

Weighing up Alternative Arrangements to the Backstop:

A framework for analysis

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This overview provides a model of border management based on three 'cornerstones'. It is intended to offer a framework for understanding the ways in which the backstop and alternative arrangements would work. In addition, it includes an overview of the ways in which technology can help in customs facilitation. It also offers an explanation as to why the social environment must be taken into account. It concludes with matrixes outlining key considerations when implementing any border 'solution'. This paper is not intended to address the specific complexities of the case of the Irish border but merely to offer broad guidelines for the viability of any proposed border management system or part thereof.

1. The backstop

- 1.1. The 'backstop' that is part of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement (25 November 2018) has its origins in the UK-EU Joint Report of 8 December 2017.
- 1.2. The UK government committed in that report to: protect north/south cooperation; uphold the 1998 Agreement in all its parts; and 'avoid a hard border including physical infrastructure and related checks and controls'.
- 1.3. The Report envisaged three means of meeting this objective: (i) through the future UK-EU relationship, (ii) through specific solutions for Northern Ireland, or (iii) through full alignment with the rules of the single market and customs union.
- 1.4. The Preamble to the Protocol notes that *the backstop is conceived under the third of these scenarios*. This is because, firstly, the future UK-EU relationship can only be negotiated after Brexit. It is also because, secondly, some strong concerns have been expressed, particularly from among unionists, regarding 'Northern Ireland-specific' arrangements.
- 1.5. The Protocol preamble states that 'The Withdrawal Agreement is not intended to establish a permanent future relationship' and acknowledges 'The EU and UK's intention is to replace the backstop with a subsequent agreement that puts the absence of a hard Irish border on a permanent footing'.

2. The quest for alternative arrangements

- 2.1. The Joint Interpretive Statement of 11 March 2019 affirms the EU and UK's 'firm commitment to work at speed on a subsequent agreement that establishes by 31 December 2020 alternative arrangements such that the backstop solution in the Protocol on Ireland/Northern Ireland will not need to be applied'.
- 2.2. To this end, it promises to establish 'a specific negotiating track ... to lead the analysis and development of these alternative arrangements'. This will be established at the outset of the UK's status as a non-member-state and will be 'part of the negotiations'.
- 2.3. The dedicated track will consider both 'existing and emerging facilitative arrangements and technologies'.

- 2.4. The purpose of that proposed examination of 'alternative arrangements' is to assess their potential to replace the backstop. The backstop may be replaced 'in whole or in part'. This means that *alternative arrangements may be useful and subsequently implemented for managing one or more aspects of the challenge addressed by the backstop.*
- 2.5. By definition, *alternative arrangements to the backstop would have to meet the objectives of the backstop: avoiding a hard border, protecting north/south cooperation and upholding the 1998 Agreement.* This should, logically, form the litmus test for any alternative arrangements proposed.
- 2.6. The Joint Report also made an explicit commitment to support the all-island economy and the need to respect Ireland's rights and obligations within the EU's single market. These objectives are inseparable from the long-term health of the Northern Ireland economy, especially when it comes to the agri-food sector. Any sustainable long-term 'alternative arrangement' to the backstop would need to meet both of these commitments too, if we are to have a solution that works without causing lasting harm to Northern Ireland's economy and, consequentially, society.
- 2.7. Alternative arrangements would also have to ensure that all goods entering the EU's single market comply with customs and regulatory requirements, and vice versa for goods entering the UK. They would also have to comply with WTO obligations for the UK and EU.
- 2.8. The interpretive statement also asserts that the evaluation of the alternative arrangements will include a judgement as to their 'their practicability and deliverability in the unique circumstances of Northern Ireland'.

3. Border management principles and the backstop

- 3.1. All border management centres on three principles:
- We know what is crossing the border;
 - We know that it meets the criteria for doing so;
 - We can prevent entry/exit if needs be (see fig.1).



Figure 1. Three cornerstones of border management.

- 3.2. Any post-Brexit arrangement must be capable of covering all three of these, from both the UK and EU sides of the border.
- 3.3. It is worth noting that the cornerstones must work in conjunction with each other; it is no good knowing what is crossing without being able to ensure it meets the standards or being able to prevent entry if it doesn't.
- 3.4. It should be recognised that these three cornerstones are not of equal weight.
- 3.4.1. If it can be assumed that goods crossing the border meet the criteria for doing so (i.e. customs procedures not required, regulatory standards met) then the other two pillars are much less important.
- 3.4.2. If, however, that cannot be assumed or, indeed, it is known that goods in all likelihood do not meet the criteria (i.e. they are subject to customs procedures, they may not meet specified regulatory standards) then the other two pillars become much more significant.
- 3.5. Finally, it is worth recognising at this point that any effective border management system will need to have effective enforcement of anti-smuggling controls as well as trade facilitation.
- 3.5.1. There is a fundamental difference between trade facilitation and anti-smuggling controls. Put simply: contraband is not going to be declared, presented for inspection or voluntarily submitted for tracking across the border.

