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Towards an ambitious, broad, deep and flexible EU-UK partnership?

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EUROPEAN POLICY CENTRE

The **European Policy Centre (EPC)** is an independent, not-for-profit think tank dedicated to fostering European integration through analysis and debate.

The Europe's Political Economy (EPE) programme covers topics related to EU economic policy, in a context of increasing globalisation and rapid technological change. It provides expertise on reforming and strengthening the Economic and Monetary Union (EMU) and regional economies; ensuring a holistic approach to industrial policy; supporting the Single Market and digital policy; as well as optimising the use of the EU budget and its programmes. Internationally, the EPE programme focuses on trade policy and multilateral governance systems. The programme's team also closely monitors and assesses the Brexit process and puts forward new ideas about the long-term relationship between the UK and the EU.

The activities under this programme often overlap and transpire in cooperation with other EPC programmes. This is the case, for example, for analysis related to Brexit and differentiated integration, skills and labour markets, sustainability and strategic autonomy.

ABOUT THE BREXIT THINK TANK GROUP

Even before the 2016 referendum, which resulted in the UK's decision to leave the EU (i.e. Brexit), the European Policy Centre (EPC) has been closely following the evolution of the UK's relations with the EU.

The Brexit negotiations, which started on 19 June 2017, set in train the formal process for the UK to leave the EU. Throughout the process, the EPC has been carefully analysing and providing advice and recommendations on the ongoing negotiations and the political, social and economic implications for the EU, as well as looking at what Brexit might mean for the EU's future relations with the UK as a third country and for the future of Europe, more broadly.

The EPC has worked closely with the European Commission's Task Force for Relations with the United Kingdom (formerly known as the Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU). In particular, the EPC has facilitated an ongoing exchange between the Commission Task Force and the policy community by setting up the Brexit Think Tank Group, which brings together a number of leading experts from across Europe. The group has provided insights and expertise on the UK's future relationship with the EU, including some focused work on the level playing field.

This publication draws on the critical analysis of many members of the Brexit Think Tank Group. It covers the impact of Brexit on different policy areas, as well as the institutional implications and the likely repercussions for the UK. Each chapter examines the short-, medium- and long-term implications of Brexit in specific areas.

Further information on the EPC's projects and publications on Brexit can be found here.

ABOUT THE AUTHORS

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FOREWORD

Assessing the long-term implications of Brexit is a particularly complex exercise. Of course, a lot will depend on whether the United Kingdom and the European Union succeed in reaching an agreement on a future partnership before the end of the transition period on 31 December 2020.

But other factors will also be key to determining future ramifications: How deep and ambitious will this future partnership be? What type of regulatory choices will the UK make once the transition period ends? What trade agreements will it negotiate with other third countries?

And, of course, the exercise has become even more complex in light of the broader context of the COVID-19 crisis, with its far-reaching human, social and economic consequences, which will be felt in Europe – and globally – for a long time.

Nonetheless, it is a necessary exercise. Because people and businesses on both sides of the Channel need to be able to understand the consequences of the United Kingdom's decision to leave the European Union. They need to be able to prepare for the inevitable changes that will accompany this decision.

That is why I am particularly grateful to the excellent group of experts that have contributed to this publication. Thanks to them, the political, economic and social intricacies of the United Kingdom's departure from the European Union can be understood more broadly.

Personally, I have long believed that, no matter the agreement we reach on our future relationship, Brexit can only ever be a matter of damage limitation. However, this is the United Kingdom's choice, and I have always respected it.

At least, with the Withdrawal Agreement, we were able to provide legal certainty on a number of key issues: We have guaranteed the rights of all European citizens residing in the UK, and of all British nationals living in the EU, for their entire life. We have avoided

a hard border on the island of Ireland, where negotiations were about peace and stability, and not just trade and the economy. And we protected the EU's Single Market, along with its guarantees for consumers, public and animal health, and safeguards against fraud or trafficking.

But our work is far from over. As I write these lines in May 2020, we have very little time left to finalise negotiations on the terms of our future relationship. If we fail, the transition period will end on 31 December 2020 without any arrangements for a new future relationship in place.

This would not affect the issues covered in the Withdrawal Agreement: the financial settlement, and, thankfully, the deal we have reached on the island of Ireland and on citizens would still stand. But it would mean the return of tariffs and quotas – a total anachronism for interconnected economies like ours. Of course, this is not what the EU wants. But it is nonetheless a scenario for which everyone must continue to prepare.

On the EU side, we will continue to push for an ambitious, modern and comprehensive new partnership, going well beyond trade in goods and services, to include areas such as energy, transport, fisheries, climate action, mobility of people, research cooperation and security.

And we will do our utmost to preserve a climate of trust between us to provide a solid foundation for this new partnership, namely by ensuring that the respective obligations of the EU and the UK, set out in the Withdrawal Agreement, are properly implemented on the ground.

Of course, our future cooperation will never match what we had.

But, even though it is no longer a member state, the United Kingdom remains our closest neighbour, ally and friend. I will always believe that we are better off working together – especially in today's world, where the greatest challenges we face are

global: climate change, mass pollution, rising social inequalities, terrorism, and now of course, the risk of further global health threats, such as the COVID-19 pandemic.

In this challenging context, solidarity across borders is more important than ever. That is why we must continue to work on strengthening the EU of 27.

This also means learning the lessons of Brexit.

Because there may have been very specific British reasons behind the Brexit vote. But it was also an expression of a form of social anger – a feeling that the EU has not always sufficiently protected its citizens in the face of globalisation.

This sentiment is common in many other European regions, and risks being exacerbated by the fallout from the COVID-19 crisis. So we must take the time to listen to our citizens; to understand them; and to provide answers to their concerns. It is too late for the British regions, but it is not too late for the rest of Europe.

We must also be ambitious, as the European Commission and President Ursula von der Leyen have been in proposing a recovery plan for Europe. Just as Brexit did not destroy the EU, nor do I believe that the COVID-19 crisis will. However, it does mean that we have to react as a Union; to equip ourselves with the tools to deal with the challenges of our times, so that, going forward, we are stronger when facing the next unprecedented crisis.

Michel Barnier
Head of Task Force for Relations with the United Kingdom

The bigger picture: The impact of COVID-19 on the EU-UK relationship

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The COVID-19 pandemic, and the ensuing economic, social, and health crises, have dramatically altered the environment in which Brexit is taking place. This is already impacting the negotiations on the future relationship between the EU and the UK.

Firstly, COVID-19 has given a new impetus to the case for extending the transition period. Secondly, the reverberations of the pandemic will be felt long after the current negotiations between the EU and the UK have concluded, amplifying the impact of Brexit on the cooperation and competition between them. These wider implications go beyond the future economic partnership and affect geostrategic and security concerns.

This chapter discusses the need to extend the transition period, as well as the broader impacts of COVID-19 on the EU and UK post-Brexit.

The case for extending the transition period in light of COVID-19

There is an urgent case for extending the transition period. The time to do so is, however, running out. Under the provisions of the Withdrawal Agreement, an extension

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The pandemic will be felt long after the current negotiations between the EU and the UK have concluded. Its wider implications go beyond the future economic partnership and affect geostrategic and security concerns.

of either one or two years must be agreed before 1 July 2020.

Even before COVID-19 struck Europe, the UK's decision to negotiate the future relationship within 10 months presented an immense challenge for the negotiating teams. Now, by insisting on this timeline despite the disruptions caused by the pandemic, the UK has increased the likelihood of a no-deal outcome.

On the political level, there is little bandwidth to focus on the Brexit negotiations. With attention elsewhere, it is very difficult to achieve any substantive progress in the politically sensitive areas – such as fisheries, governance, the level playing field – where compromises will be necessary to strike a deal.

In addition to struggling with the fallout from COVID-19, businesses are asked to prepare for the effects of Brexit (e.g. new migration rules, see Chapter 11; border controls; disruptions to supply chains). This must be done without much knowledge on what exactly the new rules will be, or whether there will even be a deal.

Most importantly, COVID-19 has changed the broader context in which the UK will leave the transition phase. The UK is exiting the EU's Single Market and Customs Union amidst a global economic crisis. The UK economy will experience an unprecedented economic downturn, with forecasts predicting its worst recession in 300 years.[1] The shock of a 'hard Brexit', no matter its actual scale, will exacerbate the economic situation further and reinforce disruptions. Extending the transition period by either one or two years could prevent such an accumulation of economic shocks.

The UK government's red lines in the negotiations, paired with its adamant refusal to even contemplate an extension, increase the likelihood of not concluding a deal at all. The question of how the UK will leave the transition period – with or without a deal, in good or bad faith – has wider implications for the long-term partnership between the EU and UK.

The wider economic implications

The UK is the second-largest economy in Europe and the fifth-biggest economy in the world. Necessarily, its departure affects the EU's economic capability and weight, especially in areas where the UK has known economic strength, like financial services, research and academia.

While some EU member states with strong links to the UK economy, such as Belgium and the Netherlands, will be more impacted than others (see Chapter 7), the EU as a whole is expected to be better placed to absorb the economic shock than the UK.

Throughout the transition period, EU-UK trade patterns have continued as before.[2] However, the economic impact will become noticeable once the UK has left the transition period (see Chapter 3). The extent of the shock will depend on the depth and breadth (or lack thereof) of the future economic partnership. Without an extension, the risk of a no-deal outcome with severe economic consequences increases. However, even if a deal is reached, the UK's red lines only allow for a hard Brexit and significantly less intimate economic partnership.

Without a deal, trade between the EU and the UK will be based on World Trade Organization (WTO) terms and include the

reintroduction of tariffs and non-tariff barriers. In this case, the level playing field provisions that the EU insists must be part of any deal would not come into effect.

WTO membership represents 98% of world trade.[3] Consequently, its system of trade rules provides the ground rules of global trade for most developed and developing countries. However, while the WTO discourages unfair practices, it is not designed to guarantee a level playing field between two developed and deeply integrated economies like the EU and UK.[4]

Boris Johnson has reassured the EU that the UK "will not engage in some cut-throat race to the bottom."[5] However, ruling out this possibility would be premature, particularly if EU-UK talks conclude without a deal and on bad terms. It is also worth noting that Johnson's official statements run contrary to remarks from members of his Cabinet, who have in the past advocated a low-tax and -regulations economy.[6]

If the UK gains competitive advantages by undercutting EU standards, some member states might be reluctant to subscribe to the EU's future regulatory ambitions (e.g. on the Green New Deal), or even advocate lowering the floor for EU standards.

The UK still must establish new economic partnerships with the rest of the world, adding further uncertainty about its post-Brexit trade objectives. At the heart of its 'Global Britain' ambitions is a trade deal with the US. The UK will face difficult choices in these negotiations, for instance, regarding whether or not to open its market to US agricultural products produced at lower food safety standards. The latest UK proposal to permit the import of such products (e.g. chlorinated chicken) at a higher tariff[7] opens the door to a gradual adjustment to US standards. The pressure to seal a deal with the US at any price, and therefore to accept lower standards and potentially lower UK standards to maintain competitiveness, will be higher in the absence of an agreement with the EU.

COVID-19 has affected the international climate in which the UK leaves the EU trading bloc. New trade deals will be negotiated amidst a global downturn and in a tense trade environment. The global spread of the virus laid bare the advanced state of globalisation, and fragility of supply chains if states decide to close borders and withdraw from cooperation.

While diversifying supply chains can help create resilience to external shocks,[8] the crisis might embolden the argument against global trade and lead to further protectionism instead. The UK's voice "as a campaigner for global free trade"[9]

The shock of a 'hard Brexit', will exacerbate the economic situation further and reinforce disruptions. Extending the transition period could prevent such an accumulation of economic shocks.

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might have little clout in a post-COVID-19 world that is characterised by protectionist instincts, trade conflicts and Sino-American rivalry.

The wider geostrategic implications

The pandemic's impact will accelerate already existing geopolitical trends, such as rising tensions between the US and China. Since the start of the pandemic, President Donald Trump has ramped up his anti-China rhetoric noticeably. The EU has been careful not to take sides in this escalating conflict. In the long run, the EU will need greater strategic autonomy to be able to strike its own balance between economic, security and human rights concerns.

In a world where the US president is increasingly withdrawing from multilateralism inter alia paralysing the functioning of the WTO, the EU and UK must amplify each other's voices if they are to have an impact and defend the rules-based international order.

Now outside of the EU, the UK is more likely to be strong-armed into choosing sides. In the context of its trade talks, the US is already pressuring the UK to distance itself from China.[10] Within the Conservative Party, a group of senior Members of Parliament have recently been pushing for a tougher line on China. It remains unclear how the UK government will recalibrate its foreign policy strategy to avoid becoming a pawn in greater power politics.[11]

Brexit paradoxically creates fragmentation at precisely the point when COVID-19 has showcased the need for greater cooperation.

In a world where the US president is increasingly withdrawing from multilateralism inter alia paralysing the functioning of the WTO, the EU and UK must amplify each other's voices if they are to have an impact and defend the rules-based international order.[12]

The wider security and foreign policy implications

Beyond the EU's role as an economic power, Brexit will impact the EU's (and the UK's) influence in the realm of security and defence. Besides France, the UK has been the EU's only nuclear power as well as permanent member of the UN's

Security Council, thereby giving greater weight to the EU as a foreign policy actor. The UK's departure will weaken the EU's effectiveness, for instance, when it comes to imposing international sanctions (see Chapter 13).

The UK has shaped the EU's foreign policy in multiple ways, from its resolute attitude towards Russia and transatlantic outlook, to its preference for action led by the North Atlantic Treaty Organization (NATO) over the creation of autonomous EU defence structures. The balance of interests within the EU on some of these issues might shift after the UK has left, creating internal tensions. For instance, French President Emmanuel Macron's recent call for better relations with Russia and criticism of a languishing NATO set off alarm bells in Eastern Europe, thereby potentially weakening the EU's ability to speak with one voice on Russia.

Despite including it in the jointly agreed Political Declaration, the UK refuses to discuss security and defence in the future relationship negotiations. It appears that the UK rejects any institutionalised form of cooperation and prefers bilateralism and coordination on a case-by-case basis (see Chapter 14), which would result in a less predictable or reliable security partnership.

The UK's future foreign policy under the slogan 'Global Britain' remains ill-defined. It is based on the vague image of a UK that is "more outward-looking, more engaged with the world than ever before."[13] Central to the UK's global aspirations is the renewal of its relations with the Commonwealth and Anglosphere, playing into the narrative of an empire lost and great power expectations. While the UK is chasing dreams of Empire 2.0, new security threats are emerging that know no national border: cybersecurity threats, the climate emergency and global pandemics.

Close cooperation between like-minded and reliable partners will be required to tackle any of these cross-border security threats efficiently. Brexit paradoxically creates fragmentation at precisely the point when COVID-19 has showcased the need for greater cooperation, for instance, in the realms of medical research and food security.

Despite its 'special relationship' with the US, the UK's foreign policy interests are in practice more often aligned with Europe's. For example, the UK has sided with the EU and not the US on climate change and Trump's rejection of the Paris Agreement, the US' withdrawal from the Iran nuclear deal, and Trump's decision to move the US Embassy in Israel to Jerusalem.[14] A Trump-led White House is hardly a reliable partner for the UK.

Brexit has shone a light on the EU's priorities in its relations with third countries, and its ability to speak with one voice when it comes to the importance of preserving the integrity and competitiveness of its market.

Mutual trust will be an important factor in guaranteeing a successful reinstatement of close and mutually beneficial EU-UK relations.

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While the UK can still align with the EU's position on foreign policy issues, it can no longer shape it actively. In terms of UK-US relations, in addition to an anticipated decline in the former's military capabilities, a UK outside of the EU will no longer be regarded as a mouthpiece for transatlantic interests and, therefore, be less valuable to Washington. It will, thus, lose influence either side of the pond.

The UK's declining political influence will be reinforced by the economic shocks of Brexit and COVID-19, with economic pressures potentially resulting in a defence budget reduction in real terms.

The wider implications for (dis)integration

In light of a changing international order, Brexit will also impact how the EU approaches its relationship with other third countries. What will be the implications for European (dis)integration?

The initial concern that other EU states might want to follow the UK's example did not materialise (see Chapter 6). On the contrary, the EU-UK negotiations have exposed the economic and political costs of leaving the EU and enhanced the leverage of the Single Market.

Brexit has shone a light on the EU's priorities in its relations with third countries and its ability to speak with one voice when it comes to the importance of preserving the integrity and competitiveness of its market. This has already given new impetus to the EU's renegotiation of existing agreements (e.g. a unified governance framework for the EU-Swiss agreement, see Chapter 8). In some areas, the UK's departure could be an incentive for deeper integration. For instance, the UK used to stall closer cooperation in the areas of EU strategic autonomy and defence spending.

While Brexit has not resulted in further EU disintegration, the EU would be well advised to take the feelings of public discontent and political disenfranchisement that were expressed in the referendum seriously. Brexit should mark a moment of critical self-reflection and a chance for the EU to explore ways of considering citizens' views, improving public communication, and levelling up (regional and other) inequalities. Despite COVID-19 occupying all political bandwidth, EU member states should not dismiss the window of opportunity offered by the upcoming Conference on the Future of Europe, especially its participatory elements.

In the UK, neither its citizens nor other stakeholders (e.g. businesses, the devolved administrations) were consulted on their preferences for the future EU-UK relationship. Societal divides on Brexit still run deep (see Chapter 2). This has also increased the chance of territorial disintegration. The Scottish independence debate is gaining momentum (see Chapter 4), and Northern Ireland's new status under the Withdrawal Agreement has sparked debates about Irish reunification (see Chapter 5).

The EU must prepare for the wider implications of a disintegrating UK, especially since an independent Scotland would seek EU membership. While the EU should be open to any request from a pro-European state that shares its values,

it must also be aware of the destabilising effects on the UK. For instance, the break-up of the UK would cause a great headache regarding the UK's independent nuclear deterrent, considering that its nuclear submarines and munitions are based in Scotland. The question of Irish reunification will likely lead to a renewed conflict between Nationalists and Unionists and directly affect the EU via Ireland's EU membership.

There are other territorial issues, like the status of Gibraltar, access to fishing grounds, and the coordinated response to future (e.g. climate-induced) migration patterns. These hold considerable potential for conflict and could strain EU-UK relations in the future. Against this backdrop, it is necessary to establish robust mechanisms for dispute resolution,[15] as well as a single governance framework that enables an evolving partnership and linkages between different areas of cooperation.

The case for long-term strategic thinking and a trusting partnership

The EU must consider how to position itself vis-à-vis the UK and other third countries post-Brexit. It should review what Brexit means for the EU as a regional and global actor – not only in terms of 'hard security' but also with a view to its soft power abilities to influence and attract others.

The EU will need trustworthy and reliable partners and alliances to defend its interests on the global stage. Considering that the EU and UK will continue to share common objectives, the former has no interest in a weakened UK that is less influential and more vulnerable to external threats.

Mutual trust will be an important factor in guaranteeing a successful reinstatement of close and mutually beneficial EU-UK relations. However, the trust between both sides has been put to the test. In particular, the UK's dithering approach regarding the implementation of the Protocol on Ireland and Northern Ireland has created doubts about the UK's goodwill. If the UK is perceived to be revoking its legally binding commitment to ensure a fully operational

customs border in the Irish Sea, the future relationship would be off to the worst possible start.

While the EU should not compromise its principles in the future relationship negotiations, it is important not to lose sight of the bigger picture. The COVID-19 pandemic has reinforced global trends, such as rising US-China tensions, an increasingly protectionist trade environment, and the prevalence of cross-border security threats. These trends essentially highlight shared EU-UK strategic interests and the need for close cooperation. The primacy of the UK's sovereignty concerns currently limits the prospects for cooperation and generates a climate of distrust.

In the long run, new mechanisms (or institutions) are needed to establish new patterns of cooperation, thereby creating shared goals, transparency and trust. An acrimonious divorce – for instance, following an abrupt end to talks or an insufficiently implemented Protocol on Ireland and Northern Ireland – would be a problematic start for this transition towards a renewed, trusting partnership.

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2. Sampson, Thomas (2020), "Brexit and UK trade: the story so far", London: The UK in a Changing Europe.

3. *World Trade Organization*, "Who we are" (accessed 09 June 2020).

4. Baldock, David; Larissa Brunner; Pablo Ibáñez Colomo; Emily Lydgate; Marley Morris; Martin Nesbit; Jacques Pelkmans; Vincent Verouden and Fabian Zuleeg (2019), *Ensuring a post-Brexit level playing field,* Brussels: European Policy Centre.

5. Johnson, Boris, "PM speech in Greenwich: 3 February 2020", Greenwich, 03 February 2020.

6. For instance, in 2012, leading Brexiters (and now Cabinet members) published *Britannia Unchained: Global Lessons for Growth and Prosperity*, which called for a far-reaching deregulation agenda for the UK.

7. Stone, Jon, "Government ready to open British markets to chlorinated chicken for US trade deal", *The Independent*, 04 June 2020.

8. Koujianou Goldberg, Pinelopi, "The new empty argument against trade", *International Politics and Society,* 22 May 2020.

9. Johnson (2020), *op.cit.*

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11. Especially since the UK's review of its foreign, defence, security and development policy for recalibrating its global role has been postponed.

12. Zuleeg, Fabian (2019), "The Worst Is Yet To Come", *Berlin Policy Journal,* 31 October 2019.

13. Johnson, Boris, "The rest of the world believes in Britain. It's time that we did too", *The Telegraph*, 15 July 2018.

14. Major, Claudia and Nicolai von Ondarza (2018), "No 'Global Britain' after Brexit", Berlin: German Institute for International and Security Affairs.

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TOWARDS AN AMBITIOUS, BROAD, DEEP AND FLEXIBLE EU-UK PARTNERSHIP?

The impact of Brexit on the United Kingdom

The UK political system

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There is no historical precedent for what the politics of a member state looks like after leaving the European Union. However, what we do have is a case study of what happens to the politics of a member state as it goes through the process of withdrawing from the European project: destabilised, fractured and dominated by questions of political identity.

Perhaps the most important political effect of Brexit was not what it caused but what it revealed – a country split on values and divided by geography, with all too many people feeling wholly disconnected from the political system. The disagreement over the Brexit process between Leavers and Remainers was complex rather than binary, exposing pre-existing divisions rather than creating new ones. As a result, it is hardly surprising that the Brexit cleavage – which seemed to appear in British society out of nowhere during the referendum campaign – did not fade after the June 2016 vote.

Rather than a singular event which catalysed long-term change in the UK's political system, it is perhaps more illuminating to view Brexit as a process which accelerated existing political trends and structural changes. One such trend is partisan dealignment, or the long-term decline of party loyalty (and therefore increased volatility) among voters.

Data from the British Election Study illustrates that the proportion of the electorate reporting a very strong party identification fell from 45% in 1964 to 10% in 2005.[1] Just 1 in 10 Brits now says that they identify with a political party very strongly, compared to half of the voting population in the 1960s.[2] Following the referendum, the Leave and Remain campaigns came to provide labels for people's political identity that increasingly seemed to suit people better than traditional political labels. As a result, British Election Study research found that only 1 in 16 people have no Brexit identity, whereas more than 1 in 5 have no party identity.[3]

Following the referendum, the Leave and Remain campaigns came to provide labels for people's political identity that increasingly seemed to suit people better than traditional political labels.

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The Government has taken steps to ensure that it will be much harder for Parliament to influence the Brexit process going forward.

The UK public had long held a worryingly dim view of their parliament and political institutions, and their impressions have only worsened over time. Those who believe that the UK's political system needs quite a lot or a great deal of improvement stood at 60% in 2003, 68% a year before the referendum and is now at 72%.[4] The Brexit process did appear to deepen some of these perceptions of distrust, but attitudes were heavily dependent on outcomes. Trust slumped among Remainers after the referendum result; then among Leavers when the hung parliament of 2017-19 looked like it might attempt to force the government into holding a second referendum; and, finally, trust rebounded among Leavers when Boris Johnson won the general election.

Nonetheless, while the intricacies of parliamentary process were discussed as never before in the UK's daily news programmes, any greater familiarity with them among the public served to breed contempt rather than respect. 42% went on to say that "many of the country's problems could be dealt with more effectively if the government didn't have to worry so much about votes in Parliament."[5]

The fact that Parliament was centre stage in the Brexit drama was almost certainly the temporary result of a hung parliament rather than a permanent change in the relationship between the executive and legislature. Some changes were potentially long-lasting, however. As part of an attempt to circumvent parliamentary opposition, Boris Johnson expelled 21 Conservative Members of Parliament (MPs) who fought against a no-deal Brexit. In the general election that followed in 2019 – fought on a pledge that the no-deal scenario should remain part of the Government's strategy –, many of these MPs, some of them experienced ex-ministers, did not contest their seats.

