



Easing legal and administrative obstacles in EU border regions

Case Study No. 4

Business

Trade-related obstacles faced by businesses along the border

(Ireland – United Kingdom)



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Abstract

Trade-related border obstacles faced by businesses

This case study focuses on 'burdensome tax rules' and other obstacles affecting cross-border trade in the land border region between the Republic of Ireland and the United Kingdom of Great Britain and Northern Ireland. Since the mid-1990s, associated with the Northern Ireland peace process, there has been a significant easing of cross-border obstacles in this border region; cross-border trade has shown a long-term upward trend and various, mostly new, cross-border structures have been active. Yet, a wide range of obstacles persist, both trade-related – Value-Added Tax and other taxation aspects, public procurement and industry accreditations – and in other fields. One of the obstacles concerns taxation rules in the Republic of Ireland which require a mandatory transfer of Northern Ireland workers employed by a Northern Ireland company if active in the Republic of Ireland for more than six months. This affects businesses in the construction sector but its impact has declined since the end of the property boom in the Republic of Ireland.

The trade and other related obstacles form a tight cluster which has considerable adverse effects; not only in terms of time delays and higher costs. Lack of transparency or consistency and an array of often small but interconnected problems can amount to an entry barrier that affects mostly smaller businesses with capabilities and capacity constraints. Cross-border structures and processes, operating in a climate conducive to cooperation, are key components of solutions aiming to ease and remove obstacles. They can underpin 'better harmonisation' solutions at Member State level (best pursued in a preventative manner such as through consultations prior to transposition of European Union directives) and 'better information and support' solutions at regional level. This represents a pragmatic approach which acknowledges that obstacles cannot be wholly eradicated and that differences between national regulatory regimes will remain, notably in view of the recent decision of the United Kingdom to exit the European Union.

1 Outline of the obstacle (legal and administrative) and the policy context

1.1 Easing Border Obstacles: the European Single Market Process

The creation and evolution of the European Union (EU) has been associated with easing and removing border obstacles and, in its broadest sense, the creation of a European Single Market without any internal borders or other regulatory obstacles to the free movement of people, goods, services and capital. A major push by the European Commission in the mid-1980s led to a large number of legislative measures, the adoption of the Single European Act and the launch of the Single Market on 1 January 1993.

Nevertheless, it is acknowledged that various imperfections persist even today so that the Single Market is not yet fully functioning, and that "large potential benefits remain unrealised" in terms of boosting economic growth and making the everyday life of businesses and consumers easier¹. Therefore, it has come to be accepted that advancing the Single Market is a longer-term and on-going process while it has even been argued that "the single market can never be complete"². Currently, barriers remain prevalent in a number of sectors including insufficient mutual recognition, a highly fragmented public procurement market, a similarly highly fragmented services market, and significant barriers to the free movement of workers³.

Such shortcomings are particularly relevant to cross-border trade which is the context of this case study. A recent assessment by the European Commission of barriers to cross-border expansion found that "start-ups and SMEs find it difficult to identify and meet the regulatory requirements when trading across borders" and among other issues they "complain about a heavy burden that a set of Value-Added Tax (VAT) registration and reporting obligations puts on them"⁴.

Other recent analyses have further contributed to pinpointing the nature of persisting obstacles. For instance, the highest proportion (33%) of business respondents to the Commission's public consultation on overcoming obstacles in border regions mentioned legal and administrative barriers. Other types of obstacles mentioned were language barriers, socio-cultural differences and economic disparities (31%, 27% and 20%, respectively)⁵. An analysis of business cases handled by SOLVIT⁶ since 2010 shows that more than 75% cases fall into three legal areas: taxation and customs (35.85%), free movement for goods (24.95%) and free movement for services (15.55%) – see Figure 1.

¹ Canoy et al. (2006), *The Single Market: Yesterday and Tomorrow*, European Commission, Bureau of European Policy Advisers (BEPA), 2006, http://ec.europa.eu/dgs/policy_advisers/publications/docs/single_market_yesterday_and_tomorrow_en.pdf (accessed in October 2016)

² Ibid.

³ Terzi, A. et al. (2015), *The whys and hows of a single market for Europe*, Bruegel, March 2015, <http://bruegel.org/2015/03/the-whys-and-hows-of-a-single-market-for-europe/> (accessed in October 2016)

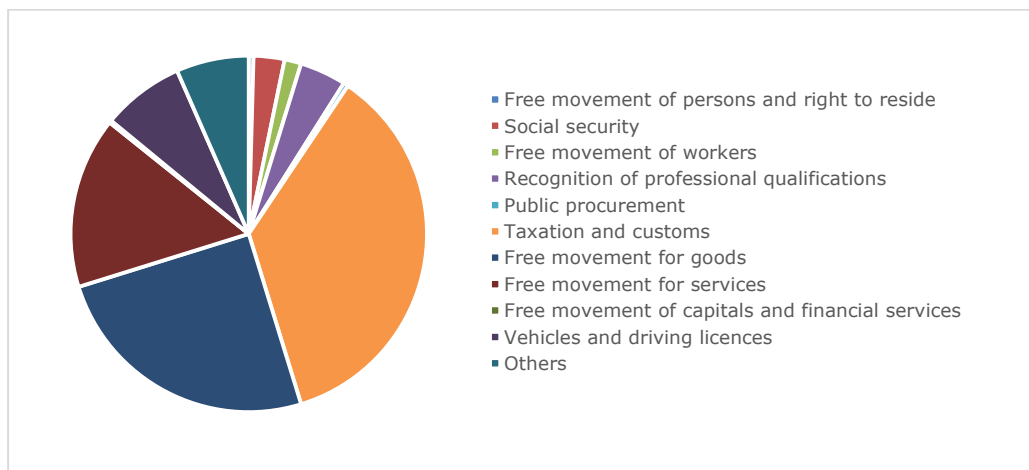
⁴ European Commission (2015), *A Single Market Strategy for Europe – Analysis and Evidence*, SWD(2015)202 final, October 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0100> (accessed in October 2016)

⁵ European Commission (2016), *Overcoming Obstacles in Border Regions: Summary Report on the Online Public Consultation*, April 2016, http://ec.europa.eu/regional_policy/sources/consultation/overcoming-obstacles-border-regions/results/report_reg-16-006_en.pdf (accessed in October 2016)

⁶ SOLVIT is a problem-solving network created to solve problems that EU citizens or businesses experience with the public administrations of EU Member States. These problems must be associated with a denial of their Internal Market rights due to Internal Market law not being applied correctly.

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Figure 1. SOLVIT cases raised by businesses (by legal area)



Source: SOLVIT database, 01.01.2010 – 05.04.2016 [2]

The EU remains committed to improving the functioning of the Single Market by:

- providing a regulatory framework that fosters the free movement of goods and services, and enhances competitiveness;
- removing existing barriers to intra-EU trade and preventing the creation of new ones;
- promoting a business and consumer-friendly environment based on transparent, simple, and consistent rules offering legal certainty and clarity.

