

New Aspects of Brexit

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Abstract

Nine years after the 2016 Brexit referendum, Britons are still divided on their views on their relationship with Europe. Some 31% of voters would vote to return to the EU, while 30% of voters would prefer to see more trade ties with the EU without joining the single market. Meanwhile, 11% wanted to join the single market only, 10% were happy with the current situation, and 9% wanted to reduce the UK's ties with the EU. Majority of voters now regret Brexit. A growing majority have begun to regret Brexit. In April 2021, when asked if Brexit was the wrong decision, 46% of Britons thought it was the right decision, compared to 43% who thought it was the wrong decision. Since January 2025, the proportion of people who thought Brexit was the wrong decision has risen to 55%, while the proportion who thought it was the right decision has fallen to just 30%. Britons see few benefits from Brexit in 2025. According to a poll conducted in early 2025, 31% of British residents believed that Brexit had a positive impact on the country's ability to make its own laws. However, the majority of the impact of Brexit was seen as negative, especially from an economic perspective. Of those surveyed, 67% believed that Brexit had a negative impact on the cost of living, and another 65% believed that it had a negative impact on the economy in general.

Keywords: Great Britain, Brexit, European Union, European Union law.

JEL Classification: K33

1. Introduction

Britain and the EU already have tariff-free trade agreement, in accordance to their 2020 breakup agreement. So what they worked out at Monday's summit was once smaller stuff: extending the EU fishing industry's get admission to to British waters for some other 12 years, allowing British college students and 20-somethings to work short-term jobs in the EU and vice versa, and opening up get entry to for British travelers to use digital passport gates at European airports.

The British authorities will remain outside the EU's single market buying and selling bloc.

Another pink line for Britain is mobility.

When Britain was once phase of the EU, everybody from different member states should live and work freely in the U.K. It's one of the matters that encouraged Brexit. Many Britons who voted to go away the EU say they did so due to the fact they want to control their own borders, restrict immigration and have a say in who can settle in the country.

Immigration is still a contentious issue in Britain.

What's left are smaller-scale points: boosting agricultural exchange and figuring out how to make it less difficult for lawyers and accountants to work in each other's countries.

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On fishing rights, an initial post-Brexit agreement for reciprocal get right of entry to to British and European waters used to be due to expire at the stop of subsequent year. Under a new deal, EU boats will be capable to fish in the U.K. till 2038.

2. Internal politics aspects

Even if the Brexit deal is adopted, possibly with a strengthened Political Declaration including permanent membership of the customs union, neither Brexiteers nor Remainers would be satisfied. For Brexiteers, the deal would not go far enough in maintaining a close relationship with the EU and preventing the negative consequences of Brexit, while for Remainers it would go too far. The fact that the deal was rejected twice (and the Withdrawal Agreement three times) in Parliament illustrates this.²

However, any remaining checks or differences in market access (regarding health and safety, product standards, etc.) could further disrupt the flow of goods, particularly between the island of Ireland and the UK. Trade in services between the UK and the EU would become more complicated in the absence of agreements such as mutual recognition and equivalence. This could severely damage the UK's service-based economy and particularly the financial services sector, with implications for jobs, tax revenues and local economies. Regardless of how and why Article 50 might be revoked, as long as the UK remains in the EU, discontent would build.

Neither Remainers nor Brexiteers would be happy with this outcome.³

Brexiteers would oppose the backstop, while Remainers and moderate pragmatists would be concerned about the economic consequences. Both groups would demand change, exacerbating the polarization and tension between those who want a close relationship with the EU and those who hope to sever all ties. A similar logic applies to the Canada Plus model. Again, assuming no technological solution is found for the Irish border, any deal would have to include the backstop. Although it would be based on a comprehensive free trade agreement, the provisions for trade in services would likely be limited, affecting the services sector. It would essentially be the worst trade deal in history, with no benefits from increased trade but only the costs of market disintegration.⁴

It is hard to see how Brexiteers, Remainers or moderate pragmatists would be happy with this model. Norway plus (i.e. membership of the single market and customs union) might be the option most easily compatible with the safeguard mechanism, as it would allow frictionless trade even in services. However, its conditions – the adoption of rules, the free movement of people, permanent membership of the customs union and contributions to the EU budget – would raise questions about whether Brexit's objectives could be achieved.⁵

It is likely to generate widespread discontent, and not just among hardline Brexiteers. Meanwhile, supporters of remaining in the EU would see it as a second-

² Larissa Brunner, *No stable equilibrium*, Policy Brief, Friedrich Ebert Stiftung, 2019, https://d1xp398qalq39s.cloudfront.net/content/PDF/2019/190418_BrexitNostableequilibrium_LB.pdf, p. 2-4. Accessed on 20 November 2025.