This is a permanent loss of experience, and the seeming acceptance of defeat for a more pragmatic, less obviously Europhobic strain of Conservativism. In their place are new MPs, joined by others who represent areas – mostly outside major cities – where previously the Labour party performed strongly. These places were won on the back of a pledge to 'get Brexit done'.

Moreover, the Government has taken steps to ensure that it will be much harder for Parliament to influence the Brexit process going forward.[6] The first version of the Withdrawal Agreement Bill ensured Parliament would vote not only on the negotiating mandate for the future relationship talks with the EU but also the final treaty on that future relationship. The post-2019 election version of the Bill stripped out these provisions, however, meaning that Parliament will have little formal say in

For the first time since the Labour Party was formed a century ago, the working class are now more likely to vote for the Conservatives than the middle class.

The fiscal headroom to deal with any short-term disruption caused by Brexit has shrunk following the COVID-19 crisis.

shaping the mandate, and no formal vote on whatever is agreed.

The referendum and its aftermath revealed a UK divided along a number of different cleavages, not least age and education level. Perhaps the key fissure in the UK's electoral geography now, as in much of Europe, is between major cities that have benefitted from globalisation and are populated by citizens with broadly more socially liberal values, and places on the periphery which are more likely to have been – and feel – disadvantaged by the long-term changes in society. This poses major problems for parties – and Labour in particular – that cannot simply be forgotten once Brexit is 'out of the way'. Brexit gave working-class voters who had long felt excluded from the political conversation a voice – and many of them went on to give Johnson their vote.

As a result, for the first time since the Labour Party was formed a century ago, the working class are now more likely to vote for the Conservatives than the middle class.[7] This also poses a geographical problem for the Conservatives: there are a number of seats, predominantly but not exclusively in the south of England, where a high number of middle-class graduates live. Overall, these seats swung to Labour and the Liberal Democrats under Jeremy Corbyn's leadership. A Labour leader with the same policy bona fides but sans the personal baggage will make things more difficult for Johnson.

While the Labour Party has emerged from the Brexit saga with fewer MPs, it can perhaps claim to be more united now that the Corbyn project is at an end. Its members and MPs – at loggerheads between 2015 and 2020 – converged on Keir Starmer as the best man to lead the party. True, he won the leadership contest as the candidate most associated with the Remain movement in the UK. Furthermore, he was also the only candidate in the contest to not rule out the UK rejoining the bloc in the long-term.

Nevertheless, his stance on Brexit was probably less important to his victory than his triangulation between Corbynism and the rest of the Labour Party.

Despite not being backed by Corbyn, in a sense Starmer could be seen as the continuity candidate: the one best placed to go with the grain of Labour's new electoral coalition forged by Brexit, and build on the relative gains made in areas with a disproportionate number of graduates. Progress could come from winning and retaining the support of enough socially liberal voters – largely those middle-class graduates mentioned above –, making just enough headway to potentially deny Boris Johnson a majority in the next general election. However, success also likely means winning back voters with more socially conservative values and who have felt detached from the Labour Party for some time. A politics fought on economic competence rather than social values is therefore likely to offer more propitious terrain for Labour.

And, of course, great changes are coming to the UK's economic model. The fiscal headroom to deal with any short-term disruption caused by Brexit has shrunk following the COVID-19 crisis. Previously urgent commitments to 'level up' the UK will become harder to deliver; not merely as a result of the eye-watering levels of government borrowing undertaken to deal with the pandemic, but also because COVID-19 itself has had a profoundly unequal impact. The virus has hit more disadvantaged urban areas harder, not only in terms of death rates but also its impact on the education of children from less well-off households.[8]

Levelling up, in other words, will be significantly complicated by the pandemic, and could be exacerbated further by the type of Brexit deal envisaged by the Prime Minister. This makes it foolish to assume – as many did the day after the general election – that the Conservative Party

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will be hegemonic for the next couple of election cycles.

It may, of course, be the case that the crisis will see an even greater reassertion of national borders and national identity. Moreover, issues such as immigration – seemingly a significantly less salient and heated debate since the referendum – could re-emerge as key dividing lines in British politics. However, it is equally possible that the nature of this crisis and its economic consequences will end up reorienting UK politics back towards questions of economic redistribution, the workplace, and the resilience and adequacy of key public services hit by a decade of austerity.

One policy area whose salience has changed as a result of COVID-19 is Brexit itself – it has now become a second-order issue in the UK, as well as a much lower priority for the EU. Decisions on whether the UK should ask for an extension to the transition period (due to end on 31 December 2020) will need to be made by the end of June 2020. However, as of yet, there is still no sign that the Government will shift its position of steadfastly refusing to do so.

Even if the Brexit question does fade from view – and the Leaver and Remainer labels dissipate –, that should not give the UK's politicians the false perception that the country is any less divided. Indeed, when thinking about responses to the key challenges the country now faces, policymakers would be wise to remember the lessons that emerged from the Brexit process. The electorate is volatile and unpredictable. Voters remain detached from the formal political process. And people and regions across the UK vary in their capacity to rebound from economic shocks and crises. If these lessons really have finally been learnt, that could be the most profound effect of Brexit.

[1] Fieldhouse, Edward; Jane Green; Geoffrey Evans; Jonathan Mellon; Christopher Prosser; Hermann Schmitt and Cees van der Eijk (2019), *Electoral Shocks: The Volatile Voter in a Turbulent World*, Oxford: Oxford University Press, p.53.

[2] Sanders, David (2017), "The UK's changing party system: The prospects for a party realignment at Westminster", *Journal of the British Academy*, Volume 5, pp.91-124.

[3] The UK in a Changing Europe (2019), "Brexit and public opinion 2019", London.

[4] Blackwell, Joel; Brigid Fowler and Ruth Fox (2019), "Audit of Political Engagement 16: The 2019 Report", London: Hansard Society.

[5] *Ibid.*, p.5.

[6] The UK in a Changing Europe (2020), "Parliament and Brexit", London.

[7] Evans, Geoff and Jonathan Mellon, "The Re-shaping Of Class Voting", British Election Study, 06 March 2020.

[8] Office for National Statistics (2020), "Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020"; Cullinane, Carl and Rebecca Montacute (2020), "COVID-19 and Social Mobility Impact Brief #1: School Shutdown", London: The Sutton Trust.

COVID-19, Brexit and the opportunity for a sustainable recovery

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The establishment of a new trading relationship between the UK and the EU takes place in times of unprecedented economic disruption due to the COVID-19 crisis. Before the crisis, the UK government set out a vision for reform which focused on improving living standards across the UK. It has since reiterated this commitment to such policies. These include so-called 'levelling up' policies, aimed at improving productivity across the different regions of the UK and achieving the green transition, through infrastructure investment. And they include addressing yawning social problems, such as the acute housing shortage and the dreadful shortcomings in social care.

The Institute for Public Policy Research (IPPR) has argued that a fair and sustainable recovery from the COVID-19 crisis is indeed possible. It should be built on public investment that fosters the green transition,[1] a reversal of crippling cuts to public services and a drive to address regional inequalities.[2] The government's overall economic success will be judged by how it tackles these challenges within the context of the pandemic.

The establishment of a new relationship with the EU will interact with these policy initiatives and could play a supportive role. At the same time, the crisis adds to the need to ensure that the transition to a new relationship is smooth, well-designed and minimises uncertainty for people and businesses.

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Vast social inequalities, underinvestment in public services and slow progress on the green transition remain huge challenges, as before. It is in this context that the exit from the Brexit transition period is taking place.

Brexit in times of coronavirus

Brexit and its economic implications will take place in an economy severely weakened by COVID-19. Even before this crisis struck, the UK was experiencing low growth and a decade of stagnant living standards that had left many behind. The decade following the 2008 financial crisis was marked by stagnant productivity growth. This meant that although unemployment reached its lowest level in four decades (below 4%), there was barely any real wage growth. Most regions of the country never saw their living standards return to the levels before the 2008 financial crisis.

The pandemic is exacerbating these trends. As elsewhere, the coronavirus has had a disastrous effect on the UK's economy and labour market. The economy is on life support, with more than 8 million workers' wages being funded by the government – almost a third of the labour force. Unemployment is likely to increase by over 2 million. If social distancing restrictions continue in the second half of the year, even if partially, redundancies may well be higher still. The groups most affected by this tend to be those earning low wages, ethnic minorities as well as young people.

The government's response so far has averted some of the crisis' worst consequences, including an even larger rise in layoffs. However, all eyes are now on the coming policy decisions that will shape the recovery. Will the government make good on its promise to invest and "spread opportunity to every corner of the UK," as the Prime Minister claims?[5] Vast social inequalities, underinvestment in public services and slow progress on the green transition remain huge challenges, as before. It is in this context that the exit from the Brexit transition period is taking place.

A 'no deal' outcome remains a possibility. However, there is also scope for compromise, for instance, in areas of environment and climate change, labour and social standards, and taxation.

The government's migration plan will have a significant impact on the UK's labour market – particularly on low-paid sectors that currently rely on EU migrants.

The economic impacts of Brexit

Even though the UK has left the EU and is currently in the transition phase, the shape of their future relationship is still hugely uncertain. As the quid pro quo for a tariff- and quota-free deal, the EU has made clear its expectation of a level

playing field for trade. This includes an agreement on areas like state aid and competition policy, taxation, environmental protections, and labour and social standards.

IPPR analysis suggests that, given the UK's red lines, there will be many challenges in negotiating such a level playing field and, so far, little progress has been made. Therefore, a 'no deal' outcome remains a possibility. However, there is also scope for compromise, for instance, in areas of environment and climate change, labour and social standards, and taxation.[4]

Any forward-looking economic assessment will thus remain highly uncertain given that important policy decisions are yet to be made. The Office for Budget Responsibility (OBR) – the UK's public finances watchdog – highlights that economic activity is about 2% lower in 2020 than what it would have been in the absence of Brexit.[5] This is mainly explained by lower business investment following the referendum. The OBR says this drag on growth constitutes about a third of the negative impact, with the rest still to come, assuming future trade barriers will be similar to those of a 'typical free trade agreement'. The exact size of this impact will depend on the outcome of the negotiations. And negative growth effects from increased trade barriers could be offset by pro-growth policy choices, as outlined in the final section of this chapter.

Before considering policy options, the remainder of this section considers in more detail how different sectors, income groups and regions might be affected by Brexit.

Brexit should be tailored to promote the government's objectives to 'level up' the left-behind regions of the country, improve living standards across the board and drive the green transition.

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SECTORAL IMPACTS

A Brexit-related increase in trade barriers is likely to negatively affect sectors like finance, mining, chemicals and electrical equipment – they could have a negative impact of more than 5% on their gross value added (GVA) (see figure, page 24). These sectors tend to have relatively higher wages, and indeed Brexit might affect high-income sectors somewhat more in general. Nevertheless, some low-paid sectors (e.g. textiles) will likely suffer, too. On the other hand, some sectors, such as agriculture, and food and beverages, could benefit from Brexit in terms of their GVA.

Distributional impacts will likely vary also within sectors. Low-paid workers might be most at risk of Brexit-related impacts, even in sectors that are on average well-paid. For instance, lower-paid or less senior staff members in firms considering downsizing or relocating due to Brexit may be at greater risk of redundancy.

Higher-income sectors are somewhat more likely to be negatively affected by Brexit

Source: Morris (2018)[6]

Relationship between predicted GVA impacts of a 'hard' Brexit and median gross weekly earnings of full-time employees by sector
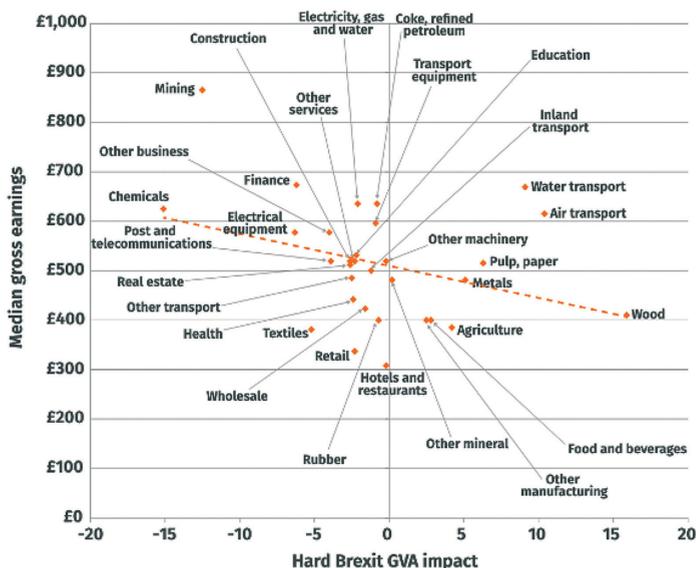
MIGRATION-RELATED IMPACTS

The UK government announced in February 2020 its plan for a new 'points-based' immigration regime following the transition phase. IPPR analysis finds that 69% of EU migrants currently working in the UK would be ineligible for a skilled work visa if these future immigration rules were to apply to them. This is because, based on their occupation and earnings, they would not have enough points to secure a skilled work visa.[7]

This suggests that the government's migration plan will have a significant impact on the UK's labour market – particularly on low-paid sectors that currently rely on EU migrants. The social care and health care systems are already experiencing a workforce crisis, but these new immigration measures are likely to complicate recruitment further. The hospitality industry will also find it particularly difficult to recruit EU workers under the new system.

PRICE-RELATED IMPACTS

Higher trade barriers resulting from the new trading relationship could mean increased prices for imported goods. Building on analysis by Breinlich *et al.*,[8] the IPPR finds that the price impact (as a share of income) could be relatively similar across income groups. Overall, prices could increase between 1.5% and 3.5% across income groups, depending on the 'softness' or 'hardness' of the new trading relationship.[9]

The manner in which potential price increases affects different income groups will vary, however. For instance, poorer households spend a greater proportion of their income on food (i.e. a product group with high price impacts as a result of Brexit). Meanwhile, richer households are more likely to spend a greater proportion of their income on transport (i.e. another product group with a high price impact, in part because of the predicted rise in the price of imported cars).

Some of these price rises could be offset by cheaper goods from elsewhere through tariff reductions if new trade deals were negotiated with non-EU trading partners. However, the overall effect of this is estimated to be relatively small.

REGIONAL IMPACTS

Brexit will likely have widely varying regional impacts. At first glance, EU withdrawal will impact local authorities in London and the South East the most. This is because these areas have the highest concentration of people employed in the services sector, particularly financial services and business activities.

However, using a different set of indicators and focusing on exports changes this picture, with regions outside London significantly more affected. For instance, Northern Ireland exports the vast majority of its food, live animals and material manufactures to the EU given the land border with the Republic of Ireland. East Wales, in turn, has a high share of exports to the EU in machinery and transport equipment, given that it contains a number of major European export hubs, such as Toyota's Deeside Engine Plant and Airbus' Broughton manufacturing site.[10]

In general, going beyond a high-level sector analysis and considering value chains, there is evidence that regions outside London will be hit the hardest. Looking at trade exposure through value chains, Chen *et al.* find that regions most exposed to EU trade are, in fact, the Midlands and Northern England, rather than London or Scotland.[11] London and Scotland – with their more skilled workforce – could also be expected to adapt to the new post-Brexit reality more quickly than others.

This differential regional impact may make the government's plans to raise productivity in all parts of the country more difficult.

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The policy opportunity

Brexit should be tailored to promote the government's objectives to 'level up' the left-behind regions of the country, improve living standards across the board and drive the green transition.[12] It should be built around three pillars: a broad-based industrial strategy, and investing in the UK's social infrastructure and a green recovery.

First, the UK requires an ambitious investment stimulus aimed at improving productivity growth in sectors that are traditionally considered high- and lower-tech. The government has declared its ambition to increase infrastructure investment and research and development expenditure for high-tech industries and manufacturing. But investments and support initiatives should also focus on service-oriented sectors, such as education, health and social care. This response must be tailored to the needs of the post-pandemic labour market.

Second, the government needs to foster investment in 'social infrastructure' that generates economic *and* social value. In the 21st century, an important source of economic value will be generated through networks and the exchange of ideas. Such growth requires people to meet, exchange and create. At the same time, the rise of the service sector means that delivery is increasingly local. In other words, much growth is generated through people convening in economic clusters. Fostering this type of growth has the dual advantage of raising growth while also

strengthening communities. World-class local public services are a crucial piece of social infrastructure to enable this. Severe cuts to such services over the last decade thus need to be reversed. This can be further advanced by championing common forms of ownership and local employment through placemaking strategies.

Third, public investments should be used to steer the economy onto a green growth trajectory. Such investment can incentivise the private sector to make green investments. Each pound the government uses to, for instance, support low-carbon housing or sustainable transport can 'crowd in' a multiple of that in private investment.

In the long term, such investments pay off for the economy as a whole. To make such crowding-in work, careful targeting and impact assessment of public investment is needed. Its aim must be to fully decarbonise buildings, transport, industry and the power sector by 2050.[13]

In sum, sustainable recovery from the COVID-19 crisis is possible. The government should ensure that its Brexit policy supports, rather than hinders, this. It will need to support a broad-based investment stimulus to allow an upscaling of the country's social infrastructure, and deliver the green transition swiftly.

[1] Murphy, Luke and Carsten Jung, "Budget 2020: Level up the economy, step up to the environmental crisis", The Institute for Public Policy Research, 08 March 2020.

[2] Raikes, Luke; Arianna Giovannini and Bianca Getzel (2019), "Divided and connected: Regional inequalities in the North, the UK and the developed world", Manchester: The Institute for Public Policy Research North.

[3] Johnson, Boris, "Let's unite this country", *Twitter*, @BorisJohnson, 15 December 2019.

[4] Morris, Marley (2020), "Negotiating the level playing field", London: The Institute for Public Policy Research.

[5] Office for Budget Responsibility (2020), "Economic and Fiscal Outlook – March 2020", London.

[6] Morris, Marley (2018), "An equal exit? The distributional consequences of leaving the EU", London: The Institute for Public Policy Research, p.8.

[7] Morris, Marley; David Wastell and Robin Harvey, "Immigration plans analysis: Two thirds of current EU migrants in health and care sector would have been found ineligible", The Institute for Public Policy Research, 19 February 2020.

[8] Breinlich, Holger; Elsa Leromain; Dennis Novy and Thomas Sampson (2017), "The Brexit vote, inflation, and UK living standards", London: Centre for Economic Performance.

[9] Morris (2018), *op.cit.*

[10] *Ibid.*

[11] Chen, Wen; Bart Los; Philip McCann; Raquel Ortega-Argilés; Mark Thissen and Frank van Oort (2018), "The continental divide? Economic exposure to Brexit in regions and countries on both sides of The Channel", *Papers in Regional Science*, Volume 97, Issue 1, pp.25-54.

[12] The UK's industrial strategy is unlikely to clash with EU state aid rules; they do not prevent an active industrial policy. Instead, the EU allows state aid to be directed towards a range of key progressive priorities, such as regional development, environmental protection and support for small businesses. It restricts state aid when public money is wasted, and pan-European inequalities exacerbated. Moreover, EU rules do not prevent nationalisation and explicitly allow for public ownership in the rail industry and other areas of the economy. The evidence suggests that the UK has spent far less on state aid than most EU countries. Morris, Marley and Tom Kibasi (2019), "State aid rules and Brexit", London: The Institute for Public Policy Research.

[13] Murphy and Jung (2020), *op.cit.*

Scotland, independence and Brexit

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Scotland's independence debate, and its eventual choice of whether to stay within the UK or not, has been strongly impacted on by Brexit. That impact will not disappear in the coming years. Brexit has also shown up many weaknesses in the existing devolution settlement across the UK, not least in the lack of influence over the UK government's decision-making by the Scottish parliament and the Welsh parliament (with the Northern Ireland Assembly suspended during the entire Brexit talks).[1]

The polls

Scotland and Northern Ireland both voted 'remain' in 2016 – Scotland by 62% to 38%. Polls since then have tended, if anything, to show higher support for remain in these regions – reaching two-thirds or more in some polls.[2] About one-third of Scotland's 'leave' voters in 2016 also supported independence, so there was not a simple 'remain/yes, leave/no' divide. However, in the four years since the vote, there has been some tendency for 2016 remain voters who also opposed independence to shift towards support for an independent Scotland in the EU. This tendency may well strengthen now that Brexit has happened, and if the UK continues to head towards a relatively hard Brexit.

Some recent polls show support for independence in Scotland increasing from its 45% level in 2014 to 50%-52% at the start of 2020; some of this increase has been driven by remain voters choosing independence in the EU over staying in the UK. There is also a very strong demographic character to support for, and opposition to, independence in Scotland. Younger voters are strongly

There is a very strong demographic character to support for, and opposition to, independence in Scotland.

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As Brexit talks start, there is little chance for any real influence from the devolved governments – any more than there was during the UK-EU withdrawal negotiations.

pro-EU and pro-independence: those under 50 years old, polls suggest, support independence by a two-thirds majority, while those over 65 are most opposed, with about two-thirds against. EU citizens in Scotland are also now more likely to back independence than in 2014.

A changing independence debate

Although the EU figured in the 2014 Scottish independence referendum debate, it was not the decisive issue. There was certainly debate about whether and how quickly Scotland could rejoin the EU, or even remain through some type of ad hoc 'holding pen' arrangement (given that it would have been an independent state that was formerly a sub-state of the UK, itself an EU member state). But the main focus of the debate was self-determination, the potential advantages of statehood versus economic doubts not least over currency, the welfare state and pensions.

The fact of Brexit means that there are now different questions in the independence debate. Scotland, of course, left the EU with the rest of the UK at the end of January 2020. Arguments from the Scottish government after the 2016 vote fell on deaf ears in London. The UK has not aimed for a softer Brexit nor (for now) a longer transition.

The Scottish government's arguments for a differentiated deal for Scotland – potentially asking the EU if Scotland could stay in the Single Market while the rest of the UK (rUK) did not – were also rejected by London (and may well have been by Brussels, too, but they were never asked).[5] Even a repeated request from the Scottish government for a different or differentiated migration policy for Scotland – which has benefitted strongly from, and depends in many sectors on, EU migration – was rebuffed without discussion or consideration.[4] Overall, the fact of Brexit means that the possibility of an independent Scotland rejoining the EU has become an even more important issue in the independence debate than it was in 2014.

A recentralisation

Meanwhile, from early in the Brexit process, there was a major debate between London, Edinburgh and Cardiff over a 'power grab' of devolved powers. In passing the EU Withdrawal Act, which brought EU law into UK law on Brexit, London had proposed bringing EU laws in devolved areas, including agriculture, environment, and fisheries, first into UK law. Both the Scottish and Welsh governments protested strongly. A compromise was put forward proposing that this centralisation of powers would only be in some areas and only last for up to seven years, while common UK frameworks were established in key areas. The Welsh government and assembly (now parliament) accepted this compromise, the Scottish government and parliament did not. Nonetheless, it went ahead. And yet, even now, any common UK frameworks are still to be established.

As Brexit talks start, there is little chance for any real influence from the devolved governments – any more than there was during the UK-EU withdrawal negotiations, first under Theresa May and then Boris Johnson. There has been formal interaction between London and the Scottish government through the so-called Joint Ministerial Committee (European Negotiations), but neither before nor after the 31st January has this amounted to any serious advance or detailed consultation over negotiating positions.

And so, in many ways, Brexit has led to a recentralisation in the UK, something that has not gone unnoticed in Scotland and that will also continue to impact on the independence debate. Currently, the UK government under Boris Johnson (as it did under Theresa May) is refusing the Scottish government's proposal to hold another independence referendum. How this stand-off will unfold is an open question. And the politics of it will certainly be influenced by the results of the Scottish parliament elections in May 2021 (still currently expected to go ahead despite the COVID-19 crisis). It also underlines the inequality of power between Westminster and Holyrood. But it is well understood in Scotland that any future independence referendum must be legally and constitutionally valid if Scotland is to be recognised as an independent state and for its prospects of future accession to the EU.

Where now for the independence debate?

The COVID-19 crisis and its aftermath may yet impact on Brexit in various ways: will Brexit take longer, and could it take a different form? Certainly, as in other countries, it means politics-as-usual has been suspended – and that has applied to the independence debate in Scotland, too.

Whether the transition period, which concludes at the end of 2020, is extended is perhaps crucial to both questions. The longer the transition period lasts, the more chance there could be for political pressures to grow for a softer Brexit that kept the UK closer to the EU – in its Single Market and/or in its Customs Union. It is hard to envisage that happening given the political complexion of the current UK government, but with a new Labour leader in opposition, and if public opinion shifted strongly, it is not impossible. If that does not happen then, sooner or later, the UK will continue down its path of a hard

In many ways, Brexit has led to a recentralisation in the UK, something that has not gone unnoticed in Scotland.