A further step in this process is an EU initiative for 'A deeper and fairer Single Market'⁷. In this, the Commission has put forward a number of targeted actions focused on:

- helping SMEs and start-ups to grow;
- making the market without borders for services a practical reality;
- strengthening the Single Market for goods.

There are also other relevant EU initiatives, notably under the Digital Single Market Strategy for Europe⁸, such as a new eGovernment Action Plan⁹ whose vision refers to providing 'borderless' digital public services to all citizens and businesses in the EU.

1.2 The trade-related border obstacles faced by businesses

In the inventory of border obstacles established by this study some 10% are trade-related obstacles¹⁰ and they are summarised in Table 2, Annex 1. They include Obstacle N89 regarding the border region on the land border between the Republic of Ireland (IE) and the United Kingdom of Great Britain and Northern Ireland (UK), which has been described as follows: '**Irish taxation rules require a mandatory transfer of Northern Ireland (NI) workers employed by a NI company if active in the Republic of Ireland (IE) for more than six months**'. There are several other

⁷ European Commission (2015), Upgrading the Single Market: more opportunities for people and business, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015)550 final, October 2015, <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-550-EN-F1-1.PDF> (accessed in October 2016)

⁸ European Commission (2015), A Single Digital Market Strategy for Europe, COM(2015)192 final, May 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>

⁹ European Commission (2016), EU eGovernment Action Plan 2016-2020, COM(2016)179 final, April 2016, <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-179-EN-F1-1.PDF>

¹⁰ Policy Area I (Industry Trade), Field of Intervention 1.1 – Exportation of goods and cross-border provision of commercial services, including e-commerce.

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obstacles that have been identified in the case of the IE-UK border which fall within the same field of intervention as obstacle N89. They relate to:

- Cross-border payroll (N87)
- Asymmetrical VAT registration (N88)
- No tax clearance certificate in the UK (N91)
- Burdensome public sector procurement (N98)
- Difficult recognition of accreditations (N99)

Overall, the obstacles in this field of intervention typically concern three topics: VAT, customs and other taxation aspects; public procurement; technical standards and industry accreditations¹¹. In terms of the typology followed in this study, most of the above obstacles belong to the category of legal obstacles which are Member State related. They emanate from different national legal provisions in a policy field for which there is no EU competence.

At business level, the adverse effects of these obstacles most commonly result in time delays and, ultimately, in higher costs for the companies which are proportionately much more burdensome for SMEs that have more limited financial means and organisational resources than larger companies¹².

The intensity of these adverse effects falls mostly in the 'moderate' category, followed by a smaller number which fall in the 'high' intensity category, according to the ratings assigned in the Inventory of Obstacles, as modified for obstacles in IE-UK on the basis of stakeholder consultations (see Table 2, Annex 1).

¹¹ A large group of obstacles in this field of intervention have been identified in the SE-NO cross-border area and, according to a survey of businesses, those with the greatest weight are: VAT (mentioned by 68% of businesses who have foreign customers); regulation/standards (53%); and lack of information (29%). Svinesundskommittén (2015), Border obstacles for trade and industry: Eliminate every single border obstacle, http://www.granshinder.se/media/134024/150914_svinesundskommitten_eliminate_every_low-2.pdf (accessed in October 2016)

¹² European Commission (2015), A Single Market Strategy for Europe – Analysis and Evidence, SWD(2015)202 final, October 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0100> (accessed in October 2016)

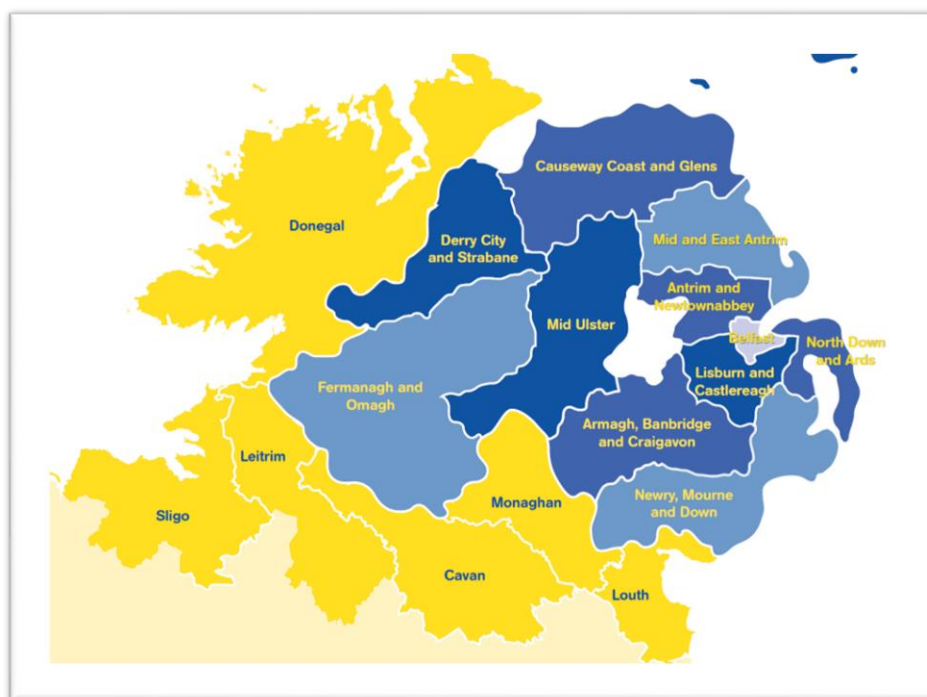
2 Case Study Context

2.1 The IE-UK cross-border area

The cross-border region on the IE-UK land border comprises¹³ of the border region of IE and the whole of NI – see Figure 2, below.

The total population is 2,325,754 of which 1,810,863 are located in NI and 514,891 in the border region of IE. There is a strong population growth trend in the border region, higher than the average growth rate in NI, which in turn exceeds that of the rest of the UK¹⁴. Both sides have a largely young population with nearly 35% aged below 24.

Figure 2. Map of the IE-UK cross-border area



Source: Interreg V-A Programme United Kingdom–Ireland (Ireland–Northern Ireland–Scotland)

2.2 Economic profile and cross-border business activity

There are considerable similarities between the two sides of the border including¹⁵:

- a high prevalence of SMEs (98% and 99%, respectively in the border region of IE and NI);
- under representation of higher value sectors;
- low gross expenditure on R&D and low proportion of businesses that are innovation active by both national and EU standards; and
- labour productivity lagging behind the state average (30% in the case of the border region of IE).

