



Ollscoil Chathair
Bhaile Átha Cliath
Dublin City University

Brexit Report

23 June 2018



2 Years Since The
Brexit Referendum

1 Year Since The
Establishment of The
DCU Brexit Institute



This report was edited by the Director and the Team of the DCU Brexit Institute — Federico Fabbrini, Ian Cooper, Andreja Pegan and Sharon Sorohan — and graphically designed by Garvan Doherty.

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Foreword

June 23, 2018 will mark 2 years since the Brexit referendum and 1 year since the formal establishment of the DCU Brexit Institute. The decision of the United Kingdom (UK) to leave the European Union (EU) represents, in the European context, one of the most significant democratic and political decisions of our time, with potentially major economic and societal implications, especially for the UK and Ireland.

At the same time, the process of withdrawal is rife with uncertainties, and it is a source of major challenges for the UK, for the EU generally, and for Ireland specifically. Because of these challenges and the scale of the potential implications, and consistent with our ethos of applying our expertise to major societal issues, DCU decided to create the Brexit Institute. It is Ireland's only such institute and was the first in Europe specifically established to explore the challenges posed by Brexit.

The DCU Brexit Institute, as it is formally known, brings together academic experts from across many disciplines in the University and serves as a platform to connect their expertise to government, business and society at large. Through a combination of important research outputs, consultative events, and policy analysis, the DCU Brexit Institute has quickly established itself as a leading national and international forum to provide insights and informed commentary on Brexit.

Over the past year, the DCU Brexit Institute has organized a series of high-profile events, closely tracking the developments of the Brexit negotiations, and exploring their impact for specific economic sectors. In addition, members of the Institute have produced a stream of published outputs, including books, institutional reports, working papers and weekly blogs, and, through these, have greatly enriched public debate on Brexit.

Marking the first anniversary of the Institute's establishment, this booklet aims to summarise its key contributions to date and the current state of the Brexit process from a range of perspectives. Of course, it also serves to showcase the wealth of expertise on Brexit-related matters that has been brought together under the umbrella of the Institute.

All of the contributions in this booklet were written by DCU staff members and they address topical issues in the Brexit process. The booklet will provide readers with a useful overview of the key Brexit themes and of progress (or, indeed, lack of same!) to date. I hope that they will find this work of interest and of value and that it may stimulate their engagement with the DCU Brexit Institute and its activities in the period ahead.

As President of DCU, I am very pleased with the valuable work that has been carried out to date by the Institute and I pay tribute to its Director, Prof. Federico Fabbrini, and its members from across the University. I also to express our gratitude to our sponsors, Arthur Cox, who have supported the Institute in many ways over the past year.

At the time of writing, the Brexit process is characterized by uncertainty, complexity, and political tension. Perhaps all that is clear at this time is that difficult and complex negotiations lie ahead, that the process will last for many years beyond 2018, and that the lives of many individuals will be affected by its outcomes. In such circumstances, the role of the DCU Brexit Institute will continue to be important and this booklet will mark just the first milestone on a significant journey.

Professor Brian MacCraith,
President, Dublin City University



Introduction

The DCU Brexit Institute inaugurated its activities on 14 September 2017 with a Conference on “Which Brexit After the UK Elections?” The event was opened by a keynote speech of **Helen McEntee** (Minister of State for European Affairs of Ireland) – a DCU alumna. The Conference also featured two panels of experts from academia and government – Iann Begg (London School of Economics), Thomas Beukers (Ministry of Foreign Affairs of the Netherlands), Federico Fabbrini (DCU), Ana Gouveia (Ministry of Finance of Portugal), Emily Jones (Oxford University), Kristien Michoel (Legal Service of the Council of the EU), and Rory Montgomery (Department of Foreign Affairs and Trade of Ireland) – moderated by Judy Dempsey (Carnegie Europe) and Ruadhan MacCormaic (Irish Times). Moreover, the event featured a keynote speech by Baroness Hilary Armstrong of Hill Top (Member of the UK House of Lords EU Committee) and was concluded by the keynote address of **Georgios Katrougalos** (Minister of European Affairs of Greece).

Two years ago today – on 23 June 2016 – the people of the United Kingdom (UK) voted to leave the European Union (EU). While the result was close – 51.9% of citizens supported leaving the EU, even as a majority of people in Scotland and Northern Ireland voted to remain within it – the Brexit referendum triggered an unprecedented event: the withdrawal of a member state from the EU.

Dublin City University (DCU) immediately moved to examine the deep causes of the Brexit referendum, and the direct consequences of this decision – in a conference which resulted in the publication of a volume on “**The Law & Politics of Brexit**”. Yet, the process of UK withdrawal from the EU continued with shifts and turns, surrounded by an ongoing feature: uncertainty.

After the UK triggered Article 50 TEU on 29 March 2017, notifying the European Council of its decision to leave the EU, British Prime Minister Theresa May played a gamble by calling a general election. Contrary to expectations, however, on 8 June 2017 the Conservative Party lost its parliamentary majority, and was forced to begin negotiations with the EU from a weaker position.

As demanded by the European Council, the Brexit negotiations were divided into two phases; the first phase focused on solving three key issues in the UK withdrawal from the EU, namely: 1) the protection of the rights of EU citizens in the UK, and UK citizens in the EU; 2) the resolution of the

border between Ireland and Northern Ireland; 3) the financial settlement owed by the UK to the EU.

While negotiations proceeded slowly through the autumn of 2017, thanks to the efforts of EU Chief Negotiator Michel Barnier and UK Secretary of State for Exiting the EU David Davis, the two parties reached agreement on 8 December 2017 on a joint report. This opened the door to the second phase of the negotiations, focusing on



setting the framework for future EU-UK relations. However, in spring 2018, discussions stalled on a number of files. While on 28 February 2018 the EU Commission published a draft withdrawal treaty codifying the diplomatic deal reached in December, and the UK Government accepted 75% of it on 14 March 2018, strong disagreement remain among the parties on issues connected to the Irish border and governance of the agreement.

In fact, intense political discussions are continuing within the British institutions on the shape that Brexit should take, and – as a crucial European Council meeting is approaching on 28-29 June 2018 – social and economic pressures are mounting within the UK to find a framework of relations with the EU which would minimize the costs for businesses and citizens alike.

Two years after the UK decision to leave the EU, it is clear that the implications of Brexit are overwhelming as they touch all economic sectors – from trade in goods to financial services, from energy and climate change, to pharmaceutical, agriculture and aviation policy – not to mention of course the effects on security and justice, foreign affairs and development cooperation.

The exploration of the unprecedented challenges posed by Brexit required the creation of a dedicated observatory. And it is precisely for this reason that DCU decided to establish the Brexit Institute – which is Ireland's only and Europe's first center specifically dedicated to examining the implications of the UK withdrawal from the EU from both a research and a policy perspective.

For exactly a year now, the DCU Brexit Institute has fulfilled its mission by offering a high-level platform to document and debate the developments in the Brexit negotiations, and the effects that Brexit produced across economic sectors. Through policy seminars, business dialogues and scholarly publications the DCU Brexit Institute has endeavored to provide clarity in a world of uncertainty.

The booklet that you have in your hands is the latest example of the wealth of expertise that the DCU Brexit Institute brings to the Brexit discussion. The contributions – written by academics from Schools and Faculties across DCU – offer an overview of the main items in the Brexit

negotiations, of the key sectors impacted by Brexit and the crucial challenges that lay ahead.

Part I of the booklet focuses on the Brexit negotiations and includes contributions by Brenda Daly on citizens right, Eileen Connelly and John Doyle on the Irish border question, Anthony Foley on the financial settlement, and Ian Cooper on the transition deal – as well as a reflection by Federico Fabbrini on the interconnections between Brexit and the debate on the future of Europe.

Part II of the booklet considers instead the effect of Brexit on a number of economic areas, and includes the chapters by Diarmuid Torney on energy and climate policy, Mark Cummins on financial services, Anthony Staines with Ross Nugent on public health and the pharmaceutical sector, Edgar Morgenroth on trade, and Andreja Pegan on agriculture, cohesion and regional policy.

Part III of the booklet, finally, discusses some critical issues to be looked at as Brexit continues, and includes contributions by Stephen Coutts on the jurisdiction of the ECJ, Gary Murphy on Irish politics, Pamela Sharkey Scott and Dónal O'Brien on the challenges for business, Roddy Flynn on the role of the media, and Daire Keogh on the impact that Brexit has on universities and the education sector.

While many of the contributions track events that the DCU Brexit Institute organized throughout the year, all chapters were written as brand-new, self-standing contributions, with the aim to offer to the reader a quick snapshot of where we are in the process of UK withdrawal from the EU – and some critical ideas of what we should expect as the drama unfolds.

Brexit is a momentous event in the history of the EU – but the process can only be fully appreciated through an interdisciplinary lens, which combines legal, political, economic and sociological analysis. By providing thought leadership on this topic, the DCU Brexit Institute is a resource for government, business and society at large – and this booklet is the latest evidence of that.

Federico Fabbrini,
Director, DCU Brexit Institute







The Negotiations

The Rights of Citizens

On 5 October 2017 the DCU Brexit Institute hosted an event on “**Brexit, Citizens’ Rights and their Protection**”. The event was opened by a keynote speech by Bertie Ahern (former Taoiseach) and closed by a debate between David Campbell Bannerman (Conservative MEPs Joint-Spokesman for International Trade) and Bernard Durkan (TD, Fine Gael). The event also featured a panel of experts - Pieter Cleppe (Head of Brussels Office, Open Europe), Ciaran Burke (Professor of International Law, University of Jena, and Law Reform Commission), Brenda Daly (Senior Lecturer, Dublin City University) and Dmitry Kochenov (Professor of European Law, University of Groningen).

Citizens’ rights have been a key priority of the Brexit negotiations from the outset. Despite initial concerns regarding the lack of progress on the issue of citizens’ rights, by the conclusion of Phase 1 of the negotiations in December 2017, both the EU and UK reached agreement in principle to **‘provide reciprocal protection for Union and UK citizens, to enable the effective exercise of rights derived from Union law and based on past life choices, where those citizens have exercised free movement rights by the specified date.’** The December agreement has been heralded by some as a significant step towards guaranteeing protection for EU and UK citizens’ **rights**. However, this sentiment is not shared by **others** such as those groups representing UK nationals **abroad**.