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There is a Brexit conundrum in the independence debate.

Brexit, aiming to negotiate a fairly basic free trade deal with the EU, or moving towards a no-deal Brexit on World Trade Organization terms.

The Scottish government has been strongly committed to its policy of independence in the EU. Debate over whether an independent Scotland might rather join Norway in the European Economic Area has occurred from time to time. But Brexit, for now, has if anything strengthened the emphasis on joining the EU – not least seeing how Ireland played its diplomatic and political hand in the talks, and the support it got from other EU member states.

There is a Brexit conundrum in the independence debate. The fact of Brexit has increased support for independence and may yet increase it further. But it also poses new challenges that were not there in 2014, which may make independence more challenging and impact on the debate.

There are challenges around the sensitive issue of which currency an independent Scotland would use.

An independent Scotland in the EU, with rUK having a basic free trade deal with the Union, would face a fairly hard border with rUK. The Scotland-England land border would be an external border of the EU – with Scotland in the EU's Customs Union and Single Market and rUK outside it. This would create friction and have a downside in terms of economic impact, given that rUK-Scottish trade is bigger than Scotland-EU trade. At the same time, Scotland would benefit from free movement of people within the EU and might be a much more attractive base for foreign direct investment. Of course, if the COVID-19 crisis changed UK politics in such a way that the UK shifted towards a softer Brexit, this would also ease the border challenges an independent Scotland would face.

Scotland, in applying for EU membership, would also surely – like Ireland – ask for an opt-out from Schengen to enable it to stay within the UK and Ireland's common travel area (with their agreement, too). If it got this, then there would not be a hard border for movement of people between Scotland and England, but there would be a hard border and barriers for goods and services. While this would clearly not be as sensitive in political and security terms as it is for the Irish border, there would nonetheless be both political and economic impact and debate around the need for a border.

There are also challenges around the sensitive issue of which currency an independent Scotland would use. The Scottish National Party's current policy is to use the pound sterling initially (even without the UK's agreement) and then to move to a Scottish currency as economic conditions allowed. However, for an accession candidate to be using the currency

of a non-member state raises an unfamiliar question for the EU. Would Brussels and the member states insist that Scotland cannot join the EU until it had its own currency (and, of course, made a commitment to join the euro)? Or would there be some sort of transition period agreed such that, if Scotland did not have its own currency at the point of accession, it would move to it within a few years?

Where next?

It has frequently been suggested that Brexit is a problem whose roots lie in English nationalism. This is an argument that is well understood in Scotland. Brexit has sharply underlined the stark differences of politics and of public opinion in England and Wales on the one hand and Scotland and Northern Ireland on the other. Scotland is divided by its independence debate, but it was not riven over Brexit as England was.

In the face of the COVID-19 crisis, there is now more uncertainty both over what the future UK-EU relationship will look like and over what domestic policies the current Conservative government will focus on during the challenging economic times that lie ahead. These issues may sharpen the divide between a more Conservative England and more social-democratic Scotland, but the nature and depth of the COVID-19-related recession will pose challenging questions for the economics of independence.

Scotland, with its own parliament, its proportional representation voting system and its pro-EU majority, looks rather similar to other EU states of its population size – Ireland, Finland, Denmark and others. Whether Scotland will eventually become an independent state in the EU remains an open question. But Brexit has opened up a major political challenge for the UK as a state, leaving its politics fractured. Whether that fracture will finally lead to it breaking apart, time will tell.

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[1] The Northern Ireland Assembly was suspended for three years, from January 2017 to January 2020, after political disagreements in the context of the so-called Renewable Heat Incentive scandal.

[2] See *Survation*, "Survey Archive: 2018" (accessed 02 June 2020).

[3] See Scottish Government (2016), "Scotland's Place in Europe", Edinburgh.

[4] Scottish Government (2020), "Migration: helping Scotland prosper", Edinburgh.

The long-term implications of Brexit for Northern Ireland

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The significance of Northern Ireland (NI) for the negotiations on both the UK's exit from, and negotiations on future relations with, the EU results from the province's violent history of sectarian, ethnic and socioeconomic conflict, and their implications for the present politics of the island of Ireland. The peace process to end 'The Troubles' (1968-1998) was originally based on the Good Friday Agreement (GFA, or Belfast Agreement; 1998), the St Andrews Agreement (2006), UK devolution legislation, and the deconstruction of physical land borders under the aegis of the EU's internal market.

Therefore, the UK's 2016 campaign and referendum on EU membership have challenged the peace process directly. Importantly, its UK-wide result was the reverse of NI's: EU membership was rejected by some 52% of UK voters (turnout: 72.2%) and upheld by some 56% of NI voters (turnout: 62.7%).[1]

This chapter will present and analyse NI's unique legal status under the GFA and Withdrawal Agreement (WA), as well as the political, social and economic implications of the Brexit process for the province.

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Northern Ireland's position differs substantially from other parts of the UK which derive their autonomy purely from domestic UK political settlements.

Northern Ireland's legal status

NI's future status has already been regulated by the WA and its Ireland/Northern Ireland Protocol (the Protocol) extensively and was addressed in the Political Declaration. It has also been shaped by the GFA as an international treaty.

NI's position differs substantially from other parts of the UK which derive their autonomy (i.e. devolution) purely from domestic UK political settlements and the ensuing legislation. The aforementioned legal documents aim to protect the peace process while preserving the integrity of the internal market and legal autonomy/sovereignty of both the EU and UK, respectively. The Protocol constitutes a semi-permanent solution that is reliant on NI's continued consent. The Protocol could also be superseded in the future by a more favourable Future-Relations Agreement, should it be successfully concluded by the EU and UK.

Under the Protocol, the UK left the EU's Customs Union in its entirety. To prevent the creation of physical infrastructure on the EU's external land border by the end of the transition period, NI will continue to adopt the EU's standards on the Single Market and regulations on goods (including VAT and sanitary and phytosanitary rules; SPS) and remain a gateway to the Customs Union. This should result in the EU-UK customs border shifting effectively from land to the sea while legally preserving the unity of the UK's customs territory. NI would effectively constitute the intersection of both customs systems.

Under the Protocol, the UK would collect the EU tariffs on the Union's behalf and with its assistance. The tariffs would be levied on goods that are shipped from mainland Britain (Great Britain; GB) to NI and might be transported into the Union's market. NI entities would be entitled, however, to rebates based on the UK's lower tariffs if the goods were consumed in NI. The settlement has a precedent character.

The Northern Ireland Assembly will have to renew its support for the settlement regularly, with an absolute majority permitting a four-year extension, and a cross-community qualified majority voting an eight-year one. In the case of a negative result, there would be a two-year 'reflection period', allowing the EU and UK to negotiate alternative arrangements. Should this fail, NI's status would merge with the UK's. Considering NI's political composition and demographics, the risk of the settlement not being renewed is limited.

The WA provides for the EU-UK Joint and Specialised Committees' administration of the NI settlement. Although the settlement should be implemented fully by the end of the transition period (i.e. by 31 December, should there be no extension), the working arrangements are still in their early stages.

In light of the UK's recently published positions, it must be emphasised that the EU and UK have substantially different understandings of the Protocol in this respect. Essentially, the EU's position is that an effective two-way maritime customs border, which would be subsequently de-dramatised using streamlined procedures and customs reimbursements for goods consumed in NI, should be established.[2]

The UK position, however, assumes a one-way (GB to NI) maritime customs border. There would be no substantial additional infrastructure involved, and EU customs duties would only be imposed on goods either officially destined for the Republic of Ireland (the Republic), or at a clear risk of crossing the land border illegally.[3]

Both sides agree on treating the island of Ireland as a single SPS unit. Considering a tight timeline which implies serious difficulties with the settlement's implementation, the introduction of the new border regime on the island of Ireland may serve as a litmus test for the Union to test the intentions and credibility of the UK government. As such, it may have a visible impact on the current negotiations on the future relations.

Importantly, the dispute between the UK and EU concerning the implementation

of the border settlement is legal, as the UK does not refuse to implement the settlement, but rather presents a radically different interpretation of it. This may test the whole WA governance system. Should the UK implement the new border regime according to its own interpretation, the EU will most probably interpret it as a serious breach of confidence.

The NI's unique status also stems from the GFA, as an international treaty and a cross-community political agreement. The GFA *acquis* is based on the principles of power-sharing between the Unionist and Nationalist communities, the social/public recognition of both identities in NI, the devolution of power in the UK (leading to the NI autonomous governance), and the development of North-South cooperation and elements of the all-island economy. The GFA provides treaty basis for a democratic change of NI's constitutional status through parallel referenda in NI and the Republic.[4] Moreover, all NI-born persons are entitled to Irish citizenship, and thereby to the Union's. Consequently, one of the possible outcomes of, and solutions to, Brexit in the NI context could be Irish unification, leading to NI's automatic incorporation into the EU's Single Market and Customs Union (à la East Germany).[5]

Political implications

Brexit is detrimental to NI politics, as it undermines the GFA's institutional and political framework and weakens power-sharing and devolution.

Firstly, the GFA's success has always been highly dependent on a depoliticised land border. Brexit reopened the question on where re-emerging controls should fall. Reinforcing the land border would suit radical Unionists (as a restoration of UK sovereignty) and Nationalists (as a catalyst for unification) while alienating moderate Nationalists and impeding the all-island economy. Hence, the Protocol compromise.

However, important aspects of the Protocol settlement are still to be defined and implemented, such as the nature of the EU's representation in Northern Ireland. While the Protocol explicitly provides for the Union to be represented during the necessary customs and border checks by its observers, the document does not regulate EU's diplomatic presence.[6] Consequently, the UK rejected the EU's recent proposal to create its permanent representation as an attempt to create a diplomatic post in Belfast.[7]

Northern Ireland would effectively constitute the intersection of both customs systems.

The dispute between the UK and EU concerning the implementation of the border settlement is legal, as the UK does not refuse to implement the settlement, but rather presents a radically different interpretation of it.

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Secondly, NI's devolution governance is based on compulsory power-sharing. However, between 2015 and 2019, NI voters shifted their support towards the radical parties – the Democratic Unionist Party (DUP) and Sinn Féin (SF) – at the cost of their moderate counterparts. While this complicated the politics of NI devolution even before the 2016 Brexit vote, the referendum campaign positioned the SF and DUP at opposite positions.

The SF's refusal to continue a Northern Ireland Executive coalition with the DUP between February 2017 and January 2020, combined with the DUP's effective House of Commons parliamentary coalition with the Conservatives between June 2017 and October 2019, led to the three-year suspension of NI devolution politics. By eliminating Boris Johnson's need to rely on the 'confidence and supply' agreement with the Democratic Unionists and shifting electoral support towards NI's more moderate parties,[8] the 2019 UK general election allowed for a broader spectrum of Unionists and Nationalists to be involved in the new Executive created in January 2020. However, the SF's victory in the February 2020 Dáil Éireann election has potentially recreated the 2017 challenge.

Thirdly, the perspectives of the sponsors of the peace process vary considerably. The EU-wide interests focus on protecting the internal market, the related issue of the adequacy of a UK-administered maritime border, and the wider issue of trust. Border politics strongly influence the Republic's perspective, its natural position as a representative of NI in the EU forum (exemplified by the Protocol's clauses concerning EU certificates), and NI's membership in the internal market. The UK's perspective has shifted the most. Between 2016 and 2019, NI was instrumental in convincing both the EU and the British public to have close EU-UK relations after the exit. However, since July 2019, Johnson's government is seeking a free trade agreement outside of the Single Market and Customs Union. As such, accommodating NI's unique needs have become more challenging.

Social implications

The most important long-term consequence of Brexit for NI seems to be a new consensus on strengthening the probability of Ireland's unification in a long perspective.[9] It will undoubtedly be influenced, however, by the medium-term feasibility of the Protocol settlement (or the Future-Relations Agreement) once it is implemented. This trend has been indicated by both the NI results of the 2016 referendum, 2019 European Parliament election and 2019 UK general election; and demographic changes.[10]

The social attitudes to Brexit seem more nuanced and flexible than those presented by NI's political parties, however. For instance, while the reconstruction of any land border infrastructure is perceived negatively by the majority of the public, the willingness to oppose it depends on its potential model. Surveillance cameras could be considered a necessary evil, and border posts as instigating acts of aggression.[11] Importantly, Brexit has not broken basic cross-community support for the GFA system, with the Ulster Unionist Party adopting a consistent anti-Brexit stance (in contrast to the DUP's rejection of the WA).[12]

However, both NI communities have their share of uncompromising minority groups (i.e. those supporting a hard border, or a unification referendum) and extremist

fringes that are prone to violence.[13] Paramilitary activities were highly visible in 2019 due to changing EU-UK dynamics. For instance, in April 2019 journalist and activist Lyra McKay was shot dead during an ambush against officers of the Police Service of Northern Ireland in Derry/Londonderry, most probably by a member of the Nationalist paramilitary.[14]

Moreover, potential new border infrastructure, however limited, is highly problematic due to the dominance of Nationalists in the transborder communities.[15] Thus, the use of surveillance cameras will be limited, while that of drones and other solutions that are immune to vandalism will be necessary, as will intense public information campaigns. This indicates the need for the EU to continue its Northern Ireland PEACE programme and thus assist the socioeconomic integration of NI's communities.

The WA provides for the continuation of the Common Travel Area (CTA) by the Republic and UK. The CTA has always been limited to the two countries. It provides the citizens of both countries with a full set of political and civil rights on the other country's territory. Consequently, it enables the smooth operation of the GFA without invoking the sovereignty issue.

The social attitudes to Brexit seem more nuanced and flexible than those presented by Northern Ireland's political parties.

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However, in the absence of harmonised public health policies on both sides of the 'invisible' border, the CTA strengthens the epidemiological challenges connected to intense cross-border movements. The problem has been exemplified by diverging COVID-19 lockdown rules on both sides of the border in March 2020. When the Irish government decided to pre-emptively introduce lockdown measures on 15 March to reduce high infection rates due to the public festivities of St. Patrick's Day (17 March), the Northern Ireland Executive chose not to reciprocate. This led to an unusually intense movement from the Republic to NI during the holiday, to the detriment of the Republic's public health policy.

Economic implications

NI's economy is highly dependent on public sector spending funded from UK government grants, with local taxes (i.e. rates) constituting only 3% of the NI budget.[16] NI has the highest annual net fiscal deficit per capita in the UK (i.e. £4,978). The UK central government's net input to the NI budget is 34% (i.e. £8.82 billion), which roughly amounts to the British net input into the EU budget. This results in the highest level of

public spending per capita in the UK (i.e. £14,821).[17]

The land border impacts the all-island sectors (primarily agriculture, transport, energy and tourism) and transborder communities. Nevertheless, it has limited impact on the dominant east-west stream of the Irish-UK trade, or on the Republic's connections to the other EU member states (EU26).

About 49% (£10.6 billion) of NI external sales in goods and services are directed to GB, 19% (£4.2 billion) to the Republic, and 11% (£2.5 billion) to the EU26. However, 46% of NI sales to the GB are generated by 117 large enterprises (i.e. over 250 employees), while 46% of NI exports to the Republic are from 8,059 micro and small businesses (i.e. between 0 and 49 employees). The latter group mostly represents the agri-food sector and – in case of problems with implementing the Protocol settlement – would be strongly affected by problems emerging on the land border. Moreover, the UK provides 65% (£13.3 billion) of NI's external purchases. However, the EU's combined share in NI's external trade has been increasing in the last years.[18]

In the short term, NI will be more dependent on the UK's fiscal policies (and their impact on devolution and dedicated NI programmes) than on its trade with the EU. In the long term, if NI is to be more dependent on its real economy and less

on UK budgetary transfers, the successful implementation of the Protocol settlement is of fundamental importance. However, from the current NI's economic perspective, unless the Republic and EU are willing to offer NI budgetary transfers that are comparable to the British ones, post-Brexit success will be dependent on maintaining unfettered access to the UK market.

NI's post-Brexit opportunities concentrate on its unique intersection status. When combined with NI's strengths – a high-quality education and university sector, research and development potential, the considerable number of highly-skilled workers, and lower operational costs for business in comparison to both the GB and Republic[19] – this status could turn the province into an investment hub. However, dysfunctional border regimes may undermine these opportunities and redirect incoming investment to the EU's and UK's economic centres of gravity.

The European Green Deal and its impact on the all-island energy sector might prove a powerful factor of cooperation across the island, and source of NI's differentiation from the GB. However, the fisheries sector might play the opposite role, especially if the UK's present position on the issue prevails, giving the UK-registered fleet considerable advantages in access to British fishing grounds.

Conclusions and recommendations

In the long-term perspective, NI will most probably continue the trend towards Irish unification, socially and politically. A peaceful outcome is dependent on a well-structured dialogue on the future constitutional settlement in the Republic, and on building up support for it among the Unionists. The merits of NI's direct

incorporation would need to be compared to its continued devolution within the Republic.

The feasibility of this approach can be assessed in the coming months by observing the debate on the unification agenda, and timeframe the SF adopts in the aftermath

of the Republic's 2020 general elections. Nonetheless, changes in the NI communities' demography and moderate Unionist politicians' growing engagement in the political processes across the border, including the All-Island Civic Dialogue on Brexit, seem to confirm this long-term trend.

However, the NI economy has considerable potential for disruption. Its present structure makes uninterrupted access to the UK internal market a priority, while the scale of transfers from GB effectively sets the limits of NI's independence. It will not be possible for NI to integrate with the EU constructively, neither as an associated partner nor part of a united Ireland, without addressing the budgetary and economic issues.

This leads to the fundamental dilemma concerning the Republic and NI for intra-EU politics. The Republic remains the Union's border member state that is responsible for securing the Single Market. In light of the fundamental differences in the EU and UK's interpretations of the Protocol as regards the nature of the GB-NI maritime border, the border regime the UK will implement once the transition period is over will probably be judged as inadequate by the European Union. In such an instance, the question on where to implement the missing controls, necessary for the continued protection of the Single Market (i.e. land versus maritime border between the Republic and the EU26), will arise.

The UK's present posture implies that, as per its interpretation, the Protocol sets the maximum of British concessions in respect of NI's status. While from the Union's point of view, this could be interpreted as a breach of law, the UK would consider this a lawful action. The ensuing legal dispute would test WA governance. Moreover, the Union would need not only to confront legal arguments about the unity of the UK's customs territory but also face the economic reality of NI's dependence on UK subsidies and trade.

The UK's present posture implies that, as per its interpretation, the Protocol sets the maximum of British concessions in respect of Northern Ireland's status.

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2. Task Force for Relations with the United Kingdom (2020), Technical note on the implementation of the Protocol on Ireland / Northern Ireland, UKTF (2020) 16, European Commission.

3. UK Government (2020), "The UK's approach to the Northern Ireland Protocol".

4. The Agreement provides that "it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland". Northern Ireland Peace Agreement (The Good Friday Agreement) of 10 April 1998, p.3. Consequently, the Northern Ireland Act 1998 provides that Northern Ireland will remain within the UK, unless a majority of its people support a united Ireland. To this end, the Secretary of State for Northern Ireland "shall exercise the power [to hold a referendum] if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland." Northern Ireland Act 1998, Schedule 1, para.2.

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TOWARDS AN AMBITIOUS, BROAD, DEEP AND FLEXIBLE EU-UK PARTNERSHIP?

The impact
of Brexit on the
European Union

TOWARDS AN AMBITIOUS, BROAD, DEEP AND FLEXIBLE EU-UK PARTNERSHIP?

The Barnier method: Lessons learned from the EU's institutional approach to the Brexit negotiations

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The UK's vote on 23 June 2016 to leave the EU sent shockwaves throughout the EU member states. After an uncoordinated initial response from various member states – the EU's six founding members held, among others, an exclusive meeting on 25 June 2016 and consequentially upset some of the remaining EU countries –, the EU and its institutions rapidly developed a comprehensive negotiating strategy vis-à-vis the departing UK. The EU27 also remained united throughout the Brexit negotiations, putting to bed any speculations that the UK would be able to divide the 27.

This chapter will explain how the EU's institutional approach contributed to the EU27's unity, from the referendum to the UK's formal exit (i.e. June 2016 to January 2020). It will then explore the prospects of maintaining this unity throughout the second phase of the negotiations, which started in March 2020 and focuses on the future UK-EU relationship. While not least due to the COVID-19 pandemic, the political environment is becoming more challenging for the EU27, maintaining similar institutional structures to those used in the first phase of the talks as well as experienced personnel will help the EU and its member states speak with one voice.

Finally, the EU should draw on some lessons from the Brexit talks and apply them in its relations with other third countries. Although the UK will remain a special partner

The EU would do well to apply the institutional lessons learned from Brexit.

due to its geographic proximity and close economic as well as cultural links, the Union faces similar challenges of speaking with one voice vis-à-vis other major third countries. It would do well to apply the institutional lessons learned from Brexit: adopt a clear political mandate from the European Council, appoint a single negotiator, maintain close coordination with the member states, and ensure a high degree of transparency when dealing with other global international actors. Cacophony and squabbles among the member states over how the EU should handle international relationships with other global powers hamper the EU's effectiveness abroad.

The Barnier method: The key to success in the divorce talks

EU leaders and institutions came up with a strategy which would protect the Single Market, maintain the integrity of the EU and help prevent a 'Brexit domino effect'.

When the UK voted to leave the EU, both parties entered unchartered territory. No member state had left the EU before, and although Article 50 of the Treaty on the European Union offered a broad legal framework, the exact conduct of the negotiations remained an open question. However, since the divorce talks were of utmost political and economic importance for the remaining member states, the EU soon realised that it needed to set the structure for the negotiations and commit to it throughout the withdrawal process.

The Brexit vote made the bloc particularly uneasy about the prospects of rising Euroscepticism across the EU. After all, the French and Dutch Eurosceptics welcomed the UK's vote with a proverbial bottle of champagne and promised to follow suit. Public opinion polls conducted in the 27 member states showed no immediate increase in the desire to leave the EU in the aftermath of the British referendum.[1] Nevertheless, EU leaders and institutions came up with a strategy which would protect the Single Market, maintain the integrity of the EU and help prevent a 'Brexit domino effect'.

In a statement on 29 June 2016, EU leaders decided to send a clear message that rather than dismantle the Union, the UK's departure would make the bloc stronger and more unified. To this end, the leaders quickly developed their 'no negotiation without notification' policy: the EU would only conduct negotiations with the UK once the latter triggered the Article 50 exit clause. Furthermore, no EU member state would

engage in bilateral negotiations with the UK government. This prevented the risk of the UK buying off some member states via bilateral talks.

The EU27 also sought to ensure that negotiations would only take place within the Article 50 framework without any kind of pre-negotiation, which put the UK under two years' pressure to negotiate a withdrawal agreement or face a no-deal Brexit. This combination of time pressure and a potential worst-case outcome for the UK amplified the EU's already strong negotiation position.

Throughout the Article 50 negotiations, the EU developed a specific institutional approach – the 'Barnier method' – named after Michel Barnier, the EU's lead negotiator. Firstly, the member states accepted that while the General Affairs Council (GAC) should be responsible for authorising the start of the talks and adopting the EU's negotiating mandate, the European Commission should lead the negotiations.

Indeed, Article 50 does not explicitly state which institution should conduct the talks, and some member states initially wanted the Council to lead. However, after some short squabbles, the 27 member states agreed that the Commission, which represents general interests of the EU, is best placed to maintain EU's internal coherence and, as such, run the talks. For this purpose, the Commission set up the Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, and appointed former Commissioner and French Foreign Minister Michel Barnier as its negotiator.

Secondly, Barnier and his team conducted broad and equal coordination with the member states and all relevant EU actors. Despite initial concerns of some EU capitals that Barnier would side with the biggest member states, the Frenchman proved a skilful negotiator and quickly gained the trust of all 27 member states, including the newer and smaller ones. Throughout the Article 50 negotiations, Barnier visited each member state at least twice, showing that he did not intend to side-line any EU capital – both those affected directly (e.g. Ireland) and less directly (e.g. the Baltics).

Barnier also established excellent working relations with the Council's Ad Hoc Working Party on Article 50, composed of Brexit delegates from every member state; and with Members of the European Parliament (MEPs), who would have to approve the final withdrawal agreement. In the past, MEPs employed their veto powers when they were dissatisfied with how the Commission and Council conducted international talks.[2] Barnier

Throughout the Article 50 negotiations, the EU developed a specific institutional approach – the 'Barnier method'.