4. **The backstop: meeting the criteria for crossing the border**

- 4.1. The backstop addresses the challenge of the Irish border by concentrating on the most substantial of the 'cornerstones' of border management: ensuring that goods crossing the border meet the criteria for doing so (see fig.2).

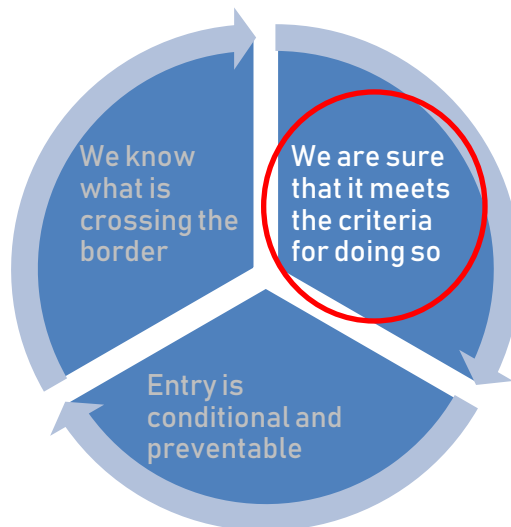


Figure 2. The cornerstone of border management utilised by the backstop.

- 4.2. When it comes to movement across an EU external border, such criteria cover both customs and regulatory standards. The backstop achieves this by close alignment between the UK and EU.
- 4.3. The backstop covers three critical aspects. First, it *makes it unnecessary to have customs procedures apply at the Irish border* because these have been applied

already (at sea/air entry points to the UK(NI) or Ireland) and because the UK will be in the customs territory of the EU.

4.3.1. This means that the UK will conform to specific EU legislation on customs, including with respect to third countries, and some harmonisation of law will continue, e.g. on state aid, competition and public monopolies.ⁱⁱ

4.3.2. And Northern Ireland will follow the Union Customs Code of the EU.

4.4. Secondly, *it makes it possible to assume that goods within and produced in Northern Ireland meet EU single market standards*. This is limited to those particular areas listed under Annex 5 of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

4.4.1. So, Northern Ireland will be subject to EU regulations in areas such as VAT and excise, certain technical standards relating to goods, agriculture, the environment, and electricity markets.

4.5. Finally, *Northern Ireland remains in the VAT regime of the EU*, which means that Northern Ireland will have to stay aligned to EU VAT rules regarding goods in order that exports crossing the border will not be liable for VAT at the point of entry.

4.6. Thus, if the backstop was fully in place, the working assumption for the EU and UK can be that goods crossing the Irish border meet the criteria for doing so. As a consequence, there is no requirement (with the exception of those transactions that are notifiable anyway between members of the EU, e.g. dangerous goods) on either side of the border to know what is crossing it at any particular point or time. There would therefore be no more obligation than at present to make sure entry through that border can be prevented with relative ease and efficiency.

5. Alternative Arrangements Type 1:

Exemptions from the criteria for crossing the border

5.1. Because the backstop addresses that most substantial cornerstone of border management, it works by ensuring that there is no divergence between the UK(NI) and EU on specific areas which would give rise to the need for border checks relating to north/south movement of goods. Objections to the backstop arise primarily from this point, i.e. that, if implemented, it reduces the scope for divergence between the UK and the EU.

5.2. It is possible to have alternative arrangements that may also seek to lever this cornerstone, albeit from a different direction: not by meeting the criteria for crossing but by ensuring that the criteria for crossing the border need not apply (fig.3).

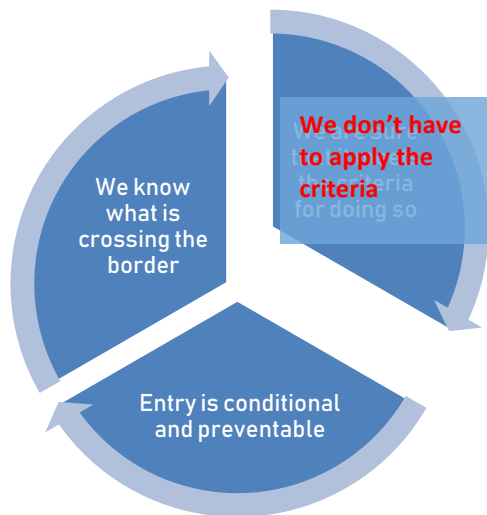


Figure 3. The cornerstone of border management leveraged by alternative arrangements focusing on exemptions from the rules.