³ Ibid, p. 2.

⁴ Ibid, p. 3.

⁵ Ibid, p. 4.

class EU membership, with almost as many obligations but fewer rights than before. Endless debates about Brexit? In all three cases, both supporters of remaining in the EU and supporters of leaving would be unhappy, and political battles over the UK's relationship with the EU would continue. In particular in the case of Norway plus, minor or technical decisions taken by the EU could become politicised, while the UK could repeatedly demand further concessions, for example on freedom of movement. Moreover, if the UK government or Parliament decides against alignment, for example on a particular piece of legislation, the resulting conflicts with Brussels could have spillover effects on other areas of cooperation and reinforce Euroscepticism in the UK.⁶

Sovereignty is a powerful, multidimensional, if contested, concept that has had different meanings in different political systems and at different times throughout history.⁷ At any given time, political and academic discourse on sovereignty is bound up with the historical context in which debates and claims about sovereignty are made. Sovereignty and statehood have gone hand in hand since the creation of the modern state system, which usually dates back to the Treaty of Westphalia in 1648.⁸

The contentious issue of a level playing field remained on the agenda until the closing phase of the negotiations. The EU's demands were intended to prevent UK businesses from undermining EU businesses through unfair competition. The size of the UK economy and its proximity to the EU ensured that the return for tariff- and quota-free access to the single market consisted of provisions in areas such as workers' rights, competition and state aid policy, taxation and the protection of social and environmental.

The EU acknowledged that the CJEU would not have oversight of the level playing field provisions contained in the final agreement, but insisted on the provisions on the market regulatory framework (MRF) in all these areas.⁹

The governance of the agreement included dispute settlement mechanisms, unilateral remedial measures and rebalancing in case one of the parties had significant divergences in the areas covered by these provisions.

The asymmetry of the relationship meant that the UK accepted a more robust MRF and governance mechanisms than it wanted as the price of an agreement. The UK retained its right to diverge, its theoretical sovereignty, but this right was not free. This raises the question of how the UK could implement its new sovereignty in the future? To what extent will the UK engage in regulatory divergence and will such divergence be conceived as regulatory competition? These are crucial questions for UK regulation and the future relationship with the EU.¹⁰

In early January 2021, Prime Minister Johnson, in a call with 250 UK business leaders, sought support for his Brexit vision and asked for ideas for legislative and

⁶ Ibid, p. 4.

⁷ Brigid Laffan, *Sovereignty and Brexit: From Theory to Practice* Brexit Institute Working Paper Nr. 5, 2021, 3 - 14. Available at SSRN: <https://ssrn.com/abstract=3788141> or <http://dx.doi.org/10.2139/ssrn.3788141>.

⁸ Ibid, p. 3.

⁹ Federico Fabbrini, Giovanni Zaccaroni, *The Future EU-UK Relationship: The EU Ambitions for a Comprehensive Partnership*, Brexit Institute Working Paper Nr. 11, 2020, 7-14, Available at SSRN: <https://ssrn.com/abstract=3757569> or <http://dx.doi.org/10.2139/ssrn.3757569>.

¹⁰ Ibid, p. 13.

regulatory changes.

If the UK chooses to deviate from this to facilitate a more open internationally, the EU is clear that this will limit access to the single market for UK financial services by taking fewer positive equivalence decisions". The EU has signalled that it is not ready to take an equivalence decision in the first half of 2021, thus leaving the UK out of the market.¹¹

In the area of data protection, which is subject to a separate equivalence decision, the UK will have to continue to be a decision-maker if it wants to share personal data across borders. Immigration is the only area where it has demonstrated its sovereignty in action. From the outset, the end of free movement was central to the Brexit discourse, and at the end of the transition period, on 31 December 2020, the EU's free movement provisions ceased. Under the Arbitration Agreement, the rights of around 4 million EU citizens were protected, but the ease of access for EU citizens to the single market UK work has ended. Those aspiring to work in the UK from the EU will have to meet the criteria of the UK's new, restrictive points-based system. In theory at least, it will be more difficult, if not impossible, for low-paid workers in care, agriculture and service sectors to migrate to the UK.

