seen in direct remittances, in investment by the diaspora and the increased skills of those who return. Increased migration will also lead to an increase in remittances. There is an instinct in host countries to view remittances as a negative, focusing on the money leaving the country. However, just as development aid should be positive for both countries, creating a wider market and increasing stability, remittances do the same, and often in a more targeted way. Encouraging remittances also addresses the problems with the diminution of human capital in countries with high levels of emigration.²² The UN Sustainable Developments Goals, at Number 10 Reduced Inequalities, aims to reduce to less than 3% the transaction costs of migrant remittances, where they now stand at 7%.²³ Legrain also pinpoints the role of expatriates in promoting trade as central to the growth of India’s IT sector.²⁴

The Root Causes of Migration

On multiple occasions, the EU has linked aid or trade with irregular migration: the Cotonou Agreement signed in 2000 between the EU and the African, Caribbean and Pacific Group of States has as its first goal of its Preamble, “to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the

world economy” and includes a section on migration in Article 13; in 2002, the European Commission indicated that its “development policy aims at tackling the root causes of illegal immigration by supporting sustainable growth and development and reducing poverty”,²⁵ and as recently as in 2016, in launching a new Migration Partnership Framework, the Commission included in its actions, “Address the root causes of irregular migration and force displacement by supporting partner countries in their political, social and economic development”.²⁶ In the short term, economic development does not lead to lower numbers seeking to migrate

“The risk of viewing economic development as a means to stem the flow of immigration is that it can increase the tensions they are seeking to address by implying that migration is a symptom of economic failure.”

to more prosperous regions. In fact, the “process of social and economic development in its broadest sense tends to be associated with generally higher levels of mobility and more migration at least in the short to medium term.”²⁷ While the 2002 report does acknowledge that development can lead to an increase in migration, it is arguably misguided to consider aid and trade in the context of seeking to reduce migration. As immigration has increased in salience in European politics,

it risks progress on a renewal of the commitments in the Cotonou Agreement, as the EU intends to condition “future aid and financial investment on African countries doing far more to control their borders”.²⁸ The risk of viewing economic development as a means to stem the flow of immigration is that it can increase the tensions they are seeking to address by “implying that migration is a symptom of economic failure.”²⁹

Towards a Global Skills Partnership

The fact that in the short term, an increase in development will lead to an increase in emigration, both regular and irregular, means that EU engagement in developing countries is being assessed poorly if reducing migration is considered part of

the goal. However, “notwithstanding the possible gains of issue linkage, EU trade and migration policies have remained largely dissociated from each other”.³⁰ Despite statements about migration in trade agreements, they have not been linked in any strategic and focused way. The Union should then consider adopting structured programmes such as a global skill partnership (GSP) as proposed by Michael Clemens. His study addressed the global shortage in healthcare and proposed a bilateral public-private partnership.

While Clemens’s model considered a single European country working with a single African country, it could be expanded to include more countries on either end; indeed, that might be necessary given the reduced level of economic resources in certain Member States. The GSP proposed considered that nursing services are worth 5 to 8 times as much in Western Europe as in Africa, while the cost of training a nurse is similarly 5 to 8 times more in Western Europe as in Africa. A GSP would include a pre-migration agreement between two countries that those who benefit from the scheme would be granted a visa. Nurses would be trained in Tunisia by Germany under two tracks, a home track and an away track. Germany would benefit by having workers for an occupation currently experiencing shortages, at a fraction of the cost of training a nurse in Germany; Tunisia would benefit from the advanced training of those in the home track. The two tracks could clearly be differentiated through intensive language training in the away track. Developing countries participating in the programmes could cap the numbers in the away track to a level that fit its own sectoral requirements. The advanced training received would improve the prospects and opportunities within the home country. Any programme would need to be tailored to the circumstances, but would be a smarter way of linking the goals of economic development and structuring the flow of migration to destination countries. The structure should engage with the specific economic needs of regions across the Union, aiming to counter a perception that flows of migration are uncontrolled, even as it accommodates greater numbers of immigrants.

Conclusion

265

This examination of creating effective integration and inclusion policies has outlined some of the challenges the EU faces in integrating migrant populations against significant demographic changes. Politics in Europe in the 2010s has made it evident that the current approach is not working. Member State Governments, with the assistance of the European Commission, should create programmes where migration can happen in structured ways and that meet the needs of economies, while designing integration programmes that guard against resentment building in either destination populations or the communities of settled migrants.

William Quill is a barrister specialising in asylum and immigration and in administrative law.