- 5.3. The grounds for exemption from the application of criteria for entry across the border can be broadly framed along three lines: size of trader, territorial locus of the trade, general waiver from the rules.
- 5.4. First, **a general exemption from customs procedures and reporting for small/micro enterprises trading below the VAT threshold** has been proposed, having originally been present in the UK government's white paper of August 2017.ⁱⁱⁱ
- 5.4.1. Given that 94% of businesses exporting to Ireland from Northern Ireland are micro or small enterprises (i.e. fewer than 50 employees),^{iv} this blanket exemption would significantly reduce the need for customs procedures for trade in goods at the border.
- 5.5. It is worth noting key problems that need to be addressed were this to be offered as a potential alternative arrangement to the backstop:
- 5.5.1. The assumption behind this proposal is that there is a 'low risk' arising from small cross-border transactions. The question immediately arises, however: what is the risk? Is it fiscal, regulatory, health, phytosanitary, economic, illegal immigration, security? Any such risk would be dealt with differently and should be viewed on different scales. And, secondly, how is it assessed to be 'low' and against what measures?
- 5.5.2. Secondly, the assumption that low risk is associated with small cross-border transactions is belied by the scale of the exemption. If it relates to 94% of all those businesses from NI trading, and to 47% of the value of all exports from NI to ROI [Republic of Ireland], then it cannot be considered to be of low risk from a wide number of perspectives, as noted above.
- 5.5.3. Thirdly, such an approach would incentivise non-compliance, not just in VAT and customs areas, but across all tax heads and other regulatory requirements. 'Off record' trading is endemic in border counties in both jurisdictions and to introduce this exemption would be akin to giving a loyalty award to all those who have successfully operated under the radar for years. It would be difficult for compliant traders to compete with those operating on a 'tax-free' and customs-free basis.

- 5.5.4. A broader problem relates to the need to retain consumer and customer confidence in goods produced in Northern Ireland, specifically in agri-food. If there are exemptions from the rules on any grounds, then the grounds for consumers to trust the products they purchase are diminished.
- 5.5.5. Furthermore, such strategy is opposite to the direction being taken by the EU, whereby *de minimis* limits for customs duty (previously £7) were abolished in 2016 and VAT limits are soon to be reduced from €6 to zero. This direction of travel in the EU is counter to that in other markets (e.g. the US), which highlights the importance of taking the specific requirements of the EU into account in any assessment of alternative arrangements.
- 5.6. **'Free trade zones' or special economic zones are another means of bringing in exemptions from applying the rules in specified places.** These areas are defined in territorial terms, e.g. around a frontier. Goods entering Northern Ireland through main entry points could be "transported under exemption" to the free zone, but when they leave that free zone they would be eligible for processing. When they leave the zone, they will get taxed. Free zones are foreseen by the Union Customs Code. The benefits are that no guarantee is required for goods stored under duty suspension; the goods need only be presented to customs (no customs declaration); goods can be processed in a free zone under the inward processing procedure.
- 5.7. There are some key challenges with free trade zones when it comes to considering the feasibility of their application in Ireland/Northern Ireland.
- 5.7.1. The first challenge is that there is a risk of extreme complexity. The border has to come somewhere. Free zones are geographically small and need to be enclosed. Therefore an extended 'circular' border will apply around the border counties covered in any such zone. When the goods leave the free zone, they need to be presented to customs again and can be declared for entry for free circulation or re-export. Under the current rules, a pre-arrival and a re-export declaration are necessary. Where does this happen? What this would lead to is a proliferation of border lines at which customs procedures should apply. Essentially, the capacity to ignore the rules only exists within a specified territorial area. As such, *this is a solution that does not work without also having great detail on what is crossing the border.*
- 5.7.2. Secondly, Northern Ireland exports of 'Food and Live Animals' to Ireland represented 32% of all goods exported from NI to Ireland in 2018. Customs facilitations for this sector are more restrictive and businesses trading in agri-food products face higher regulatory hurdles. It is unlikely that the EU will allow exemptions or waivers of the rules for agri-food in certain zones in NI/Ireland if this means that those products will then end up in free circulation in the EU's single market.
- 5.8. In an effort to address this last challenge, and possibly in conjunction with the above, **a waiver from the application of the rules could be sought.** This could come through invocation of Article XXI(b) of GATT 1994, the so-called 'security clause'. This would allow exemption from the WTO's general rules of MFN and National Treatment of Internal Taxation and Regulation when action is required regarding the protection of their essential security interests.