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Whenever the British asked the EU to relax its negotiating terms, the 'bad cop' Parliament would threaten to veto the final deal.

decided, therefore, to keep the Parliament on his side to reduce the risk of MEPs derailing the negotiations. In fact, MEPs proved particularly useful to Barnier throughout the talks. Whenever the British asked the EU to relax its negotiating terms, the 'bad cop' Parliament would threaten to veto the final deal, especially emphasising citizen's rights, the open border in Northern Ireland and the UK's ongoing financial commitments.

Thirdly, the heads of state and government took political control of the negotiation process. Brexit has been on the agenda of 18 European Council meetings between June 2016 and January 2020, several of which were entirely dedicated to the EU's strategy vis-à-vis the UK. National leaders thus took ownership of the negotiating mandate and determined the crucial decisions, for instance, on whether and with which conditions to extend the Article 50 deadline. Crucially, however, the heads of state and governments refrained from any direct negotiations with the UK's Prime Minister, asking Theresa May and later Boris Johnson to leave the room whenever Brexit was discussed. This served to reinforce the EU's united front on Brexit.

Fourthly, the EU27 used sequencing and conditionality to put additional pressure on the UK. Article 50 combined with the threat of a 'no deal exit' already places the departing country under heavy pressure. Additionally, the EU27 decided to focus on the exit issues (i.e. citizens' rights, the UK's budgetary commitments, the border in Northern Ireland) first and were only willing to start talks on the future relationship once the European Council judged 'sufficient progress' to have been achieved. Crucially, this conditionality led the UK to accept the EU's major demands.

Finally, the European Commission also decided to be transparent about its negotiating objectives and red lines. Indeed, there were moments in the talks when Barnier opted for greater (though temporary) secrecy on the Northern Ireland's question. However, the EU was consistent overall, with a strategy to keep the public informed about the progress of the talks.[3] The EU's transparency policy aimed to serve a twofold purpose. On the one hand, it intended to increase EU leverage by keeping the less transparent British government on the defensive. On the other, full transparency of the talks and regular exchanges between Barnier, member states, MEPs and national MPs made it much more difficult for the UK to hold any bilateral talks.

Lessons learned for Brexit phase II

With the UK's formal exit from the EU on 1 February 2020, Brexit negotiations entered the second phase. The UK must continue to apply EU law until 31 December 2020, although it will no longer be represented in the EU institutions. The EU and UK aim to agree on the future relationship during this short transition period.

The negotiations on future relations between the EU and UK are shaping up to be even more complex and politically challenging than the Article 50 negotiations. For one, they must cover more policy fields (i.e. trade, fisheries, financial services, internal security and much more), creating, at least in theory, more room for differences of interest among the EU member states. Contentious issues of the first phase of the negotiations – particularly the implementation of the controversial Protocol on Ireland/Northern Ireland – are putting an additional strain on the negotiations.

The new British government under Prime Minister Johnson now has an absolute parliamentary majority and seems more willing to confront the EU or to try to sow disunity among the EU27 than the May government. For instance, although the Johnson government accepted in the Political Declaration the commitment to find an agreement on fisheries by June 2020, it has since adopted a very confrontational approach to fisheries, knowing that it is the top priority for only a handful of EU member states.

To tackle said challenges, the EU decided to maintain similar institutional structures to those used in the first phase of the talks, as they worked in its favour, and (mostly) kept experienced personnel in place. Michel Barnier remains the EU's sole negotiator, with a special role within the European Commission and is supported by the renamed Task Force for Relations with the United Kingdom (UKTF). The Council of the EU adopted the EU's negotiation directives at the end of February, and the negotiations commenced in March 2020. The talks will once again be closely coordinated with the member states via a dedicated UK Working Party in the Council and the GAC. Maintaining well-experienced personnel – such as Barnier or Didier Seeuws, who also led the works of the Council's Art. 50 Working Party and successfully hammered compromises among the 27 during the divorce talks – will help the EU to remain united.

The European Council is to set the political guidelines and regularly coordinate at the highest political level, particularly assessing and signing a possible agreement in the autumn or, if the UK changes course, extending the transition period. The European Parliament has also reconvened its Brexit Steering Group, now renamed the EU-UK Coordination Group, and will be kept in the loop closely by the Commission. MEPs have a veto right on the final agreement, as they did in the first phase. At the outset of the future relationship negotiations, the UKTF also conducted a series of seminars with the member states to create a common understanding of the issues at stake for the EU.

However, after the first round of negotiations in early March, talks were temporarily suspended due to the COVID-19 outbreak in Europe. Despite negotiations continuing as of April via videoconferencing, their conduct remains severely constrained. For now, the UK government insists that it will neither ask for nor accept an extension request, and that negotiations should be concluded in 2020. The transition period can only be extended once, up to two years, and the decision must be taken by 1 July 2020 (Article 132 of the Withdrawal Agreement). The combination of heightened time pressure and a strong economic upheaval increases the

The new British government now has an absolute parliamentary majority and seems more willing to confront the EU or to try to sow disunity among the EU27 than the May government.

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pressure on both sides to make concessions and strike a deal. A failure to conclude the free trade agreement will only add up to the severe economic pain that EU economies are expected to suffer from because of the COVID-19 crisis. Thus, while the EU's institutional approach remains largely the same, the political environment has changed significantly compared to the first phase of the Brexit negotiations. It remains to be seen if the institutional structures are sufficient for the EU to maintain unity and achieve its negotiation objectives – a sustainable future relationship with the UK that protects the Single Market.

In the next phase, therefore, the political coordination between the Commission and member states will be as important as the technical conduct of the negotiations. Between 2016 and 2019, the European Council only discussed Brexit in depth when it was asked to consider extending the Article 50 talks. It will face further difficult decisions throughout 2020: Which of its (and individual member states') priorities should the EU focus on in the shortened negotiations? Should the EU27 accept and/or attach conditions to an extension of transition if the UK changes course? Most importantly, what, if any, compromises should the EU enter into at crunch time to get to an agreement? At which point is a no-trade-deal Brexit preferable to further compromise? Answering these questions will be particularly challenging because the political attention of EU leaders will be focused on containing the further spread of COVID-19; combating its economic, social and political fallout; and coordinating recovery efforts.

The combination of heightened time pressure and a strong economic upheaval increases the pressure on both sides to make concessions and strike a deal. A failure to conclude the free trade agreement will only add up to the severe economic pain that EU economies are expected to suffer from because of the COVID-19 crisis.

Food for thought for relations with other third countries

The Brexit negotiations were and are unique – it will be impossible to replicate the style of the Brexit talks fully in the EU's other international negotiations. The framework of Article 50 allowed for sequencing with a strong element of conditionality, and much higher political and economic costs if parties failed to reach an agreement than one can imagine in any other international negotiation. Combined with the determination to protect its integrity, this framework enabled the EU to devise institutionally innovative structures.

Nonetheless, there are three key lessons from the Brexit talks the EU should draw from and attempt to apply in EU's external relations.

First, the Brexit negotiations demonstrated the value of having a clear political mandate agreed upon by the heads of state and government, facilitating the Commission's preservation of unity among the EU27 throughout the technical negotiations. The Barnier team's constant coordination with national governments – both via the usual EU institutional structures as well as by visiting each member state – contributed to this extraordinary level of support from the capitals for the joint EU position.

This approach should be replicated in talks with other third countries. So far, the member states have shown divergent views on how to deal with major global powers like China, with some EU capitals showing greater leniency than others and opting for bilateral channels of communication. If the EU institutions and member states devoted more time to narrowing these divergent stances and coordinating their approaches, they would stand greater chances of developing a successful EU policy towards major international partners.

Second, although the Brexit negotiations were highly complex and affected various EU policy areas, the EU institutions and member states managed to overcome a temptation to enter turf wars over who should be in charge of the talks. The close involvement of the European Parliament helped reinforce the Commission's position vis-à-vis the UK and ensured a smooth consent procedure in the former.

The EU should attempt achieving a similar degree of institutional coherence, especially during complex international negotiations that combine different policy areas. Although the Commission is the EU's sole negotiator in areas of exclusive competence (e.g. trade), member states have been reluctant at times to give it a clear mandate for negotiations with third countries. This was particularly the case if the trade talks included elements of so-called shared competences between the member states and the EU, such as the EU-Canada Comprehensive Economic and Trade Agreement, which faced resistance from many national parliaments.

Third, the EU turned transparency into a virtue by publicising the mandate, its red lines, negotiation objectives and the progress of the talks. This helped maintain public trust in the EU's capacity and willingness to represent its interests. The EU is becoming more transparent in its trade negotiations, as witnessed in the last couple of years (e.g. Transatlantic Trade

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and Investment Partnership). Nevertheless, applying the Brexit model of transparency to its fullest capacity could boost public confidence in the EU and debunk the misconception that the EU is an elite club that opts for backroom deals.

Implementing these three recommendations would not require any significant legal tweaks, such as treaty change, and yet would improve the EU's negotiating hand worldwide. The COVID-19 outbreak has provoked questions about the fate of multilateralism and accelerated the return of great power politics, with a growing conflict between the US and China. The EU institutions, which have been cheerleaders of global cooperation, must now try harder to sell the benefits of free trade and international cooperation to some of its own members. If they use some of the tricks of the Brexit negotiations, they stand a chance of winning the argument.

[1] Hoffmann, Isabell and Catherine de Vries (2016), "Brexit has raised support for the European Union", Bertelsmann Stiftung.

[2] Gostyńska-Jakubowska, Agata (2017a), "Parliamentarians in Brexit talks: Bulls in a china shop?", Centre for European Reform.

[3] Gostyńska-Jakubowska, Agata (2017b), "Brexit maze: The role of EU institutions in the negotiations", Centre for European Reform.

The geographically asymmetric impact of Brexit

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Much has been made of the economic disruption that Brexit will entail. Whenever the transition period comes to an end, the economic pain that has thus far been mostly hypothetical will become a reality. However, what is not as widely understood is that this pain will be distributed highly asymmetrically, both across and within EU member states.

This asymmetry will likely affect the bargaining dynamics on the future EU-UK relationship amongst the EU27, as well as their domestic politics and evolving perceptions of European integration. Furthermore, the disruptive consequences of Brexit will be compounded by the economic shock triggered by the COVID-19 outbreak. This toxic combination sets the stage for intense political turbulence.

This chapter aims to shed clarity on how the political and economic fallout from Brexit will settle within the EU. Firstly, it maps out the existing asymmetries across different member states. Secondly, it dissects how geographical asymmetries can play out at the regional level within individual member states. Finally, it argues that Brexit will reverberate differently across political constituencies at the national and European levels, fuelling polarisation in terms of political agenda-setting.

This may strike many as a bleak outlook, with sobering prospects for the EU-UK relationship. However, this situation also offers an opportunity to foster policy renewal and rebuild economic and societal resilience.

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Asymmetries across member states

The prolonged debate about the actual meaning of Brexit has made it clear that the UK is formally leaving the European Single Market, accepting friction to trade as the price of regaining legal autonomy in decision-making. The EU27 currently account for 45% and 53% of all UK exports and imports respectively.[1] Logic dictates that the ensuing disruption must be equal on both sides of the Channel, with the caveat that it will be dispersed amongst the 27 EU member states and concentrated – and more keenly felt – in the UK.

However, while all 27 member states will be affected by Brexit, this will not be to the same extent, nor in the same way. Even within a tightly integrated Single Market, trade and investment flows are distributed in distinct geographical patterns that vary per sector. This is also the case for labour flows, remittances and other patterns in the market structure. While one may quibble about the ranking of the 'most exposed' member states, it is important to appreciate the political dynamics that this factual asymmetry will entail in the EU decision-making on its new partnership with the UK.

Individual member states have analysed how their bilateral trade balance with the UK will be affected by Brexit, and how the consequences for their economic tissue will look.[2] Unsurprisingly, these analyses yield different results in function of factors like geographical proximity, historical links, export strengths and cultural ties.

Being the only country that shares a land border with the UK, Ireland is particularly exposed to Brexit. Due to their position as maritime gateways to the European continent, the Netherlands and Belgium stand to be strongly affected by the reintroduction of custom controls and regulatory barriers. Malta may be located

further away from the UK than other member states but will still experience Brexit more acutely than most due to its historical links and economic integration with the UK. Given its status as the EU's export powerhouse, the German economy is also expected to take a hit that is disproportionate to its already prominent economic and demographic size. Other member states to be mentioned include the Czech Republic, France and Slovakia.

Depending on which economic indicator one prefers, and which economic sector one focuses on, the impact assessment and ranking will vary. Nevertheless, the bottom line remains the same: the economic fallout will be distributed across the EU27 unevenly.

The principal consequence of this asymmetry is that the EU27 will approach the trade negotiations with the UK with their relative national and sectoral exposure in mind. At the same time, they will keep an eye out for the opportunities Brexit will engender for their respective companies.

This is why trade policy has historically become an EU-exclusive competence. By putting the European Commission in charge of negotiating on behalf of the Single Market, the EU has robbed its negotiation counterparts of the opportunity to exploit such asymmetry strategically. This also explains why the EU's negotiating team, led by Michel Barnier, has placed a premium on fostering consensus among the 27 and keeping all the capitals informed as much as possible. This was done knowing full well that EU unity will become more precarious once negotiations turn to particularly sensitive topics, like fisheries. In turn, the UK is likely to find allies in member states that realise that any 'no trade deal' scenario will hurt their respective economies severely.

In combination, these factors explain why the prospect of unwinding the UK's integration in the European economy looks distinctly unappealing from both sides of the English Channel. If economic interdependence is to be maintained, the challenge is to identify an alternative legal foundation to maintain a deep economic relationship.

Asymmetry within member states

Similar dynamics of asymmetry are also at play within individual member states. As the European Committee of the Regions has assessed, the impact of the UK's withdrawal varies dramatically from one region to another within any member state.[3] While federal political systems make such patterns more visible, these dynamics also generate political pressure in more centralised systems of domestic governance. The UK may face the toughest challenge in this regard, in having to maintain cohesion amongst its four constituent countries – but it is far from unique, as, for example, the case study of Belgium shows.

It comes as no surprise that the German state of Baden-Württemberg stands to be particularly affected as far as the European automobile and machinery sectors are concerned; as are Western Slovakia, and Central Moravia in the Czech Republic for electronics. Similarly, the textile industry is strongly concentrated in different Italian and Portuguese regions. The French Auvergne, the German state Rhineland-Palatinate, the Belgian province of Walloon Brabant and the Dutch province of Zeeland are most exposed when it comes to chemicals and plastics. Some economic impact may manifest itself distinctly locally – think of the Channel ports in the Hauts-de-France region and the related fisheries conundrum – but reverberate strongly at the political level.

Belgium constitutes a multifaceted case in point.[4] At the aggregate level, the UK is the fourth-largest customer of the Belgian economy and fifth-most important source of Belgian imports. However, the lion's share of the bilateral trade balance relates to the region of Flanders in the north. This fuels competition between the federal and regional layers of Belgian government, especially when government coalitions are composed differently.[5]

Similarly, at the subregional level, West Flanders and Antwerp are more vulnerable than other Belgian provinces due to their main ports and the geography of local supply chains. With

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key local political leaders hailing from Ypres – home to the proverbial Flanders Fields – and Antwerp – the city which boasts a port that is one of the UK's largest maritime trading partners –, these dynamics acquire high salience rapidly, confirming the maxim that all politics is local. These facets will all play a critical role in the Belgian regional parliaments' necessary ratification of a 'mixed' agreement, pertaining to those areas of EU-UK cooperation falling within the competence of member states.

Fragmentation across the political spectrum

The zero-sum logic that correlates with economic turmoil and the partial unravelling of trade relationships pits member states against one another, just as it does in regions, provinces and cities.

This political tension is set to produce higher standards of government, simply because this is what the situation will require and what citizens are entitled to.

Geographical asymmetries across and within the EU27 member states are fuelling political fragmentation. The zero-sum logic that correlates with economic turmoil and the partial unravelling of trade relationships pits member states against one another, just as it does in regions, provinces and cities. In that sense, the economic fallout due to Brexit risks latching on to the political turmoil caused by the eurozone and migration crises. Furthermore, the socioeconomic shock triggered by COVID-19 is likely to compound these dynamics. At the most fundamental level, EU decision-makers must confront the most challenging asymmetry of all: the fragmentation and growing polarisation of the European political spectrum itself.

Across the EU, citizens and policymakers find themselves confronting similar governance challenges. These relate, among others, to the interplay between economic and environmental policy, the management of migration pressures and societal cohesion, and the challenge of securing societies while maintaining civil liberties and the rule of law. What these challenges have in common, when looking beyond their technocratic details, is that they beg the question to what extent national governments will be in the lead, and what the role of European institutions and subnational levels of government is to be.

These are matters which have deeply divided opinions in most member states, allowing populist movements to draw on the growing number of voters alienated from mainstream politics – especially as far as the EU elite's policy consensus is concerned.[6] Rather than framing this as an all-or-nothing battle between 'globalists' and '(sub)nationalists', the EU framework requires a more sober assessment of how European, national and local levels of government and accountability can complement and mutually reinforce one another.

Conclusion

The prospect of deepening political fragmentation in and amongst the EU27 may strike one as bleak. It does not bode well for the EU-UK relationship either, as both sides must devote substantial attention and resources to managing their internal affairs. Growing disunity amongst the EU27 could be what results in a 'no deal' outcome at the end of the year, compounding the severe socioeconomic shock the COVID-19 outbreak has already engendered.

In fact, Brexit may only be the proverbial tip of the iceberg of what is yet to come. Polarised debate on whether supranational or intergovernmental dynamics will triumph in shaping the future of the EU may well continue long after Brexit has become a distant memory. Similarly, the tension between federal and centralised approaches to government at the national level will continue to exist.

Nevertheless, there is good reason not to lose hope. Such political tension is set to produce higher standards of government, simply because this is what the situation will require and what citizens are entitled to. In particular, the deepening crisis of governance will puncture the lazy illusion that the matter of national government can be safely neglected, because of the (often imaginary) safety net provided by European institutions. Responsible statecraft requires carefully managing expectations of what different levels of government can adequately plan and provide for. This demands gravity, accountability and persistence. If Brexit has made this abundantly clear, it will paradoxically have done everyone a great service.

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[1.] See Ward, Matthew (2019), "Statistics on UK-EU trade", London: House of Commons Library.

[2.] Useful statistics can be found inter alia in Vandenbussche, Hylke (2019), "Sector-Level Analysis of the Impact of Brexit on the EU-28", Flemish Department of Foreign Affairs. See also Chen, Wen; Bart Los; Philip McCann; Raquel Ortega-Argilés; Mark Thissen and Frank van Oort (2018), "The continental divide? Economic exposure to Brexit in regions and countries on both sides of The Channel", *Papers in Regional Science*, Volume 97, Issue 1, pp.25-54.

[3.] Levarlet, François; Paolo Seri; Chiara Zingaretti; Dea Hrelja; Elodie Lorgeoux (2018), Assessing the impact of the UK's withdrawal from the EU on regions and cities in EU27, Brussels: European Committee of the Regions.

[4.] For in-depth analysis, see Mattelaer, Alexander (2017), "Towards a Belgian Position on Brexit: Actively Reconciling National and European Interests", Brussels: The Royal Institute for International Relations.

[5.] Cf. Vandenbussche, Hylke; William Connell and Wouters Simons (2017), "De impact van Brexit op de Vlaamse economie: Een analyse van het output- en jobverlies", Leuven: Katholieke Universiteit Leuven.

[6.] Cf. Eatwell, Roger and Matthew Goodwin (2018), *National Populism: The Revolt Against Liberal Democracy,* London: Pelican Books.

Is Brexit a game changer for EU external differentiated integration?

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The future EU-UK relationship cannot be negotiated *in abstracto* as a purist form of 'taking back control', as imagined by Prime Minister Boris Johnson. The UK is the first country to leave the EU, but the last of a long list of close neighbours and remote countries which have asked for preferential access to the Union's Single Market.[1] Any post-Brexit agreement will have to fit into an already complex framework of external differentiated integration. Over the years, the EU has accepted very diverse modes of such integration. Every agreement corresponds to a specific moment of the EU project, a specific partner and specific objectives, and is implemented through a specific institutional set-up.[2]

However, while the UK expects to benefit from this ad hoc approach to obtain a tailor-made post-Brexit agreement, a rather systemic approach is prevailing with EU negotiators. The latter must carefully anticipate any spillover effects of a final deal on the Single Market; on member states as much as on countries benefiting from specific forms of external differentiated integration.

The global economic crisis provoked by the COVID-19 pandemic has deeply transformed the post-Brexit political economy. Avoiding the additional economic costs of a hard Brexit could be an incentive for concession. However, now more than ever, the EU27's priority, reflected in its negotiating mandate for post-Brexit relations, is to safeguard its economic competitiveness by preserving the integrity of

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Rather than facilitate differentiation in integration, Brexit might even be a turning point to upgrade the Single Market's leverage.

A high degree of differentiation and complexity have led the EU to reform the governance of various modes of external differentiated integration over the last decade.

the Single Market and using the full leverage of its economic weight on third countries.

While (i) the EU had launched a review of the various existing differentiated integration agreements even before the 2016 referendum, (ii) Brexit has been an additional incentive to increase EU control over preferential partners. Brexit led to a harder EU stance on unified framework agreements with stronger institutional mechanisms to ensure a level playing field with third countries. From this, it follows that (iii) rather than facilitate differentiation in integration, Brexit might even be a turning point to upgrade the Single Market's leverage.

Existing forms of external differentiated integration in the Single Market and their evolution

Starting in the 1980s, the deepening of the Single Market and creation of the EU induced a process of intra-European harmonisation. Together with the end of the Cold War, this led to important steps of differentiated third-country integration into the Single Market during the 1990s. The microstates of Andorra and San Marino established bilateral customs unions with the EU in 1990 and 1991, respectively; the European Free Trade Association countries Norway, Iceland and Liechtenstein integrated into the EU through the 1992 European Economic Area (EEA) agreement; Turkey signed its long-awaited customs union in 1995; and Switzerland negotiated a number of bilateral agreements with the EU, leading to the Bilateral Agreements I (1999) and II (2004). More recently, Ukraine, Moldova and Georgia, as well as some Western Balkans countries, benefited from Association Agreements, like Deep and Comprehensive Free Trade Agreements (DCFTAs) and Stabilisation and Association Agreements.[3] In addition, the EU has been actively negotiating comprehensive free trade agreements with partners worldwide over the last years (e.g. Canada, Japan, South Korea).

All these various modes of external integration in the Single Market rapidly created a high degree of differentiation and complexity, aggravated further by subsequent joint committee decisions modifying the individual agreements. The practical difficulties in managing this diversity have led the EU to reform the governance of various modes of external differentiated integration over the last decade, to (i) ensure a more level playing field through the coherent interpretation of EU law and dynamic alignment to the evolving EU *acquis*; (ii) have an effective system of dispute settlement; (iii) rebalance rights with obligations for third countries accessing the Single Market; and (iv) reduce the number of exceptions in all agreements. In a sense, the objective was to negotiate arrangements that are similar to the EEA, which is generally perceived as a rather successful form of third-country integration in the EU Single Market.

The renegotiation of existing agreements started in the early 2010s with Switzerland and the microstates Andorra, San Marino and Monaco. Simultaneously, the EU experimented with a new form of association agreements: DCFTAs integrating (at least, partly) the EU's new policy priorities. However, while they created unified institutional frameworks, including mechanisms for the interpretation of EU law

and dispute settlement (and a role for the European Court of Justice), the DCFTAs also contained much intersectoral complexity in terms of its approximation to the EU *acquis*.

A hardened EU stance in the renegotiation of external differentiated integration due to Brexit

While the ongoing renegotiations have increased the awareness that the governance of the post-Brexit agreement must be well anticipated, Brexit has become a further incentive for the EU to regain better control over third countries' access to the Single Market. As the EU has rejected the possibility of the UK 'cherry-picking' parts of the EU *acquis*, Brexit negotiations have contributed to the hardening of the EU position in the renegotiation of several existing agreements even further.

The EU chief negotiator, Michel Barnier, has been extremely cautious about restraining post-Brexit options to the existing modes of partial integration. He even went as far as to remove the option of the excessively complex Swiss arrangement – considered a 'cherry-picked' solution that is quite advantageous for Switzerland – from the table. While the famous 'Barnier steps' seemed to suggest that the Swiss model was an option for the UK,[4] this would only be the case if a deal which is along the lines of the new institutional framework agreement negotiated between the EU and Switzerland in 2018 is struck. This new agreement, which covers five of the Bilateral Agreements I, would introduce dynamic alignment in these policy areas,[5] establish a dispute settlement mechanism with a binding interpretive role for the European Court of Justice (ECJ) on EU law, and mandate all additional agreements to be integrated into this framework, including a modernised free trade agreement. While not yet ratified, the EU pointed out that the

new agreement with Switzerland includes comprehensive provisions on competition and state aid, stressing that the status quo of the current Swiss model is not available to the UK.[6]

Interestingly, the persistent intention of the British government to negotiate a 'cherry-picked' agreement has led the EU to increase pressure on Switzerland to ratify the agreement. A key measure in this regard has been the suspension of stock market equivalence for Swiss shares in mid-2019, which was not based on actual divergence from EU Single Market rules but on a political move to break Switzerland's delaying tactics.[7] In addition, concerns that the microstates would use their small size to pursue distinctive economic strategies based on tax competition have hardened the EU position[8] in the ongoing renegotiations of their access to the Single Market.