Withdrawal Agreement

Subsequent to the publication of the Joint Report, the European Commission published a **draft withdrawal agreement** documenting the agreed legal text in March 2018. This draft legal text has been approved by the EU-27 and the UK government. **Article 9** contains clarification regarding the scope of the Withdrawal Agreement, stating that it is applicable both to UK citizens lawfully resident in the EU, and to EU citizens lawfully resident in the UK **‘before the end of the transition period and [who] continue to reside thereafter’**. Frontier workers are also included within the scope of Article 9. In respect of family members of such citizens, the position outlined in Article 9(e) of the Withdrawal Agreement is that they must fall under one of the qualifying conditions to acquire lawful residency. The position is clearer for those family members who are lawfully resident with an EU citizen prior

to Brexit, than it is for any family members seeking to move to the UK during the transition period or post-Brexit. After Brexit, national immigration laws will apply. Clarification has been provided regarding the citizenship rights of those children who are born, or legally adopted, after the withdrawal date. Safeguards are also provided within the Withdrawal Agreement regarding the aggregation of social security payments, reciprocal healthcare and pension entitlements post-Brexit.

An area of concern relates to the right of residence. **Article 10** of the Withdrawal Agreement provides for continuity of residence, but this can be lost should the EU or UK citizen be absent from the host State for more than 5 years. There has also been a great deal of consternation regarding the requirement that citizens will have to apply for settled status in the UK after Brexit.



Transition period

There is an apparent lack of consensus regarding the rights of EU citizens who arrive in the UK during the transition period. The EU states that any EU citizen arriving in the UK is entitled to expect the **same rights** as EU citizens lawfully resident in the UK prior to its withdrawal. However, the UK government has repeatedly emphasised that those EU citizens who arrive during the transition period will not have the same rights as those currently

membership of the EU. The UK government guarantees continued protection of British and Irish citizens' rights under the common travel area. Effectively this means that British and Irish citizens will not be subject to any requirements to apply for settled status and will continue to enjoy the **same right** to work, access education, and access to social welfare entitlements and benefits. However some **commentators have questioned** whether the common travel area will be enough to safeguard such rights post-Brexit as the common travel area is a political, and not a legal, **agreement**.

Concluding thoughts

The current state of play creates different tiers of rights for EU citizens in the UK. Those already in situ are seemingly guaranteed continuation of the status quo. Those EU citizens exercising their right to free movement and who lawfully move to the UK during the transition period will no longer enjoy the same rights as those citizens already resident in the UK. EU citizens arriving in the UK after the transition period ends will be treated as third country nationals. Concerns have also been raised about the **corollary rights of UK citizens** to freely move within the EU once the transition period expires. Such concerns do not appear to have been adequately allayed at this stage.

Brenda Daly,

Associate Professor of Law, DCU School of Law and Government



enjoyed by EU citizens living in the UK prior to withdrawal day on 29th March 2019. The UK government position is that EU citizens arriving in the UK after 30th March 2019 and before 31st December 2020 will acquire **different rights** to stay and work from those EU citizens who are already in the UK prior to the date of withdrawal.

Common Travel Area

Given the agreed commitment in the December Joint Report to deal with the special circumstances in Northern Ireland, it is not surprising that there is a notable exception concerning the rights and privileges of British and Irish citizens during the transition period and after the UK withdrawal from the EU occurs. In the UK position paper mentioned above, the UK government confirms that any proposals concerning the rights of those EU citizens who move to the UK during the implementation period, will not affect the rights of British and Irish citizens. This position endorses the Common Travel arrangements which predate the UK and Ireland's

The Border

On 26 October 2017, the DCU Brexit Institute hosted an event on “**Brexit, the Border and the Internal Market**” with the support of the European Commission Representation in Ireland. The event featured keynote speeches of Pascal Lamy (former Director general of the WTO, former European Commissioner for Trade) and a debate between Alyn Smith (Member of the European Parliament) and Neale Richmond (Member of the Irish Senate). The event also included a panel of experts from academia, business and government - Carlos Closa (Consejo Superior de Investigaciones Científicas), John Doyle (Dublin City University), Anne-Marie Martin (Council of British Chambers of Commerce in Europe) and Dagmar Schiek (Queen’s University Belfast).

Now that there has been agreement on the financial settlement and the rights of EU citizens post-Brexit, the question of the Irish border has become central to the negotiation of the EU-UK ‘withdrawal agreement’. Since the publication of the draft withdrawal agreement in March 2018, which contains a solution to the Irish border question that would only be triggered if no final alternative solution was agreed (the backstop), the British Cabinet has been in **disarray**. Disagreements between Cabinet members, and between individual ministers and the Prime Minister, on the future relationship of the UK to the single market have been both public and acrimonious. Negotiations between the UK and the EU have also been fractious and unproductive. This issue of the border is a significant barrier to a negotiated exit for the UK and if not resolved will have serious consequences for Ireland.

In the absence of a negotiated withdrawal, the inevitable hard border on the island of Ireland will not only be a serious economic problem for a

small island with an integrated economy, it will also jeopardise the peace agreement that currently supports the political structures of Northern Ireland and cross border policy collaboration. The 1998 Good Friday Agreement, that effectively ended 30 years of conflict, is facilitated by an open border, and is also supported by the institutional structures of the EU, that has made the existing level of cross border collaboration possible. Brexit, therefore, is a serious challenge to the peace process, as a closed border would not only have a significant economic cost, but it would also be a powerful symbol that the peace process had failed. In these circumstances physical border posts would inevitably be attacked, leading to an escalation of security measures, and a spiral of **violence**. The UK government, although stating a preference for the absence of a hard border, has also ruled out using WTO frontier exemptions to place a de-facto border in the Irish Sea, and has not put forward any alternative proposal which is acceptable to the EU. The Irish government is supported by the EU, but the possibility remains that wider



economic considerations will weaken this support, with the potential to undermine EU cohesion, if there is a perception that large EU states did not support a small state, on an issue of vital national importance.

Since the publication of the [Joint Report on the Brexit negotiations](#) in December 2017, contradictory and unworkable solutions put forward by the UK have made progress difficult. The Joint Report commits the UK to 'address the unique circumstances of the island of Ireland', and includes the Draft Protocol on Ireland/Northern Ireland which provides a 'backstop' agreement in the event of no overall agreement being reached. This proposes that in the 'absence of agreed solutions, the United Kingdom will maintain full alignment' with the single market with the key aim of protecting the 1998 Agreement. The [draft withdrawal agreement](#) (19 March 2018) includes provision for a legally operative version of the "backstop" solution as part of the legal text of the Withdrawal Agreement. The UK government refused to sign off on the EU text or to provide an alternative backstop text and in response has floated a number of ideas that have not been considered feasible by the EU or in some cases by members of the UK government.

The UK government has suggested that technology be used to monitor cross border trade and avoid the need for border controls in Ireland. However, as a UK parliamentary committee has pointed out, this type of technology does not currently exist. The idea of a complex customs partnership was also suggested that would allow the UK to retain open borders for trade with the EU but without free movement of people, and which would also allow the UK to conduct its own trade negotiations with third countries. Following the rejection of this proposal by EU negotiators, the Prime Minister suggested that the 'back stop' solution would be applied to the whole of the UK and not just to Northern Ireland. This would mean that the UK would maintain regulatory alignment with the EU after 2020. This suggestion was strongly rejected by members of the UK Cabinet. It is also not acceptable to the EU, as it would mean granting single market access to whole of the UK, without the UK accepting the integral four freedoms or European Court of Justice oversight, a very different proposition from treating the tiny Northern Ireland economy as a special case. Given



the continued gulf between the UK's suggested solution and what is acceptable to the EU it is unlikely that the June European Council meeting will be able to report any significant progress, prior to the absolute deadline to agree the text of a withdrawal agreement at the October 2018 European Council. In these circumstances Irish officials are concerned that the UK will succeed in postponing a decision on the border question up to the October deadline. In these circumstances the UK hopes that the European Council would agree a vaguely worded commitment on the Irish border, effectively pushing a decision back to the end of 2020, as the issue does not arise in de-facto terms during the transition period.

The UK believes that having all major issues on the table simultaneously as the post transition treaty is being finalised in 2020 will allow them more leverage to sideline the issue of the Irish border in the formal agreement. This is a high risk strategy, as a refusal by the EU to accept the postponement of any real decision, could mean the collapse of the idea of a transition period, meaning the UK would crash out of the EU on 29 March 2019. Maintaining the integrity of the Single Market means that the EU cannot agree to allow the UK preferential access without any of the shared costs. If the UK maintains its refusal to allow special case treatment for Northern Ireland this will result in a stalemate. In these circumstances a hard Brexit seems the most likely outcome with all the negative consequences that it will entail.

Eileen Connolly,
Professor of International Politics, DCU School of Law and Government

John Doyle,
Professor of Politics and Dean, Faculty of Humanities and Social Sciences

The Financial Settlement

On 23 November 2017 the DCU Brexit Institute hosted an event on “Brexit, the Financial Settlement and the Future of EU Finances” in cooperation with the European Parliament Information Office in Ireland. The event featured an opening keynote speech by Baroness Falkner of Margravine (Chairwoman of the UK House of Lords EU Financial Affairs Sub-Committee) and a closing keynote speech by Mairead McGuinness (Vice President of the European Parliament). The event also featured a panel of experts, leading academics, business leaders and policy-makers, including Tony Foley (Dublin City University), Michael Keating (Center on Constitutional Change), Colm Kelpie (Irish Independent), Thilo Maurer (European Commission) and Kim Lane Scheppele (Princeton University).

The EU and UK have agreed both the concept of a Brexit divorce financial settlement and the methodology for finalizing the amount of the settlement. There is no agreed identified final figure. This will flow from the methodology and will be paid over time. Of course, the financial agreement, like all other aspects of the negotiations, depends on overall agreement on all elements of Brexit. As noted in the December joint report, “nothing is agreed until everything is agreed.”