Business activity across the IE-UK land border is well established. Cross-border goods trade shows a long-term upward trend which has recovered from a sharp decrease in

¹³ Based on NUTS regions (IE011 and UKN01-05) covered by the Interreg V-A Programme United Kingdom–Ireland (Ireland–Northern Ireland–Scotland) 2014-2020

¹⁴ Central Statistics Office (2012), Census 2011 Population Classified by Area, Dublin, 26 April 2012, <http://www.cso.ie/en/census/census2011reports/census2011populationclassifiedbyareafomerlyvolumeone/> (accessed in October 2016); Office of National Statistics (2009)

¹⁵ Interreg V-A Programme United Kingdom–Ireland

2007-10 due to the global economic downturn. The balance of trade has remained consistent over the past five years with trade in a North-South (NI-IE) direction representing roughly 60% of all cross-border trade. 'Food & Drink' is the dominant sector in cross-border trade accounting for almost 50% of all trade in goods. The 'Rubber & Plastics' and 'Chemicals' sectors follow, at 7% each; 'Paper & Publishing' and 'Other Manufacturing' are also significant¹⁶.

The cross-border market is vital for NI exports (representing 23.5% of total exports) but accounts for a much smaller total for the IE (2%), although this is higher in the case of the regions closer to the border with NI¹⁷. It is also more critical for small firms' exports: 62% of NI's and 17% of IE's. In addition, the cross-border market is of great value as a learning ground: it has been the first step into exporting taken by 73% of firms and experience gained had a significant influence on entering other markets for 71% of these firms¹⁸.

Nevertheless, it is only a minority of businesses (28%) that engage in cross-border (or other) export sales. The proportion is higher among larger businesses. Manufacturing is the sector that is most likely to engage in cross-border (or other) export activity, followed by retail/distribution and professional services.

2.3 IE-UK cross-border coordination mechanisms and other structures

The **North South Ministerial Council** (NSMC) was established under the Belfast/Good Friday Agreement (1998), to develop consultation, cooperation and action across the island of Ireland on matters of mutual interest and within the competence of the Administrations. The NSMC comprises of Ministers of the Northern Ireland Executive (devolved administration in the UK) and the Irish Government, and oversees six cross-border implementation bodies including:

- **InterTradeIreland** (ITI) which is tasked with the promotion of trade and business on an all-island and cross-border basis and the enhancement of the global competitiveness of the all-island economy to the mutual benefit of IE and NI.
- The **Special European Union Programmes Body** (SEUPB) which has managerial and oversight functions in relation to various EU programmes, including Interreg.

In addition to the above statutory bodies, there are several non-statutory cross-border organisations and networks. Among them, three cross-border local authority networks cover the three areas of the cross-border region.

The **East Border Region** Ltd (EBR) is the oldest of these structures and comprises of ten local authorities from both sides of the border. It was established in 1976 to promote innovative, cross-border economic development and to improve the living conditions and employment prospects of those living in the region. It has been active in implementing projects under Interreg and other EU programmes, including cross-border support services for micro-businesses.

Similarly, the **Irish Central Border Area Network** (ICBAN) is a cross-border local authority-led company comprising of eight local authorities from both sides of the border within the Central Border Area. It was formally established in 1995 to promote cooperation and communication on a cross-border basis on common regional development concerns and to provide a forum to respond to the unique economic and social needs of the Central Border Region. Its activities are similar to those of EBR.

¹⁶ InterTradeIreland (2016), Updated briefing on cross-border trade (by Eoin Magennis), January 2016

¹⁷ Ibid.

¹⁸ Ibid.

The third of these local authority structures, the **North West Region Cross Border Group**, has recently ceased to operate and is in the process of being restructured and relaunched.

There are also several non-governmental organisations with a cross-border remit. The **Centre for Cross Border Studies**, founded in 1999, conducts a range of research and policy activities. It provides information services to projects and generally to the population of the cross-border region, such as 'Border People', as well as training activities. **Co-operation Ireland** was set up in 1979 as 'Co-operation North' to improve North-South cooperation and in particular the economic links between NI and IE. It currently delivers projects aimed mostly at schools, youth groups and community organisations.

There are various public authorities and other organisations in IE and NI which are engaged in cross-border matters, notably departments of the Irish Government and of the NI Executive, local authorities (counties/districts), business organisations (IBEC in IE and CBI/NI), local chambers of commerce, etc.

2.4 Cross-border trade obstacles on the IE-UK land border

Since the mid-1990s, largely as a result of the Northern Ireland peace process and, especially, following the Belfast/Good Friday Agreement (1998), there has been a significant easing of cross-border obstacles and growth in all aspects of cross-border cooperation between NI and IE. In the case of cross-border trade, the launch of the European Single Market in the early 1990s provided an additional impulse. Today, there are **more than 18,000 workers and 5,200 students crossing the border every day to work or study. Every year, 14 million cars cross the border between Dundalk and Newry, and 1.7 million people cross the border by bus or train for short-term visits**¹⁹.

Overall, the general conditions are conducive to cross-border activities due to common language, passport-free travel²⁰, not dissimilar institutional traditions and fairly good connectivity throughout with the exception of the North Western part of the cross-border region. The use of different currencies (the Euro in IE and the Sterling in the UK) represents an exception to this. However, the most important factor influencing cross-border cooperation in this border area is socio-cultural affinity, which is very strong among parts of the border communities but virtually absent in other. These differences are reflected in politics and, indeed, for parts of the political spectrum cross-border cooperation is linked to issues of sovereignty.

These crucial factors have slowed down the pace of cross-border cooperation and the tackling of obstacles. This is manifested in the cross-border institutionalisation which has reached a plateau without any state-level or local agreements emerging since the 1990s. In the case of cross-border trade and other business activities, as well as associated support, other forces have also been at work, namely, the major downturn in the IE economy in 2007 and austerity measures affecting the public sector on both sides of the border.

Hence, a wide range of obstacles remain in the field of cross-border trade and other related fields; several are included in the Inventory of Obstacles of this study. They are listed in Table 2 of Annex 1 and summarised below.

The burdensome nature of existing tax rules and the way they affect cross-border activities of businesses in the IE-UK border region has been identified as one key obstacle as outlined in the following box and in the 'problem tree' of Annex 2.

¹⁹ Border People (2016), About us, 2016, <http://borderpeople.info/about-us> (accessed in October 2016)

²⁰ A 'Common Travel Area' exists between the UK and the Republic of Ireland going back to agreements reached in the 1920s

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Box 1. Obstacle N89 - Irish taxation rules require a mandatory transfer of NI workers employed by a NI company if active in IE for more than six months.

If an NI construction company operates on a site in IE for more than six months, then it is deemed to be a 'permanent establishment' and any employees of that company who are resident in NI and have been processed through the NI PAYE ('Pay As You Earn' system) must then be transferred over from the beginning of the contract as being IE employees²¹.