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Constrained Brexit options due to existing forms of external differentiated integration

In light of Brexit, the European side has become acutely aware of the potential consequences of exceptions to the functioning of the Single Market's level playing field. There are clear limits to what the EU can concede to the UK without risking discontent, complaints and potential calls for renegotiations from other third countries. The latter could even include EEA countries which are rather satisfied with the current set-up of their relationship with the EU.

If the UK were to enjoy frictionless market access in specific sectors and complete divergence from others, and avoid being bound by the ECJ's interpretations of EU law, this would seriously undermine the objectives the EU has set for external differentiated integration in the Single Market over the last decade. It could lead Switzerland to never ratify the negotiated institutional framework agreement, and the microstates to terminate the ongoing negotiations. If the UK manages to gain access to some of the EU's discussion fora and its decision-shaping and -making processes, this could also affect the latter's relationship with Turkey, which has long sought better information and representation to handle the EU Customs Union. In fact, already ridden with problems, it might also mean the factual end of the Customs Union between the EU and Turkey.

There are clear limits to what the EU can concede to the UK without risking discontent, complaints and potential calls for renegotiations from other third countries.

While temporary exclusions are already applied to the EU's competition and state aid policy, increasing the level playing field with third countries will be more complex than ever in what might become a 'free festival' of state aid.

Brexit as a stepping stone for the leverage of the Single Market?

Rather than suggesting much leeway for concessions, the EU27 negotiating mandate could actually mark the next step in the promotion of the Single Market. The UK is not any third country. Its geographical proximity and high level of economic

integration in the Single Market does not allow for a Canada-style deal.[9]

Rather, the EU calls for a broad association agreement with the UK. In addition to an economic partnership agreement, this would offer a unified institutional framework providing consistent governance for the various areas of cooperation. It mentions, as in the renegotiations of the Bilateral Agreements I with Switzerland, the introduction of a dispute settlement mechanism with a role for the ECJ to interpret EU law in arbitration cases. Most notably, it contains level playing field requirements on labour, social and environmental standards; carbon pricing; and competition and state aid. The latter is also accompanied by a very stringent requirement of dynamic alignment on EU legislation over time. Therefore, the EU's proposal resembles the new institutional framework negotiated – but not ratified – with Switzerland, giving the UK more room regarding some of the four freedoms (e.g. free movement of people) while entailing less frictionless access to the Single Market in some other policy areas.

This is also very consistent with the EU27's initiatives to restore a more level playing field with China, notably in the field of state aid. It would prevent the UK from developing the kind of competition distortions that the EU is also pressuring China to stop. However, state intervention will be needed direly to overcome the COVID-19 pandemic and the unprecedented, looming economic crisis. While temporary exclusions are already applied to the EU's competition and state aid policy, increasing the level playing field with third countries will be more complex than ever in what might become a 'free festival' of state aid. Nevertheless, upgrading the leverage of the Single Market might be the only way for the EU to survive.

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1. This chapter focuses on one of the most salient elements of the future EU-UK relationship, namely the UK's post-Brexit access to the European Single Market. However, Brexit will also have consequences on other dimensions of EU external differentiated integration, which are – at least, partly – covered by the different chapters of Part 3 of this book.

2. The UK's withdrawal from the EU constitutes the first empirical case of 'differentiated disintegration'. The future EU-UK economic relationship will thus differ from other forms of external differentiated integration that generally have sought closer integration with the EU.

3. While negative public referenda (e.g. Switzerland on European Economic Area membership in 1992, Norway on EU membership in 1994), small country size, insufficient economic development and political conflicts hampered some third countries' progress towards EU membership, different forms of external differentiated integration have been conceived as pragmatic alternatives.

4. Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU (2017), Slide presented by Michel Barnier, European Commission Chief Negotiator, to the Heads of State and Government at the European Council (Article 50) on 15 December 2017, TF50 (2017) 21, European Commission. See also Zuleeg, Fabian (2017), "Brexit: Towards a deep and comprehensive partnership?", Brussels: European Policy Centre.

5. The five policy areas by dynamic alignment in the new institutional framework agreement with Switzerland would be the free movement of persons, civil aviation, overland transport, technical barriers to trade and agriculture.

6. Baczynska, Gabriela, "EU's Barnier eyes loose association deal as basis for new British ties", swissinfo, 29 January 2020.

7 Ahead of the May 2020 free movement referendum in Switzerland, the EU has not increased its political pressure on Switzerland to avoid a backlash from the Swiss public.

8. The objective with the microstates is – in a way – to create a second European Economic Area, but without the two-pillar structure for its governance.

9. Task Force for Relations with the United Kingdom (2020), Trade Agreements: Geography and trade intensity, UKTF (2020) 13, European Commission.

TOWARDS AN AMBITIOUS, BROAD, DEEP AND FLEXIBLE EU-UK PARTNERSHIP?

The impact of Brexit on the EU -UK relationship

Trade and settling future UK-EU disputes

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As a bloc, the EU is the UK's largest trading partner, while the UK stands with the US and China as the EU's equivalent in terms of its total trade.[1] Unsurprisingly, increasing trade barriers between the UK and EU is forecast to lead to significant economic losses.[2] However, trade has rarely been at the forefront of either side's considerations, as seen by the recurrent possibilities of a no-deal outcome.

Leading Brexit supporters both inside and outside the UK government have not had a settled view on the importance of EU trade. They have variously argued that the theory of greater trade with nearby partners, according to the gravity model, is exaggerated,[3] or developments in technology are reducing its importance;[4] that the Single Market's impact on UK-EU trade has been exaggerated;[5] or that new trade barriers after Brexit will not be so economically significant.[6] More recently, it has been suggested that any losses resulting from Brexit will be unnoticeable due to the COVID-19-related economic crisis.[7]

Nevertheless, the more common approach of Brexit supporters and the UK government is to suggest that the crisis has made exiting the transition period and a floundering EU more urgent than ever.[8]

Mainstream trade economists have challenged these views, to which Brexit supporters often suggest that politics is more important than trade. As an added complication, the 'Global Britain' phrase has stuck, particularly in trade. As such, a significant part of the Brexit narrative is now about the UK's ability to strike new trade deals with the US[9] and others, at the expense of close UK-EU trade relations.

The EU side has generally considered increased trade barriers with the UK a regrettable necessity caused by the UK's referendum and the EU's need to protect the Single Market. Even member states who were like-minded

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partners of the UK (e.g. Sweden) tend to agree.

This chapter considers the current UK-EU trading relationship and how it may develop. At the time of writing, a zero-tariff trade deal is being discussed between the two. However, the UK has been clear that they prioritise absolute regulatory freedom over zero tariffs, and expect border checks as of 1 January 2021.[10] In global terms, the resulting relationship will be an unusually loose relationship between neighbours,[11]

and the chances must be that deal or no-deal, a closer trading relationship will evolve from this low point.

In part, the likelihood of a closer relationship comes from both sides seeking to resolve trade frictions without using dispute settlement,[12] which will be discussed in the last section of this chapter. Experience suggests that problems in the trade relationship will be best handled politically, and it will be through this that the rationales for future agreements will develop.

UK-EU trade

UK-EU trade figures (2019)

	Exports (£bn)	Exports (%)	Imports (£bn)	Imports (%)	Balance (£bn)
Goods	170,568	45.79	265,456	52.86	-94,888
Services	129,779	39.79	106,744	48.01	23,035
Total	300,347	42.99	372,200	51.37	-71,853

Source: Office of National Statistics (2020)[13]

The EU accounts for 47.26% of the UK's trade. This understates the importance of the EU to the UK, though: the figure rises to 53% when including countries which are intimately linked with EU trade (i.e. Turkey, Switzerland, Norway).

By way of comparison, the percentage of the EU's external trade in goods that is with the UK is 12.6%,[14] while, for services, it is around 20%.[15] This discrepancy, along with the UK's balance of trade figures (see Table 1), seems best explained by the UK's phenomenal strength in service exports. Services figures are difficult to disaggregate, so it is unclear what exactly drives UK strength and how much reflects accounting transactions within companies. Nevertheless, the UK is considered a leading global player in sectors as diverse as film production, financial and business services, and advertising.

On current plans for the UK to leave the Single Market and European regulatory agencies at the end of the year, we can expect to see increased barriers to trade from that point, which would usually lead to declining trade.[16] However, as neighbours, the UK will remain an important market to the EU and vice versa – gravity effects are still key determinants of trade relationships.[17] The UK may also struggle to increase non-EU trade to their desired level,[18] particularly if some UK exporters choose to relocate to the EU. Predicting future trade flows is difficult even without political developments, and such uncertainty is likely negatively impacting, for example, investment in the UK.

Evolving UK and EU trade policy

The EU has been such an active proponent of preferential trade agreements, going beyond World Trade Organization (WTO) terms, that it has more than any other country or trade bloc.[19] These come in three major forms (although the terminology is inconsistent): (i) Free Trade Agreements (FTAs) with distant countries like South Korea and Canada, focusing on tariff elimination and the recognition of EU products in particular (i.e. geographical indications); (ii) Association Agreements with closer countries, such as Ukraine, that include compliance with parts of the EU *acquis*; and (iii) Economic Partnership Agreements with developing countries.

While new agreements with New Zealand and Australia are under negotiation, and one with the South American bloc Mercosur awaits ratification, the EU trend is away from sealing new agreements to enforcing existing ones. Its creation of the position Chief Trade Enforcement Officer confirms this trend.[20] This trend is further backed by a joint non-paper between Netherlands and France – traditionally on opposing sides of EU trade policy – published in May, and the EU's commitments to enter trade agreements only with countries which have signed the Paris Agreement. All of this means that the UK cannot expect special treatment.

Meanwhile, UK trade policy is far from settled, with a number of different approaches discussed across government. Brexit encompassed free traders and protectionists, supporters of joining the European Free Trade Association, advocates of greater Commonwealth trade, and those for whom a US trade deal was an opportunity to join interests attacking EU regulations. At present this means that the UK's main expressed interest is tariff-free trade with the EU – as long as the UK does not have to adhere to its regulations (which may include level playing field provisions) –; and a deal with the US, protecting UK food standards but moving away from EU regulations.

The UK is unlikely to be offered their desired deal by the EU or US, which means making difficult choices by the end of 2020.[21] The economic turmoil caused by the COVID-19 pandemic and uncertainty surrounding its long-term impact will complicate these choices.

The longer-term trade policy picture was unclear even before the pandemic. The UK government has talked of domestic

The UK may struggle to increase non-EU trade to their desired level, particularly if some UK exporters choose to relocate to the EU.

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The EU trend is away from sealing new agreements to enforcing existing ones. The UK cannot expect special treatment.

economic rebalancing – implying a revival of manufacturing – when the UK's obvious global strengths are in services, in which it is fiercely competitive.[22] Manufacturing exports in sectors like automotive and pharmaceuticals are dependent on EU markets and, without appropriate deals with the EU, will be subject to tariffs and regulatory barriers. Meanwhile, services are not generally well covered in FTAs.[23]

Future changes in UK government could also have a major impact on trade policy. A Labour-led government would be more supportive of an EU agreement than one with the US, whereas the Conservatives seem set to continue opposing close ties with the EU, 2016 having marked a reversal of a 70-year policy.[24]

Some would hope a future UK government may consider rejoining the EEA or Customs Union in the future. It seems unlikely to happen in the next decade.

Much will depend on the public perception of trade policy effects. There are likely to be many future stories of the UK being disadvantaged in trading with the EU. While most will initially be blamed on the EU or COVID-19, major manufacturing losses would be more difficult for the government to justify. Similarly, a UK-US trade deal which affects UK farmers will be more controversial than one that simply fails to deliver new exports.

Evolving trade agreements

One of the odder aspects of FTAs is that in practice, often elaborate state-to-state dispute settlement mechanisms are seldom used.

Given the geographical proximity and high chance of a more EU-friendly government taking office in the UK at some stage, it seems unsustainable for mutual trade not to be underpinned by agreements. Even fervent supporters of Brexit envisaged this, but their proposed deals were so biased towards the UK that they could not happen.

It seems reasonable to think that the shape of the upcoming agreements would be based on negotiations to date. While making standard offers, the EU will demand level playing field reassurances for fair competition from the UK – more than what it has asked of others – due to the latter's proximity and size, and a lack of trust. The UK will ask for more than a basic trade agreement while suggesting otherwise, without accompanying fair competition provisions. These positions do offer plenty of scope for deals to be reached through both side compromising, but it may take some time for that negotiating rhythm to be established.

This could apply to different types of agreement, from a WTO-compliant FTA to mutual recognition, veterinary equivalence,

and other forms of cooperation. The chances of multiple types of agreements with the UK has led the EU to propose an overarching governance framework for the relationship, rather than risk the difficulties it faces in EU-Swiss relations.[25] Although the UK is resisting this, it should ultimately be in both parties' interests to ensure a smooth relationship with regular meetings at various levels – even if this is not in this current phase of negotiations.

In time, the UK is also likely to reverse its decision, as outlined in Chief Negotiator David Frost's Brussels speech of February 2020,[26] to leave all European regulatory bodies open to non-EU members (e.g. the European Aviation Safety Agency). The consequential costs, job losses, and reduced UK influence over rules as a result of leaving European regulatory structures are a heavy price to pay for refusing to accept sector-specific regulations with only limited European Court of Justice jurisdiction, particularly given the global importance of EU rules. International investors have taken note, and the difficulty in retaining or attracting their attention in the future combined with the UK political priority attached to manufacturing will surely be decisive.

Some would hope a future UK government may consider rejoining the European Economic Area (EEA) or EU Customs Union in the future. It seems unlikely to happen in the next decade, but cannot be completely ruled out, either. Many Brexit supporters would have been happy to remain in the EEA,[27] and the Customs Union would help protect UK manufacturing. These factors are likely to be the subject of future conversations, particularly if the UK struggles economically post-Brexit – although the shape of its economy may well have changed by then.

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Dispute settlement

One of the odder aspects of FTAs is that in practice, often elaborate state-to-state dispute settlement mechanisms[28] are seldom used.[29] For example, the USA has 14 FTAs, from which there have only ever been 4 disputes. In turn, 3 of the latter were in the context of the North American Free Trade Agreement. Meanwhile, the EU currently lists 3 disputes among its 41 agreements. In the past, countries have chosen to take disputes to the WTO, possibly as a way of using collective pressure for compliance, rather than risk mutual retaliation which would undermine a trade agreement.[30]

As suggested by the creation of an EU Chief Trade Enforcement Officer, this situation may be about to change.[31] The EU aims to be more forceful when applying agreements, including (and perhaps particularly) one with the UK. However, in reality, this will be far from straightforward.

Much of the language in FTAs is ambiguous, creating a framework for trade rather than a detailed legal description of all rules. For instance, commitments to labour or environmental standards, though sometimes not subject to dispute settlement, are often ambiguous and difficult to enforce.[32] Commitments to equivalent regulations are not to be taken literally, but provide a broad framework for the interaction of the two parties' regulatory systems with trade.

This ambiguity was demonstrated in UK-EU relations by the EU's request for an office in Northern Ireland. According to the Withdrawal Agreement,

"Union representatives shall have the right to be present during any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by this Protocol [...]. The United Kingdom shall facilitate such presence of Union representatives and shall provide them with the information requested."[33]

Although there is no specific text about an office, the term "facilitate" could be interpreted as meaning this request should be granted. The UK has refused it thus far.

Entering dispute settlement every time such a problem arises would soon render the agreement unworkable. Hence the reluctance to use these in general, given that both parties are probably not following the agreement to the exact letter. Agreeing on a more tightly defined language would likely be impossible. Therefore, the UK and EU must find ways to build a working relationship without having to resort to such mechanisms.

Implementing structures to support trade relations is the strongest argument for creating a single UK-EU governance structure, with lead officials taking charge of ongoing relations, resolving problems amicably where possible, and escalating to the ministerial level where required. Both sides have reservations about establishing such a structure – the UK, to avoid being trapped in some way; the EU, to avoid granting the UK special status post-Brexit. However, it is hard to see how else day-to-day problems could be resolved, other than by building permanent structures. From these structures, addressing ongoing problems will likely bring the impetus for deeper agreements.

Ultimately, it is geography and, therefore, the volume of trade which dictates that the UK and EU need a formal trade relationship. However, emotion and politics suggest that it will take some time before sufficient consensus can emerge within and between the two parties. The UK has never internally resolved their desired balance between market access and independence; the EU still has an underlying tension between wanting the success or failure of an ex-member. Both dilemmas must be answered satisfactorily for there to be a stable relationship. Until then, more difficulties can be expected.

1. European Commission (2020), Top Trading Partners 2019 – Trade Statistics; *Eurostat*, "Trade in services with non-member countries (extra EU), main partners, EU-27, 2017 and 2018" (accessed 05 June 2020). The two documents suggest that the UK is marginally behind the US and ahead of China in terms of the EU's largest external trading partners.

2. Springford, John (2019), "How economically damaging will Brexit be?", Centre for European Reform.

3. See e.g. Gudgin, Graham; Ken Coutts; Neil Gibson and Jordan Buchanan (2017), "Defying Gravity: A critique of estimates of the economic impact of Brexit", London: Policy Exchange.

4. For example, the then Secretary of State for International Trade wrote, "New technologies, in both physical and virtual infrastructure, are producing truly global products and services in a world where geographical boundaries matter much less than before." Fox, Liam, "Brexit is a golden opportunity for us to regain our power over international trade", *The Independent*, 28 March 2018.

5. See e.g. Burrage, Michael (2016), *Myth and Paradox of the Single Market: How the trade benefits of EU membership have been mis-sold*, London: Civitas.

6. See e.g. Collins, David (2018), "Brexit and the 'No Deal' scenario", Lawyers for Britain.

7. N.B. This opinion has mostly been expressed by opponents of Brexit. See e.g. Behr, Rafael, "Will Johnson smuggle a bad Brexit through the coronavirus crisis", *The Guardian*, 06 May 2020.

8. Singh, Arj, "Despite Coronavirus, No.10 Won't Extend the Brexit Transition. Here's Why.", *Huffington Post*, 27 April 2020.

9. See e.g. Paterson, Owen, "Why Brexit is great for the UK and USA", 05 October 2017.

10. Under the Protocal on Ireland/Northern Ireland, there will be no goods checks between the EU and Northern Ireland.

11. An example of successful market integration between neighbours is the Single Economic Market between New Zealand and Australia. However, there are several customs unions around the world. For example, the Agreement between the United States of America, the United Mexican States, and Canada provides a basis for deeper cooperation. "Since [the North American Free Trade Agreement], the three countries have made efforts to cooperate on issues of mutual interest, including trade and investment, and also in other, broader aspects of the relationship, such as regulatory cooperation, industrial competitiveness, trade facilitation, border environmental cooperation, and security." Villarreal, Angeles and Ian F. Fergusson (2020), "NAFTA and the United States-Mexico-Canada Agreement (USMCA)", Congressional Research Service, p.4.

12. "The Dispute Mechanism Systems (DMS) in many trade agreements have lain dormant because countries preferred to use the World Trade Organization (WTO), with its Appellate mechanisms". Szyszczak, Erika, "Dispute Resolution in EU Trade Agreements: A Preliminary Glimpse of a New World Order", *UK Trade Policy Observatory*, 26 June 2019.

13. *Office for National Statistics*, "UK total trade: all countries, non-seasonally adjusted" (accessed 05 June 2020).

14. European Commission (2020), *op.cit.*

15. *Eurostat*, "Trading partners' share of EU-27 international trade in services with non-member countries (extra- EU), 2018" (accessed 05 June 2020).

16. See e.g. United Nations Conference on Trade and Development, "Post-Brexit UK exports could fall by $32 billion due to non-tariff measures and tariffs", 25 February 2020.

17. See e.g. Estrin, Saul; Christine Cote and Daniel Shapiro, "It will be cheaper for the UK to trade with EU countries after Brexit – at least in the near term", *British Politics and Policy*, 23 August 2018.

18. Brakman, Steven; Harry Garretsen and Tristan Kohl, "Global trade can't replace the value of the EU Single Market for the UK", *LSE Brexit,* 22 May 2017.

19. *European Commission*, "EU trade agreements: delivering new opportunities in times of global economic uncertainties", 14 October 2019.

20. Luyten, Ann-Evelyn and Jin Woo Kim, "Could the EU's Chief Trade Enforcement Officer enforce sustainable development commitments under EU trade agreements against non-compliant third countries?", *EU Law Live*, 13 May 2020.

21. Henig, David, "Coronavirus response sheds light on tough UK trade choices ahead", *UK Trade Forum*, 30 March 2020.

22. Morita-Jaeger, Minako and L. Alan Winters (2018), "The UK's future services trade deals with non-EU countries: A reality check", Brighton: UK Trade Policy Observatory.

23. Hoekman, Bernard M. and Aaditya Mattoo (2013), "Liberalizing trade in services: Lessons from regional and WTO negotiations", San Domenico di Fiesole: European University Institute.

24. Shrimsley, Robert, "Brexit: the Conservatives and their thirty years' war over Europe", *Financial Times*, 14 December 2018.

25. "Swiss-EU relations are based on more than 120 bilateral contracts negotiated since a 1992 referendum". Atkins, Ralph; Jim Brunsden and Philip Stafford, "Switzerland faces stark choice on EU integration deal", *Financial Times*, 06 December 2018.

26. In particular, Frost said, "Sovereignty is about the ability to get your own rules right in a way that suits our own conditions", a definition that, taken literally, rules out virtually all international

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trade coordination. Frost, David, "David Frost lecture: Reflections on the revolutions in Europe", Université Libre de Bruxelles, 17 February 2020.

27. "The Leave Alliance is no fan of Boris Johnson and our preferred outcome ([European Free Trade Association, European Economic Area]) now seems improbable". *The Leave Alliance*, "The Brexit Party is gambling Brexit away", 02 November 2019.

28. Not to be confused with the separate investor state dispute settlement mechanism, which is not covered in this section.

29. Szyszczak (2019), *op.cit.*

30. Vidigal, Geraldo (2017), "Why is There So Little Litigation Under Free Trade Agreements? Retaliation and Adjudication in International Dispute Settlement", *Journal of International Economic Law*, Volume 20, Issue 4, pp.927-950.

31. The breakdown of the Appellate Body of the World Trade Organization (WTO) is a more recent issue that affects taking disputes to the WTO. The EU and a number of other countries have agreed to a multi-party interim appeal arbitration arrangement; the UK has not signed it.

32. Gammage, Claire (2018), "A critique of the extraterritorial obligations of the EU in relation to human rights clauses and social norms in EU free trade agreements", *Europe and the World: A law review*, Volume 2, Issue 1.

33. Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU (2019), The Revised Protocol on Ireland/Northern Ireland included in the Withdrawal Agreement, TF50 (2019) 64, Art.12(2).

Data adequacy post-Brexit: Avoiding disruptions in cross-border data flows

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The UK must engage in Brexit negotiations with an aim to preserve cross-border data flows and foster long-term cooperation with the EU in the digital and tech sectors. This is especially important for an effective COVID-19 recovery, as well as addressing the longer-term strategic interests of both parties.

This chapter offers an overview of the EU Digital Single Market (DSM) strategy, illustrating its high stakes for the stability of EU and UK economies, changes in the UK's political narrative post-2016, and the current state of play. Secondly, this chapter outlines three possible scenarios leading toward a decision on data adequacy, including the main issues, state of play and obstacles. Thirdly, it argues that adopting a stable negotiating position, preserving maximum data-regulatory convergence between the two parties, and extending the transitional period beyond 31 December 2020 are crucial preconditions for avoiding disruption on cross-border data flows and boosting development and responsible tech during the post-COVID-19 economic recovery.

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During the transition period, the UK remains compliant with the EU's GDPR, and its courts continue to apply decisions of the ECJ, and other changes in EU law.