The details of the financial settlement methodology are identified in the December Joint Report and are developed further in the Draft Agreement of March 2018. Neither document identifies or estimates the size of the amount to be paid by the UK. The EU has not produced an official estimate but the UK Treasury (January 2018) has estimated the figure to be about €40 to €45 billion or £35-39 billion sterling. This is a net figure which takes account of payments minus receipts. The Treasury estimate refers to the net impact on the UK economy as opposed to the Government finances. The impact on the UK public

finances will be higher than the €40-45 billion because the Treasury estimates include receipts from the EU which will go to the private sector and will not flow into the Government accounts. The **UK National Audit Office** estimated this aspect to be about €8 billion.

The financial settlement methodology consists of four elements; a) a list of components to be financed, b) calculation principles and payment details, c) arrangements for continuing UK participation in programmes of the current Multiannual Financial Framework until their termination and d) matters relating to various EU institutions and activities such as EIB, ECB, Facility for Refugees in Turkey and The European Development Fund.

The UK will contribute to and participate in the 2019 and 2020 EU budgets as if it had stayed as a member using the existing payment system and mechanism. The UK will contribute to existing EU budgetary commitments which continue beyond December 2020. It is notable that these two budgetary components constitute the great bulk of the UK net financial payment. The UK will contribute to EU liabilities and contingent liabilities incurred up to December 2020. The UK will be repaid appropriate shares of any paid-in guarantees.

The UK Treasury estimates the following payments relating to the different components. The net contribution to the 2019 and 2020 budgets will be £15-16 billion. Continuing budget commitments for 2021-2026 will amount to £19-20 billion. The share of EU assets and liabilities is between £2 and 4 billion and will continue until 2064. This gives a total net settlement of £35-39 billion allowing for rounding. Most of the settlement will be paid before the end of the next EU budgetary period in 2027. By then £34-36 billion will have been paid. Excluding the monies related to liabilities and assets, the net £34-36 billion will be paid over eight years or an average of £4.5 billion per year.

The Treasury figure for the settlement is an estimate. The actual value of the settlement depends on future events and is therefore uncertain. The UK National Audit Office has identified some of these uncertainties. The

economic performance of the UK in 2019 and 2020 will determine the UK's budget contribution. This may be different than currently anticipated. Assumptions of inward receipts from the EU to the private sector may prove optimistic. The settlement is to be paid in euro (Article 127 of the March Agreement) and the current assumptions about the future exchange rate may be wrong resulting in either a higher or lower Sterling payment. The Joint Report includes the expectation that the UK will honour its commitments to the 11th European Development Fund. The Treasury estimates did not include this item and it could add almost £3 billion to their settlement estimate. The EDF also has some assets, a share of which (about €500 million or £450 million) will be repaid to the UK.

The financial settlement is very detailed. Overall, in my opinion, it is a triumph for the EU. It is a blow to a "hard Brexit" approach and a victory for agreement and cooperation. It has locked the UK into continuing with its 2019 and 2020 EU budgetary commitments as if it continued to be a member of the Union. It has obtained commitment for ongoing budgetary commitments long after the UK exit. It has established the principle of the UK continuing to contribute to existing liabilities. It has established the euro as the medium for payment. It must be acknowledged that the UK prime minister in her Florence Speech of September 2017 stated "The UK will honour commitments... so that other member states shall not need to pay more or receive less over the remainder of the current

budget plan..." The financial settlement certainly delivers this and much more by pushing additional budgetary commitments into the post-2020 budgetary period. It is likely that the eventual cost of the divorce bill will exceed the current estimates. Certainly, the cost to the UK exchequer will exceed the current Treasury net Brexit bill estimate of €40-€45 billion. It is difficult to identify any major EU objectives which have not been achieved in the financial settlement. Equally, it is difficult to identify any major issues where the UK has dominated.

As the provisions of the settlement are quantified, apart from the 2019 and 2020 budgetary contributions, there may be disagreements between the EU and the UK. An independent arbitration mechanism is conspicuous by its absence in the financial settlement. Of course, if there is no overall Brexit deal, the financial settlement will fall by the wayside and alternative legal mechanisms may be used by the EU to collect what it perceives to be monies which are legally due from the UK.

Anthony Foley,
Emeritus Associate Professor of Economics
DCU Business School



Withdrawal, Transition and Future Relationship

On 7 December 2017, the DCU Brexit Institute hosted an event on “Moving on? From Brexit to Future EU – UK Relations”, in partnership with Ibec. The event featured keynote speeches by Pat Cox (Former President of the European Parliament) and Alojz Peterle (former Prime Minister of Slovenia, Member of the European Parliament). The event also featured a panel of experts - Kenneth Armstrong (University of Cambridge), Karen Banks (European Commission legal service), Ian Cooper (Dublin City University) and Kathryn O'Donovan (Ibec).

The UK is due to leave the EU on March 30, 2019. To ensure an orderly Brexit, before that date the two sides must reach an agreement with three separate elements, identifiable by the initials, “WTF”.

There must be (1) a Withdrawal settlement to arrange the terms of the “divorce”, (2) a Transition deal to cover the relationship immediately after the withdrawal and (3) a Framework for Future Relationship which will outline the final terms of post-transition EU-UK relations. The first two will comprise a formal document (the Withdrawal Agreement) and the third will take the form of a political declaration.

Tentative agreement has now been reached on Withdrawal and Transition, making it possible for discussions on the Framework for Future Relationship to begin. But because nothing is agreed until everything is agreed, there is still no guarantee that a disorderly “cliff-edge” Brexit will be averted.

Withdrawal

After the UK triggered Article 50 in March 2017, the EU demanded a two-stage negotiation, in which the terms of the withdrawal must be settled before the talks could turn to future relations. Three key withdrawal questions would need to be addressed in the first stage: the financial settlement (the “divorce bill”), the rights of EU citizens in the UK (and vice versa), and the land border between Northern Ireland and the Irish republic. Only when the EU deemed there to be “sufficient progress” on these three questions could the negotiations move on to the second stage. Initially, the UK rejected this plan, insisting that

the two negotiating stages were interlinked. In May 2017 the UK's chief negotiator, David Davis, promised “the row of the summer” over the question of sequencing. He insisted it would be “wholly illogical,” in particular, to try to settle the Irish border question without knowing what the new EU-UK customs arrangements would be.

Then came the UK election in June, when the Conservatives lost their majority and made the fateful deal to carry on governing with the support of the DUP. When Davis met again with Michel Barnier, the EU's chief negotiator, he was in a weaker position, and acquiesced to the two-stage negotiation. The “row of the summer” did not disappear, however, but rather turned into the row of the autumn, winter, and spring.

As negotiations continued into the autumn, progress was made on the first two issues but not the third. In her Florence speech in September 2017, Theresa May made significant concessions on the divorce bill and on the legal recognition of the rights of EU citizens in the UK. Yet in October 2017 the EU found there was not yet “sufficient progress” to move to stage two, mainly due to a lack of progress on the Irish border question.



A breakthrough seemed to come in December, when it was agreed that, in the absence of other solutions, “full alignment” would be maintained across the Irish border. The DUP had deep misgivings about this “Brexit border backstop,” fearing that it would entail a border in the Irish Sea; the only alternative seemed to be that the whole of the UK would remain in full alignment with the EU. This ambiguous solution allowed for “sufficient progress” to be declared, but it also ensured that the Irish border would continue to be a contentious subject of negotiations into the second stage. Large sections of the Protocol on Ireland/ Northern Ireland remained unresolved in the colour-coded “Draft Withdrawal Agreement” that was struck in March 2018.

Transition

In her Florence speech, Theresa May also accepted the necessity of a transition period in which the UK would maintain full market access and continue to abide by EU rules even after it has formally left the EU. She proposed a period of “about two years” with a flexible end-date.

The Draft Withdrawal Agreement foresees a shorter transition of twenty-one months and two days, with no provision for an extension (although this is subject to change). The EU insisted on 31 December 2020 as the end-date because it coincides with the completion of its current 7-year budget cycle.

The UK government calls the transition an “implementation” period, but this is something of a misnomer because there will not in the first instance be anything to implement. (Of course “transition” is also somewhat misleading because it implies a known destination.)

In fact, only after the UK has left the EU would the negotiations on a future treaty begin in earnest. If the UK “red lines” are maintained, and it leaves the Single Market and the Customs Union as promised, this must be a free trade agreement like that between the EU and Canada.

The Brexit Committee of the House of Commons warned in a recent report that 21 months will not be sufficient time either to conclude and ratify all the agreements that will define the Future EU-UK Relationship, or to implement whatever new controls will be needed at the UK border. It recommended that the UK government should, if necessary, seek an extension either of the “Article 50 time” (which would require unanimous approval of the European Council) or of the transition.

Framework for Future Relationship

The third element to be agreed is the Framework for the Future EU-UK Relationship. This will not take the form of a treaty but a political declaration that will accompany the Withdrawal Agreement. It may outline not only future economic relations but also some kind of new political relationship – e.g. an “association agreement,” as suggested by the EP. The UK Government aims to agree the “substance” of the future relationship by October 2018 in order to allow for its approval in a “meaningful vote” in the UK parliament prior to Brexit.

Ian Cooper,
Research Fellow, DCU Brexit Institute



Brexit, Ireland and the Future of Europe

On 25 January 2018 the DCU Brexit Institute hosted an event on “Brexit, Ireland and the Future of Europe”. The event constituted the official launch of the Brexit Institute and was opened by the **keynote speech** of Michael D. Higgins (President of Ireland). In addition, the event featured the keynote speeches of **Hilary Benn** (Chairman of the UK House of Commons Brexit Committee), **Herman van Rompuy** (first President of the European Council), and **Helen McEntee** (Minister of State of EU Affairs of Ireland) and was concluded by **Simon Coveney** (Tánaiste and Minister of Foreign Affairs and Trade of Ireland). The event also featured a panel of experts from academia and civil society – **Dan Kelemen** (Rutgers University US), **Etain Tannam** (Trinity College Dublin) and **Noelle O’Connell** (European Movement Ireland) – moderated by **Dearbhail McDonald** (Irish Independent).