Endnotes

1. H. Farmbrough, 'Hans Rosling On Why Rich Countries Need to Tackle Climate Change Differently' (31 December 2017)Forbes,[<https://www.forbes.com/sites/heatherfarmbrough/2017/12/31/hans-rosling-on-why-rich-countries-need-to-tackle-climate-change-differently/>]. Although Rosling's comments refer to Europe and North America, the decline is concentrated in Europe, as the population of North America is in fact projected to increase by 38%; however, the rate of growth in North America is slow in comparison with other areas of the globe.
2. United Nations Department of Economic and Social Affairs, World Population Prospects: Key findings and advance tables (2017 Revision).
3. 'The World in 2050: The Long View How will the global economic order change by 2050?' (2017) PwC, p. 4.
4. Clemens, 'The Biggest Idea in Development That No One Really Tried' (2011) Annual Proceedings of the Wealth and Well-Being of Nations 26; Clemens, 'Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?' (2011) 25 JEP 83.
5. (2011) 25 JEP 83, at 101.
6. Kerr and Kerr, Economic Impact of Immigration: A survey (2011) NBER Working Paper Series.
7. Polakow-Suransky, Go Back to Where You Came From: The backlash against immigration and the fate of western democracy (Hurst Publishers, 2017), pp. 142–151.
8. Ibid., p.157
9. Palacio, Confronting the Migrant Threat to the EU (22 June 2018), Project Syndicate [<https://www.project-syndicate.org/commentary/europe-migration-response-disembarkation-platforms-by-ana-palacio-2018-06>].
10. Byman, 'Do Syrian Refugees Pose a Terrorism Threat?' (25 October 2015) Lawfare [<https://www.lawfareblog.com/do-syrian-refugees-pose-terrorism-threat>].
11. Benton and Embiricos, Doing More with Less: A New Toolkit for Integration Policy (Jan 2019) Migration Policy Institute.
12. Krugman, 'Suffer Little Children' (20 November 2014), The New York Times [<https://www.nytimes.com/2014/11/21/opinion/paul-krugman-immigration-children.html>].
13. Alesina, Miano and Stantcheva, Immigration and Redistribution (2018) NBER Working paper.
14. Porter and Russell, 'Migrants Are on the Rise Around the World, and Myths About Them Are Shaping Attitudes' (20 June 2018) The New York Times.
15. Craig, Rucker and Richeson, 'The Pitfalls and Promise of Increasing Racial Diversity: Threat, Contact and Race Relations in the 21st Century' (2018) 27 Current Directions in Psychological Science 188, at 189.
16. Alesina, Miano and Stantcheva, Immigration and Redistribution (2018) NBER Working paper
17. Batsaikhan, Darvas and Raposo, People on the Move: Migration and Mobility in the European Union (2018), Bruegel.
18. Ibid.
19. Dempster and Hargrave, 'Understanding public attitudes towards refugees and migrants' (2017) Chatham House Working Paper 512.
20. 'What educated people from poor countries make of the "brain drain" argument' (27 August 2018) The Economist [<https://www.economist.com/open-future/2018/08/27/what-educated-people-from-poor-countries-make-of-the-brain-drain-argument>].
21. P. Legrain, Immigrants: Your Country Needs Them (Abacus, 2009), p. 177.
22. 'Remittances – an untapped engine for sustainable devel-

- opment', United Nations Department of Economic and Social Affairs [<https://www.un.org/development/desa/en/news/population/remittances-engine-for-sustdev.html>].
23. International Organisation for Migration, *Global Migration Indicators 2018*, at 26.
 24. Legrain (2009), at 184.
 25. European Commission, 'Communication from The Commission to the Council and the European Parliament Integrating Migration Issues in the European Union's Relations with Third Countries' (3 December 2002).
 26. European Commission, 'Commission announces New Migration Partnership Framework: reinforced cooperation with third countries to better manage migration' (7 June 2016).
 27. H. de Haas, 'Turning the Tide? Why development will not stop migration' (2007) *Development and Change* 38(5).
 28. Fox, 'Impasse on migration clouds EU-Africa relations' [<https://www.euractiv.com/section/development-policy/news/impasse-on-migration-clouds-eu-africa-relations/>].
 29. Stevens, 'Development Aid Alone Won't Reduce Migration' United Nations University Migration Network (14 July 2014) [<https://migration.unu.edu/publications/blogs/development-aid-alone-wont-reduce-migration.html>].
 30. Jurje and Lavenex, 'Trade Agreements as Venues for "Market Power Europe"? The Case of Immigration Policy' (2014) 52 *JCMS* 320, at 333.

EMERGING

VOICES

Arum elit, si odiassita perovit reris sus dolut re nam eum
faciis ma volupta quisil is estium aut repudi cuscimi,
consent ionsequo quo etur re sin connimint mi, to ve-
niatur? Quis acipsam facepel lanihillam et que con porio.
Em qui connihitatem et lab id ma dollabo rerehent et
aliquis sunt inctis doluptate prent ut ero idempor iones-
tis ipis utem aut rem harcil mo ditatius dolores tempos
ne quam que mi, sinctati to tem dolo officabo. Nam, con
nullessi non perspero occaeces et, si desent.



Future of the **EU27**