5.9. There are four key problems with invoking this clause:

- 5.9.1. First, there is a question as to whether this case would be considered eligible for an exemption on these grounds given that the conflict as manifest at the border appears to have been resolved by the 1998 Agreement and that an alternative to infrastructure and related checks and controls exists (i.e. the backstop.)
- 5.9.2. Second, *it could not be considered as a long-term solution but more properly as a request to ignore the rules*. There are consequences to ignoring the rules, not least the fact that it will become known by other trading countries and criminal organizations that this is what happens in Ireland/Northern Ireland. This will have only negative consequences for the global standing of trade from the UK and Ireland. The longer this general exemption is applied, the greater risk to consumers and to legitimate traders.
- 5.9.3. More specifically, if the security clause is invoked to make a case for not applying the rules in Northern Ireland/Ireland, then there is a risk of actively bringing about the scenario which the UK and EU are seeking to avoid by not having a hard border, i.e. that Northern Ireland is seen as a high security risk. The power of terrorism comes in disrupting 'normal' activity and by giving the impression of an environment of security risk. Invoking the security clause is essentially doing a part of this work for the terrorists. It is not a sure foundation for investment and trade in Northern Ireland.
- 5.9.4. Finally, whilst focusing on WTO rules might make sense in relation to UK import procedures, WTO rules are generally overtaken by (stricter) EU Union Customs Code (UCC) rules when it comes to EU imports (i.e. UK[NI] exports). In the case of north/south trade, compliance with EU requirements will be necessary.

6. **Alternative Arrangements Type 2:**

To know what is crossing the border

- 6.1. It is a fundamental cornerstone of border management to know what is crossing the border. However, this cannot stand entirely alone; *it must work in conjunction with the other two cornerstones*. In knowing what is crossing the border, it must be possible to be sure that it is allowed to cross and it must also be possible to prevent entry if required.
- 6.2. ***The prospect of a fully electronic environment for customs facilitation, aided by the use of technology and inspections away from the border***, is one which would be shown to have validity in terms of the overall steady but slow development of customs facilitation.
- 6.3. It is true that advance cargo information is absolutely key for risk analysis. However, opportunities for submission and analysis of advance information in respect of land border movements are at best limited and at worst non-existent. This is why such a high inspection rate applies to the land border crossing points at the EU borders. *Comparisons with maritime or air freight in terms of risk analysis based on advance information are meaningless*. Also ports create natural control points or gateways through which all has to pass, having certainty that you know what is coming into

the territory reduces the need for “stop and check” that would be the case for a land point where no such “control filter” exists.

- 6.4. It needs to be acknowledged that *any alternative arrangements relying primarily on advance cargo information will require a level of data sharing and analysis that is currently not known anywhere in the world when it comes to crossing a land border.* This is because at other land borders, the default position can be to deny entry; in the case of the post-Brexit Irish border, entry will be (be **by?** default) unopposed. The question then arises: why would a business submit the necessary detailed information? Incentive to comply needs to be paramount if any alternative arrangements system based on addressing this particular cornerstone of border management is to work.
- 6.5. Data is absolutely essential to this approach to managing the border. There is a need to have detailed data, to be able to process it and to be able to share it between the respective border agencies. The better the data and the more of it is there is, the better the consequent border management – but also the greater the challenge of retrieving good quality data and processing it efficiently.
- 6.6. Because this cornerstone of border management cannot function alone, it must be recognised that in knowing what is crossing it needs also to be possible to:
 - 6.6.1. (i) verify that what is declared is that which is crossing the border, i.e. detailed data does not substitute for capacity to perform physical checks at some point, especially on sensitive products; and
 - 6.6.2. (ii) to prevent entry if needs be.
- 6.7. Another proposed solution is the use of ***the Community Transit system for UK/Ireland cross border traffic.*** The purpose of the system is to allow goods to be exported from one country, pass through at least one other country and have import formalities completed in another country, being the country of destination. The most common office of destination is at the import station.
 - 6.7.1. In a cross-border trade movement, the transit operation would need to commence at an approved office of export in (internal) Northern Ireland and finish at an approved (internal) office of destination in Ireland. Such approvals are not given lightly and it is difficult to envisage a large scale issue of approvals.
 - 6.7.2. As with the AEO system, certain requirements including provision of a guarantee must be met (at a significant cost). Moreover, there remains a need to confirm the integrity of shipments at each office of transit.
- 6.8. ***Authorised Economic Operator schemes*** are key to leveraging the cornerstone of knowing what is crossing the border and trying to connect this to that of being able to assume that what is entering is allowed to do so.
 - 6.8.1. AEO is beneficial in terms of fewer customs interventions, easier access to simplified procedures and the possibility to have an inspection carried out at importers’ premises.
- 6.9. There are different scales of trusted trader status, with correlated levels of benefit when it comes to crossing a hard border. It is important to recognise that the more freedom/less friction faced by a trusted trader depends *both* on how trustworthy the trader has proven itself to be and on the nature of the goods being traded.