The Digital Single Market and Brexit

Published in May 2015, the European Commission's DSM strategy proposed a mix of initiatives to be tabled by

the end of 2016, set across three main pillars: (i) improving access to digital goods and services across the EU; (ii) creating conditions and a level playing field for digital networks and services; and (iii) maximising the growth potential of the EU digital economy.[1] The strategy suggested a €250 billion of additional growth over the course of the mandate of the Juncker Commission.[2] Overall, resolving barriers and fragmentation in a fully-functional DSM could contribute an additional €415 billion per year to European GDP.[3]

Ahead of the Brexit referendum, the UK government was fervently committed to the DSM strategy and made bold recommendations about its implementation and improvement.[4] In October 2015, it responded to a written question in Parliament: "The Digital Single Market is a key priority for the UK Government and we welcome its ambition."[5] At a policy level, the DSM addressed the "burdensome regulations" and "differing national regimes" in the EU that the UK had traditionally opposed.[6] At a political level, the DSM offered strategic benefits and a leading role to the UK, which already had a strong presence in the digital and technology sectors vis-à-vis its other EU partners.

The UK's tech sector exported £28 billion worth of digital services to the EU in 2018. This accounted for over half of the UK's digital exports in total. In the same year, the UK's digital sector contributed £149 billion to the national economy, which incidentally is ten times as much as what farming and fisheries provide.

A member of the DSM, the UK's tech sector exported £28 billion worth of digital services to the EU in 2018. This accounted for over half of the UK's digital exports in total, according to the Department for Digital, Culture, Media & Sport (DCMS). In the same year, the UK's digital sector contributed £149 billion to the national economy (i.e. 7.7% of UK gross value added), which incidentally is ten times as much as what farming and fisheries provide. It is also important to note that businesses in DCMS sectors imported £15.8 billion worth of services from other EU member states, accounting for 46.4% of all services (by value) they imported in that year.[7]

Despite the DSM's strategic importance, the then Prime Minister Theresa May announced the UK's exit from the DSM in March 2018.[8] A report by the House of Commons' Business, Energy and Industrial Strategy Committee had previously expressed concern that "the decision to leave the European Union risks undermining the United Kingdom's dominance in this policy area." It continues, "We could have led on the Digital Single Market, but instead we will be having to follow."[9] Despite leaving the DSM, May assured EU partners in the revised Political Declaration that the UK intends to preserve "a high level of personal data protection to facilitate [data] flows and exchanges across the future relationship."[10] This was a key concern on both sides of the Channel, as high UK data protection standards would help avoid disruptions in EU-UK data flows.

These commitments were also adopted later in the legally binding Withdrawal Agreement: "Union law on the protection of personal data shall apply in the United Kingdom in respect of the processing of personal data of data subjects outside the United Kingdom." However, the same article also specifies that to the extent that EU law no longer applies, "the United Kingdom shall ensure a level of protection of personal data essentially equivalent to that under Union law".[11] Thus, the UK could make its own arrangements and preserve cross-border data flows, as long as it offers an equivalent level of data protection to that offered under EU law (i.e. the General Data Protection Regulation; GDPR).

More recently, in February 2020, Prime Minister Boris Johnson wrote in a statement to the House of Commons that "the UK will in future develop separate and independent policies in areas such as [...] data protection".[12] This caused uneasiness in EU circles, prompting the EU's Chief Brexit Negotiator Michel Barnier to claim that Johnson was backtracking on earlier commitments. Furthermore, European Data Protection Supervisor Wojciech Wiewiórowski argued that deviations from the EU data protection *acquis* "would constitute an important obstacle to the adequacy findings," and that the EU should "take steps to prepare for all eventualities."[13]

Towards an EU-UK data adequacy agreement

During the transition period, the UK remains compliant with the EU's GDPR, and its courts continue to apply decisions of the European Court of Justice (ECJ) and other changes in EU law. Moreover, according to the Withdrawal Agreement's Article 71, GDPR will continue to apply in the UK as EU law even after the transition. This concerns personal data originating from the EU that continues to be processed within the UK post-transition, where the relevant data commenced before the end of the transition. This protective provision in the Withdrawal Agreement secures continuity in cross-border data flows at the end of the transition period. It also suggests that the UK could preserve cross-border data flows for business and citizens post-transition if these data flows are bound by joint data governance mechanisms. However, if the UK decides to deviate from present data governance arrangements, this provision will fall away, too.

In that case, an adequacy agreement would be necessary to preserve cross-border data flows, and ensure that UK data protection rules in handling data originating from the EU are robust enough to safeguard the fundamental rights of EU citizens post-Brexit. A decision on data adequacy – or lack thereof – would influence the future of cross-border data flows significantly. If data protection requirements are deemed inadequate by the European Commission, cross-border data flows for citizens, businesses and other services could be limited or even suspended.

Thus, there are essentially three scenarios for continuing cross-border data flows, one regarding the short-term, and two regarding the long-term EU-UK relations.

In the short term, cross-border data flows will continue unimpeded during the transition period.

In the long term, the UK can choose to continue to be bound by GDPR and joint EU-UK governance mechanisms. This would preserve cross-border data flows for business and citizens post-transition, even in the absence of an adequacy agreement. However, this would require significant regulatory convergence in other areas – the UK would have to remain in the European Economic Area and subject to the same data relationship rules as Norway, Iceland and Liechtenstein.

Otherwise, if the UK decides to deviate from joint governance mechanisms and EU law post-transition, an adequacy agreement would have to be concluded by 31 December 2020. In this case, adequacy could be full or partial.

If the European Commission grants the UK full data adequacy, cross-border data flows would be completely unrestricted, and the UK would enjoy the same data access relationship rules as Switzerland, Japan or New Zealand. However, if data adequacy is partial, data flows would be unrestricted only for certified organisations/sectors, and contingent on the adoption of Privacy Shield standards – as is the EU's present data access relationships with the US and Canada.[14]

Nevertheless, if the UK decides to deviate from joint governance and EU law post-transition, and an adequacy agreement is not concluded by 31 December 2020, this would have a significant impact on cross-border data flows, as these could be limited or even suspended.

It is difficult to predict the economic impact of such a disruption. It would place immense compliance burdens on individual organisations, which would have to pay legal and administrative fees to ensure that cross-border flows remain lawful. Increasing the cost of business could slow growth for many organisations and undermine innovation.[15] So far, reports have estimated the bureaucratic cost to be significant, too, especially for small businesses that would have to adopt Standard Contractual Clauses or Binding Corporate Rules.[16]

Judging from a first level of analysis, the economic impact would be significant, considering that 75% of UK data flows are with EU countries. Moreover, much of the UK's economic activity is dependent on these flows – it exported £28 billion worth of digital services to the EU in 2018.[17]

For an adequacy decision to be reached, a significant evaluation process must be completed. Steps involve a period of assessment by the Commission, followed by a draft decision, an opinion by the European Data Protection Board, and final approval by member states and the College of Commissioners. However, even when this evaluation takes place, there could still be other obstacles in reaching an agreement, as the ECJ would have the final word. In the *Schrems* case of 2015, the ECJ concluded that the transfer of EU citizens' personal data could be suspended when a third country does not afford an adequate level of protection to that under EU law. Thus, the ECJ can decide on adequacy relating to data protection, "even where the Commission has adopted a decision finding that a third country affords an adequate level of protection of personal data."[18]

So far, the UK has made some arrangements that could facilitate negotiations for an adequacy agreement. However, at this point, these are insufficient. The UK transposed the GDPR into national legislation by adopting the Data Protection Act in 2018. But in February 2020, the European Parliament adopted a resolution that highlights concerns about that act of UK legislation. Specifically, the Parliament expressed concern that the UK's current data regime provides a "broad exemption from the data protection principles and data subjects' rights for the processing of personal data".[19]

Indeed, the UK Data Protection Act currently allows the forwarding of personal data to third countries, the processing of personal data for immigration purposes, and the retention of electronic communications data. Therefore, the resolution concludes that the UK "does not fulfil the conditions of the relevant EU acquis as interpreted by the CJEU, and hence does not currently meet the conditions for adequacy".[20]

Additionally, a Commission 'decision on adequacy' cannot be conditional on other EU-UK agreements ahead of Brexit, such as in the area of trade. Adequacy decisions do not result from conventional negotiations. That is because the EU considers data adequacy (and the protection of personal data) to be a matter of fundamental rights, as enshrined in the EU's Charter of Fundamental Rights (which the UK controversially rescinded). In this regard, the Charter has the status of an EU treaty and is non-negotiable – hence the term 'decision'.

What does the future hold?

Currently, access to markets for digital services seems to be the most prominent issue for the UK digital economy as a whole. Nonetheless, the EU will also suffer substantial losses due to the UK's exit from the DSM in December 2020. Contrary to the EU's underinvestment in tech, venture capital in the UK tech sector has seen record-breaking investments in 2018 (£10 billion) and 2019 (a £3.1 billion increase from 2018) – the highest levels in UK history. These numbers should alarm EU officials, considering that UK-based tech firms in 2019 secured more venture capital investment than Germany (£5.4 billion) and France (£3.4 billion) combined.[21]

Other future Brexit scenarios suggest that the post-Brexit UK could remain well-positioned to attract venture capital in the tech industry, as its likely relaxed data protection regime could incline other EU-based companies to relocate. However, EU conditionality in this area could remain strong. Until now, the GDPR has provided a homogeneous regulatory environment in the EU that has inclined other global actors to adopt similar regulations, including big tech companies. The GDPR set a global gold standard in data protection that, among other things, decreases complexity for tech companies that are active across different global markets. Under this light, one could question whether it really is in the UK's interest to deviate

A decision on data adequacy would influence the future of cross-border data flows significantly. If data protection requirements are deemed inadequate by the Commission, cross-border data flows for citizens, businesses and other services could be limited or even suspended.

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from data protection standards and the GDPR in the long term. One should also consider the political influence that big tech companies could exert over UK foreign policy post-Brexit. The EU has provided its member states with strong collective leverage against the influence of tech giants in China and the US.

Being part of the DSM, the UK has been well-positioned to attract venture capital in the tech industry. Additionally, the DSM has provided the UK with unprecedented market access for its tech sector within the EU, which will be lost post-Brexit. Thus, it remains uncertain whether the UK will be able to maintain the same levels of investment in tech upon leaving the DSM.

The economic damage incurred by the UK's exit from the DSM could be cushioned by adopting a close data governance relationship with the EU, as the UK and EU27 tech sectors could still benefit from each other, although to a lesser degree. Nevertheless, it seems that even the prospect of containing mutual damage is improbable, as the EU would not compromise its data protection standards to grant the UK data adequacy.

Preserving cross-border data flows is a contentious political issue for the UK government because it is closely tied to the role of the ECJ. A positive ECJ ruling on UK data adequacy currently seems unlikely, especially considering the UK's ambiguous track record in mass surveillance programmes. For example, think of the UK's violation of Article 8 of the European Convention on Human Rights, as per the European Court of Human Rights' ruling in September 2018.[22]

The UK's present approach to data-flows negotiations brings to mind zero-sum models and game theory outcomes. However, this approach is irreconcilable with the COVID-19 crisis, which emphasises the shared nature of risks and vulnerabilities, and illustrates the need for meaningful compromise and sustained cooperation between the two partners.

The UK's present approach to data-flows negotiations brings to mind zero-sum models and game theory outcomes. However, this approach is irreconcilable with the COVID-19 crisis, which emphasises the shared nature of risks and vulnerabilities, and illustrates the need for meaningful compromise and sustained cooperation between the two partners.

Adopting a stable negotiating position, preserving maximum data-regulatory convergence between the two parties, and extending the transitional period beyond December 2020 are crucial preconditions for avoiding the 'digital' cliff edge of a no-deal. These steps should enable the UK to attain a full adequacy decision on data flows. Only this outcome would offer maximum damage limitation for both parties in the short and long terms.

Aside from Brexit, the EU must also find ways to increase its clout in big tech and digital sectors. It should encourage innovation by enabling EU tech champions in a fully-fledged DSM.

1. In addition to these pillars, the European Commission identified three additional areas of EU action in its 2017 mid-term review of the Digital Single Market strategy: (i) the European data economy; (ii) cybersecurity; and (iii) the promotion and regulation of online platforms. European Commission (2017), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-Term Review on the implementation of the Digital Single Market Strategy: A Connected Digital Single Market for All, COM(2017) 228 final, Brussels. See also Bjerkem, Johan and Malcolm Harbour (2019), "Making the Single Market work: Launching a 2022 masterplan for Europe", Brussels: European Policy Centre.

2. European Commission (2015a), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Single Market Strategy for Europe, COM(2015) 192 final, Brussels.

3. European Commission (2015b), Commission Staff Working Document: A Digital Single Market Strategy for Europe – Analysis and Evidence, SWD(2015) 100 final, Brussels.

4. UK Government (2015), "UK vision for the EU's digital economy", London.

5. UK Parliament, "Digital Technology: EU Internal Trade: Written question – 901740" (accessed 29 May 2020).

6. After Brexit, "The Digital Single Market and Brexit" (accessed 29 May 2020). See also UK Government, "The UK vision for the EU's digital economy" (accessed 29 May 2020).

7. UK Department for Digital, Culture, Media & Sport (2020), "DCMS Sectors Economic Estimates 2018: Trade in Services", London.

8. BBC News, "In full: Theresa May's speech on future UK-EU relations," 02 March 2018.

9. Business, Innovation and Skills Committee (2016), "The Digital Economy: Second Report of Session 2016-17", House of Commons, para.68.

10. Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU (2019), Revised text of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom as agreed at negotiators' level on 17 October 2019, to replace the one published in OJ C 66I of 19.2.2019, TF50 (2019) 65, para.8.

11. Council Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019), 2019/C 384 I/01, Art.71(1, 3).

12. UK Parliament, "UK / EU relations: Written statement – HCWS86" (accessed 29 May 2020).

13. Stolton, Samuel, "'Prepare for all eventualities' on UK-EU transfers, EDPS says", EURACTIV, 26 February 2020.

14. European Commission, "EU-US data transfers > Commercial sector: EU-US Privacy Shield" (accessed 29 May 2020).

15. Patel, Oliver and Nathan Lea (2019), "EU-UK Data Flows, Brexit and No-Deal: Adequacy or Disarray?", London: UCL European Institute.

16. Ibid.; Lloyd, Lewis (2020), "UK-EU future relationship: data adequacy", London: Institute for Government; TechUK, "The UK Digital Sectors After Brexit", 24 January 2017.

17. Patel and Lea (2019), op.cit.

18. Court of Justice of the European Union, Judgment in Case C-362/14, Maximillian Schrems v Data Protection Commissioner, The Court of Justice declares that the Commission's US Safe Harbour Decision is invalid, No117/15, 06 October 2015, Luxembourg, p.1.

19. European Parliament (2020), Motion for a resolution to wind up the debate on the statements by the Council and the Commission pursuant to Rule 132(2) of the Rules of Procedure on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland (2020/2557(RSP)), B90098/2020, para.32.

20. Ibid., para.32.

21. Tech Nation, "UK tech sector beats both US and China to lead global growth in 2019", 15 January 2020.

22. European Court of Human Rights, Some aspects of UK surveillance regimes violate Convention, ECHR 299 (2018), 13 September 2018, Strasbourg.

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A radical departure: Migration and mobility between the UK and EU after Brexit

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Discussion of the UK-EU relationship, particularly its economic aspects, tends to focus on trade more than migration. However, the implications of Brexit for the latter may matter just as much, if not more. Over the last two decades, the UK has become somewhat less integrated with the EU in trade terms; trade with EU members now accounts for just under half of total UK trade. By contrast, even after the departure of the UK, Ireland and Cyprus will be the only member states that trade outside the EU more than they do within.[1]

Migration is different. Despite the UK's long-standing reluctance to participate in the EU's Area for Freedom, Security and Justice and its resulting opt-outs across a range of EU policies, from Schengen to Frontex, the movement of people between the UK and the rest of the EU has grown dramatically. Over the same 20 year period, the number of UK residents born in an EU member state more than doubled to over 3.6 million (i.e. just over 5%). About 1 in 5 EU citizens who have migrated within the EU live in the UK.[2]

These statistics reflect a number of factors: the UK's decision to immediately open its labour market to new member states in 2004; its relatively flexible and dynamic labour market (particularly after the eurozone crisis); and, of course, the appeal of London, the status of English as the world language, and the UK's world-class universities. While movement the other way has not expanded as fast, about a million Britons – slightly under 2% of the population – now live in EU member states.[3]

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The impact of the Brexit vote on migration trends

The Brexit vote changed all of this. In the year prior to the referendum, the net migration of EU citizens to the UK reached 200,000. Before the COVID-19 crisis, it had fallen to perhaps a quarter of that figure. This reflects economic trends, but more importantly legal and psychological factors relating to the uncertainty about the future rights of EU citizens currently residing in the UK, and the general political and social climate, with the UK no longer considered a hospitable destination for EU migrants.

Again in contrast to UK-EU trade – which, prior to the COVID-19 outbreak, remained broadly stable since the referendum –, when it comes to migration, the UK's disengagement from the EU has already begun. The introduction of a new UK immigration system after the end of the transition period in January 2021 (barring a now unlikely extension) is likely to accentuate this trend.

The Withdrawal Agreement mandates that EU citizens currently residing in the UK and UK nationals in the EU will – regardless of whether there is a deal on the future UK-EU relationship, or not – broadly retain their existing rights. However, UK nationals will lose the automatic right to move to another EU country or work across borders. Furthermore, there is still scope for a dispute over exactly how the provisions relating to citizens' rights are interpreted in the UK and the EU member states.

The new UK immigration system

Nevertheless, the major changes are for new migrants from both EU and non-EU countries (with the exception of Irish citizens, who will retain their existing rights), who will need to qualify under the UK's new 'points-based' immigration system. For most of those migrating to the UK to work, that will mean securing a job that requires skills and pays salaries above certain thresholds. For those migrating for family reasons, they must qualify under the UK's existing rules – which are extremely restrictive compared to most EU member states.

The UK's new system will, therefore, represent a significant tightening of controls on EU migration compared to free movement. All migrants coming to work in lower-skilled and paid occupations will in principle no longer be able to gain entry, while those who do qualify will need to pay considerable fees and have their prospective employers apply on their behalf. Even then, they will have, as is the case for non-EU migrants at present, significantly fewer rights (e.g. access to the welfare system).

For UK citizens seeking to move to the EU, the mirror image applies: their automatic right to reside as EU nationals will end, and they will be treated as third-country nationals, like other non-EU citizens. However, the key difference is that the migration of third-country nationals is largely a competence of individual member states, with some minimum standards set at the EU level under various directives which cover the rights of third-country nationals.

That means that it will be, in general, easier for UK citizens to move to Sweden for work purposes than to Italy – although still considerably harder than it is now for UK citizens moving to either country. It also implies that having migrated in the first place, their rights to move between EU countries or work across borders will be severely curtailed.

Any UK-EU deal will not cover migration

The course of the UK-EU negotiations will not alter this trajectory of policy changes significantly. As noted above, the Withdrawal Agreement resolved issues relating to the rights of those who have already migrated between the UK and EU. However, for future migration, the UK government is firmly committed to maintaining regulatory flexibility after Brexit. Combined with the accelerated timetable for negotiating a trade deal with the EU, this means that there is little prospect for any significant provisions on labour mobility or long-term migration between the UK and EU in any post-Brexit deal.

Putting aside the UK's political constraints, past EU trade deals – such as the Canada-EU free trade agreement – have not included significant provisions relating to immigration, particularly given the complex division of competences between the EU institutions and member states on such issues. Some arrangements will probably be agreed in any UK-EU deal to facilitate short-term business visits. But – as in with other regulatory provisions governing the trade in services between the UK and EU – any such arrangements will still represent a significant increase in regulatory barriers between the two.

One major unanswered question concerns students. UK universities (and graduate employers, particularly in London) benefit significantly from the current arrangements: EU students attend UK universities on the same basis as UK ones, pay much lower tuition fees than non-EU students and, under the UK's system for the repayment of student loans, only on a deferred basis (if at all).

This system is costly for the UK government and hard to justify under the new 'non-discriminatory' system and is therefore unlikely to continue. It is, however, possible that if an UK-EU trade deal is reached, some special arrangements will be made to facilitate UK students' enrolment in universities in

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EU member states and vice versa. These could include the continuation of the Erasmus Programme for student exchanges, as well as measures to facilitate researchers' mobility.

Economic consequences

These changes will have significant economic and political consequences for the UK. Over the past two decades, migration from the EU has boosted growth, helped address skill and labour shortages, and benefited public finances in the UK. It also led to rapid population growth in some areas of the country.

Brexit will not mean the end of migration flows between the UK and EU. Indeed, since the Brexit vote, UK public opinion has become more pro-migration, opening some political space for a more liberal policy than appeared likely two years ago.

Against a background of general austerity and cuts to public services – and a hostile media and opportunistic politicians looking for convenient scapegoats –, this generated significant social and political tensions, which provided much of the impetus behind Brexit. The UK economy is already in the process of adapting to a new reality where EU migration is much lower, leading to pressures in areas like the National Health Service (NHS) and agriculture. The UK government has announced that fruit pickers from abroad will be exempt from the COVID-19-related quarantine imposed on travellers. Meanwhile, NHS workers will not have to pay the government's future 'NHS surcharge', a special surtax imposed on new migrants to ostensibly help fund the NHS – although in practice it simply goes into general government funds.

For EU countries that source large numbers of migrants to the UK, there will be both advantages and disadvantages. These member states have benefited from their citizens' access to the UK labour market, acting as a 'safety valve' for high domestic unemployment as well as from remittances. However, in the medium to long term, a decrease in the emigration of relatively young and skilled EU workers to the UK (and perhaps the return of some currently residing in the UK to the EU) may be an economic benefit. This is particularly true of countries facing severe demographic challenges, like Latvia and Lithuania.

Nevertheless, Brexit will not mean the end of migration flows between the UK and EU. Indeed, since the Brexit vote, for a variety of reasons, UK public opinion has become more pro-migration, opening some political space for a more liberal policy than appeared likely two years ago. The ousting of Theresa May, the most restrictionist Prime Minister in recent UK history, reinforces this, as does the desire of the devolved administrations, particularly Scotland, to maintain migration flows.

While COVID-19 will obviously lead to a very sharp fall in migration in the short term, it will not necessarily alter this dynamic in the long term. The UK is exceptionally dependent on international travel and connectivity in a way that the US, for example, is not. This means that UK and EU policymakers must find a way to allow people to move across its borders in huge numbers again, whether it be through screening, testing, post-arrival monitoring, or some combination.

And indeed, the pandemic has highlighted the fact that economic value, as measured by market wages, is not necessarily a great reflection of wider social value. Care workers, bus drivers and supermarket staff all fulfil essential functions, and it is far from obvious whether or not the UK public will support an immigration system that excludes such workers. This will not mean the continuation nor restoration of free movement, but rather that the new system will be more open – closer perhaps to the Swedish treatment of third-country nationals, which broadly allows workers to come do jobs that cannot be filled by EU workers – than originally envisaged.

Conclusion: A new chapter

Migration is about people. People have moved back and forth across the Channel and North and Irish Seas since long before the creation of the UK and other European nation-states, let alone the EU. We are, and will remain, part of a broader European family. Most of the 3.6 million EU nationals currently residing in the UK will remain put, and many for the rest of their lives. The family connections made and cultural cross-fertilisation of the last two decades will not be reversed.

Over time – deal or no deal – both sides will find it in their interests to construct new frameworks for the mobility of people, especially young people, students and researchers. Brexit will make it harder for us to study, work, retire, or fall in love – but it will not stop us.

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[1] *Eurostat*, "International trade in goods – Overview" (accessed 08 June 2020).

[2] *Office for National Statistics*, "Population by country of birth and nationality: 2019" (accessed 08 June 2020).

[3] *Eurostat*, "EU citizens living in another Member State – statistical overview" (accessed 08 June 2020).

TOWARDS AN AMBITIOUS, BROAD, DEEP AND FLEXIBLE EU-UK PARTNERSHIP?

Judicial partners forever? Two challenges preventing a fast and effective future judicial cooperation

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There is a field in the negotiations where a Canada- or Australia-style deal is not sought after. Nevertheless, the debate surrounding it is legally and politically fascinating, and the absence of an agreement in this area would truly endanger our security. It is judicial (and police) cooperation – the 'internal security' part of the negotiations.

As our economies and societies remain intertwined, so will our families and criminals. Instead of enumerating instruments currently in force and looking for their appropriate alternatives, this chapter looks at two overarching prerequisites that condition the future EU-UK judicial cooperation as a whole: the protection of fundamental rights and the European Court of Justice's (ECJ) jurisdiction.

What the future EU-UK judicial cooperation should look like…

The revised Political Declaration calls for a "comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters" that could draw from

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Judicial cooperation is one of the four areas in the current negotiations for which there are significant differences.