This obstacle has been identified with reference to the construction industry and it commonly occurred during the fast growth years before the 2007 economic crisis that hit the IE; a period characterised by a property boom.

It generally caused significant administrative and financial burdens on the employer²². It is more burdensome for enterprises without a company status²³. Most of the building contractors fall in this category, typically being owner-managed enterprises whose owners are listed as self-employed.

The practical implication is that NI employees and owner-managers are treated by the IE tax rules as residents of the IE for tax purposes even if they commute daily from their normal place of residence in NI. The direct effect of this situation is that NI business owners and employees pay more income tax, since personal taxation in the IE is higher than in the UK.

A further adverse effect is that they cannot get tax relief for pension contributions made in the UK, since the tax was paid in the IE. This raises a more general issue as a person who is resident in either NI or IE and is self-employed in the other jurisdiction cannot obtain effective tax relief on pension contributions²⁴. Although many people in the construction sector were generating significant incomes during the boom years, they were disincentivised from making pension contributions without tax relief.

Overall, the trade-related obstacles in the IE/NI border area fall under two **topics**, broadly in line with the EU level analysis in Section 1:

- VAT and other taxation aspects; and
- public procurement, including industry accreditations.

These obstacles are closely inter-related and represent a tight cluster of obstacles. Moreover, there is a whole host of other obstacles of concern emanating from the aforementioned and other policy fields which need to be taken into account.²⁵ All these

²¹ With effect from 1 January 2006 the statutory position is, as follows: "Irrespective of the tax residence position of the employee or the employer, income from a non-Irish employment attributable to the performance in the State of the duties of that employment is chargeable to income tax in the State and is within the scope of the PAYE system of deductions at source". Income Tax Statement of Practice SP - IT/3/07, Revenue Commissioners (Republic of Ireland)

²² O'Kane, A. (2015), Obstacles to cross-border mobility: Taxation, Border People Project, The Centre for Cross Border Studies, January 2015, <http://borderpeople.info/wp-content/uploads/2015/01/Border-People-Briefing-paper-no-4-Taxation-20150120.pdf> (accessed in October 2016)

²³ In terms of corporation tax, the situation is beneficial to incorporated NI businesses. A NI company that pays tax in the IE (12.5%) on a construction project (because that project had met the definition of a 'permanent establishment') does not then pay any UK tax on the same profit. Corporation tax rates are much lower in the IE than in the UK and most other EU countries.

²⁴ This has been identified as a separate obstacle (N92: No tax relief on pensions), see Table 2 in Annex 1

²⁵ a) particular business sectors affected, for instance, by the HGV (Heavy Goods Vehicle) road user levy in the UK or differences in waste shipment regulations (see Section 3); b) general business-related issues, such as corporation tax, currency, transaction costs (banking fees etc.), black market and cross-border shopping; c) transport and information society infrastructure, notably the road network in the North-west border area, absence of rail network, rural broadband issues (current level of provision and differences in policies regarding future provision); d) mobility of cross-border workers and students; and, e) access to social insurance systems.

obstacles are firmly attributed to Member State level, arising from the differences created in the transposition of EU directives or differences in equivalent national legislation. In the case of Northern Ireland, these are competences retained at UK government level rather than set by the NI Executive.

Evaluating the **intensity of the obstacles** is particularly challenging. Not only there are no comprehensive surveys but most local stakeholders have emphasised that the reported obstacles are 'perceived' obstacles from the point of view of the businesses and therefore difficult to quantify. An overview of the intensity of the obstacles is provided in Table 2 of Annex 1, taking into account ratings attributed to individual obstacles identified through the desk research undertaken for the compilation of the EU-wide inventory of obstacles and adjusted on the basis of contributions from local stakeholders.

All obstacles are rated as being of 'medium' intensity within the field of intervention related to trade²⁶. However, there are major variations in the assessment of certain obstacles by key stakeholders, including VAT registration requirements in IE, tax rules / transfer of workers and adequacy of advice services. This underlines the divergent perceptions regarding obstacles (in these cases the ratings are shown in Table 2 of Annex 1 in brackets).

The intensity of obstacles has also been broadly rated at the level of field of intervention (see Table 2, Annex 1). In this respect, there is consensus among local stakeholders that the intensity of the obstacles regarding cross-border workers' mobility stands out²⁷. In the words of the head of one of the local chambers of commerce, in the IE/NI border area "the main obstacles are more about people and less about goods and services".

The **timeline** of the obstacles shows that little has changed after the initial impetus of the late 1990s and early 2000s. For instance, already in 2000-2006 efforts were made to address public procurement obstacles through an Interreg supported project, known as 'Go Tender', led by InterTradeIreland²⁸.

A survey in 2009²⁹ identified a set of regulatory barriers to cross-border trade and business which is not very different to the situation in 2016, as depicted in Table 2 of Annex 1:

- access to information and signposting;
- VAT-related issues;
- other tax and insurance related issues;
- exchange rates and pricing;
- repetition and duplication of data requirements; and
- recognition of accreditations and qualifications.

Indeed, local stakeholders mentioned only one obstacle that is currently being addressed, namely, university access requirements. The persistent nature of the

²⁶ Field of Intervention 1.1: Exportation of goods and cross-border provision of commercial services, including e-commerce.

²⁷ Notably the Field of Intervention 2.2 regarding 'Mobility of cross-border workers (commuter flows)' and 3.1 regarding 'Access to social insurance system (e.g. retirement pensions, disability insurance, survivor benefits, unemployment insurance etc.)'

²⁸ Dawson, S. et al. (2015), Response to European Commission's Public Consultation on Overcoming obstacles in border regions, The Centre for Cross Border Studies, December 2015, <http://crossborder.ie/site2015/wp-content/uploads/2016/01/CCBS-Response-to-Consultation.pdf> (accessed in October 2016)

²⁹ Dawson, S. et al. (2015), Response to European Commission's Public Consultation on Overcoming obstacles in border regions, The Centre for Cross Border Studies, December 2015, <http://crossborder.ie/site2015/wp-content/uploads/2016/01/CCBS-Response-to-Consultation.pdf> (accessed in October 2016)

obstacles in the IE/NI border area is linked, on the one hand, to border-related peripherality (infrastructure type obstacles) and, on the other hand, to an insufficiently cooperation-conducive climate (see Section 4). In the words of a stakeholder from a cross-border structure, "there is no end in sight" in matters such as differing rates of taxation, standards, and public procurement, all of which depend on national governments agreements.

A closely related field is the '**availability and quality of cross-border economic advice services**' (see 1.5 in Table 2, Annex 1). Such support is well established and very extensive in the cross-border area of IE/NI, much of it with EU financial support (Interreg and PEACE programmes). For instance, Interreg III-A supported 39 projects and Interreg IV-A 32 projects focusing on business development (such as cross-border clusters) and cross-border trade.