Important developments have recently taken place in the Brexit negotiations as well as in the debates on the future of Europe. On 15 December 2017, the European Council decided that sufficient progress had occurred in the UK withdrawal negotiations, authorizing the European Commission and the British Government to move into phase two of the Brexit talks, which will focus on the future relations between the UK and the EU. At the same time, the pro-European élan of French President Emmanuel Macron and breakthroughs in the German coalition negotiations have reignited cooperation between Paris and Berlin on EU reforms, sealed on 22 January 2018 in a joint Franco-German declaration on the future of European integration.

Debates on Brexit and the future of Europe are treated in Brussels as well as in most national capitals as separate files. In fact, they are intimately connected, since they represent but two pieces of the broader European puzzle. While the decision of the UK to withdraw from the EU signals the desire of this member state to scale down its level of integration, the French-led project

to relaunch integration among a core group of EU member states demonstrates the willingness of other countries to deepen their cooperation within the EU. If adequately reconnected, therefore, the Brexit negotiations and the debate on the future of Europe provide an exceptional opportunity to redesign the EU to make it simultaneously more inclusive and more effective.

The technique to achieve this is through an architecture of concentric circles.

Since the Treaty of Maastricht in 1992 the EU has accommodated increased differentiation among its member states: some countries have opt-outs (e.g. from the euro, or Schengen) while others could develop enhanced cooperation between themselves on specific policy fields. The underlying assumption of all these forms of differentiation was however that all member states would move in the same direction, albeit at different speeds. Brexit, of course, has shattered that expectation, revealing how the UK was not committed to moving in the direction of an “ever closer Union”. All of a sudden, rather than multi-speed, the EU has emerged to be multi-directional.

Certainly, the UK traditionally had an idiosyncratic position vis-à-vis the project of European integration. But no one should be fooled: not all other 27 EU member states are truly committed to the European cause to the same degree. The legacy of the euro-crisis left deep scars between Northern vs. Southern member states, and responses to the migration crisis have exposed the irreconcilable views of Western vs. Eastern member states on issues like solidarity and refugees’ rights. In fact, the authoritarian drift at play in Hungary and Poland – which led the European Commission in December 2017 to activate for the first time ever Article 7 TEU, which may result in a suspension of Warsaw’s EU voting rights – unearths the cleavages at bay in the EU.

In this context, rather than repeating the trite story that all member states will move together in the same direction at their own speed, it may be time to pause and rethink the forms of integration available to European countries. This is what President Macron had hinted at. And this is where the Brexit negotiations become relevant. Instead

of just settling the unique British position vis-à-vis the EU, the talks with the UK should become part of a broader discussion of the levels of integration available in Europe, and serve as a lab to devise a form of associated membership which in the near future may become suitable for other states. If political integration appears necessary particularly for the Eurozone, simple economic cooperation should remain possible for countries outside it.

In a nutshell, the future of Europe should be redesigned on the basis of an architecture of concentric circles. In this model, the UK could remain associated to the EU in an outer (looser) circle of regional integration, in the company of other third countries and current EU member states, while another group of countries club in a (tighter) circle of federal-like cooperation. States at the periphery would only abide by those rules necessary to ensure the functioning of the free market, and regain sovereignty on other policies. States at the core, instead, would willingly accept to integrate further, endowing federal institutions with greater sovereignty and democratic legitimacy.

A political union surrounded by a regional free market would be appealing for Ireland. In particular, maintaining the UK associated to the

EU core in a free trade area would satisfactorily settle the problem of the border between Ireland and Northern Ireland, which was left unresolved in the deal concluding phase one of the Brexit negotiations, and still remains a contentious issue as talks advance in the second phase. Nevertheless, a Europe of concentric circles would also raise challenges for Ireland, especially if participation in the core becomes – as it should – a package deal with no opt-outs, e.g. in the field of defense and taxation.

Yet, speaking in Strasbourg on 17 January 2018 as the national leader to address the European Parliament in the framework of the new series of debates organized by that assembly on the future of Europe, Taoiseach Leo Varadkar emphasized the commitment of Ireland towards further European integration. As he put it, Ireland, having benefitted so much from EU membership, has a special responsibility to lead on the future of Europe debate. By proactively contributing to the conversation on EU reforms, Ireland can thus shape the future of Europe in a way that is more congenial to the interests of small member states.

Federico Fabbrini,
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The Sectoral Impact

Energy and the Environment

On 15 February 2018 the DCU Brexit Institute organised an event on “Brexit, Climate and Energy Policy”, in partnership with the Irish Environmental Protection Agency and the Political Studies Association of Ireland. The event featured an opening keynote speech by **Enrico Letta** (former Italian Prime Minister and dean of the Paris School of International Affairs (Sciences Po)) and a high-level panel featuring **Laura Burke** (Director General of the Environmental Protection Agency) and **Julia King, Baroness Brown of Cambridge** (Deputy Chair of the UK Committee on Climate Change). The event also featured a panel of leading academics, business leaders and policy-makers, including **Charlotte Burns** (University of Sheffield), **Joseph Curtin** (University College Cork & IIEA), **Tanya Harrington** (Powerscourt Group) and **Diarmuid Torney** (Dublin City University).

In some ways, the EU’s development of a substantial body of environmental law is surprising. Indeed, the Treaty of Rome contained no explicit environmental provisions. Since then, however, EU environmental policy has developed from an incidental policy in the 1970s, which focused primarily on removing barriers to trade between member states, to a “**system of environmental governance**”. This governance system covers a wide range of environmental challenges, including air and water quality, birds and habitats, as well as global environmental challenges such as ozone depletion and climate change.

The extent to which the EU and UK environmental governance regimes remain aligned post-Brexit will depend on the nature of the Brexit settlement. The EU’s existing relations with a range of third countries provide a **variety of possible future models**. Although Secretary of State of the Environment **Michael Gove** has committed to delivering a “**Green Brexit**”, the UK Government’s search for new markets may drive a regulatory race to the bottom, including on environmental standards.

Over the past two decades, climate change has become perhaps the highest profile area of EU environmental policymaking. The scale of the decarbonisation challenge facing the world is nothing short of daunting. According to the UN Environment **Emissions Gap Report 2017**, climate change policy pledges made by governments around the world cumulatively amount to only approximately one-third of what is required to limit global warming to 2 degrees Celsius, a key danger

threshold set by climate scientists. In order to close this gap, much deeper cuts in greenhouse gas emissions are needed between now and 2030 as well as beyond.

Climate change is a quintessentially global problem. The landmark Paris Agreement on climate change, forged by nearly 200 governments at the COP21 climate summit in 2015, provides a framework for global cooperation. Donald Trump’s announcement in June 2017 that he intends to pull the US out of Paris certainly dealt a blow to global efforts, but the response by the rest of the world — including by the EU, China and Canada as well as by many states and cities within the US — has been encouraging.

The EU has long been a leading player in the global response to climate change. The EU persevered with the 1997 Kyoto Protocol following the withdrawal of the US, and played a central role in shaping the Paris climate agreement. At home, the EU has developed a progressively wider and deeper set of policies to deliver on its international commitments. Brexit poses challenges for the European response to climate change in at least four areas.

First, the UK’s withdrawal alters the balance between progressive and laggard EU member states when it comes to climate policy. The UK has been among the vanguard pushing a decarbonisation agenda within the EU over the past couple of decades. Its departure will complicate the EU’s efforts to decarbonise the European economy.

Second, one of the Union's flagship policy instruments, the EU Emissions Trading Scheme (EU ETS), may be undermined. The scheme requires power generation companies and heavy industry to possess permits to emit carbon dioxide. These permits are tradeable on an EU-wide basis. Companies for whom emissions reductions are relatively expensive can purchase these permits from companies for whom emissions reductions are relatively cheaper, with the result that emissions reductions occur in a cost-effective manner. It is not yet clear what will happen to the EU ETS post-Brexit. One option is that the UK could remain in the scheme, similar to Iceland, Liechtenstein and Norway who participate despite not being EU member states. Another option is that the UK could establish its own domestic emissions trading scheme that could then be linked to the EU ETS. The EU ETS has faced significant challenges, but some observers are optimistic that these can be overcome through reforms due to come on stream in 2021. Brexit significantly complicates that picture.

Third, Brexit will impact on the EU's commitment to decarbonise those economic sectors not covered by the EU ETS—principally transport, buildings, and agriculture. Member states have agreed to reduce emissions from the non-ETS sector by 30% relative to 2005 levels by 2030. Under a deal reached in December 2017, each member state has been allocated an individual share of this overall target. The UK's target of 37% is higher than the EU average, meaning that Brexit will leave a hole in the collective effort of the 27 remaining member states.

Fourth, Brexit potentially undermines the EU's international climate diplomacy. The UK has been at the forefront of European efforts to shape global climate cooperation over recent decades. The UK Foreign Office invested heavily in building up an extensive network of climate diplomats around the world. In a post-Brexit landscape, the EU will lose one of its most active international climate champions. On top of this, the UK's continued commitment to international climate diplomacy is in question. In fact, a UK foreign policy position paper published in September 2017 **failed to mention the Paris climate agreement** among a list of international treaties the UK is "committed" to.

Perhaps the biggest risk to EU climate ambition is that it slips down the policy agenda in the coming years as the EU and UK struggle to manage the Brexit process, particularly if we face a disorderly Brexit. Policies to combat climate change have in the past been subject to the vagaries of economic and political cycles, such as during the depths of the financial crisis.

Time is not on our side in the fight to combat climate change. Although governments and societies around the world are increasingly waking up to the challenges posed by climate change, many have not yet understood the scale of the changes required. Brexit risks undermining the progress the EU has made to date.

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Financial Services

On 12 April 2018 the DCU Brexit Institute hosted an event on “**Brexit and Financial Services**” in partnership with Arthur Cox. The event featured keynote speeches of **Joaquin Almunia** (former European Commissioner for Economic & Financial Affairs) and **Ed Sibley** (Deputy Governor, Prudential Regulation, Central Bank of Ireland). The event also featured a panel of experts - Robert Cain (Arthur Cox), Mark Cummins (Dublin City University), Niamh Moloney (London School of Economics), and Valerio Scollo (GSK Luxembourg) – moderated by Federico Fabbrini (DCU).