In this area at least, the British state has "taken back control".¹²

3. European and foreign policy aspects

The European Communities Act 1972 was merely a channel through which the content of any EU treaties which were or were not in force in the United Kingdom at any given time could be implemented in national law, and this act could be emptied of any effective content by a simple ministerial act. The source of EU law would be severed by the withdrawal of the United Kingdom from all the treaties from which EU law was derived.¹³

Sitting in a panel of eleven judges for the first and only time in its history, the United Kingdom Supreme Court ruled that since the European Communities Act 1972 had made EU law an applicable system of law as part of British law, the Crown could not act in a way that contradicted the will of Parliament. Since Parliament had integrated the United Kingdom into the EU legal system, as set out in the European Treaties, only primary legislation passed by the legislature could authorise the government to withdraw from the Treaties.¹⁴

The Supreme Court judgment was delivered on 24 January 2017. Two days later, on 26 January 2017, the European Union (Notification of Withdrawal) Bill was introduced (and, curiously, followed, rather than preceded, by a White Paper). Parliament passed this Bill on 13 March 2017, and the Bill received Royal Assent on 16 March 2017. Whatever the UK may have thought Brexit would mean, and however many Members of Parliament may have supported the cause of remaining in the EU during the referendum campaign, there was a clear majority in favour of respecting the

¹¹ Ibid, p. 13.

¹² Ibid, p. 13.

¹³ Helen Mountfield, *Brexit: Can the United Kingdom Change Its Mind ?* British Institute of International and Comparative Law, Paper nr. 10, 2018, 10 – 18, https://www.cigionline.org/static/documents/document/Brexit%20Series%20Paper%20no.10_3.pdf. Accessed on 20 November 2025.

¹⁴ Ibid, p. 10.

referendum result. The Bill received little real opposition and no significant amendments.¹⁵

The short title of the Act, the European Union (Notification of Withdrawal) Act 2017, is a misnomer, as its sole operative provision gives the Prime Minister parliamentary authority to give notice of the United Kingdom's intention to withdraw from the European Union, "notwithstanding any provision made by or under the European Communities Act 1972 or any other law", rather than to withdraw the United Kingdom from the European Union. The long title of the Act describes it more precisely as "an Act conferring power on the Prime Minister to give notice, under Article 50(2) of the Treaty on European Union, of the United Kingdom's intention to withdraw from the EU".¹⁶

Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements. A Member State which decides to withdraw notifies the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State setting out the arrangements for its withdrawal, taking into account the framework for its future relationship⁴ with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority after obtaining the consent of the European Parliament.¹⁷

The Treaties shall cease to apply to the State concerned from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend that period.¹⁸

For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not take part in the discussions of the European Council or of the Council or in the decisions concerning them. The qualified majority is defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union. If a State which has withdrawn from the Union requests to rejoin, its request is subject to the procedure referred to in Article 49. Given the intense legal controversy that has arisen since then on this issue, it is worth examining why the forensic consensus that Article 50 was irreversible was invoked as a fundamental collective presumption in the proceedings. The consensus that Article 50 was irreversible was a tactically convenient way of putting things from the point of view of both parties. For the claimants, this position avoided difficult factual questions as to whether the mere notification to the European Council of the intention to withdraw from the European Union actually changed anything. It avoided addressing the question of whether, if a subsequent Parliament decided that it did not wish to leave the European Union, the decision not to withdraw would have the effect of avoiding the point of withdrawal triggered by the Article 50 notification, so that no authority (in national law) was required simply to indicate an intention.

It is not enough to give Parliament the opportunity to ratify (or not) what

¹⁵ Ibid, p. 10.

¹⁶ Ibid, p. 10.

¹⁷ Ibid, p. 16.

¹⁸ Ibid, p. 16.

ministers may or may not have negotiated internationally at a later date, when it is too late in practice for them to change this. However, despite advice – including from the claimants in the Miller case – to include a statutory mechanism for parliamentary approval within the European Convention on Human Rights.¹⁹

In the Union (Notification of Withdrawal) Act 2017, the government refused to do so. The Prime Minister therefore still has no statutory authority to agree the terms of withdrawal from the European Union and will need it if he does, as this would inevitably bring significant changes to domestic law and the rights conferred by it. As Lord Hope, the former Deputy Chief Justice, said in the debate on the second reading of the European Union (Notification of Withdrawal) Bill in the House of Lords: To clarify that the United Kingdom will withdraw from the European Union when Parliament has legislated to authorise the terms of a withdrawal agreement.²⁰

In essence, therefore, the notification of the intention to leave the European Union that the Prime Minister gave to the European Council on 29 March 2017 was made conditional on a future parliamentary decision to do so. It is possible that the notification given under Article 50(2) may be given conditionally or withdrawn. It is possible that under national constitutional law no valid decision to leave the European Union can be taken without express statutory authority, but the European Union has been notified of the United Kingdom's intention to withdraw and Article 50(3) seems to suggest that this notification takes effect two years after notification, in the absence of agreement by the rest of the European Union to extend that period.²¹