Information and advice on trade-related matters is provided by InterTradeIreland while a wide range of topics are covered through well-established services such as 'Border People' and EURES Cross-Border Partnership. However, local stakeholders, including those directly involved in these projects and services, acknowledge that the complexity of cross-border issues is such that existing provision cannot be treated as 'the whole answer' to the problems arising from the obstacles in the IE/NI border area. Additionally, some stakeholders voice concerns as to how far support services to micro-businesses will be provided under Interreg V-A in view of the new emphasis on 'concentration'.

All the above issues could prove relatively minor in comparison to the new challenges following the Brexit vote in the UK on 23 June 2016. While it is too soon to know the specific implications of this major development, at the time of writing this case study, the prospect of a re-emergence of a 'hard border' between the North and the South (and whether and how this could be avoided) is a key area of concern and debate not only in the cross-border area but in the whole of the UK and Ireland.

3 Impact analysis

3.1 Adverse effects of obstacles on businesses

Obstacle N89, regarding burdensome tax rules, affects NI businesses in the construction sector mainly in terms of administrative/financial burdens as well as higher personal taxation for owner-managed enterprises and disincentives towards pension contributions. However, the impact of this obstacle does not seem particularly significant since much fewer building contractors from NI operate in the IE today compared to the boom years. Recent data show that the construction sector's engagement in cross-border activity is currently very low³⁰, although with signs of a significant expansion in the Irish economy in 2016 this obstacle could become more prominent in the future.

Nevertheless, this obstacle forms part of a tight cluster of obstacles; their adverse effects on businesses should be considered as a whole. Trade-related obstacles impact businesses in similar terms to those found at EU level, as outlined in Section 1. Businesses incurring **higher costs** for operating on the other side of the border is a common occurrence and is illustrated in the following examples:

- A cross-border issue since 2008 concerns waste management regulations. While there is a single competent authority (NIEA) in NI and the cost of registration is only £120 there are ten different regional authorities in IE and the cost of each application is €1,000.
- Trucks from IE crossing into NI have to pay a heavy goods vehicle road user levy which is not applicable in IE. The amount payable depends on weight and other factors but overall it represents an additional expense on IE hauliers.

Similarly, there are problems in terms of lack of transparency or consistency. In the case of waste management, problems reported include "a lack of understanding by companies" and "companies have encountered ... [inconsistencies]"³¹.

Other frequently encountered impacts of trade-related obstacles concern an imposition of obligations on the other side of the border that do not apply to the 'home' jurisdiction. For example, there is a mandatory requirement for NI companies to register for VAT in IE if active there, even if they are exempt in NI, where UK legislation does not require registration for businesses with a turnover of less than £83,000 in any 12-month period.

The aggregate effect of these and an array of other, often small, problems can amount to an entry barrier and loss of market opportunities for businesses. All relevant research highlights that when it comes to obstacles, perceptions matter and can seriously affect the visibility of opportunities and accessibility of markets. A key finding of a recent study of cross-border flows within the agri-food sector was the belief that "cross-border trade meant complying with two sets of officials and regulations, and that this represented a burden that the business was not prepared to undertake"³².

However, there are three key qualifications to this general finding.

First, the effects of individual obstacles are not symmetrical and tend to affect businesses only on the one or the other side of the border.

³⁰ Q1/2013 – Q3/2015 data showing that among all sectors covered in the all-island Business Monitor construction is the least likely to engage in cross-border activity (Perceptive Insight (2016), Review of all-island Business Monitor, January 2016)

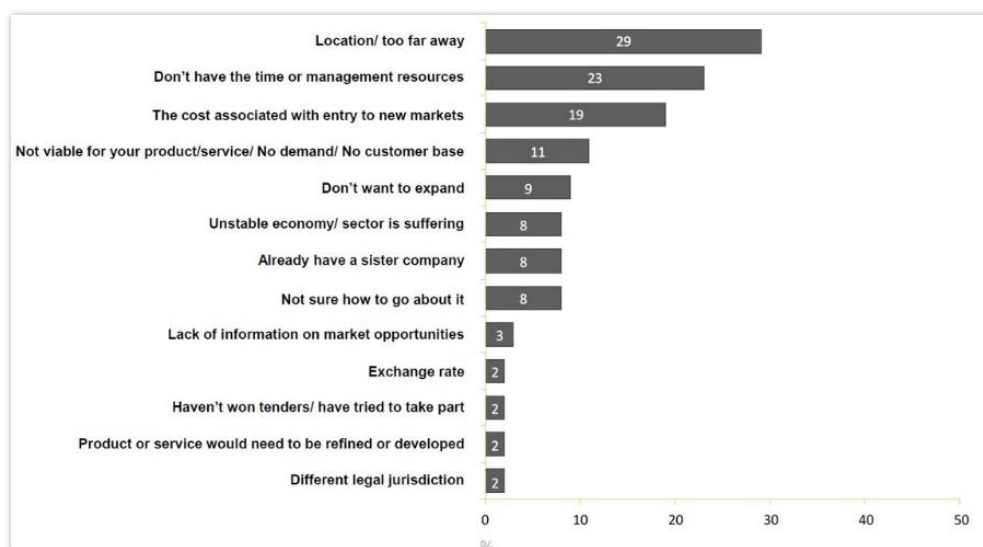
³¹ InterTradeIreland (2011), Environmental regulation and Cross-Border Trade and Business, September 2011, <http://www.intertradeireland.com/media/intertradeirelandcom/researchandstatistics/publications/EnvironmentalRegulationsandCBTrade&BusinessreportSep2011.pdf> (accessed in October 2016)

³² Soares, A. et al. (2016), A study of cross-border flows within the agri-food sector: A snapshot of four border counties, The Centre for Cross Border Studies, February 2016, <http://crossborder.ie/site2015/wp-content/uploads/2016/02/A-Study-of-Cross-Border-Flows-within-the-Agri-Food-Sector.pdf> (accessed in October 2016)

Second, the impacts are mainly felt by smaller businesses, such as owner-managed construction firms and rural businesses in the agri-food sector³³. Business size is an important factor in cross-border and generally export activities. Larger companies can cope with complexity and tend to engage more in exporting. In the case of IE-NI this applies to 56% of businesses with 50 or more employees, more than double for those with fewer than 10 employees (27%)³⁴.

Third, external obstacles are not the only relevant factors, as shown in Figure 3, below. Although some of them are related to external obstacles, like the cost associated with entry to new markets and knowledge on 'how to go about it', other significant factors are business specific, e.g. 'location too far away', 'don't want to expand', or they reflect the overall state of the economy or size of the market on the other side of the border.