The territorial battle over the financial services sector continues in the wake of the Brexit vote and the continued uncertainty over the post-Brexit scenario. Frankfurt, Paris, Dublin, Brussels, and other cities are all vying for valuable financial services business from London. Notwithstanding that there have been some relocation announcements, with Frankfurt appearing to be the most successful of the competing cities, we have not yet seen a mass exodus from the City of London. The strategy to date has been conservative on the part of financial institutions, setting up regulated subsidiaries with limited activities rather than the wholesale movement of all activities.

The City of London is one of the major global financial services centres for very good reason. Over decades of investment, the City of London has positioned itself to compete with, and arguably overtake, New York. To contextualise its global position, a **London School of Economics** discussion paper reports that one fifth of all global banking activity flows through the City of London, with some 250 foreign banks in operation; 45% of all assets under management in Europe are managed out of the City of London; the City of London is the leading location for counterparty clearing in the world, with daily foreign exchange transactions worth some €1 trillion euro and a level of daily

interest rate derivative turnover worth just under €1 trillion euro; the City of London is a major location for global insurance and reinsurance functions, with some 600 insurers and reinsurers in operation; while overall, the financial services sector employs over one million workers. London is not readily replaceable and, in my view, the discourse around who will become the ‘new’ London and who will benefit the most from a down-sized City of London is misguided.

Financial institutions are gauging the political negotiations and weighing up the pros and cons of any relocation decision – and there are significant pros and cons, both financial and strategic. In light of the agreed 21-month transition period to the 31st December 2020, clear warnings are coming from various quarters that financial institutions need to continue with contingency planning efforts and to prepare for the so-called ‘cliff edge’ no deal Brexit scenario. But there simply has to be an agreement. The financial ramifications of such a worst-case ‘cliff edge’ scenario are incalculable, or calculable only under a host of assumptions!

A core concern for financial institutions is that of market access and EU passporting, which allows the seamless delivery of financial services across EU member states under the single market model. The Brexit positions of the EU and the UK are quite divergent here. The most the EU is indicating it may offer in this regard is some form of improved equivalence agreement with the UK. Such a solution would mean the UK would get access to the EU market but would effectively be bound to a regulatory regime that aligns with that currently in place in the EU but with the considerable risk that the EU may rescind the equivalence agreement at any stage and with short notice.

The UK position appears to be that of some form of free trade deal with the EU in respect of financial services, which would give the UK the autonomy it desires over the design of its own regulatory regime. Given the embeddedness of the City of London in the global financial system and, more importantly, in the European financial system, both sides are deeply exposed and have a huge amount to lose. The tenuous nature of an equivalence agreement would simply create unacceptable levels of uncertainty. The only option in my opinion



is for the EU to engage with the UK and work on a financial services specific free trade deal that would provide mutual benefit to both parties and provide long-awaited certainty to the financial services sector. And there is much to discuss and negotiate.

The **Association for Financial Markets in Europe** provides a succinct summary of the main issues that underscore the complexity involved. The first issue is the continuity of financial contracts. Post-Brexit, it is not clear how financial institutions are to manage existing financial contracts when UK based financial institutions lose EU passporting rights. This has implications for both UK and EU based counterparties, where losses and damages may be incurred due to the inability of one or more counterparties to meet contractual agreements. The options are either to have the contracts 'grandfathered', whereby contracts are agreed to be serviced as per contract terms up until maturity post-Brexit, or to novate contracts to new entities that would be regulated accordingly; although for contracts involving multiple and cross-border counterparties this could be extremely difficult to agree. The second issue is that there is currently a choice of legal jurisdiction for financial contracts and an agreement by all Member States to recognise and enforce judgements made in the legal jurisdiction of any other Member State. In this context, how the legalities of financial contracts are to be managed post-Brexit needs to be clarified. The third issue is that of contract clearing and whether UK clearing houses will be approved from a regulatory perspective post-Brexit. With the City of London being the major global base for clearing activities then if UK clearing houses are not recognised, this could mean significant increases in capital requirements for the

counterparties involved given that moving contract positions from UK clearing houses to EU clearing houses would be impractical. The fourth issue relates to bank recovery and resolution. Currently the Bank Recovery and Resolution Directive ensures recognition of resolution actions across the EU. It is not understood what the situation would be post-Brexit. A related issue is the eligibility of financial instruments governed under English law for capital requirement purposes in a post-Brexit environment. If such financial instruments are not recognised then this would require financial institutions to replace this capital, creating considerable cost for the financial institutions in question and reducing the availability of capital for investment. The final and fifth issue has a GDPR resonance and relates to the cross border movement of personal data. Clarity is needed around the management of personal data post-Brexit, particularly as the banking sector becomes ever more data driven, with the trend towards open banking.

The City of London is too big to fail and too big to conquer and divide amongst the EU. As I see it, the EU needs to face reality and concede to the UK on the need to negotiate a financial services free trade agreement that benefits both sides. Hard negotiations are needed around the complex issues outlined above by the Association for Financial Markets in Europe, which is not an exhaustive list of considerations. The financial services sector is unique in comparison to other industry sectors. Hence, a unique set of solutions is required. Both the UK and EU need to meet somewhere in the middle ground, and soon!

Mark Cummins,
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Medicine and Public Health

On 3 May 2018 the DCU Brexit Institute hosted an event on “Brexit, Medicine and Public Health” in partnership with IQVIA. The event was opened with a debate between Baroness Suttie (Member of the UK House of Lords, European Union Committee) and Paulo Rangel (Member of the European Parliament, Constitutional Affairs Committee). The event also featured a panel of experts from industry, government bodies and academia - Justin Carty (IMSTA), Rosarii Mannion (HSE), Eamonn McGowran (BESIN Healthcare), Rita Purcell (Health Product Regulatory Authority) and Anthony Staines (Dublin City University).

Brexit, in whatever form it eventually takes, is likely to affect every segment of our society, and of our economy. There are some obvious areas, which have received much public attention, including agriculture, borders, trade and customs, and the rights of EU citizens resident in the UK. It's not so obvious, to most of us, how Brexit will affect Irish health care, but it needs to be considered. There is recent **work** from Nick Fahy and colleagues, on how British health care may be affected, and it is worth reviewing this too.

A number of conclusions may be drawn. The first, and perhaps the most fundamental, is that it is very unlikely that Brexit will be stopped. There are various mechanisms for doing so, either through a parliamentary reversal, or by calling another referendum. The first is not a politically credible option, and polls suggest it is unlikely that another referendum will produce a different answer. It is more plausible, perhaps, that the Conservative party could realise the likely damage from Brexit

and move (or be pushed) to remain in a close relationship with the EU. However, for any company or state body at risk from Brexit to assume that it will not happen would be a dereliction of duty. It will be necessary to plan on the basis that, from 30 March 2019, the whole of the UK will exit the EU, with or without an agreement.

This leads to the second conclusion. Brexit affects every level of the health ecosystem, from the producers, importers and exporters of drugs and devices, to staffing, health service finance, and patient care. For the producers the risks are quantifiable. Essentially, the whole regulatory system has to be re-authorised, to ensure that all currently authorised products, either originating in or going into the UK, remain authorised. To market such items it is necessary to have a marketing authorisation, but this can only be held by bodies established within the EEA. Fixing the many problems that will arise will involve identifying the products, and developing UK-specific and Ireland-specific regulatory forms. At present, these are often identical, but that will change. There is a real risk that some products will no longer be available in Ireland. Getting and securing market access for Irish products in the UK will also be expensive, time-consuming, and increasingly urgent. To make matters more challenging, products from the UK will require specific import authorisation, and many will require each batch to be tested within the EU before release. It is not clear that there are enough people with the necessary skills to deliver this before March 2019.

For healthcare providers, matters are much less certain. It's not known how Brexit will affect the supply of skilled health care workers, and the



mutual recognition of professional qualifications. What is known is that, both the British NHS and the Irish HSE are short staffed. Both the UK and Ireland need to bring in significant numbers of staff from abroad. HSE recruits between 4,000 and 7,000 staff each year, for example. After Brexit, the NHS is likely to recruit more Irish staff, as the supply of EU citizens wishing to work in the UK is shrinking, and the current UK rules on immigration will restrict many non-UK citizens from entry. It is **hoped** that the professional qualifications of foreign staff in the UK will continue to be recognised after Brexit, but this remains an aspiration.

Procurement will also be a major challenge both for service providers and producers after Brexit. It is simply not known how public and private procurement will be impacted by Brexit rules. The regulatory hurdles can be surmounted, and regulators in Ireland, the UK, and the rest of the EU are working very hard to do this. It may be necessary to change existing contracts, and there are substantial risks of losses, or disruption to supplies, on both sides.

Third, there are wide and deep cross-border healthcare links between the UK and Ireland. For example, there are substantial and well-established joint services for cancer, diabetes, emergency care, and paediatric cardiac surgery. In addition, almost 600 people a year are referred to UK services, under the Treatment Abroad Scheme, typically for specialised care, or expertise which is not available in Ireland. There are also a significant number of patients, over 700 in 2016, who travel, mostly to Northern Ireland, to receive care without excessive delays, under the EU's Cross-border Health Care Directive. All of these services are at risk. A recent All-Island Civic Dialogue on **'Brexit – Implications for Cross-border Health Co-operation'** articulated these issues, and others, but could not indicate any solutions.

In fact, resolving these problems will not be easy. One key to minimising the harm will be to keep patients and patient care as the focus of health system responses. Brexit poses many challenges, and perhaps even a few opportunities for Ireland, and Irish healthcare. The biggest challenge now is uncertainty. It is painfully obvious that the UK Government is unable to agree on their own desired

outlines for a post-Brexit relationship. Given this, it is hard to see how any agreement can be reached in a reasonable time. It is possible, and perhaps likely, that a last-minute deal will be agreed, perhaps containing a long transition period, and an outline of a mutually desired end state. However, to reiterate, no-one can depend on this happening. Our key, and perhaps unsatisfactory, conclusion is that we must all prepare for the worst of outcomes, and hope that they will not occur. If we do not prepare adequately, patients, and their families, will pay the price.