Of course, no country has ever expressed an intention to leave the European Union under Article 50, so this too is an untested question, which should ultimately be resolved by the CJEU. While there are legal arguments on both sides, the principles of EU law provide a strong indication that the European Union can treat the notification of the intention to withdraw as conditional and that EU law would treat it as capable of being withdrawn unilaterally. On the one hand, there is some support in the language of Article 50(3) for the suggestion that Article 50 is irrevocable. Article 50(3) provides that, in the absence of a withdrawal agreement, the Treaties “shall cease to apply” to the State concerned two years after the notification given under Article 50(2), unless the European Council unanimously agrees with the Member State to extend that period.²²

It could be said that, read literally, this means that once notification has been made, either the Treaties would cease to apply following the conclusion of a withdrawal agreement, or the Treaties would automatically cease to apply two years after notification, unless the European Council, acting unanimously, agreed with the Member State to extend the two-year notice period. But the CJEU tends towards a teleological interpretation of the provisions of the Treaties, and this interpretation is not consistent with the apparent purpose of Article 50 or with other overarching principles of EU law.

The better view, and apparently the view supported by the government's legal

¹⁹ Ibid, p. 16.

²⁰ Ibid, p. 16.

²¹ Ibid, p. 17.

²² Ibid, p. 17.

opinion, is that Article 50 is revocable.²³

The constitutional requirement to grant irrevocable parliamentary authority to leave the European Union could not be lawfully given at the time the notification was given, as Parliament would not have, at that stage, sufficient information to know what rights and laws would be repealed by exit. The text of Article 50(1) uses the term “intention” (to leave) in Article 50(2), and the present tense (“which decides”, not “has decided”) allows for the possibility that a Member State may change its intention when the political consensus changes or if, for example, there is a change of government.²⁴

This is also in line with Article 4 TEU, which recognises the inherent political and constitutional structures of the Member States and the principle of subsidiarity and proportionality recognised in Article 5 TEU.

If, following a democratic political change, the legislature of a Member State wished to take a constitutionally valid decision to withdraw a previous notification of intention to withdraw from the European Union, it would be surprising if the CJEU were to say that this could not be done, which would essentially lead to the expulsion of the Member State against the will of its people as expressed through their elected representatives. To do so would be contrary to the common democratic values of the European Union.²⁵

The views on the role of parliaments, which are expressed in Protocol 1 to the TEU on the role of national parliaments in the European Union. It provides that ‘the manner in which national parliaments scrutinise their governments in relation to the activities of the Union is a matter for the constitutional organisation and practice specific to each Member State’. This protocol goes on to state that it is desirable for national parliaments to be involved and to be able to express their views on the issues of withdrawal from the European Union, which are matters of particular interest and concern to the United Kingdom Parliament. A decision taken without fulfilling a State’s own constitutional requirements does not constitute a valid decision within the meaning of Article 50(1).²⁶

It is true that, in Article 50(2), the Treaty provides that a State which ‘decides’ to withdraw ‘shall notify the European Council of its intention’. This might suggest that the decision to withdraw must have been taken before the notification was made, but this cannot be the correct interpretation. The decision to withdraw must be in accordance with constitutional requirements, and the requirement of sufficiently precise parliamentary authority cannot be met before Parliament has had adequate information about the negotiated terms of withdrawal for which it is called upon to give its legal authorisation.²⁷

It follows that if Parliament decides not to accept the terms of any agreement agreed with the European Union but does not pass legislation authorising withdrawal in the absence of such an agreement, there would be no constitutionally valid decision to leave the European Union. The issue is not without doubt, but it seems likely that the CJEU would accept, if the issue were contested, that the notification of a decision to

²³ Ibid, p. 17.

²⁴ Ibid, p. 17.

²⁵ Ibid, p. 17.

²⁶ Ibid, p. 17.

²⁷ Ibid, p. 18.

withdraw was simply obsolete. Provided that the United Kingdom had expressed a genuine intention to leave the European Union in good faith and in accordance with its own constitutional requirements, as it did on 29 March 2017, the notification would be treated as having been made subject to any constitutionally valid change of mind within the notice period and subject to the national constitutional requirement that the terms of withdrawal be authorised by any subsequent act of Parliament.²⁸

Furthermore, there is no provision in Article 50 expressly preventing the revocation of the notification of withdrawal from the Treaties. Since a treaty is essentially an international contract, in the absence of an express provision to the contrary, the notification of a future intention to revoke may be withdrawn unilaterally at any time until the expiry of the notification. Article 50 is a mechanism for the voluntary withdrawal of a Member State from the European Union, not an exclusion mechanism. Article 50 has its origins in Article I-60 of the proposed Treaty establishing a Constitution for Europe (which ultimately did not enter into force), and the draft Article I-60 was actually entitled ‘Voluntary withdrawal from the Union’.²⁹