Figure 3. Reasons for not taking part in cross-border trade



Source: Perceptive Insight (2016), Review of all-island Business Monitor, January 2016 [9]

Taking into account the above considerations, we can identify the section of businesses most affected by the obstacles as an 'intermediate' group of businesses which do not currently trade on cross-border basis but have the potential for doing so. The other two groups are businesses which already do so (mostly larger ones) and those which do not do so and lack the potential for trading or otherwise operating across the border ('local' businesses). Based on all-island data and making allowance for a higher share of businesses located closer to the border engaging in cross-border trade, it is estimated that the size of the 'intermediate' group is in the region of 20% of the total (with those already trading across the border at 30% and local ones at 50%)³⁵. This 'intermediate' group comprises mainly SMEs which do not have the capacity and capabilities to overcome the obstacles. They have small profit margins and can be very sensitive to the additional costs generated by the obstacles. This group can benefit most from effective support.

3.2 Impact on the functional integration and socio-economic development of the cross-border area

The above analysis indicates that **the impact of the specific obstacle (N89), regarding burdensome tax rules in IE, is not significant but the overall impact of a tight cluster of closely related obstacles, to which it belongs, can be**

³³ ibid

³⁴ Perceptive Insight (2016), Review of all-island Business Monitor, January 2016

³⁵ As estimated at validation workshop on the basis of data presented at the workshop by InterTradeIreland.

much greater but also more nuanced. This is because the general impact of trade-related obstacles on the border area depends on many other factors. Notably, the existence of several other legal/administrative obstacles in related policy areas – for example, in labour market/education, transport and social security – tends to reinforce this impact, and this clearly applies to the IE/NI border.

However, there are many other factors which could further reinforce or, conversely, mitigate the impact of the legal and administrative obstacles. As already pointed out, the availability of information on cross-border issues and practical business support can play a crucial role in helping an intermediate group of enterprises deal with and overcome border obstacles. There are factors that can stimulate cooperation, such as personal relations and shared interests³⁶. They often apply beyond an individual business, at a more general level, as an aspect of socio-cultural affinity between the border area communities. In the case of IE/NI, private business interests and community culture are closely inter-connected and inter-community affinity tends to be particularly strong in some cases while distinctly lacking in others.

In other words, the legal/administrative trade-specific obstacles can have a much greater weight if the overall environment is not favourable to interaction, and conversely a much smaller weight if there are positive factors that mitigate their impact.

Overall, the question of the impact of trade-related obstacles on functional integration is a complex issue and there are no relevant studies to allow an explicit/detailed assessment or quantification. Nevertheless, there is sufficient - albeit largely qualitative - evidence to suggest that overall impact is 'moderate' and this is supported by the following:

- There has been a long-term growth trend in cross-border trade, which although seriously affected in the 2008-2011 period by the economic downturn has now resumed and continues.
- The ratings of the intensity of individual trade-related obstacles, as well as those of most other obstacles, fall into the 'medium' category.

There is a widespread perception that in parts of the cross-border area functional integration is quite advanced. This is manifested in the large numbers of people crossing daily the border around the City of Derry in the North-west and in the Newry/Dundalk area in the East, which is also the subject of a series of local cross-border initiatives focusing on economic development³⁷.

Progress towards functional integration does not hide the fact that border obstacles, in their totality, are regarded by local and national stakeholders as having a serious negative effect on the socio-economic development of the border area. In recent years, several reports³⁸ and submissions have made this point, either in terms of demonstrating the degree to which the border areas lag behind other parts of the two

³⁶ Setnikar, S. et al (2014), Factors that influence cross-border cooperation between business in the Alps-Adriatic region, Economic Research-Ekonomska Istrazivanja, 25 September 2014, <http://www.tandfonline.com/doi/full/10.1080/1331677X.2014.952091> (accessed in October 2016)

³⁷ Dundalk Chamber of Commerce, Newry Chamber of Commerce and Trade, and Warrenpoint-Burren-Rostrevor Chamber of Commerce (2016), All Island Economy: Thinking in a new way, A Challenge for North and South, January 2016, <https://www.oireachtas.ie/parliament/media/committees/jobsenterpriseandinnovation/Dundalk-Chamber.ppt> (accessed in October 2016)

³⁸ Houses of the Oireachtas (2016), Report on the All-Island Economy, Joint Committee on Jobs, Enterprise and Innovation, January 2016, <https://www.oireachtas.ie/parliament/media/committees/jobsenterpriseandinnovation/All-Island-Economy--Final.pdf> (accessed in October 2016)

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jurisdictions or by making the case for exploiting the 'untapped potential' of the area through cross-border cooperation³⁹.

³⁹ Bradley, J. et al. (2012), Cross-Border Economic Renewal: Rethinking Regional Policy in Ireland, The Centre for Cross Border Studies, March 2012, <http://www.crossborder.ie/pubs/2012-economic-report.pdf> (accessed in October 2016)

4 Solutions and good practice

Neither the analysis of trade-related obstacles in previous sections, nor the perception of the local stakeholders place EU related obstacles at centre stage. References by local stakeholders to the EU level tend to relate (in a positive way) to solutions, signposting to past and present initiatives of the Commission on the Single Market, and to specific obstacles solved through EU initiatives, such as the roaming charges. As already indicated in previous sections, **the trade-related obstacles, including the burdensome tax rules (obstacle N89), have been largely attributed to the Member State level.** Therefore, this section focuses on good practice and solutions at regional and national level.

4.1 Practical experience

There is no evidence that any significant cross-border trade obstacles have been removed in the case of IE-UK, but several have been addressed and to some extent alleviated, such as in public procurement, through better information to businesses and through the recognition of accreditations following representation to the relevant bodies.

Efforts to address obstacles have been considerable and pinpoint to several key points that fall into two broad categories. First, efforts to remove obstacles through:

- Research and proposals making a policy case on the basis of obstacles encountered by individuals or groups of businesses (or citizens). This is done systematically by bodies such as InterTradeIreland and the Centre for Cross-Border Studies.
- Lobbying by cross-border bodies and networks, e.g. ICBAN in the case of hauliers levy, and business organisations⁴⁰.
- Reaching decision-makers with a cross-border remit in order for them to take up the case. In the case of IE/NI, as already noted, there is a permanent mechanism in the form of the North South Ministerial Council, albeit this has proved less effective lately.

These efforts ultimately amount to representations to decision-makers at state or sub-state level. However, in the case of IE/NI there is an asymmetry, as the decision-making on the identified obstacles is at the level of UK government rather than at the level of the NI devolved administration. This underlines the importance of reaching the right decision-making level with a remit for addressing the obstacles. In the case of IE-UK this has been pursued at official rather than political level through regular quarterly meetings between the respective 'better regulation units' of the UK and IE.

Second, efforts to help businesses cope with existing obstacles: relevant experience in various regions⁴¹ highlights the importance of a supportive environment through the provision of information and assistance to businesses. This is also reflected in the extensive provision of information and support services in the IE/NI border area, through 'Border People' and various other Interreg supported services run by East Border Region Ltd and other organisations. These are regional level efforts that adopt a pragmatic approach, accepting the existence of obstacles.