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Ross Nugent,
DCU Student

Customs and Trade

On 14 June 2018, the DCU Brexit Institute organised an event on “Brexit, Customs and Trade” in partnership with the British Irish Chamber of Commerce and DCU Invent. The event featured keynote speeches by Michael Russell (Scottish Minister for UK Negotiations on Scotland's Place in Europe) and László Andor (former European Commissioner for Employment, Social Affairs and Inclusion). The event also featured a panel of leading academics, business leaders and policy-makers - Katie Daughen (British Irish Chamber of Commerce), Massimo Fabio (KPMG Italy), Ólafur Ísberg Hannesson (EFTA Surveillance Authority) and Edgar Morgenroth (Dublin City University) – moderated by Audrey Carville (RTE).

A key advantage of EU membership is the internal market of the EU, which allows traders to trade goods and services with minimal barriers. While the impact of Brexit on the nature and extent of trade barriers will depend on the final agreement between the EU and the UK, Brexit will leave trade between the UK and the EU less free.

Trade barriers can take many forms. For merchandise trade tariffs or tariff quotas are applied by the EU to a range of products from third countries. While the average tariff charged by the EU is relatively low at around less than 5%, there is significant variation with the highest tariffs being charged on agri-food products, followed by basic manufactured goods including textiles. For example, fresh mackerel is subject to a 20% tariff. In many cases tariffs involve both a tariff rate and a charge based on the weight or volume of the products shipped. For example, fresh beef is subject to a 12.8% tariff plus €303.4 per 100 kg of beef. In some cases the tariff increases once a quota of product has been reached.

The variation of tariffs across different products implies that the effect of tariff barriers will be very different across sectors and the severity of the impact will also depend on trade patterns. For example, the UK is the most important destination for Irish beef exports while it is much less important as destination of Irish pharmaceutical products.

A worst case scenario for Brexit, for example if no final agreement between the EU and the UK is reached, would entail the imposition of these tariffs on imports from the UK into the EU. This

would most likely be reciprocated by the UK. Static simulations, where it is assumed that the effect of tariffs is passed through to final prices and where no allowance is made for trade diversion to other countries, suggest that this would **reduce** Irish goods exports to the UK by 30.5%, which equates to 4.2% of total goods exports. Total UK merchandise exports would be reduced by 9.8% under these assumptions, while the effect for the EU as a whole would be to reduce exports by 2.1%. This shows that the impact of a hard Brexit would be very significant for the UK and for Ireland the effect would be double of that experienced on average by EU countries.

In addition to tariff barriers, trade is also affected by non-tariff barriers. These have featured less in discussions about the impact of Brexit, but in practice tend to be **larger** and are likely to be more important as they might apply even in a situation where trade between the EU and the UK is free of tariffs, and could affect Irish trade with other countries.

Non-tariff barriers can take many different forms. For example, a country may set technical standards that differ from those that apply in the exporting country, thereby requiring the exporter to make alterations to the product. A country may require expensive certification, registration or treatment of a product before it is allowed to enter the market. There may be government procurement restrictions or subsidies for local producers. Administrative or inspection procedures may also result in additional costs. These may also affect transiting trade, which is important for Ireland as **more than half** of the

goods exported from Ireland to countries other than the UK transit through the UK. Importantly, given the many ways in which trade can be affected by non-tariff barriers makes it more difficult to remove these barriers via trade agreements.

While tariffs and non-tariff barriers are important for goods trade, services trade tends to be more restricted. Even a far-reaching trade agreement, such as the recent Canada EU Trade Agreement (CETA) removes almost all tariff barriers for goods but retains many restrictions for services and in particular financial services. For example under CETA Canadian insurance companies are required to set up local branches in member states in order to supply the service services in the EU. Other types of restrictions also apply. For example, airlines operating within the EU must be majority owned by EU shareholders.

The economic impact of Brexit will be significantly determined by the nature and extent of trade restrictions post-Brexit. This is not just dependent on whether tariffs are imposed, but will depend significantly on the degree to which non-tariff barriers and trade restrictions will apply. The potential impact of a hard Brexit could be significant at least over the short-run, and will not be restricted to reduced exports to the UK but also due to the potential of raised costs for imports from the UK. Irish trade with other countries may also be affected by non-tariff barriers that may apply to goods that are transhipped through the UK, reflecting the fact that this is the shortest route to the economic heart of Europe. Getting an agreement with the UK on this aspect of trade is therefore particularly important.

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Agriculture and Regional Development

With the start of the debate on the multiannual budget of the EU in May 2018 and Brexit getting closer, the EU-27 and the UK find themselves in similar situations: both need to look ahead to define directions for agriculture and regional development. Because of Brexit, they will carry out these debates separately. The UK needs to formulate new agricultural and regional policies, whereas the EU-27 has started lengthy and difficult negotiations over its 2021-27 multiannual budget for the EU (aka Multiannual Financial Framework - MFF).

What is at stake? In this commentary, I focus on the budgetary and redistributive aspects that are linked to these two policies.

Under the names of the **Common Agricultural Policy (CAP)** and **Cohesion Policy**, agricultural and regional development take up the **largest proportion** of the EU budget. Brexit leaves a vacuum in the EU budget. While in **May 2018**, the European Commission proposed to increase the EU budget, cuts in the CAP and Cohesion Policy are envisaged to accommodate new needs (for example border control).

Both EU policies will be implemented in the UK until the expiry of the current EU budgetary period in 2020. Since it is unclear what the relations between the UK and EU-27 will be in the long-term (e.g. UK's membership in the single market and/or a customs union), it is difficult to predict the leverage the UK will have in shaping these policies. The agricultural policy has, in fact, implications for trade, while British regional aid might be subject to EU state-aid rules if the UK stays in the single market.

Agriculture

The CAP was the first common policy of the EU (set up in the 1960s). While its **treaty objectives** have remained the same, the policy has undergone considerable changes since the 1990s. While it is no longer central in the debate on European integration, agriculture remains a controversial issue and the CAP is accused of being the EU's most **economically inefficient** policy.

Due to different national and sectoral interests, negotiating the CAP is not an easy task for the EU. In this respect, Brexit is an unambiguous **benefit**

for the UK and it provides the opportunity to make British agriculture **greener**. However, time is tight. The UK government guaranteed farmers that the current CAP subsidies will be paid until 2020. A new British agricultural policy needs to be implemented after this date. In light of the workload to negotiate the withdrawal agreement and the uncertainty surrounding the future EU-UK relations, it seems that the future British agriculture **is likely to follow the structure of the CAP** with the **amounts of subsidies falling**.

Subsidies will likely fall also in the EU-27. In May 2018, the European Commission proposed 5 % cuts to the CAP budget, with circa 4 % cuts for farmer's income support (aka direct payments). Direct payments are **controversial**. They are part of what is known as Pillar I, which represents the largest share of CAP expenditures. To address the controversy on direct payment, some of these payments are since 2013 dependent on farmers implementing measures, which are beneficial for the environment (aka "greening") – for example crop diversification. Finally, the CAP has gradually expanded to include Pillar II or the regional policy for rural development.

The scope of agricultural reforms is concerned with the expenditure balance between and within Pillars I and II. To what extent should support of domestic agriculture be reduced? To what extent does the CAP system help achieve greater food self-sufficiency in the EU? Shall we pay farmers for the public goods they provide? These are some of the questions both the EU-27 and the UK will need to (separately) answer.

Regional development

In contrast to agriculture, the UK was instrumental in setting up and supporting the EU's regional policy (aka Cohesion Policy). In the 1970s and 1980s, Cohesion Policy represented an important mechanism for the UK to draw down EU funding and to alleviate low budgetary returns from the CAP. In time, the financial importance of Cohesion Policy for the UK **decreased** and today's funding amounts to **0.1 % of UK GDP**. However, the **benefits** of Cohesion Policy have varied greatly within the UK, where EU funds have been a significant funding source for local actors. Cohesion Policy has been important in particular for the



poorer parts of the country (for examples Wales and Cornwall), some of which voted to **leave** the EU.

Under the current 2014-20 Cohesion Policy programme, the UK uses EU funding for improving the labour market, combating social exclusion, promoting research and development and transitioning to a low-carbon economy. The British government has made no commitment to continue regional support, which puts these long-term development goals at **risk**. The need for a strong regional policy in the UK is further warranted due to large **regional differences** in income, wealth and productivity, which stand out compared to those in the EU-27. Cohesion policy is based on a transparent allocation mechanism (GDP per

capita). It remains to be seen how government funding will be **distributed** between different regions and nations within the UK in the future. Another clear contribution of Cohesion policy to the UK has been the strengthening of **social justice** in British economic development.

Regarding the EU-27, the European Commission proposed to cut funding for Cohesion Policy by 7 % (even though the **EP** estimates the cuts will be higher). The new legislation underpinning spending will deal with questions on the policy's geographical scope (e.g. shall it be limited to less developed regions only?) and purpose (e.g. shall it be re-aligned with the economic semester and become an instrument for structural reforms?). The question of simplification will also need to be addressed, as well as the use of financial instruments.

In sum, the same old negotiation challenges are in front of the EU-27, with the addition of the question of whether and how to fill in the vacuum left by Brexit. On the British side, on the other hand, the opportunities from leaving the EU seem clearer in agriculture than in regional development.

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The Political Challenge

In April 1970 T.V. Commins, commenting on Irish ambitions to join the EEC, the Irish ambassador to France wrote to the Department of Foreign Affairs about Ireland's relationship with Northern Ireland:

“

On the Northern Ireland problem, it does not seem unrealistic to envisage that membership of the Community (jointly with Britain) will, in the nature of things, ease the way towards eventual abolition of the border, at least in the long term if not in the immediate or medium term.

”

[National Archives of Ireland, Department of Foreign Affairs, 2001/43/1139, Commins to Morrissey, 16 April 1970.]