- 6.10. The trade-offs between security of the trader/friction crossing the border required for each 'rung' of the ladder of trusted trader status should be clear. The necessary (and likely) take-up of trusted trader status at each rung should also be assessed.
- 6.11. There are two elements to AEO: one focussing on the security status of the operator, the other relating to customs status. In global terms, the security element is the most prevalent.
- 6.12. The highest standards of trusted trader require extremely high standards of security and information: secure facility where the goods are kept (with strict limitations on who is able to enter the facilities), sealed trucks, vetted truck driver. Judging by take-up rate elsewhere, the highest status of AEO is not a popular designation by even larger businesses.
- 6.13. It is worth noting that Trusted Trader status does not typically give traders a license to cross anywhere along a land border but rather only speeds up the process of crossing the border when they reach the designated point of entry.
- 6.14. Trusted Trader status does not, of course, relieve the trader from complying with the rules nor does it make them invulnerable to inspection.
- 6.15. There are dangers in relying too much on AEO status for addressing the challenge of border management.
- 6.15.1. Core to all of them is the need to recognise that they only primarily address the weakest cornerstone of border management, i.e. merely that of knowing what is crossing the border.
- 6.15.2. The downsides include:
- The costs of obtaining and maintaining authorisation
 - a requirement to provide security by way of guarantee
 - requirement to comply with specified financial, accounting and other standards
 - need to prove a satisfactory customs/tax history.
- 6.15.3. Then comes the cost of continual compliance.
- 6.15.4. For such reasons, AEO status can be a serious challenge for companies when it comes to both meeting the requirements for being granted the status and to maintaining the status. Such costs are particularly difficult for small and micro businesses to bear, and for those with a tight profit margin. The costs of compliance are proportionally much greater for smaller businesses.
- 6.15.5. Furthermore, in order to benefit fully from AEO benefits, both the consignor and consignee must be AEO authorised in their respective countries.
- 6.15.6. Finally, an AEO scheme needs to have impeccable credibility. This comes in several forms, but primarily there needs to be consequences for not having AEO status, either by not meeting the standards for it or by choosing not to apply for it. That is to say, there has to be friction in moving goods across the border, means of processing customs and enforcing standards, and a method of stopping things from entering across the border.

7. **Alternative Arrangements Type 3:** ***Entry is preventable***

- 7.1. Whilst it is necessary for alternative arrangements to concentrate on facilitation of movement, it is absolutely essential to balance this against the need to counter-balance the fact that if we are in an environment in which we cannot be sure that

goods are allowed free movement across the border, then the means of preventing movement across the border needs to be effective and in no doubt.

7.2. The prevention of entry of goods across a border is the crudest cornerstone of border management. It is worth noting that this form of border management works very well in air and (to a lesser extent) maritime ports. In such cases, the border tends to naturally be a 'hard' border (i.e. difficult to cross) and border management takes the form of literally facilitating easier and more efficient movement across the border.

7.2.1. Crossing of a land border is quite different; it is difficult to secure a land border (especially one without any topographical features that are difficult to traverse) and to prevent movement across it.

7.2.2. The Irish border is different again, with over 240 primary crossing points and – more to the point – with a commitment to avoid a hard border or physical infrastructure at the border.

7.3. *There are three ways of preventing entry across a land border:*

7.3.1. The first is to block entry points and to ensure those that remain traversable have the necessary facilities and personnel for processing customs.

7.3.2. The second is to designate specific crossing points for legitimate movement of goods; by default, therefore, those crossing at other points might be classed as potentially suspicious – and thus there will be a need to intercept movement at both authorised and non-authorised entry points.

7.3.3. The third is to intercept movement before it reaches the border. The further away from the border, the greater the capacity for illegal goods to be moved or diverted, and the more difficult the task of the border agencies.

- Also, the greater the distance from the border, the more risky (for border agencies) and intrusive (for citizens) border inspections become. This is true of proposals to have inspections on premises as well as on routes towards the border – inspections on premises (particularly those suspected of black market activity) bring with them their own security risk.

7.4. If the assumption has to be that goods do not meet the criteria for crossing the border, *provision must be made for inspections at the border for cases* in which:

- Goods are not eligible for simplified procedures
- Importers do not qualify for AEO status
- Importers do not wish to avail of AEO
- Suitable examination facilities do not exist at a premises
- Threat or risk levels are too high to allow movement prior to inspection
- Smuggling is suspected

7.5. What are the difficulties of preventing entry across a physically open border?

7.5.1. It would demand an incredible amount of resources, applied and active on both sides of the border, to allow multiple simultaneous inspections on a country-wide basis.