⁴⁰ As reported by consultees

⁴¹ For example, in the Alps-Adriatic region: Setnikar, S. et al (2014), Factors that influence cross-border cooperation between business in the Alps-Adriatic region, Economic Research-Ekonomska Istrazivanja, 25 September 2014, <http://www.tandfonline.com/doi/full/10.1080/1331677X.2014.952091> (accessed in October 2016)

Box 2. Good practices IE-UK

- Cross-border structures with a specific policy area focus, e.g. InterTradeIreland.
- Multi-sector structures with a broad consultative remit, e.g. North South Ministerial Council.
- Regular meetings between the 'better regulation units' of UK and IE.
- Provision of information and support services to businesses.

4.2 Conclusions

What stands out from the above practical experience and good practice is the crucial importance of putting in place relevant **cross-border structures and processes** that can address obstacles and generally support cross-border cooperation.

However, a crucial condition for these structures and processes to produce results is the existence of a **climate of cooperation**. This relies on the socio-cultural affinity of border communities, the political will both in the border area and at national level to pursue cooperative solutions, as well as a sufficient weight of local (border area) problems to be taken seriously in the national context.

As regards trade-related obstacles the main types of solutions fall into two broad categories: better information and support at regional or local level, and better harmonisation, to be pursued at national level. As indicated at the beginning of this section, the role of the **EU level** can be supportive – and this has been the case in the past, including Interreg and the Peace and Reconciliation Initiative – but also broader EU initiatives, e.g. the eGovernment Action Plan, and specific actions related to eProcurement and a Single Digital Gateway could make a worthwhile contribution.

At **state level**, better harmonisation can be best pursued in a preventative manner, i.e. through consultations prior to the transposition of EU directives or new national legislation. But it can of course be pursued also in a corrective manner once the differences in the regulations adopted by each state become apparent. One option for addressing those issues is through competent authorities with a broad remit, like the 'better regulation units' in the UK and IE. Another option is through cross-border forums for particular policy areas, although this will probably need to involve a number of sectoral or thematic forums to be able to sufficiently cover the spectrum of regulatory issues involved in cross-border trade.

Better information and support, at **regional level or even local level**, is based on the assumption that Member State related legal obstacles and administrative obstacles cannot be eradicated and differences in the regulatory regimes will persist and new ones will emerge, making perfect harmonisation impractical. In the case of IE-UK there is a clear trend for differences to remain and, for what is sometimes referred to as 'British exceptionalism' (opt-outs from the common currency, etc.) compared to 'Irish Europeanism', to continue to pose challenges. This is something that could be greatly magnified with Brexit.

This approach reflects a pragmatic view of the complexity associated with border obstacles. It also offers the possibility of targeting actions both geographically and by type of business or topic, e.g. public procurement, for greater effectiveness. A combination of the two types of solutions will be justified in practically all cases.

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List of consultees⁴²

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⁴² Consulted by phone and/or email prior to the validation workshop of 27.04.2016, except for Lisa Fegan who was consulted on several occasions in July and August 2016

⁴³ Provided information but not substantive contributions

Annexes

Lists of obstacles

Table 1. Obstacles in various EU borders related to Filed of Intervention 1.1 – Exportation of goods and cross-border provision of commercial services, including e-commerce

Obst. No.	Border	Main feature	Problems caused by obstacle	Intensity
1	SE-NO	Requirement for VAT rep. in NO	Swedish export companies selling to Norway and having an annual turnover exceeding 50 000 NOK must be registered for VAT in Norway through a "VAT representative".	Medium
2	SE-NO	Inadequate customs procedure	Road transportation of goods from SE to NO must transit through a staffed customs station.	High
3	SE-NO	Inadequate customs procedure	Customs declaration of goods / cargo cannot take place at train stations.	Medium
4	SE-NO	Cumbersome VAT reimbursement	Swedish exporting e-commerce companies face obstacles in Norway which create administrative burdens and additional cost.	Medium
5	SE-NO	Different technical standards	Standards for building materials in NO and SE differ; major differences concern fire protection and requirements related to moisture, water and sanitary matters.	High
10	SE-NO	Complicated VAT taxation rules	Norwegian conference organisers face problems when provide services across the border due to complicated VAT rules in SE.	Medium
12	SE-NO	Costly top level domain registration	Some Swedish e-commerce businesses have problems to register a Norwegian "top level domain".	Medium
15	SE-NO	Complicated VAT and customs rules	Cultural actors when they realise CB exchange activities experience complicated customs and VAT administration procedures.	High
16	SE-NO	Centralised mail system	The cross-border delivery of goods sent by mail from northern Norway to Sweden takes a long time, in some cases up to 14 days.	High
17	SE-NO	Different media legislations	Different regulations in Norway and Sweden cause problems for cross-border trade of print media (books, magazines) and e-books.	High
87	IE-UK	Cross-border payroll	Irish companies need to establish a cross-border payroll if their NI workers perform activities in Northern Ireland.	Medium
88	IE-UK	Asymmetrical VAT registration	Admin. burden linked to a mandatory VAT registration of NI companies active in the IE.	Medium
89	IE-UK	Burdensome tax rules	Irish taxation rules require a mandatory transfer of NI workers employed by a NI company if active in the IE for more than 6 months.	Medium
91	IE-UK	No tax clearance certificate in the UK	Asymmetric conditions for companies/self-employed individuals as regards the availability of "Tax Clearance Certificates".	Medium

Case study 4

Obst. No.	Border	Main feature	Problems caused by obstacle	Intensity
98	IE-UK	Burdensome public sector procurement	Companies face additional burdens from some public sector contractual processes regarding procurement.	Medium
99	IE-UK	Difficult recognition of accreditations	Companies face additional burdens from some public sector contractual processes regarding the mutual recognition of certain industry accreditations.	Medium
165	BE-FR	Institutional complexity	A high level of institutional complexity in the field of economic development hinders cross-border economic development.	Medium
182	BE-FR	Lengthy and costly cross-border mail	Mail sent across the border passes through national distribution centres resulting in long delivery times; higher FR-BE postal charges.	Medium
196	BG-EL	Different rules on public procurement	Legal differences in the field of public procurement hamper participation in tendering on the other side of the border.	Medium
214	IT-AT, IT-SI	Business funding & legal complexities	Cross-border business activities in the Alpen Adria Region are hindered by complex business funding systems and frequent changes in domestic business legislations.	Medium

Source: Inventory of Obstacles adapted to reflect local stakeholders' contributions on the intensity of IE-UK obstacles

Table 2. Main obstacles in the IE-UK border region (by Field of Intervention)