By contrast, Article 50(5) expressly addresses the situation of a Member State which has already withdrawn from the European Union but which subsequently has a political change of mind and wishes to request re-registration. In these circumstances, Article 50(5) sets out the formal constitutional mechanism by which such a request for re-registration must be considered. In essence, this is a request to conclude a new international law agreement with the Union, and such a new agreement could not be concluded unilaterally, but would have to be concluded by agreement with all the remaining Member States. The fact that there is no equivalent mechanism for a Member State which has notified its intention to leave the Union but which decides not to do so tends to suggest that there is no formal requirement for the agreement of the other Member States if the notifying State decides not to follow up on that decision.³⁰

Finally, an interpretation of Article 50 that allows for the withdrawal of the intention to leave the Union is in line with the general provisions of the Vienna Convention on the Law of Treaties.³¹

Article 65 of the Vienna Convention sets out a general notification procedure to be followed for (inter alia) withdrawal from a treaty or suspension of its application. However, Article 68 provides that the notification of the intention to withdraw may be revoked at any time before its entry into force. It is true that Article 50 TEU provides for a special procedure for withdrawal from the European Union. Therefore, the clear terms of the Vienna Convention on withdrawal from treaties in general are not determinative of the position of a State withdrawing from the EU treaties in particular.³²

In fact, even after the renegotiations undertaken by British Prime Minister Boris Johnson in October 2019, the Political Declaration states that the economic partnership “will be comprehensive, including a free trade agreement, as well as broader sectoral cooperation where it is in the mutual interest of both parties. This was

²⁸ Ibid, p. 18.

²⁹ Ibid, p. 18.

³⁰ Ibid, p. 18.

³¹ Ibid, p. 19.

³² Ibid, p. 19.

underpinned by provisions to ensure a level playing field for open and fair competition.³³

The Political Declaration clearly recognises that free movement ends after Brexit. On the one hand, the parties commit to “conclude ambitious, comprehensive and balanced agreements on trade in services and investment in services and non-services sectors”, as well as in financial services – while respecting each party’s right to regulate and its decision-making autonomy. On the other hand, the Declaration unequivocally notes that “the United Kingdom has decided that the principle of free movement of persons between the Union and the United Kingdom will no longer apply” – and as such, it provides for the development of an alternative mobility framework, based on reciprocity and non-discrimination, but in line with the principle of national sovereignty.³⁴

However, while the Declaration clearly indicates that the framework of future EU-UK relations will not correspond to the depth of integration that existed when the United Kingdom was a Member State of the EU, it nevertheless includes a long list of economic sectors on which the EU and the United Kingdom intend to reach a future agreement: in addition to goods and services, it also includes the digital domain, intellectual property, public procurement, aviation and road transport, energy, nuclear, fisheries and global cooperation.³⁵

4. Particular aspects

Throughout its EU membership, the UK maintained a two-tier immigration system, under which only highly qualified workers from outside the EU were admitted to the UK, while workers of all skill levels were free to enter from other EU Member States, benefiting from the right to free movement under the EU Treaties, a cornerstone of the single market.

Subject to certain restrictions, the EU free movement regime applied to economically active people (workers, self-employed persons and service providers) and semi-economically active people, such as students and pensioners, provided they had comprehensive health insurance and sufficient resources.³⁶

Since the 2016 referendum, the UK government has consistently maintained its commitment to ending the free movement of people between the Union and the UK and to introducing a managed migration regime post-Brexit.³⁷

The commitment has been fulfilled. The UK’s two-tier immigration system has therefore come to an end with Brexit. The post-Brexit mobility rules have resulted in a three-tier system of rights. Firstly, there are EU citizens who arrived in the UK before the end of the transition period (31 December 2020) and who are covered by the EU Residence Scheme (EUSS) under the Withdrawal Agreement (WA).³⁸

³³ Federico Fabbrini, Giovanni Zaccaroni, *op. cit.*, p. 7.

³⁴ *Ibid*, p. 7.

³⁵ *Ibid*, p. 7.

³⁶ Catherine Barnard, Emilija Leinarte, *Mobility of Persons in the New UK-EU Relationship*, University of Cambridge, Faculty of Law, Legal Studies, Research Series, Paper no. 12, 2021, 3-14. Available at SSRN: <https://ssrn.com/abstract=3793085> or <http://dx.doi.org/10.2139/ssrn.3793085>.

³⁷ *Ibid*, p. 3.

³⁸ *Ibid*, p. 3.

They will continue to enjoy similar rights to EU citizens. Those travelling to the UK after the transition period will fall into one of the following two categories: (i) those covered by the EU-UK Trade and Cooperation Agreement (TCA) who enjoy limited mobility rights as part of the UK-EU trade in services liberalisation commitments.³⁹

The rest, who are in the general immigration queue alongside travellers from other third countries, will compete for access on the basis of their skills.