7.5.2. It is important not only to acknowledge that mobile inspection units have limited capacity to prevent entry of goods, but also that they cannot substitute for proper facilities for inspections. It is hard to conceive of customs agencies on

both sides of the border having suitable inspection technologies available at every premises involved.

7.5.3. The role of modern day customs has evolved significantly from traditional revenue collection and enforcement of prohibitions and restrictions. Trade facilitation is now to the fore, but customs are increasingly seen as the first line of defence in terms of state security. If a border is renowned to be not properly managed, it will only encourage the expansion of illegal activity across and around the border. It will also result in displacement of traffic (both legal and illegal) from maritime border crossing points that are more strictly controlled.

7.6. Another problem with the point about preventing entry is that this inevitably leads to delays in crossing the border. Delays in JIT or time sensitive goods can produce extravagant losses for traders. If such delays are unpredictable or irregular, this only diminishes the capacity of traders to manage the consequences.

7.6.1. Related to this is the challenge posed by groupage. If some goods are compliant and others are non-compliant in a load, all of them will be held up in a delay.

7.7. In sum, alternative arrangements that focus on the cornerstone of prevention of entry are the weakest in that this is where the double-edged sword of security risk is exposed. That is to say, there is a security risk in enforcement (i.e. to the enforcers) and in non-enforcement (i.e. consumer and citizen safety diminishes if there is no proper enforcement happening).

8. **Technology and the management of goods crossing a land border**

8.1. Risk management and risk analysis play major roles in customs strategy and this is increasingly supported by multi-level detection technology architecture. Many of the technology applications are of a non-intrusive nature.

8.2. *Technology can serve three core functions when it comes to the customs facilitation and management of a land border. First, **it can speed up the submission and processing of information**. In particular, this is intended to minimise errors, to reduce personnel time and costs, and to reduce friction and queues on the border crossing. This can take the form of smartphone apps, which include information for the customs agencies (e.g. details on the driver, the consignment) and information to the driver (e.g. that permission is granted for entry). Barcode scanning can also ensure that a great deal of information can be shared quickly and with minimum fuss, and the potential to link to other identified piece of information (e.g. ANPR of the truck).*

8.2.1. In the use of such technology, it needs to be acknowledged that this is just about the transferal of information. Essentially it is to reduce time and costs of personnel. It has been developed for use first and foremost at physically hard borders. The rationale behind it is to ease movement across a hard border.

8.3. Secondly, **technology can be used to confirm when a vehicle (or potentially a container or item on that vehicle) crosses a particular point at a particular time**. This can be done by measures that either require some connection between

information at the entry point (e.g. Automatic Number Plate Recognition, Radio Frequency Identification, Bluetooth, beacon tags – all of which require some physical infrastructure at the crossing point) or continual tracking (e.g. via GPS). The greater the distance enabled between the vehicle of interest and the receiver, the greater the cost of the technology.

8.3.1. As with the example above, such technology does not confirm what is precisely in the vehicle/container. It relies on the data submitted in advance about the consignment being accurate and detailed.

8.4. Finally, **technology can be used to verify information submitted**. This can happen through non-intrusive inspection technologies. New and emerging technologies continue to be developed. Modern drive-through container X-ray scanners are capable of scanning upwards of 100 vehicles per hour, in order to validate declared contents. The driver's cab is not subject to irradiation and therefore there is no requirement for the driver to get out.

8.4.1. Artificial intelligence can be used to assess a scanned image of contents of a container in order to determine whether what is in it is in accordance with what would normally be expected for the type of consignment that had been declared.

8.4.2. If a potential problem is identified, however, the vehicle then needs to be directed to secondary inspection where it can undergo more detailed, dedicated type of scanning (for which the driver will need to exit the vehicle) and/or physical inspection of the container by personnel. Inspection requires not only personnel (possibly accompanied by trained sniffer dogs) but also dedicated inspection equipment, unloading and storage facilities, e.g. with refrigerated storage capacity.

8.5. Another type of technology that is of growing implementation at border entry points (though typically airports) is **facial recognition**. This technology is of extremely limited use when it comes to customs facilitation; it can be another means of verification, in this case verification that the driver is the one authorised to be associated with that consignment and vehicle.