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existing EU capabilities and existing forms of cooperation between the EU and non-EU Schengen countries.[1] It would entail finding that delicate balance between affirming the UK's non-EU membership while keeping our cooperation as efficient as possible – the "somewhere in between".[2]

On 18 March 2020, the European Commission tabled a generous draft agreement that suggests establishing fast and effective tools to replace the capabilities in force today (including a near copy of the European Arrest Warrant).[3] This shows that the EU is ready to offer an unprecedented degree of judicial and police cooperation to a third country. Nevertheless, the Union is now facing challenging UK red lines.[4]

In the current troubled times, it is of utmost importance that the EU shows that it will not compromise on fundamental rights and the rule of law, no matter what it takes.

A third state's accession to international treaties that guarantee, in principle, the respect for fundamental rights does not imply the state's de facto respect for the same rights.

... and why it is (currently) out of reach

As the EU's lead negotiator Michel Barnier declared after each of the three first rounds of negotiations, judicial cooperation is one of the four areas for which there are significant differences.[5] Understanding the issues at stake necessitates taking a close look at two of the UK's red lines.

1. RESPECTING HUMAN RIGHTS IS ONE THING, SPECIFYING HOW IS ANOTHER [6]

The respect for fundamental rights – including data protection[7] – and the rule of law is a particularly essential prerequisite in the area of judicial (and police) cooperation. The reason is simple: any judge or relevant authority of a state must be able to trust that all judges or relevant authorities from the cooperating state respect fundamental rights strictly, including key procedural rights, in order to pass on sensitive information or allow those judges or authorities to take decisions that could affect its own nationals. More importantly, a member state which, for instance, surrenders an individual to a third country that does not respect human rights risks being sued for breaching human rights itself. The respect for human rights is, therefore, a key precondition for any form of judicial cooperation.[8]

Furthermore, to ensure close cooperation, abiding by the same body of rules is essential. It is important to choose a living document capable of evolving in the same manner for both Parties. Mobilising the European Convention on Human Rights

(ECHR) is an obvious solution, as both EU member states and the UK already adhere to it (and the EU is bound to respect it by virtue of the Charter and the general principles of EU law). Abiding by its framework rather than just its rights is crucial, as it ensures that the standards will remain synonymous over time.

However, the UK is against the agreement specifying how it should protect and enforce human rights and the rule of law.[9] It rejects any reference to a specific set of rules – a requirement that does not only concern this policy area –, especially the ECHR. Dominic Cummings, Prime Minister Boris Johnson's senior adviser, has repeatedly and ardently called for a referendum to denounce the latter.[10]

In the current troubled times, it is of utmost importance that the EU shows that it will not compromise on fundamental rights and the rule of law, no matter what it takes. Certainly, this is not a caprice; there are real concerns about how the UK's future protection of human rights will look.[11]

In fact, the EU should actually toughen its own red line in the area of judicial cooperation. The draft agreement nourishes an ambivalence that was already present in the revised Political Declaration and the EU negotiating directives of 25 February 2020;[12] a sort of double standard concerning the required threshold of protection of human rights.

On the one hand, under Part I ("Common provisions"), Title II ("Basis for cooperation") of the draft agreement, the *upholding* of democracy and the rule of law, and *respect* for human rights are considered "essential elements" of the agreement.[13] In this regard, the Parties should "reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties, as well as their *continued commitment to respect* the European Convention on Human Rights and Protocols 1, 6 and 13 thereto."[14]

On the other hand, the application of Part III ("Security partnership"), Title I ("Law enforcement and judicial cooperation in criminal matters") is conditioned upon (i) the UK's continued *adherence* to the ECHR (and Protocols 1, 6 and 13 thereto); and (ii) the UK giving *continued effect* to these instruments under its domestic law.[15] The text continues by stating that Part III, Title I shall be *suspended* should the UK abrogate domestic law, giving effect to the abovementioned instruments; or make amendments to the effect of reducing the extent to which individuals can rely on them before domestic courts.[16] The same Title shall be *disapplied* should the UK denounce any of those instruments.[17] However, specific reasons for suspension or termination is something the UK does not want, either.[18]

This difference in formulating the standards – or rather the articulation between those formulations – encompasses real, uncomfortable risks.[19] The *adherence* to the ECHR entails the obligation to respect not only its content but also its framework, including the jurisdiction of the European Court of Human Rights (ECtHR). However, in the case of a breach, the probability of reaching the ECtHR is limited. As the ECJ recently recalled in a case concerning the Agreement on the surrender procedure between the EU and Norway and Iceland, a third state's accession to international treaties that guarantee, in principle, the respect for fundamental rights does not imply the state's de facto respect for the same rights.[20] Ironically, even as an EU member state, the UK was not formally bound to *continued adherence* to the ECHR as long as it respected its content.

What would happen in a situation in which UK authorities no longer apply or respect the rights contained in those instruments without making any denouncement, legislative amendment or abrogation? One could not even submit the issue to the arbitration tribunal foreseen by the draft agreement, as – despite having an extensive

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jurisdiction way beyond trade issues – it does not have jurisdiction to rule over a breach of Part I, Title II.[21] Any dispute concerning these obligations could merely be discussed within the Partnership Council.[22] There would be two other options, but these are radical: (i) suspending any provision (amid any "appropriate measures") by activating Article 35 of Part V, Title III (thus the procedure for breaching "essential elements");[23] or (ii) terminating the entire agreement by activating the general termination clause in Article 8 of Part VI (which does not require any reason).[24]

One adequate alternative could be to condition the applicability of Part III, Title I to the *respect* for fundamental rights and the rule of law explicitly, including continued adherence to the ECHR and giving effect in domestic law to the latter. This should not preclude from keeping a stricter and specific regime of remedies in case of breach of this Title. The recent case law of the ECJ reminds us of the importance of striking the right formulation of obligations when it comes to protecting human rights in agreements with third states.[25] Failing to do so could place judges and other relevant authorities in delicate positions. Ultimately, the degree of the future EU-UK judicial cooperation will be proportionate to the UK's commitment to fundamental rights.

The recent case law of the ECJ reminds us of the importance of striking the right formulation of obligations when it comes to protecting human rights in agreements with third states.

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2. BYE-BYE KIRCHBERG

It comes with no surprise that the UK does not want the ECJ to be assigned any role in resolving EU-UK disputes.[26] However, in the revised Political Declaration, the UK committed to respecting the integrity of the Union's legal order by committing to the rule that if a dispute raises a question of interpretation of a concept or provision of EU law, the arbitration tribunal *should* refer the question to the ECJ. The latter's ruling would be binding on the arbitration tribunal.[27] The draft agreement turned the "should" into a "shall",[28] exactly like in the Withdrawal Agreement (WA).

Again, this is not a caprice. As an arbitration tribunal established in an agreement between the EU and a third country operates outside of the EU judicial system, it should not enjoy any jurisdiction to interpret and apply rules of EU law other than the provisions of the agreement.[29] This is also the reason why the EU cannot accept the UK's demand to let a political body deal with disputes related to security provisions.[30] On top of not offering adequate safeguards, a political body is not allowed – under EU law – to refer a question to the ECJ. This is key to respecting the autonomy of the EU legal order.

When the UK says that the EU does not have the same imperative in other international agreements with third countries, this is true for some agreements that involve a lower degree of cooperation, but not all.[31] The depth of the envisaged agreement makes the involvement of concepts of EU law necessary, and therefore the ECJ, too.

Hence, this second divergence also has a direct impact on the achievable degree of judicial cooperation. As Ian Forrester, former British judge of the General Court of the CJEU, said in his farewell speech, "the process is [not] politically reversible in terms of public expectation."[32] As he emphasised, "cross-border cooperation in these fields [...] will involve procedures governed by EU law."[33]

There are three possibilities to break the gridlock: (i) the UK accepting the ECJ's (limited) jurisdiction; (ii) removing all references to EU law in the draft agreement; or (iii) keeping all provisions containing such references out of the scope of the dispute settlement mechanism. Obviously, the latter two options mean lower intensity of cooperation. The UK might be opting for the second option. Its government repeats that the alternative, "fast", "effective and reciprocal" instruments to the capabilities in place for judicial and police cooperation should draw on precedents from similar capabilities put in place between the EU and non-EU countries, rather than existing EU tools.[34]

Perspectives

These two red lines remind us that the judicial (and police) cooperation debate is also about sovereignty. The UK's attitude towards this field has long been complicated for precisely this reason. Although the UK does not want the future agreement to "constrain the autonomy of [its] legal system in any way",[35] it must make its mind up: cooperating also means constraining yourself. What is true for the executive and legislative branches is also valid for the judiciary: judicial cooperation requires mutual trust and the sharing of common rules.

The EU's offer to the UK is unique, considering that the latter is now a third country, especially at a time when trust has somehow even diminished between judges within the EU.[36] The UK should ensure that it does not miss this opportunity. Otherwise, their judicial (and police) cooperation will decrease in efficiency, with all the consequences it entails. In addition, the UK digging in their heels and sticking to the two red lines would likely reduce the overall level

of trust, slow down the negotiations[37] and eventually influence the level of political ambition of the entire agreement.

The risk of a 'no deal' scenario remains real, especially as the COVID-19 crisis has affected the timeline and quality of the negotiations considerably. It would mean falling back on heavy and lengthy judicial cooperation regimes, such as international agreements adopted within the framework of the Council of Europe, or the Hague Conference on Private International Law. At least there would be no gaping legal loopholes, which is reassuring per se – but those instruments are far from ensuring the fluid cooperation we experience today. The UK could become a safer place for EU criminals and, similarly, the UK would once again face its worst 'Costa del Crime'[38] nightmare.[39] In any scenario, the WA provides some 'transitional measures to the transitional measures' for ongoing judicial procedures and investigations. These will not simply stop in the absence of

a deal. Those WA provisions are particularly welcome considering that the COVID-19 pandemic delayed procedures in several European countries.

There are reasons to hope that the final text of the currently negotiated agreement will at least include some basic arrangements that go beyond the aforementioned fallback options. However, we might need to wait for another UK government for the cooperation to deepen. It is important to remember that not very long ago, a former British prime minister did a U-turn and was ready to commit to respecting the ECHR. This could happen once again.

1. Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom (2020), OJ C 34, 31.1.2020, pp.1-16, para.80 (hereinafter, Revised Political Declaration). At this stage, going beyond existing international conventions on civil judicial cooperation is out of the scope of the negotiations.

2. Barnier, Michel, Speech by Michel Barnier to the students at ESCP Europe: Cooperation in the Age of Brexit, Brussels, 26 February 2020a.

3. European Commission (2020), Draft text of the Agreement on the New Partnership with the United Kingdom, UKTF (2020) 14, Brussels.

4. UK Government (2020), "The Future Relationship with the EU: The UK's Approach to Negotiations", London.

5. Barnier, Michel, Negotiations with the UK: Michel Barnier, the European Commission's Chief Negotiator, sets out points of convergence and divergence following the first round of negotiations, European Commission, 5 March 2020b; Barnier, Michel, Press statement by Michel Barnier following the second round of future relationship negotiations with the United Kingdom, European Commission, 24 April 2020c; Barnier, Michel, Remarks by Michel Barnier following Round 3 of negotiations for a new partnership between the European Union and the United Kingdom, European Commission, 15 May 2020d.

6. This chapter was written before the fourth round of negotiations that took place on 2-5 June 2020. At the end of this round, Michel Barnier declared that negotiators had a "constructive discussion on the question of commitment to the European Convention on Human Rights, although important questions remain as to how to reflect this commitment in our agreement." See Barnier, Michel, Statement by Michel Barnier following Round 4 of negotiations for a new partnership between the EU and the UK, European Commission, 5 June 2020e.

7. On the significance of data protection in this field, see e.g. Gutiérrez Zarza, Ángeles (2015, ed.), Exchange of Information and Data Protection in Cross-border Criminal Proceedings in Europe, Berlin: Springer; Caruana, Mireille M. (2017), "The reform of the EU data protection framework in the context of the police and criminal justice sector:

harmonisation, scope, oversight and enforcement",
*International Review of Law, Computers &
Technology*, Volume 33, Issue 3, pp.249-270.

8. See e.g. Judgment of 25 July 2018, *LM*, C-216/18
PPU, EU:C:2018:586, para.36.

9. UK Government (2020), *op.cit.,* Pt.2, para.31.

10. For Dominic Cummings' opinion on the
European Convention on Human Rights, see
Dominic Cummings's Blog, "ECHR" (accessed 28
April 2020).

11. Beyond declarations made by some British
politicians, see e.g. the recent European Court of
Human Rights case in which the Police Service of
Northern Ireland's regime of indefinitely retaining
the DNA profiles, fingerprints and photographs of
suspected or convicted criminals was deemed to
constitute "a disproportionate interference with
the applicant's right to respect for private life"
(*Gaughran v. the United Kingdom*, no. 45245/15, 13
February 2020, ECHR 2020); or the European Court
of Justice case in which an Irish court hesitated
to execute a European Arrest Warrant issued by a
British court in 2018 (Judgment of 19 September
2018, *Minister for Justice and Equality v RO*, C-327/18
PPU, EU:C:2018:733). For an analysis of the
consequences of the UK ceasing to be bound by
the EU Charter, see Dawson, Joanna, "How might
Brexit affect human rights in the UK?", *House of
Commons Library*, 17 December 2019.

12. Annex to Council Decision (EU, Euratom)
2020/266 of 25 February 2020 authorising the
opening of negotiations with the United Kingdom
of Great Britain and Northern Ireland for a new
partnership agreement (2020), OJ L 58, 27.2.2020,
Brussels, pp.53-54.

13. European Commission (2020), *op.cit.*,
Art.COMPROV.4(1) and COMPROV.12.

14. *Ibid.*, Art.COMPROV.4(1) (emphasis added).

15. *Ibid.*, Art.LAW.OTHER.136(1).

16. *Ibid.*, Art.LAW.OTHER.136(2). The suspension
(in part or in whole) of Part III, Title I of the
draft agreement is also foreseen in the case of
adequacy decisions concerning data protection
being repealed, suspended or declared invalid
(see Art.LAW.OTHER.136(5-6)).

17. *Ibid.*, Art.LAW.OTHER.136(3).

18. UK Government (2020), *op.cit.*, Pt.2, para.33.

19. Despite its apparent goal, Art.LAW.GEN.3 of the
draft agreement does not avoid these risks. This
provision says that "[n]othing in this Title [Part
III, Title I] shall have the effect of modifying the
obligation to respect fundamental rights and
fundamental legal principles as enshrined in the
European Convention on Human Rights, or, in case
of the Union and its Member States, in the Charter
of Fundamental Rights." This does not affect the
wording of the subsequent provisions.

20. Judgment of 2 April 2020, *Ruska Federacija v I.N.*,
C-897/19 PPU, EU:C:2020:262, para.65.

21. European Commission (2020), *op.cit.*, Art.
INST.9(2)(a).

22. *Ibid.*, Art.INST.9(3).

23. *Ibid.*, Art.INST.35.

24. *Ibid.*, Art.FINPROV.8.

25. See e.g. Judgment of 2 April 2020, *Ruska
Federacija v I.N.*, *op.cit.*

26. UK Government (2020), *op.cit.*, Pt.2, para.30.

27. Revised Political Declaration (2020), *op.cit.*,
para.131.

28. European Commission (2020), *op.cit.*,
Art.INST.16(1).

29. See Opinion 1/17 of the Court of 30 April 2019
(CETA), EU:C:2019:341, para.120-136.

30. As a reminder, the UK wants the EU-UK security
partnership to be the subject of a separate
agreement "with its own appropriate and
proportionate governance mechanism." See UK
Government (2020), *op.cit.*, Pt.2, para.30, 39 and 45.

31. See e.g. Association Agreement between
the European Union and the European Atomic
Energy Community and their Member States, of
the one part, and Georgia, of the other part, OJ
L 261, 30.8.2014, pp.4-743, Art.267; Association
Agreement between the European Union and its
Member States, of the one part, and Ukraine, of
the other part, OJ L 161, 29.5.2014, pp.3-2137,
Art.322; Association Agreement between the
European Union and the European Atomic Energy
Community and their Member States, of the one
part, and the Republic of Moldova, of the other
part, OJ L 260, 30.8.2014, pp.4-738, Art.403.

32. Forrester, Ian, A Valediction, Forbidding
Mourning, Luxembourg, 06 February 2020, p.2.

33. *Ibid.*, p.5.

34. UK Government (2020), *op.cit.*, Pt.2, para.27-53.

35. *Ibid.*, para.30.

36. See e.g. Judgment of 25 July 2018, *LM*, *op.cit.*;
and similar and subsequent cases.

37. The EU insisted repeatedly that it and the UK
negotiate and advance in all areas in parallel.
See e.g. Barnier (2020c), *op.cit.*; Barnier (2020d),
op.cit.; Barnier (2020e), *op.cit.*

38. The 'Costa del Crime' is a "a humorous name for
the Costa del Sol in Spain, which some people
in the UK think of as a place where successful
British criminals go to live." *Longman Dictionary
of Contemporary English*, "Costa del Crime, the"
(accessed 18 May 2020). The expression first
appeared in the 1980s when numerous British
criminals hid in Spain to benefit the lack of a
well-established surrender agreement in place
between Spain and the UK.

39. For a short overview of the consequences of a
'no deal' scenario, see European Commission (2019),
A 'No-Deal' Brexit: Police and Judicial Cooperation.

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Can the EU and UK cooperate on foreign policy and sanctions?

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The UK sees no need to put foreign policy on the agenda of the Brexit negotiations. It is seeking a foreign policy relationship with the EU that is similar to the one the US has, combining bilateralism with EU member states and ad hoc coordination with EU institutions if deemed useful.

Greater foreign policy divergence between the EU and UK is likely, which in turn could impact cooperation on sanctions policies. The EU should build more expertise on sanctions, while a new foreign policy format outside of formal EU structures could be explored.

A preference for bilateralism

The UK has a preference for bilateralism with national capitals rather than working through Brussels.

The Political Declaration was clear. As part of their negotiations on the future relationship, the EU and UK would work towards a "broad, comprehensive and balanced security partnership", including the issue of foreign policy cooperation.[1]

However, at the start of the negotiations in February 2020, the UK backtracked on this commitment. It stated that foreign policy is "for the UK Government to determine, within a framework of broader friendly dialogue and cooperation between the UK and the EU" and does "not require an institutionalised relationship" with the EU.[2] It indicated no interest in discussing defence and foreign policy matters.

Foreign policy, of course, follows vastly different rules from EU trade, which is the dominant focus of the Brexit talks. The legal and regulatory structures are much weaker or absent. There is no European Court of Justice (ECJ) that oversees diplomatic relations, and level playing field guarantees play no role. Still, Britain's change of tune at the start of the negotiations is striking – not just because it reverses its earlier commitment, as agreed in the Political Declaration – and raises several practical issues.

Why did the UK change its mind? The UK has pointed out that it wants to negotiate as "sovereign equals".[3] On trade matters, this means that Britain's interlocutor is the European Commission, given its exclusive competence in the area. On foreign policy, however, the situation is different. The UK has had a long-lasting lukewarm approach to the Common Foreign and Security Policy (CFSP). Besides, member states generally lead diplomatic affairs.

The UK was never a strong advocate of a common European foreign policy, which helps explain why it is not keen to develop institutionalised frameworks now. Rather than view it as a multiplier, the UK has traditionally considered CFSP as time-consuming and ineffective. London pushed back against the notion of the EU as a political union, yet EU ambitions to develop a common foreign policy identity pointed in that direction. The result is that the UK has a preference for bilateralism with national capitals rather than working through Brussels and its embryonic foreign policy machinery.

The UK prefers to decide whether to cooperate with the EU on an ad hoc basis; or exert influence on European foreign policy through a format like the G7, or through its bilateral ties with individual member states.

However, Commission President Ursula von der Leyen's ambition to lead a "geopolitical Commission",[4] accompanied by initiatives to promote European strategic autonomy – primarily in the realm of defence, technology and trade – indicate an increasingly important role for the EU in foreign affairs. In that context, it would be suboptimal not to agree on a framework for EU-UK foreign policy consultations.

What future for the 'special relationship'?

London's newfound status outside the EU means that it will continue to work with the EU and its member states wherever their foreign policy objectives align. Nevertheless, in the same breath, the UK will pursue a different course if it so desires.

Even so, given geopolitical realities, the EU and UK should be expected to remain closely aligned on several issues, including the preservation of the Iran nuclear deal, sanctions against Russia, support for Ukraine, and the common threat of terrorism. Equally, the UK has supported EU enlargement throughout its membership and continues to do so outside of the Union, even if the EU's enthusiasm for enlargement has cooled. However, on strategic issues like the response to China's growing influence and transatlantic ties, the UK and EU may gradually diverge.

The relationship with the US will be the most influential factor shaping the UK's future foreign policy outlook. And by extension, it will influence Britain's foreign

policy relationship with the EU. Put simply, if US-EU ties are strong, the EU and UK will find a way to cooperate. If, however, US and European foreign policies pull in different directions, the UK will be stretched.

A central building block of the UK's post-Brexit foreign policy is a strong relationship with Washington. Rather than embracing its newfound 'sovereignty' after leaving the EU, Britain's emphasis on its 'special relationship' with the US will draw London closer into Washington's foreign policy orbit. But turbulence lies ahead for London, no matter the outcome of the upcoming US presidential elections.

The close personal relationship between President Donald Trump and Prime Minister Boris Johnson has played an important role in cementing US-UK ties. It is an uneasy relationship, however, as witnessed by Prime Minister Johnson's discomfort when President Trump announced his intention to invite Russia's Vladimir Putin to the G7 summit in 2020. Trump may also cajole the UK to take sides on foreign policy issues that matter to Washington, such as going along with its increasing confrontationist approach to China.

Simultaneously, Donald Trump is undermining the system of global governance built around international and regional institutions – such as the World Trade Organization and North Atlantic Treaty Organization (NATO) – on which post-Brexit Britain relies. President Trump has not shown an appetite to forge coalitions to tackle global problems, favouring a mix of isolationism and unilateralism instead. If Trump is re-elected, the special relationship could be a difficult pairing for the UK: Trump's 'America First' would likely relegate the UK to a very distant second.

If instead Joe Biden is elected US president in November, Britain's problems will be different. Before Brexit, the UK functioned as a bridge between the US and the Union. That role has now disappeared. Should Biden win, the UK may find that his administration prefers to build closer ties with the EU rather than double down with Brexit Britain. Biden, contrary to Trump, is no fan of Britain's departure from the EU. Furthermore, his Irish-American heritage could make it more difficult for London to strengthen US-UK ties if Brexit is perceived to jeopardise stable relations between Northern Ireland and the Republic. A US-UK trade deal would also not likely be at the top of Biden's list of priorities.

Britain's emphasis on its 'special relationship' with the US will draw London closer into Washington's foreign policy orbit.

The UK is now more hawkish towards China than the EU is prepared to be.

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Areas of divergence?

As an extension of its foreign policy reorientation towards the US, Britain is intensifying its ties with other English-speaking countries, such as Canada and Australia, with which the UK also shares close security and intelligence ties. Together with the US, this 'Anglosphere' is emerging as a substitute intergovernmental framework in which to embed UK foreign policy. For example, a statement on developments in Hong Kong was signed by the UK, US, Canada and Australia. The absence of support for the statement by an EU member state is striking and could point to greater divergence between the EU and UK in the future. The pursuit of 'Global Britain' may result in British overcompensation: to justify its newfound status post-Brexit, the UK may deliberately not reach out to the EU, even if this would make sense diplomatically, and focus on others instead.

The COVID-19 pandemic has led the UK to reassess its relationship with China. While Europe and the US were busy addressing the domestic consequences of the virus, China pushed through a new national security law for Hong Kong, which seemingly violates the 1984 Joint Declaration and impacts the status of British Nationals (Overseas). The UK also showed solidarity with Australia when it was singled out for criticism after questioning China's initial handling of the epidemic. Combined with US pressure to block Huawei from supplying parts of the UK's fifth-generation technology (i.e. 5G) infrastructure, the UK has adopted a tougher line vis-à-vis China. Furthermore, Britain has proposed the creation of a 'D10' alliance of 10 liberal democracies – the G7, Australia, India and South Korea – to counter China's growing technological influence.

It remains to be seen how the EU will respond to this initiative. What is clear is that the UK is now more hawkish towards China than the EU is prepared to be. Though it has toughened its rhetoric towards Beijing, the EU does not want to jeopardise its economic ties with China and avoids taking sides amidst growing Sino-American competition. It could spell greater EU-UK differences of opinion over how to respond to China.

How could EU-UK foreign policy cooperation look?

From a practical point of view, there is, of course, much foreign policy coordination that can be done on an ad hoc basis. However, the reverse is also true. Few foreign policy issues would be easier to address *without* established consultation mechanisms, particularly in the event of a crisis. Neither does the existence of consultation mechanisms predetermine that the UK and EU will always think alike.