This new state of affairs is reciprocal and therefore free movement rights are no longer available to UK citizens travelling to EU Member States.⁴⁰

The same three-tier system of rights will apply to UK citizens, the only difference being that those not covered by the EU Settlement Scheme or the TCA will have to follow the immigration routes set by each EU Member State.

Surveillance and enforcement are much more effective when it comes to the transport of goods, compared to the rights of citizens.⁴¹

The situation of EU citizens in the UK will deteriorate and will require a constant effort to ensure their rights. Member States can contribute, for example, by allowing their citizens to obtain dual citizenship, where they waive this in relation to non-EU states. However, the UK will be reminded that the rights of EU citizens should not be neglected. Some aspects of the Protocol will require further development. For example, the criticism that the Protocol fragments the EU internal market by opening only the goods-related partition to Northern Ireland is entirely justified.⁴²

Unionists continue to argue that they may not be allowed to join the EU, but there is no reason why they should not. Brexit belongs to a bygone era of sovereign nation-states and fixed borders. Ironically, it is being implemented in a political entity that was not even such a nation-state in the past, especially since devolution.

The effort to create a unitary United Kingdom faces formidable obstacles.⁴³

The various proposals to reconstitute the UK on a new basis would do absolutely nothing to solve the problems raised by Brexit. However, the old system, in which divergent views on the constitution could coexist (more easily in Scotland and Wales than in Ireland), is being destroyed as nations are pulled apart by their distinct foreign orientations.

The Trade and Cooperation Agreement (TCA), concluded on Christmas Eve 2020 and entering into force on 1 May 2021 - set out only a fairly limited framework for bilateral trade in goods and cooperation on a finite set of policies.⁴⁴

In fact, the war in Ukraine has pushed new countries to either join NATO, apply for EU membership or relaunch their bilateral partnership.

³⁹ Ibid, p. 3.

⁴⁰ Ibid, p. 3.

⁴¹ Dagmar Schiek, 'Brexit and the Implementation of the Withdrawal Agreement', in Federico Fabbrini (ed.), *The Law & Politics of Brexit: Volume III: The Framework of New EU-UK Relations* (Oxford, 2021; online edn, Oxford Academic, 21 Oct. 2021), <https://doi.org/10.1093/oso/9780192848468.003.0003>, p. 3-17.

⁴² Ibid, p. 16.

⁴³ Michael Keating, *Fractured Unions: Brexit and the Territorial Constitution*, Brexit Institute Working Paper Nr. 13, 2021, 3-14. Available at SSRN: <https://ssrn.com/abstract=3952189> or <http://dx.doi.org/10.2139/ssrn.3952189>.

⁴⁴ Harold James, *Brexit and the New Globalization*, Brexit Institute Working Paper Nr. 2, 2023, 5. Available at SSRN: <https://ssrn.com/abstract=4579946> or <http://dx.doi.org/10.2139/ssrn.4579946>.

This has an impact on EU-UK relations and creates opportunities for the two sides to review their cooperation and readjust it in light of the new geopolitical reality. In fact, with a general election due in the UK before 2025 and a review of the ATT due in 2026, there is a window to do so soon. Brexit has proven to be a major act of self-harm for the UK.

The ATT is a complex and lengthy legal document. However, in terms of content, it remains a rather thin document, covering only a limited number of policy areas. In particular, the core of the ATT is the chapter on the movement of goods, with the elimination of customs duties, and rules of origin.⁴⁵

Furthermore, the ATT also contains provisions on services and investment, public procurement and the movement of capital, as well as other provisions on economic cooperation in the areas of aviation, transport and fisheries.⁴⁶

Finally, the ATT also created a framework for the EU-UK partnership on certain aspects of health and cybersecurity, internal security and criminal justice, as well as the coordination of social security and participation in EU programmes.

However, the scope of the ATT is limited - especially compared to what the UK has enjoyed for almost 50 years as an EU Member State.

First, the ATT does not cover most of what constitutes the core of the EU internal market, including the free movement of persons and the free movement of services - namely... financial services which are only mentioned in terms of regulatory cooperation for financial stability.

Moreover, the ATT has few provisions on digital technology, data protection, artificial intelligence, green energy and the fight against climate change.⁴⁷

Brexit leaders framed their message of “taking back control” in a rather different way. They saw the UK as playing a leading role in the globalisation of the world – promoting more globalisation, not less. In this interpretation, the EU was a discredited and dysfunctional protectionist system that stood in the way of global openness. The final trigger for the British debate on Brexit came from the European debt crisis, or euro crisis, which emerged in Greece in 2010.⁴⁸

To many British observers – not just those fundamentally critical of the EU – the euro seemed on the verge of collapse. The UK, like the US, was an outsider in the euro drama, distanced both by a different tradition of economic thinking and by competing interests and the range of their geopolitical calculations.