Some two decades' years later Commins's prescience was realised when the creation of the single market in 1992 and the continuation of the peace process, which would come to fruition in the 1998 Good Friday Agreement, saw the end of any visible border between the two parts of Ireland.

Now another two decades on from that historic peace agreement the prospect of a hard Brexit brings with it the danger of a return to a very real and equally hard land border. Ever since the British voted for Brexit, party politics in Ireland has been convulsed by its implications for Ireland. And this is for good reason, as the potential consequences of Brexit for Ireland are stark. Ireland's commitment to the European project, the fact trade with Britain is such an essential part of the Irish economy and, probably most importantly, doubts about what exactly will happen to the border between North and South have remained constant questions of conjecture since the Brexit vote but no one in Ireland is really any the wiser as to their answers.

The backstop to nowhere?

The so-called backstop deal of December 2017 which leaves the Irish border question to last in the Brexit negotiations has seemingly come to naught and has caused significant difficulties for the minority Fine Gael led government. The government is of the view that the December agreement provides a legal provision to implement the backstop of maintaining full alignment in Northern Ireland with those rules of the Single Market and customs union necessary to protect

North-South co-operation and to avoid a hard border.

In asserting this position the Minister for Foreign Affairs Simon Coveney became very animated in a heated Dáil **debate** on the topic in early March 2018 and has adopted a rather patrician air that he should not be quizzed or criticised in any way on Brexit. When the Fianna Fail leader Micheál Martin accused the Taoiseach Leo Varadkar and Coveney of naiveté on Northern Ireland in overselling the Brexit deal of December 2017 and the anticipated restoration of the Executive in Northern Ireland (which never materialised) an irate Coveney accused his constituency rival of misleading the House, being unhelpful and not understanding what was going on.

While the government may be fully satisfied with such a backstop deal for a frictionless border after Brexit, it is certainly valid to suggest that it may in fact lie outside Britain's withdrawal treaty with the EU. Given that the Conservative government in Britain has still given no real thought to the border question beyond the ludicrous claims that technology will somehow or other sort the whole problem out, the backstop remains at best a distant hope.

Yet technology has still not offered a border solution and the position of Michel Barnier the EU's chief negotiator for Brexit also remains as it was a full year ago when he became the first non-elected official of any international organisation to be invited to speak before the joint houses of the Irish parliament. On that occasion he told the Irish, and indeed the watching world, that **'customs controls are part of EU order management. They protect the single market'**. Barnier was blunt in his assessment of the consequence of Brexit, dramatically driving home the point that it comes at a cost. By reiterating the point that Brexit changes the external borders of the EU, Barnier did what politicians often want to avoid: he spoke a harsh but dutiful truth.

That remains the EU's stance. If the British put themselves outside that market, then a hard border becomes inevitable. That is the irrevocable price of Brexit and it is a dear one which no one

really wants to pay. The question of the border continues to be intractable. After Barnier's speech in Dublin there was much talk of the idea of special status for Northern Ireland which became the new buzz word for ensuring a soft Brexit. The problem is that it seems an almost impossible ask for the British Conservative government to even begin to think about such a position. The very words 'special status' send a long shiver down the spine of every Tory politician, particularly for those with long and bitter memories of the conflict in Northern Ireland.

An hour before Barnier delivered his speech to the Irish parliament in May 2017 I addressed the Oireachtas Joint Committee on Foreign Affairs on Brexit. I was struck by just how great the fear amongst politicians of all parties was regarding the impact Brexit will have on the border counties in particular. This fear remains palpable in political circles as Brexit looms ever closer but without any pointer as to what it will actually look like at the Irish border.

The vast majority of Irish people and pretty much all of its elites have been horrified by the Brexit result and subsequent events, particularly since it has become clear that the governments of David Cameron and Theresa May, both before and after the vote, gave no real thought to the Irish question. It has become somewhat fashionable in Britain to blame the Irish government and the Irish body politic in all its guises for having the temerity to bring up the question of the border.

In reality this is the reflexive British response to their surprise at the manner in which the EU and Ireland speak as one voice about Brexit and the border. Like much else in relation to Britain's troubled understanding of the EU ever since first joining along with the Irish in 1973, there should really be no surprise. The EU needs to stand in solidarity with those who want to be in the club, not with those who are about to leave it. That is its history. Notwithstanding the odd domestic dispute about political strategy Ireland realises this as well.

Gary Murphy,
Professor of Politics and Head of DCU School
of Law and Government



The Legal Challenge

There has much been detailed and systematic analysis of the causes and legal process of Brexit. This short note is not intended to enter into the details of the Article 50 process, the draft withdrawal agreement or on the possible options for a future relationship and how they may or may not work in practice. Instead, it is an attempt to take stock of Brexit as a legal phenomenon and in particular to step back and assess the impact of Brexit on law in general and in particular UK and EU law. This note will briefly assess the impact of Brexit on the constitutional law of the UK, the EU and finally the emergence of a new type of law – the law of disintegration within the context of transnational regional law.

Impact on UK Law

Substantively, it remains to be seen how much of the law of the UK will change. This will depend on the future relationship with the Union and the extent to which it is bound by EU law. However, it is likely that the UK will move to being a norm-taker in these fields – either formally or informally – particularly in relation to market regulation, if companies operating in the UK wish to maintain access to the single market.

That Brexit will impact the constitutional law of the UK is already evident. Firstly, it is affected by the process itself and the questions it raises for parliamentary sovereignty. However much the UK Supreme Court can declare that the ultimate decision for triggering Brexit lies with the Westminster parliament, the sheer political potency of a popular vote means that de facto the decision has been made by popular acclaim. Secondly, the sheer scale of the task to disentangle the UK from the EU's legal order will mean the creation of a power vested in the Government to alter UK legislation, including acts of parliament. Thirdly and finally, Brexit has opened fault lines in the constitutional settlement between the different constituent units in the United Kingdom and in particular the relationship between the devolved institutions and the central government. While explicit calls of self-determination on the part of Scotland in particular in the wake of Brexit have abated somewhat, the process of Brexit has opened the question of the role of the devolved administrations in the process itself and in the

post-Brexit distribution of returned powers.

Impact on EU Constitutional Law

The impact on EU law both substantive and constitutional is less direct and will likely take more time to emerge. There will be an effect on the evolution of substantive EU law with the absence of a significant Member State with a strong liberal agenda and a resistance to integration affecting future laws in Europe. More immediate is the constitutional impact. Brexit has created something of a constitutional moment for the Union. Contrary to immediate expectations, we have witnessed a recommitment by the Member States to the European project understood broadly. Throughout the Article 50 process, the values and principles of the Union – including the nature and meaning of membership – have been reasserted and clarified, as has the supranational method, with the supranational Union institutions playing a central role in partnership with the European Council and Member States.

A Whole New Law?

Finally, Brexit will create a whole new legal order – whatever the final label applied to the withdrawal and future relationship agreements, it is likely that Brexit will result in a new relationship between the UK and the EU based on its own set of laws and institutions lying somewhere between an international legal order and a supranational legal order. There certainly is some precedent



for this; the Union has entered into a variety of association agreements with third states and the EEA regulates the relationship between the EU and most EFTA states (with Switzerland being the exception).

However, two factors - one a difference in degree, one a difference in kind - differentiate this new legal order from previous associations. Firstly, the sheer importance of the UK as a political, economic and security actor within Europe. Aside from its scale the UK has a particular weight in certain key areas such as financial services and security. This will no doubt impact on the nature and form of any agreement and its importance for future study. Secondly, contrary to other agreements, the aim of which is to bring the various associated states closer to the Union economically and ultimately legally, the UK's association will be a regime designed to remove the UK from the Union and sever legal links; it is managed disintegration or disintegration through law. Given that integration has served as a key principle in the interpretation of Union law, Brexit and the legal regime that results opens up the possibility of a new set of principles to manage divergence rather than convergence in international legal relations. This is a whole new departure for the field of transnational law and transnational legal regimes and one that will call for further study and elaboration.

Conclusion – A Tale of Two Unions

Brexit is a story of divergence. The United Kingdom and the European Union are going their separate ways. It is also a story of divergence of political and constitutional experience. As is apparent, the UK's constitutional order, already under strain, has been unsettled significantly by the event and process of Brexit. Parliament's role has come to be questioned by the rise of a form of popular sovereignty and an empowering of the executive, as is the devolution settlement. On the contrary, the European Union – at least so far – has managed to emerge stronger and has had its constitutional underpinnings reaffirmed. The Article 50 process itself has led to a strengthening of the supranational institutions and a reflection on the meaning of membership. The result of Brexit, contrary to what was hoped for by the Leave camp, has so far been infinitely more damaging for the United Kingdom and to some extent reaffirming for the EU. While this diagnosis is well-known for the economic and political field, it is no less true for the constitutional and legal.

Stephen Coutts,
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The Business Challenge

The impact of Brexit on Ireland is a well versed topic, with many experts weighing in to give their view of the range of potential outcomes. Economic think tanks and consultants have issued high level reports on the dynamics of the UK split for Irish trade, not just our direct business transactions with the UK but also our use of their island as a vital land bridge to connect with our EU partners. Potential challenges identified include tariffs, quotas, customs checks and cross border delays – never mind the myriad complexities related to Northern Ireland. The stages of the Brexit deal and the possible ramifications are debated and discussed by specialist commentators at length, with each development analysed for its potential impact on the overall trajectory of the exit negotiations, for the EU as a whole but also specifically for Ireland.

The Irish situation is particularly problematic because of the historic relationship between Ireland and Britain. Our nearest neighbour provided us with a gateway, in the form of a large, culturally similar and geographically accessible market, to learn the process of internationalisation. As **only 14% of our overall goods and 20% of services** are destined for the UK an initial impression of our exposure is reassuring, but this headline figure understates our vulnerability. Deeper analysis reveals that more than 40% of the exports of our indigenous firms are sold to our nearest neighbour. Transport service businesses are particularly exposed as over 60% or €2.5bn of their total exports are UK bound. In addition, as almost half of our tourist footfall is from the UK, any threat to the free movement of people between the two islands is of grave concern, particularly for small businesses in this sector.