It is in this spirit that the Political Declaration stated that both sides would seek to design cooperation mechanisms that are "flexible and scalable" and that can be used in the event of a contingency.[5] The Declaration even made a specific proposal that the EU's High Representative for Foreign Affairs and Security Policy could invite British counterparts to participate in informal ministerial meetings.

Former US foreign secretaries John Kerry and Rex Tillerson participated in informal meetings of the Foreign Affairs Council (FAC) in 2016 and 2017, respectively. However, that precedent was not enshrined in an international agreement between Brussels and Washington, and the UK may not see the need for such an agreement now. London has a point: Why should the UK not participate in informal meetings of the Foreign Affairs Council if it is invited?

The UK, through its foreign minister, has made no secret of its desire to pursue less formalised meetings with the EU and intensify ties with other powers around the globe. London views consultation mechanisms with EU institutions as needlessly constraining. It appears that the UK is seeking a foreign policy arrangement with the EU that is akin to the one the US has with Brussels; as a third country with strong ties to capitals and irregular summitry with the EU, rather than as a 'former EU member-state' with a degree of privileged access to the bloc's CFSP machinery.

Many EU member states have close ties to the UK, which translates into close cooperation on day-to-day foreign policy, defence and national security issues. However, can strong bilateral ties substitute Britain's regular consultations in the Political and Security Committee (PSC) or the FAC? Would an annual EU-UK summit – like the one the EU holds with the US (at the best of times) – be sufficient? The answer to both questions is probably not. The area where this becomes most apparent is the issue of sanctions.

Sanctions

The UK has played an important role in shaping EU sanctions policy. This is due to a combination of factors: Britain's political willingness to wield the sanctions instrument, London's central role as a global financial centre, and the Foreign Office's and HM Treasury's forensic and legal capabilities to help compose sanctions listings. The UK adopted a national sanctions act in 2018, enabling it to pursue an autonomous sanctions policy.

In London, officials say that the UK's expertise on sanctions is essential to EU sanctions policy: the UK is the largest contributor to the preparation of EU sanctions packages, followed by France, Germany, the Netherlands and the Commission. This suggests that whatever the result of the negotiations on the future relationship, the EU will need to make additional staff and resources available to replace British skills and expertise.

It also underlines that the EU has an interest to ensure a continued link with the UK on sanctions. This helps explain why the EU's draft treaty states that, where relevant, the EU and UK "shall endeavour to reinforce the coherence and effectiveness of their sanctions policies and decisions, including as regards their implementation".[6]

The UK also has an interest to cooperate with the EU. When it comes to sanctions, size matters: they are more effective when more countries sign up to them. The value of continued UK-EU cooperation on sanctions is widely appreciated. The EU benefits from the UK's expertise, and the UK has benefited from the clout offered by a common EU position to pursue its foreign policy goals. For instance, it is questionable whether the EU would have imposed sanctions on Zimbabwe's leadership if Britain had not pushed for them.

Within the EU, discussions on sanctions and listings are generally prepared in smaller groups: France, the UK and Germany took the lead on Iran sanctions, while a group including Spain, the Netherlands, UK and France worked on sanctions for Venezuela. Post-Brexit, it is not a stretch to imagine that the UK could be included in a small group of like-minded countries on preliminary discussions regarding future sanctions policies.

However, this would not obviate the need for EU-UK consultations. While the political push for sanctions generally comes from member states, EU institutions play a crucial role in implementing them. Sanctions involve trade relations, investment ties and access to the Single Market, and may include the freezing of personal assets, travel bans or restrictions on access to capital. In all instances, the EU has the competence – sometimes exclusively – under the judicial oversight of the ECJ.

Why should the UK not participate in informal meetings of the Foreign Affairs Council if it is invited?

Moreover, EU decision-making to extend sanctions regimes is moving away from unanimity and towards qualified majority voting. As such, the distinction between national and EU-level policies regarding sanctions is diminishing, and so an EU-UK framework is desirable.

If EU-US ties are indeed a model for future EU-UK cooperation, there are both good and bad examples to consider. The Iran sanctions regime was created by the E3 (i.e. France, Germany, the UK) together with the US. The regime was later backed by the European Council and United States Senate, and implemented in a joint, transatlantic and coordinated manner.

A new format, such as a 'European Security Council', could go a long way to ensuring that the UK continues to play a central role in discussions about the foreign policy challenges facing the continent.

An example of the latter, however, is the breakdown in transatlantic cooperation on new sanctions against Russia in 2018, when the US and EU pursued separate tracks, and their policies diverged. Then, a degree of institutionalised transatlantic consultation would have been helpful.

A controversial element in future EU-UK coordination on sanctions is whether a data-sharing agreement will be necessary. Some say that it is not necessary to craft sanctions policies, as the information shared with other governments is mainly open-source. But it seems unlikely that the EU and UK could pursue close cooperation on sanctions if there is no data-sharing agreement to underpin it. Even the US and EU have a data treaty.

Post-Brexit, Britain cherishes its autonomy. However, its pursuit of a sanctions policy that is entirely separate from the EU could clash with the reality that, in many cases, EU and UK sanctions policies do align and, therefore, both sides have an incentive to

cooperate. Britain's fear of being constrained by the EU could make actual cooperation more cumbersome, impacting both parties' abilities to achieve foreign policy results. Cooperating on sanctions only makes sense if there is a broader agreement on the overarching foreign policy objectives. If there is no shared foreign policy outlook, then cooperating on sanctions will not happen either.

The major uncertainty, therefore, is whether British and EU foreign policy outlooks will remain broadly aligned in the future. If so, Britain's insistence on avoiding any institutionalised framework that could be perceived as constraining the UK's autonomy, could complicate the pursuit of practical cooperation.

A new format?

The UK may either feel that it does not need the EU – and that existing intergovernmentalism suffices, or that the 'Anglosphere' offers alternatives –, or it may expect EU member states to bring a better proposal to the table. The UK is aware that the role it plays in European foreign and security policy issues could strengthen its negotiating hand. It is worth remembering that the talks in 2017 had a false start when Britain's Article 50 notification letter appeared to suggest a quid pro quo between continued British participation in European security matters and market access to the EU.

The EU, of course, has an interest in maintaining close relations with its neighbours, particularly if its neighbour is a permanent member of the UN Security Council, the G7, the G20 and NATO, and boasts nuclear power. Despite the UK not being a strong supporter of CFSP, the EU foreign policy debate will be poorer because of Brexit. Britain's global perspective has helped the EU focus on foreign policy developments further from home. The UK also tended to take a strategic view of, for instance, developments in Southeast Asia when other EU member states viewed ties with Asia primarily through an economic lens. There is a risk that due to Britain's absence, the EU will mainly focus on regional issues at a time when Sino-

American competition requires a broader strategic perspective on Europe's global role. It helps explain why, in its draft treaty, the EU pitched "close Political Dialogue", "structured consultation" and "regular thematic dialogues on issues of mutual interest" with the UK.[7]

Now, alternative frameworks may need to be considered. A permanent invitation for Britain to participate in the FAC or PSC would be problematic for the EU amongst others, because of the precedent it would set towards countries like Norway and Turkey. The G7 is a useful format, but it lacks the bureaucratic mechanisms for sanctions coordination. Furthermore, the geopolitical differences between its members – from Italy to Japan – are too large. Despite NATO's aspirations to expand the political dimension of its political-military alliance (e.g. to better understand China's challenge to international security), its North Atlantic Council is not an effective venue for political dialogue and has become too unwieldy with 29 members.

A new format, such as a 'European Security Council', could go a long way to ensuring that the UK continues to play a central role in discussions about the foreign policy challenges facing the continent. This Council, based around the E3,

would be organised outside of formal EU structures, though the Commission or High Representative should have a seat at the table. Such a council could discuss strategic questions, including sanctions policies.

Based on conversations with UK officials, there is an interest in Westminster to explore a European Security Council. However, the EU and its member states would first need to resolve a number of questions, including which countries could join the Council, the number of times it would meet, and the party who would set the agenda. And, more importantly, the EU27 would need to assess the impact a European Security Council would have on the integrity and autonomy of EU decision-making on foreign policy matters.

That discussion, of course, would not take place in the immediate context of today's EU-UK talks. Nevertheless, the High Representative could now initiate internal consultations among the EU27 to explore how such a security framework could work.

Finally, foreign policy may not be on the agenda of the talks on the future relationship, but it can intervene. In the short run, sanctions policy could prove to be problematic. During the transition phase, the UK is expected to follow EU decisions and regulations. Should the EU27 decide to impose sanctions on a country with which post-Brexit Britain is seeking to intensify ties, this could have detrimental effects on EU-UK

talks. In fact, this is not entirely hypothetical. In February 2020, tensions between the EU and Turkey rose in response to Turkey's unilateral decision to open the Turkish border to Greece, potentially precipitating a new migration crisis. It led to a standoff between the EU and Turkey. The UK foreign minister gave a press conference with his Turkish counterpart where he stressed the strength of bilateral UK-Turkish ties and supported Ankara.[8] The crisis de-escalated, but it became apparent that regarding Turkey, the EU and UK think differently.

As this chapter has shown, the main question for future EU-UK foreign policy cooperation is how Brexit will impact the UK's and EU's foreign policies in the context of Trump's America and Xi's China. The EU, its member states and the UK are increasingly caught between US-Chinese geopolitical, economic and normative competition.

On the face of it, this should create an incentive for European countries, including Britain, to stick together, regardless of Brexit. Neither Washington nor Beijing are entirely reliable. This should provide the necessary glue for close cooperation, despite the absence of formalised structures. However, the pull of divergence unleashed by Brexit is strong, and initially Britain's foreign policy will develop through the momentum Brexit has generated. It suggests that a period of growing foreign policy estrangement between the EU and its erstwhile member lies ahead.

1. Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU (2019), Revised text of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom as agreed at negotiators' level on 17 October 2019, to replace the one published in OJ C 66I of 19.2.2019, TF50 (2019) 65, para.78.

2. UK Government (2020), "The Future Relationship with the EU: The UK's Approach to Negotiations", London, para.8.

3. Ibid.

4. European Commission, The von der Leyen Commission: For a Union that strives for more, 10 September 2019.

5. Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU (2019), op.cit., para.92.

6. European Commission (2020), Foreign Policy, Security and Defence part of the Draft text of the Agreement on the New Partnership with the United Kingdom, UKTF (2020) 15, Art.FPSD.4(5).

7. Ibid., Art.FPSD.2.

8. Raab, Dominic, "Foreign Secretary's joint press conference Turkish foreign minister, March 2020", Ankara, 03 March 2020.

Strong together? The impact of Brexit on security and defence cooperation

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The Brexit vote in 2016 sounded an alarm in European capitals in terms of security and defence. The ensuing withdrawal of a major (i.e. hard) security actor from the EU was considered a potential fracture in European and Western unity amid mounting security challenges, including wars in the southern and eastern neighbourhoods of the EU. The election of Donald Trump as the President of the United States some six months later caused another shockwave in Europe by casting a shadow over the transatlantic security relationship. Despite quadrupling the US' defence budget for Europe in 2017, President Trump's ambivalent political statements on the US commitments and the North Atlantic Treaty Organization (NATO) left a lasting mark on the European security mind-set.

In light of these developments, EU member states prioritised security and defence when they started to implement the EU's 2016 Global Strategy for foreign and security policy. Even if NATO remains the cornerstone of European defence, we are witnessing a determined effort to build a stronger European pillar for security and defence in a longer-term perspective. The member states have decided to deepen their defence cooperation both within and outside the EU framework.

This chapter discusses the implications of Brexit for the EU in the field of security and defence. It suggests that embedding the UK into EU defence initiatives is challenging in the short term. Increasing EU-NATO cooperation as well as different forms of bi- and minilateral defence cooperation, however, create a platform where collaboration can be sustained and a deeper EU-UK relationship in security and defence built in the longer run.

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Even if NATO remains the cornerstone of European defence, we are witnessing a determined effort to build a stronger European pillar for security and defence in a longer-term perspective.

EU developments towards a defence union?

Security and defence has emerged as one of the policy fields in which EU integration has been consolidated and advanced in response to Brexit. Even if this development was already set into motion in the 2013 European Council meeting, security and defence featured high on the agenda of the 2016 Bratislava meeting, which addressed the immediate implications of the Brexit vote. Security and defence then became one of the main topics in the ensuing Leader's Agenda and future of EU debate, aiming to consolidate the EU in light of Brexit.

This is because the leaders understood that Brexit could weaken the EU's position in foreign and security policy, due to the UK's notable role in hard security matters, including its nuclear deterrent and permanent seat in the UN Security Council. In addition, the prospects of moving forward in this policy field looked promising, considering the member states' interests. Brexit could unlock some defence initiatives for the EU that the UK traditionally opposed. The pertinent national budgetary constraints, which were aggravated by the 2008 financial and economic crisis, as well as the increasing cost of defence materials and weapons systems, highlighted the benefits of deeper EU defence cooperation.

This became more evident during the 2010s, as EU member states' interest in launching new military crisis management operations – the initial purpose of the Common Security and Defence Policy (CSDP) – waned.[1] Concurrently, EU members increasingly favoured strengthening the European defence research and industrial base, which would support European military capability development even beyond the CSDP operations.[2]

Against this background, and in a relatively short period, defence cooperation within the EU framework has deepened considerably. In late 2017, the member states decided to launch the Permanent Structured Cooperation (PESCO): the Treaty-based mechanism allowed willing and able member states to deepen defence cooperation. The adopted broad and modular approach implies that 25 of the 27 member states collaborate, in varying groupings, in 47 projects aimed for military capability development. Relatedly, the member states have launched an annual coordinated defence review of the national defence budgets (i.e. CARD), which also helps identify gaps for potential PESCO collaborative projects.

Security and defence has emerged as one of the policy fields in which EU integration has been consolidated and advanced in response to Brexit.

So far, the UK has proven the most pessimistic scenarios of a more inward UK approach to security and defence wrong.

Importantly, the European Commission has moved into the field of defence by establishing the European Defence Fund (EDF) and Directorate-General for Defence Industry and Space. These actions aim to contribute to the funding of defence research and collaborative projects and, in doing so, strengthen the European defence industrial base. While the Commission initially proposed assigning €13 billion from the next Multiannual Financial Framework (MFF) to the EDF, the ongoing MFF negotiations are likely to lead to a much smaller budget for the EDF. Losing the UK's financial contribution to the EU budget makes the funding of new priorities, such as defence, a daunting task. Moreover, financing the EDF is likely to become increasingly difficult due to the significant economic crisis resulting from the COVID-19 crisis.[3] However, the very purpose of the EU's defence initiatives is to enable the member states to meet their defence capability targets cost-effectively.

Notwithstanding the significance of these developments, there also seems to be much less clarity about the strategic direction of the EU's defence efforts.[4] This comes as no surprise, given the divergent security interests and priorities of the member states, which is also evident in the Franco-German cooperation. Contrary to some expectations, the UK withdrawal has not altered the transatlantic orientation of many member states, which has led to a vivid debate on the nature and scope of European strategic autonomy. Relatedly, some member states' dissatisfaction with some EU initiatives' level of ambition has led to them launch their own initiatives outside of the EU framework.

For example, the French European Intervention Initiative (EI2), made up of 14 states, aims to forge a common strategic culture to enhance the readiness for joint military action in varying institutions and coalitions. Importantly, the initiative includes the UK and can be seen (at least, in part) as aiming to retain the close defence relationship between the two major European military powers, and maintain the UK's connection to European defence developments.[5]

What role for the UK?

So far, the UK has proven the most pessimistic scenarios of a more inward UK approach to security and defence wrong. It has played a very active role in the NATO's reassuring measures in its eastern flank, most notably in the Baltic Sea region, in which the number of new UK deployments is highly significant.[6] Moreover, the UK is one of the few European NATO members which has largely lived up to the jointly agreed spending commitments. The UK has also deepened its bi- and minilateral defence cooperation in Europe, including the UK-led Joint Expeditionary Force (JEF) which comprises eight Northern European NATO and non-NATO members. As part of its renewed foreign policy aspirations under the rubric of 'Global Britain', the UK is also (re)introducing the military defence dimension to its Arctic policy.[7]

Significant and recognised budgetary constraints might hinder, however, the actualisation of these UK objectives. These are partly related to the negative economic implications of Brexit, which the COVID-19 crisis will increase. Moreover, the UK's aspirations have so far lacked detail, and the long-awaited, integrated foreign, security and defence policy review has been delayed to at least October 2020

due to the pandemic and the government's need to assess its implications for UK security and economy.

Against this background, the most pressing short- and medium-term question related to Brexit in the field of security and defence is the EU-UK relationship. Although the post-membership security relationship could, in principle, take an institutionalised form, recent developments point to less integrated options.

During the withdrawal negotiations, the UK government and EU27 aspired after the closest possible relationship in security and defence. The UK proposed to go beyond third-country precedents, thereby allowing the UK and EU to benefit "from closer, more intense and more productive cooperation than the EU enjoys with any other partner." [8] In practice, this could have meant at least limited UK access to EU policy-planning and -making in foreign and security policy, and favourable terms to participate in EU defence initiatives (e.g. PESCO, EDF). Importantly, this could have led to continuing and potentially increasing UK contribution to CSDP operations without significant limitations concerning the planning and conduct of EU missions. The largely shared security interests and weight of the UK as a security and defence actor could have propelled a novel type of relationship with the EU in security and defence, which could then be institutionalised. [9]

The UK's participation is increasingly framed in the broader context of transatlantic collaboration in defence research and industry, where major industrial interests and pertinent issues of duplication feature high.

However, the stated objectives of the current UK government regarding EU-UK future relations suggest that an institutionalised relationship with the EU on security and defence is not on the cards, at least not in the short term. The UK seems to have accepted a third-country status as the starting point of the second phase of negotiations.

The potential negative economic implications of leaving the EU could limit the UK's security and defence policy aspirations in terms of budgetary constraints.

This approach appears to be in line with Prime Minister Boris Johnson's objective to distance the UK from the EU in general. However, EU member states have also hesitated to grant the UK a privileged status in or access to the EU's developing defence initiatives and structures, or EU policy processes in general. This reflects the shared general view that the rights and obligations of an EU member and non-member must be clearly distinguishable. EU members also remember the UK's reservations towards and consequent blocking of deeper forms of EU defence cooperation in the past, and some members are concerned with implications of UK influence should it gain a privileged role. [10] Importantly, any novel type of privilege granted to a former member state would invite the question of whether to apply equal treatment to other close security partners with a third-country status, such as the US or Norway.

Recently, these concerns have been reflected in the EU's decision-making on the terms of third-country participation in the PESCO and EDF. Although the Council of the EU agreed to allow third-country participation, there seems to be a continuing tension between the EU and US over provisions in the PESCO and EDF. The concerns pertain to the role of third countries' participation in EU defence research and ownership of related intellectual property rights.[11] Against this backdrop, the UK's participation is also increasingly framed in the broader context of transatlantic collaboration in defence research and industry, where major industrial interests and pertinent issues of duplication feature high.

Despite the UK's reluctance to engage in negotiations on security and defence relationship – this policy field is not among the 11 key topics of the ongoing negotiations over future relations –, the EU has nevertheless published a draft treaty on future relations which also covers security and defence matters.[12] This builds on the Political Declaration of the Withdrawal Agreement and offers a somewhat deeper relationship than is usually granted to a third country, particularly in the field of CSDP missions.

Building cooperation in the longer run

In the longer-term perspective, the most notable challenges of UK defence policy relate to Brexit both directly and indirectly. The potential negative economic implications of leaving the EU could limit the UK's security and defence policy aspirations in terms of budgetary constraints. Relatedly, should the political acrimony between the UK and EU increase – as the result of the failure to conclude the negotiations over the future relations, for instance –, domestic political pressure to review the UK commitments to European defence might rise over time.

An in-depth and comprehensive EU-UK relationship in security and defence might be difficult to achieve, given the limited timeframe for the negotiations, as well as the priorities and objectives of both parties. Nonetheless, managing to conclude the negotiations and ratify the agreement on the future relations could provide a solid foundation for deepening the relationship in the years to come.

A notable UK contribution to the EU's CSDP missions, for instance, would certainly underline the need for ever-closer coordination, starting with the realisation of shared security interests underpinning the objectives of the operations. Continuing close collaboration in security and defence could also prove useful for building trust and finding ways to work around some of the thorniest questions, such as third-country participation in EU defence initiatives. It could also highlight the benefits of joint capability development projects.

The defence initiatives taking place outside the EU framework and which include the UK, as well the increasing NATO-EU collaboration, could also provide a conducive environment for enhancing the EU-UK relationship in the future. In terms of the NATO-EU collaboration, non-traditional security challenges (i.e. terrorism, hybrid and cyber threats) reiterate the shared security interests

and benefits of EU-UK cooperation. The management of pandemics, such as the current COVID-19 crisis, also provides strong incentives for EU-UK cooperation in the field of human and societal security in the international and multilateral context.

A deeper and more institutionalised relationship might return to EU-UK agenda should the post-Brexit environment expose the limits of case-by-case coordination, and fail to secure a sufficient level of predictability and reliability between the EU and the UK in the field of security and defence.

[1.] Gowan, Richard and Nick Witney (2014), "Why Europe must stop outsourcing its security", London: European Council on Foreign Relations.

[2.] See European Union Institute for Security Studies (2016), Report of the Group of Personalities on the Preparatory Action for CSDP-related research. The case for an EU-funded defence R&T programme: Catalysing cooperation, enabling capabilities, sustaining competitiveness, Paris.

[3.] Fiott, Daniel (2020), "Will European defence survive coronavirus?", Elcano Royal Institute.

[4.] Biscop, Sven (2020), European Defence and PESCO: Don't waste the chance, EU Integration and Differentiation for Effectiveness and Accountability.

[5.] The UK and France have a long-standing bilateral defence cooperation relationship, which was consolidated further in 2010 via the Lancaster House Treaties. The two treaties set out a framework for cooperation between the two countries, and a roadmap to increase interoperability between their armed forces and engagement on a number of joint initiatives on equipment.

[6.] Kennedy-Pipe, Caroline and Duncan Depledge (2019), "Britain, Estonia and the Wider North", London: The Royal United Services Institute.

[7.] Cepinskyte, Agne (2019), "Global Britain's Arctic security policy: Going forward while looking back", Helsinki: Finnish Institute of International Affairs.

[8.] UK Government (2018), "The future relationship between the United Kingdom and the European Union", London, para.66.

[9.] Scazzieri, Luigi (2020), "The UK and European security cooperation, post-Brexit", Rome/Milan: Aspen Institute Italia.

[10.] Ibid.

[11.] Brattberg, Erik and Tomáš Valášek (2019), "EU Defense Cooperation: Progress Amid Transatlantic Concerns", Washington D.C.: Carnegie Endowment for International Peace.

[12.] European Commission (2020), Foreign Policy, Security and Defence part of the Draft text of the Agreement on the New Partnership with the United Kingdom, UKTF (2020) 15.

ABOUT THE EUROPEAN POLICY CENTRE

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The EPC has been awarded an annual operating grant for the period 2018-20 from the Europe for Citizens programme, funded from the EU budget, along with other similar think tanks and civil society organisations. The EPC contributes to the aims of the programme through activities designed to promote citizens' understanding of the EU policymaking process and their involvement in the European public policy debate, as well as through its work on the future of Europe.

This book examines the political, economic, social and institutional implications of the UK's departure from the EU in different policy fields, including trade, defence and security, foreign policy, judicial cooperation, migration and mobility, as well as the impact on UK politics and EU integration.

Besides thinking through the consequences of Brexit, the authors also take into consideration the ongoing negotiations and the possibility of the EU and UK failing to agree on a deal before 31 December 2020. They also look at the dramatic impact of the ongoing COVID-19 pandemic and conclude that, given the related economic, health and social crises, the transition period must be extended.

The book also holds a few lessons on what the EU could and should take away from this experience. As Michel Barnier, the EU's chief Brexit negotiator, says in the book's foreword, "We must take the time to listen to our citizens; to understand them; and to provide answers to their concerns. It is too late for the British regions, but it is not too late for the rest of Europe."

This detailed assessment of the long-term implications of Brexit for the United Kingdom, for the European Union, and the relationship between the two has been carried out by a group of leading experts on Brexit. Their contributions draw from discussions held in the Brexit Think Tank Group, which was set up by the EPC in the aftermath of the 2016 referendum. Through this format, the EPC facilitated a continuing exchange between the European Commission's Task Force for Relations with the United Kingdom and the policy community. The group has provided insights and expertise on the UK's future relationship with the EU, including on the level playing field.