With differences of interest, there can always be compromise and negotiation: indeed, this is the essence of diplomatic negotiations.⁴⁹

The first explanation concerns the political psychology of the European process.

The United Kingdom, like Switzerland (outside the EU) or Sweden (in the EU but not in the eurozone), was not defeated and occupied in the 1940s.

There was no fundamental compromise on the part of the old elites (although the Swiss and Swedish ruling classes made such a pact as part of the exercise of

⁴⁵ Ibid, p. 5.

⁴⁶ Ibid, p. 8.

⁴⁷ Ibid, p. 8.

⁴⁸ Ibid, p. 8.

⁴⁹ Ibid, p. 8.

maintaining neutrality). Therefore, in the British case there is no need for the dialectic of reconciliation that de Gaulle presented.

Historians and political scientists often understand the EU as an extension of a certain type of national policy.⁵⁰

The interwar responses, trade protection through tariffs and quotas, were not effective.⁵¹

In contrast, the EEC's main fiscal mechanism, the Common Agricultural Policy (CAP), set prices for farmers and provided an elaborate system of subsidies. Managing rural decline proved to be the most important political reward of the European integration process.

For France, agriculture accounted for 42.2% of employment in 1900 and, at the start of the EEC in 1958, it still accounted for 22.0%. By 2020, this had fallen to 2.8%.

For Germany, the equivalent figures are 33.8, 16.1 and 1.6; and for Italy 58.7, 32.9 and 4.0.

But the UK did not really need this system of managing the peasant class, with only 9.2% of employment in agriculture in 1900 and 4.1% in 1958.⁵²

To some extent, the British government's opposition to any continued role for the CJEU also reflects a deeper misunderstanding of the role of this court in resolving disputes during the period when the UK was an EU member state.⁵³

Much of the existing commentary on dispute settlement under the Withdrawal Agreement and the ATT is largely limited to the immediate reactions following the conclusion of these agreements; to the shape of the dispute settlement mechanisms under these agreements; or to predictions about the resolution of certain types of disputes, for example trade and investment disputes. More recent contributions assess the role of the CJEU in relation to other 'international' dispute settlement courts and bodies beyond the context of Brexit.⁵⁴

It is suggested that Brexit has led to a further emphasis on the 'international' characteristics of the CJEU, both in its relations with national (non-EU) courts and in its persistent and increasingly conflicted view of its own autonomy in relation to other international dispute settlement bodies. More recent developments, for example in relation to the Ireland/Northern Ireland Protocol (INIP), now known as the Windsor Framework (WF), and the abolition of 'preserved EU law' as a legal category, also allow for the assessment of these mechanisms in their domestic and wider Union constitutional context, including their influence on the relationship between categories of rules.⁵⁵

The assessment of dispute settlement mechanisms in the Brexit legal arrangements complements the second – interlinked – objective of the contribution, which is to assess the significance of the precise future role of the CJEU as a dispute

⁵⁰ Ibid, p. 8.

⁵¹ Ibid, p. 8.

⁵² Ibid, p. 8.

⁵³ Niall O'Connor, Anastasia Karatzia, Theodore Konstadinides, „Courting controversy? The constitutional implications of the Court of Justice of the European Union's involvement in the resolution of disputes after Brexit". *Yearbook of European Law*, Vol. 43, 2024: 413–439, <https://doi.org/10.1093/yel/yeae012>.

⁵⁴ Ibid, p. 413.

⁵⁵ Ibid, p. 413.

settlement forum, including the extent to which the UK will remain subject to its influence in the long term, despite the Government's desire to prevent this. It will be argued that the seemingly limited role of the CJEU in the post-Brexit agreement between the UK and the EU must be seen in the light of the terms of the Agreements themselves, which in many ways suggest a much more ambitious continuing role for the Court than that publicly predicted by the UK Government.⁵⁶

Divergences can also come from the UK's higher courts, which have the power to depart from 'preserved EU case law', i.e. decisions of the CJEU handed down before the end of the transition period. The Preserved EU Laws (Repealing and Reform) Act 2023 (REULA) introduced new procedures for departing from what is now known as 'assimilated EU case law', which is discussed in more detail below. While the UK has not yet sought to depart significantly from the EU in most areas of regulation, there is no doubt that the possibility of departing from EU rules was both a key motivation for Brexit and a fundamental negotiating objective of the UK government.⁵⁷

As such, there has been an increasing desire on the part of the UK to prioritise its own national sovereignty and judiciary over the establishment of supranational mechanisms for dispute resolution. This approach can be seen throughout the Brexit negotiations, particularly in the UK's failed attempts to negotiate directly with member state governments, thereby bypassing the EU institutions. This can also be seen in the agreed dispute settlement system, which is closer to the UK's preferences than the EU's.⁵⁸

While it may be unusual to entrust jurisdiction over an international agreement to a court of one of the parties, the reality is that the Withdrawal Agreement and the TCA were concluded in the unique circumstances of a Member State leaving the EU, with an existing court, the CJEU being the ultimate authority on the meaning of EU law, and therefore making it all the more complex to avoid its legal expertise. It is almost certain that there will be further disagreements between the UK and the EU after Brexit, in the sense that "almost any provision of the withdrawal agreement or any agreement on the future relationship could give rise to disputes".