8.5.1. The use of facial recognition technology requires physical infrastructure. It also requires consent.

8.6. Technology relies on people taking it up. The thing – apart from cost – that is **typically the biggest constraint on the effective use of technology in facilitating movement across a border is human behaviour**. Specifically, people are loathe to register and submit information as needs be. Every new layer of unfamiliar procedure puts people off using it, even if it will bring them tangible benefit (in terms of time saved etc.).

8.6.1. For this reason, adequate time for testing and roll-out and familiarisation with the technology by border agents and clients is absolutely essential.

8.6.2. Also essential is clear information and transparency about the purpose of the use of technology, why and how its use is necessary and how it brings benefits.

8.7. **All technology works on the basis of data**. The greater the amount of data that can be processed in the design and application of the technology, the more effective

it is. Monitoring and surveillance by itself is useless unless you have the capacity to act on the information gathered.

8.7.1. The potential for in-built bias must be taken into consideration in the use of technology. This is particularly true when the data being processed is of a commercially or socially sensitive nature.

8.7.2. In the case of the Irish context, any monitoring of movement across the border will be taken by some residents as politically objectionable and resonant with practices during the days in which the border was securitised frontier. This is highly significant if we bear in mind the need for public buy-in for technology to work at all.

8.8. *The effective use of technology at a land border requires:*

8.8.1. A hard border, i.e. a lack of choice about where the goods will cross;

8.8.2. A huge amount of detailed data on what is crossing and expected to cross;

8.8.3. IT registration and reporting systems developed enough to cope with the nature and amount of information.

8.8.4. A capacity for personnel to follow up on the information being gathered through technology;

8.8.5. Data sharing and cooperation between agencies on both sides of the border

8.8.6. An environment in which people accept its use and the correlated requirements on privacy/data-sharing.

9. Considering the importance of the social environment: Getting buy-in

9.1. One thing that is absolutely clear: no system of border management can work without public buy-in. It is necessary to have buy-in not only from traders (consignors and consignees) but also it is essential to have an environment in which the management of the border is broadly supported.

9.2. This is always going to be a tricky prospect in the context of Ireland/Northern Ireland. The commitment to avoiding a hard border comes from recognition of what all the main social partners and political parties in Northern Ireland have clearly advocated, i.e. a retention of the status quo as far as possible when it comes to the experience of crossing the border.

9.3. The unique circumstances on the island of Ireland mean that any change to the requirements for crossing the border, or experience of doing so, will be viewed with immense caution. It is inevitable that more than half of the political parties in Northern Ireland will be quick to identify changes to the border and its management and to bemoan it.

9.4. Ignoring the likelihood of this and determining just to push on through with a 'solution' regardless is not a strategy that will hold. In fact, it will not only increase resentment and the discourse around political interference and British blunt force in Northern Ireland, it will also, in effect, directly undermine the workability and viability of any solution.

9.5. With this in mind, it is important to test all alternative arrangements against a measure of acceptability as well as feasibility. Such measures should take into account the principle that people wish to see as little change as possible; the fact that there is a history of military surveillance and securitisation in the border region (leaving a legacy of suspicion of government information-gathering, and a strong

defence of privacy); and the fact that if there are negative consequences to the use of alternative arrangements, it will always be presented as a direct consequence of the UK's decision.

9.6. ***It is vital that the UK Government does not appear to advocate solutions that come 'above the heads' or in disregard for the concerns of residents in the border region.***

9.7. In the case of any change to a border, partnership from the start is key.

Partnership with industry is particularly crucial.

9.7.1. There is a need to have reciprocal engagement from an early start. If possible, the system needs to be co-created. Bring the private sector in early and understand what they need.

9.7.2. With this in mind, it is very wrong to give the impression that the loss of business and profit is a perfectly acceptable price to pay for alternative arrangements.

9.7.3. And in due course you can get tactical intelligence from the private sector if there is a relationship of trust. For a border management system to work, you need to have created a situation in which a reputable economic operator would be willing to share information (e.g. a breach in their security) in order to stay trusted.

9.7.4. This would only come about:

- (i) if they could see the overriding benefit of retaining their trusted status;
- (ii) there was a serious risk that such a breach would be found out anyway;
- (iii) the business sees it as being in the interest that all participants in the system are trustworthy and working closely with the authorities in keeping its functioning impeccable.

10. The core challenges

10.1. Any solution to managing the Irish border after Brexit will have to meet four key challenges. First, ***the new system will have to be supported by both the general public and by the public bodies concerned.***

10.1.1. It will need to have buy-in from businesses, politicians (of almost all views), and the general public; if it is resented, exploited politically, or undermined, it will fail.

10.1.2. It will need to be adequately resourced and prepared for.

10.1.3. It will require a long run-in and roll-out: for training staff, ironing out difficulties in the system, for raising public awareness.