Obstacle No.	Main feature	Problems caused by obstacle	Intensity*
<i>(1.1) Exportation of goods and cross-border provision of commercial services, including e-commerce.</i>			<i>Medium</i>
87	Cross-border payroll requirement	Irish companies need to establish a cross-border payroll if their NI workers perform activities in Northern Ireland.	(Medium)
88	Asymmetrical VAT registration requirements	Administrative burden linked to a mandatory VAT registration of NI companies active in IE.	Medium
89	Burdensome tax rules	Irish taxation rules require a mandatory transfer of NI workers employed by a NI company if active in IE for more than 6 months.	(Medium)
91	No tax clearance certificate in the UK	Asymmetric conditions for companies/self-employed individuals as regards the availability of "Tax Clearance Certificates".	Medium
98	Burdensome public sector procurement	Companies face additional burdens from some public sector contractual processes regarding procurement.	Medium
99	Difficult recognition of certain industry accreditations	Companies face additional burdens from some public sector contractual processes regarding the mutual recognition of certain industry accreditations.	Medium
<i>(1.5) Availability and quality of cross-border economic advice services</i>			<i>(Medium)</i>
97	Difficult access to business legislation	Businesses have to undertake considerable efforts for exploring their	

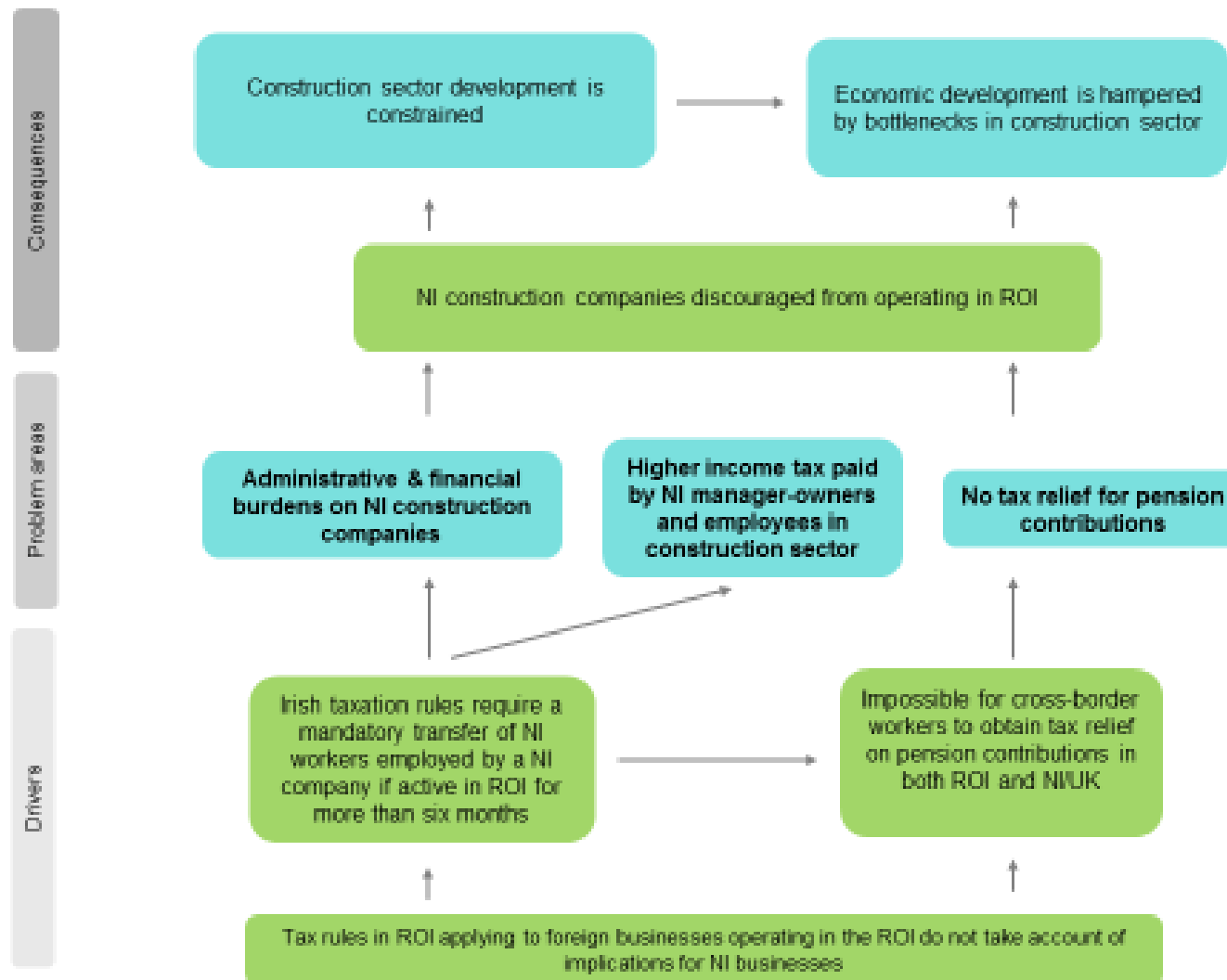
Case study 4

Obstacle No.	Main feature	Problems caused by obstacle	Intensity*
		legal/regulatory obligations in the neighbouring jurisdiction.	
<i>(2.2) Mobility of cross-border workers (commuter flows)</i>			<i>High</i>
90	No equivalent to Irish double taxation relief	Asymmetric conditions for CB workers on the availability of special tax reliefs after double taxation relief has been applied.	
<i>(2.3) Mobility of trainees, students and teachers</i>			<i>Medium</i>
95	Different national systems for higher education	High tuition fees charged by higher education institutions in NI limit the cross-border mobility of students from the IE.	(Being addressed)
96	University access requirements	Increased university access requirements in Ireland for high demand courses are a hurdle for students from Northern Ireland.	
<i>(3.1) Access to social insurance system (e.g. retirement pensions, disability insurance, survivor benefits, unemployment insurance etc.)</i>			<i>(High)</i>
92	No tax relief on pensions	Impossible for cross-border workers to obtain tax relief on pension contributions in both Ireland and the United Kingdom.	
93	Cumbersome UK-side application processes	Cross-border workers face considerable difficulties when applying for UK family benefits (esp. UK Child Tax Credits).	
94	Lengthy tax procedures	Lengthy decision procedures of UK Tax Credits Office have a negative knock-on effect for cross-border workers who claim supplement payment of Irish Child Benefit.	
<i>(3.2) Access to health care services (i.e. primary, secondary and tertiary care) and medical treatment</i>			<i>Medium</i>
100	Complex administrative processes	Complex administrative processes hinder the cross-border mobility of healthcare professionals and patients.	

* Obstacles in fields of intervention other than Field of Intervention 1.1, are rated only at the level of field of intervention rather than individual obstacle. In brackets, ratings where stakeholders' assessments show considerable variation.

Source: Inventory of Obstacles adapted to reflect local stakeholders' contributions on the intensity of obstacles

Figure 4. Problem tree



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