It is also possible that disputes relating to the Withdrawal Agreement and the TCA are more likely to arise due to the dualistic nature of the UK legal system, whereby international agreements or treaties do not themselves produce any effect in UK domestic law. Rather, for such agreements to have any legal effect, their main provisions must be incorporated into domestic law.⁵⁹

5. Conclusions

In some ways, Brexit has now not performed out as either supporters or opponents expected.

The COVID-19 pandemic and Russia's full-scale invasion of Ukraine delivered greater financial disruption, and made it more difficult to parent the impact of

⁵⁶ Ibid, p. 413.

⁵⁷ Ibid, p. 415.

⁵⁸ Ibid, p. 415.

⁵⁹ Ibid, p. 415.

Britain's EU exit on the economy.

In one key area, immigration, Brexit's affect has been the opposite of what many predicted.

A wish to limit immigration was once a major motive many people voted to go away the EU, but immigration to the UK today is some distance greater than before Brexit due to the fact the wide variety of visas granted for people from round the world has soared.

Meanwhile, the rise of protectionist political leaders, especially newly again US President Donald Trump, has raised the stakes for Britain, now caught between its close to neighbours in Europe and its trans-Atlantic "special relationship" with Washington.

Polls propose UK public opinion has soured on Brexit, with a majority of human beings now wondering it was once a mistake.

Nevertheless, rejoining the EU looks a far away prospect.

Bibliography

1. Brunner, Larissa, *No stable equilibrium*, Policy Brief, Friedrich Ebert Stiftung, 2019, https://d1xp398qalq39s.cloudfront.net/content/PDF/2019/190418_BrexitNostableequilibrium_LB.pdf. Accessed on 20 November 2025.
2. Laffan, Brigid, *Sovereignty and Brexit: From Theory to Practice* Brexit Institute Working Paper Nr. 5, 2021. Available at SSRN: <https://ssrn.com/abstract=3788141> or <http://dx.doi.org/10.2139/ssrn.3788141>.
3. Fabbri, Federico & Giovanni Zaccaroni, *The Future EU-UK Relationship: The EU Ambitions for a Comprehensive Partnership*, Brexit Institute Working Paper Nr. 11, 2020. Available at SSRN: <https://ssrn.com/abstract=3757569> or <http://dx.doi.org/10.2139/ssrn.3757569>.
4. Mountfield, Helen, *Brexit: Can the United Kingdom Change Its Mind ?* British Institute of International and Comparative Law, Paper nr. 10, 2018, https://www.cigi-online.org/static/documents/documents/Brexit%20Series%20Paper%20no.10_3.pdf. Accessed on 20 November 2025.
5. Barnard, Catherine & Emilija Leinarte, *Mobility of Persons in the New UK-EU Relationship*, University of Cambridge, Faculty of Law, Legal Studies, Research Series, Paper no. 12, 2021. Available at SSRN: <https://ssrn.com/abstract=3793085> or <http://dx.doi.org/10.2139/ssrn.3793085>.
6. Schiek, Dagmar, 'Brexit and the Implementation of the Withdrawal Agreement', in Federico Fabbri (ed.), *The Law & Politics of Brexit: Volume III: The Framework of New EU-UK Relations*, Oxford, 2021; online edn, Oxford Academic, 21 Oct. 2021, <https://doi.org/10.1093/oso/9780192848468.003.0003>.
7. Keating, Michael, *Fractured Unions: Brexit and the Territorial Constitution*, Brexit Institute Working Paper Nr. 13, 2021. Available at SSRN: <https://ssrn.com/abstract=3952189> or <http://dx.doi.org/10.2139/ssrn.3952189>.
8. James, Harold, *Brexit and the New Globalization*, Brexit Institute Working Paper Nr. 2, 2023. Available at SSRN: <https://ssrn.com/abstract=4579946> or <http://dx.doi.org/10.2139/ssrn.4579946>.
9. O'Connor, Niall, Anastasia Karatzia & Theodore Konstantinides, „Courting controversy? The constitutional implications of the Court of Justice of the European Union's involvement in the resolution of disputes after Brexit". *Yearbook of European Law*, Vol. 43, 2024: 413–439, <https://doi.org/10.1093/yel/yeae012>.