10.2. ***The costs of compliance with the new regime will have to be lower than the risks of non-compliance.***

10.2.1. Why would people in the Irish border region be willing to submit the necessary data and to allow a reduction in their privacy (e.g. having their GPS location traced) in order to cross a border that is perfectly easy to cross anyway, especially if the chances and costs of you being caught are more or less zero?

10.3. ***There has to be a means of managing the movement of goods by three types of border-crosser:***

- 10.3.1. *AEOs*: how are they made sure to be reliable, verifiable and secure?
- 10.3.2. *Other traders*: the Trusted Trader criteria need to be strict enough to mean that some do not meet the criteria; there will also be others who do not want to take on that status. How do we know what they are bringing across, that it is compliant and that it can be stopped if needs be?
- 10.3.3. *Smugglers*: how do we prevent their movement and make it as risky and unattractive as possible?

10.4. **How to manage the other side of the border?** It is essential to remember that border management works two ways. In all movement across the Irish border post-Brexit, the challenge involves the exit/entry from UK into EU and exit/entry from EU into the UK.

- 10.4.1. It is not possible to have effective border management along a border that will remain comparatively open (i.e. without traditional infrastructure for border controls) without close coordination between agencies on either side.
- 10.4.2. Data sharing will be absolutely critical to this process.
- 10.4.3. Trust will also be vital and must be fostered from the earliest phases.
- 10.4.4. Law enforcement cooperation is also essential on both sides.

11. **Determining the viability of a new border management regime**

- 11.1. Summarising all the points made above, it is perhaps helpful to set out this matrix of five types of questions that must be asked of any proposed regime that seeks to manage a customs/regulatory border.
- 11.2. The matrix necessarily works for both traders and for authorities, which is putting the complex web of actors as simply as possible.

	For importers/exporters	For border agencies
Data	What information needs to be submitted? When and how?	How to manage that information, assess it and respond to it?
Environment	Is the regime accepted in terms of socio-cultural norms and popular opinion?	Is the regime politically, legally, economically and resourcefully supported?
Adjustment	How dramatic will the change be to existing practice?	How can the change from one regime to the other be managed and kept up to date?
Cost	What will the costs of compliance be?	What will be the cost of implementing these measures?
Time	How long and how predictable will border crossing? How often will deliveries be disrupted? What will the effect be on customer service levels?	How long will it take to roll-out the new regime?

Figure 4. A matrix for assessing the feasibility of a border management regime.

- 11.3 The set of priorities is clear here. First, the critical importance of data. This works not only in terms of what information is submitted, but also in the authorities' ability to handle and process it quickly and securely.

- 11.4 Second, the essential context of socio-cultural environment. This can be adjusted if there is change
- 11.5 Third, worth recognising that habits die hard. The greater the adjustment required on both sides, and by importers/exporters and by authorities/agencies, the greater the risk of non-compliance, the longer the necessary run-in time and the greater the risk of flaws in the functioning of the system.
- 11.6 Cost – in human, time, monetary resources – will be critical to determining how feasible any particular border management system is.
- 11.7 Finally, time is a consideration. For importers/exporters, this has two dimensions. First, they will need to know how predictable the border crossing process will be. Secondly, they need to know when the new rules will kick in, and what to do with them. For border authorities, preparedness is key.

12. What is required to make a border management system work

12.1. Bearing all the above in mind, this matrix sets out five core elements that are needed to ensure that a border management system works when it comes to a customs/regulatory border.

12.2. This is designed with a holistic approach in mind, taking into consideration in particular the importance of human behaviour and of social context when it comes to determining the effectiveness of a system of border management.

12.3. All of these challenges are particularly acute in a socio-political environment in which the very notion of border management is contested by many.

12.4 All evidence suggests that the introduction of any changes to the management of the Irish border should be done with great caution, proper consultation and with care to avoid misrepresentation.

	What is required to make a border management system work
Familiarity	A long run-in and roll-out: for training staff, ironing out difficulties in the system, for raising public awareness
Incentivisation	Compliance has to outweigh non-compliance in a cost/benefit analysis
Cross-X-border cooperation	An ability to share information, to cooperate and to coordinate action between authorities/agencies on both sides of the border
Enforceability	An ability to verify that what is crossing is what is declared and/or is compliant, and to prevent entry of non-compliant goods
Simplicity and clarity in rules	A clear understanding of the rules that apply: people both operating the system and working within it need to know what is required, enabling minimal to no disruption of the trade.

Figure 5. What is needed to make a border management system work.

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ⁱⁱ <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8453>

ⁱⁱⁱ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf

^{iv} https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-N-trade-slide-pack-March-2019_1.pdf