The multiplicity of reports commissioned and prepared by policy makers, government analysts, consultants and academics on the challenges of Brexit fall into three broad categories. Some adopt a **macro perspective** considering the implications of the Brexit impact on the economy as a whole or for particular business sectors. Others suggest that **firms analyse worse/best case scenarios** for their particular business sector based on the potential UK/EU trade agreements, largely focused on the **short to medium term impact**. Lastly there are those who adopt a **practical approach** for

businesses and offer a toolbox for analysing a firm's key short term exposure to the UK as either a major market for its output, a vital part of its supply chain for inputs, or a land bridge for accessing their EU partners.

These reports provide valuable guidance and a rich resource for organisations in their initial response to the major shock of Brexit. Their identification of risks and potential outcomes was particularly useful in helping businesses make the transition from disbelief at the referendum result to a slow realisation that Brexit is now inevitable. Despite several opportunities, it is now generally accepted that the Brexit decision is not open for revisiting and organisations must prepare for an uncertain UK/EU relationship. The general conclusion of these reports is that Irish organisations must reorient their exports and reorganise their sourcing strategies to/from destinations outside of the UK.

At face value, this suggested approach is simple, Irish organisations can simply 'just' replace internationalising to the UK with increased internationalising to other EU neighbours. But this injunction dismisses a multitude of complexities which firms overlook at their potential peril. In essence, organisations grow by either selling more to existing customers or through developing new customers, often in new markets. Achieving growth in a familiar market in which you are well versed with all aspects of its workings, from consumer preferences to competitor tactics, is often easier than building a new market from a zero base. This is why, for many Irish firms the impact of Brexit represents a major opportunity cost as it not only potentially endangers their existing UK sales but may put an end to their strategic hopes to further take advantage of this familiar market by building upon existing customer relationships in the area.

Developing new customers in new markets is challenging even for organisations with a tradition of internationalising to the UK. The rich history and similarities between the UK and Ireland's customs and practices reduced market entry risk and eased many Irish firms into the process and risks of internationalisation. As a result, experience of internationalising to the UK does not build a depth of firm capabilities for internationalising

to more remote, diverse and unfamiliar markets. It is not simply a question of firms switching their efforts from one location to another. A central risk of internationalisation is lack of familiarity with a target market. Creating a presence and attracting new customers in international markets demands gathering market and competitor intelligence. Firms will be forced to build a deep awareness and comprehensive assessment of the legal, political, economic, and social structures of targeted international markets. Networks must be developed, and for both the food sector and professional service firms particularly, there is the challenge of establishing reputations. The question is how small Irish firms with limited resources and internationalisation capabilities will build the skills and capabilities required to internationalise successfully. Firms must first identify and then establish trading relationships in sufficiently

attractive locations to compensate for the looming threat to business with the UK. The assumption that those firms with a tradition of exporting to the UK have developed the requisite portfolio of skills and capabilities for internationalisation to more distinctly different locations must be questioned. Building these requisite skills for internationalisation represents a further as yet largely unrecognised, Brexit challenge for Irish businesses.

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The Media Challenge

The impact of Brexit on media in Ireland and the UK was felt almost as soon as the referendum passed in June 2016. Having slightly recovered in 2014 after a long post-2008 downturn, legacy media advertising revenues plateaued again as large corporations in the UK and Ireland slashed their marketing budgets in anticipation of a “period of consumer uncertainty”. On the other hand the weakening of sterling, especially vis-à-vis the dollar proved a boon for the UK film industry, making the country a much cheaper location for footloose Hollywood production. (It would also make UK-based media firms tempting acquisition targets: the ongoing respective attempts of US-based Fox and Comcast to acquire Sky Television are at least partially informed by such currency fluctuations.)

But there are also a series of potential longer-term effects of Brexit on media in the UK, Ireland and the wider EU. The UK’s pre-eminent position as an audiovisual production centre within Europe owes something to its having an Anglophone status and an enviable cadre of internationally-respected technicians - but also its EU membership. In an increasingly straitened funding environment, access to the kind of “soft” money accessed via the [EU’s Creative Europe programme](#) (which the UK availed of to the tune of £57 million between 2014 and 2016, along the way supporting the distribution of 115 UK films across Europe), was a manifest draw for inward production. Furthermore, as required by EU Competition law and the European Commission’s 2013 Cinema Communication, film and television production subsidies from beyond the UK - such as the Irish Film Board and our Section 481 tax credit - are also automatically available to productions based in the UK. Freedom of movement has mattered too: international co-production is now the norm across European film industries, including that of the UK. This inevitably demands cross-border movement of personnel. The first season of Game of Thrones was shot on location in Northern Ireland, then post-produced in Dublin. As the prospect of a hard border looms, it’s not yet clear how post-Brexit constraints - changing border security measures, the introduction of work visas and possibly new personal taxation arrangements - will impact such free-ranging productions.

The decision of US-based television giants operating across Europe - Sky, Liberty Global etc - to locate their European headquarters in the UK also owed much to the European Commission’s long battle to create a single European broadcasting environment. Commencing with the passage of the first “Television Without Frontiers” directive in 1989 the European Commission espoused the “Country of Origin” principle whereby a broadcaster licenced to operate in one EU member state was automatically permitted to broadcast into the rest of the EU. Freed of the need to negotiate 28 different sets of regulatory hurdles, the UK became a hub for the pan-national broadcasters which consequently emerged: as of 2016, more than half the 2,200 broadcasters operating within the EU were licenced by Ofcom, the UK electronic media regulator. Brexit would remove this locational advantage in one fell swoop. This may redound to Ireland’s benefit: already a hub for digital tech companies - Apple, Facebook, Amazon etc - whose screen content production activities are increasingly converging with more established film and television companies. The explosion of independent audiovisual production since the 1990s makes Ireland an increasingly plausible alternative media hub for companies like Sky looking to retain access to a wider European market for their suite of channels. For the UK, their potential exclusion from the Country of Origin principle is particularly worrying, as television channels there are increasingly seeking to exploit online delivery mechanisms to make their content accessible beyond their local borders. In theory the Council of Europe’s 1989 [Convention on Transfrontier Television](#) might maintain UK broadcaster access to other CoE members but that Convention only applies to traditional linear broadcast modes and makes no mention of online content.

Finally, if a post-Brexit environment did encourage a migration of broadcasters across the Irish Sea, this might also see the myriad of currently UK-located opt-out channels fall under the regulatory purview of the Broadcasting Authority of Ireland for the first time. Typically found in the nether regions of your electronic programme guide, such channels cumulatively account for nearly a third of television viewership and associated advertising.

Yet another element of the Television Without Frontiers directive (and subsequent [Audiovisual Media Services Directives](#)) raises post-Brexit issues both for British programme-makers but also for commercial channels in Ireland. In a bid to create a protected internal market for European programme makers, the directives have long required European channels to set aside 51% or more of their schedules for European-produced material. This proved a boon for UK production: already associated with high-quality output, UK productions found a ready market in the rest of Europe as broadcasting was deregulated in the 1990s, especially in weaker production contexts such as Ireland where broadcasters lacked the resources to extensively invest in expensive genres like drama. However, post-Brexit the fact that British content will no longer count towards such quotas will complicate matters for broadcasters seeking to comply with the directive. This will certainly create issues for RTE given its reliance on popular soaps like the BBC's Eastenders but may be critical for TV3 whose primetime schedule is often exclusively constituted by UK imports - Coronation Street, Emmerdale, and the various "shiny floor shows" (X-Factor et al). Since 2006, TV3 has already moved towards greater levels of indigenous production (albeit from an initially very limited inhouse commissioning base). Will it have to move further in that direction to meet the requirements of the directive?

Lest we think that film and television might seem like trivial matters relative to the political and economic challenges discussed elsewhere, let us conclude by recalling that the Creative Industries now account for 14% of Gross Value Added (GVA) in the UK economy and that the sector there is growing at twice the rate of the economy as a whole. In 1993, at the time of a US-EU trade dispute over the audiovisual sector which threatened to derail the last round of the GATT negotiations, the French film producer Daniel Toscan du Plantier observed that having long been the side salad in world commerce, cinema had become "the beef". The UK cannot afford to treat the fate of that particular foodstuff lightly as it stumbles towards departure from the EU.

Roderick Flynn,
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The Education and Research Challenge

Yanis Varoufakis famously compared Brexit to the [Hotel California](#), in that you may check out, but you can never leave. From the outset, Britain has declared its intention to remain within the European research and innovation community. Indeed, amongst the priorities of Theresa May's '[Plan for Britain](#)' was an ambition to 'remain the best place for science and innovation' through 'close collaboration with our European partners'. [Pascal Lamy](#), too, described 'full and continued engagement' as a 'win-win' for both the UK and the EU, and such shared sentiments comforted commentators, including [Kurt Deketelaere](#), secretary of the League of European Research Universities, who concluded that, in the research and innovation space at least, 'Brexit will not happen'.

Two years on, that complacency appears misplaced, and debate has scarcely advanced from the ambiguity of the initial 'Brexit means Brexit'. In essence, of course, the education issue will only be clarified in the context of the overall resolution. Yet, for Higher Education Secretary, [Sam Gyimah](#), there remains 'no ambiguity' about Britain's desire to continue within the European Programmes, but 'not at any price'. The British Government's '[Framework for the UK-EU partnership; science and innovation](#)', reiterates May's ambition for a 'deep science partnership' but it, too, demands a 'suitable level of influence' in return for 'an appropriate financial contribution'. As in trade and services, then, Britain has rejected passive 'pay-to-play' participation. Despite Michel Barnier's conciliatory assurances on future research collaborations, delivered at [Dundalk](#), the European Commission appears determined to reduce Britain to 'third country' status in Horizon Europe, behind Turkey, Albania, and Israel who enjoy 'associate membership' of the current Horizon 2020. Britain would be relegated to a third division, along with Canada and South Korea, who are required to pay higher contributions, excluded from certain innovation programmes, and disqualified from the new [European Innovation Council](#). Critically, too, Britain would be explicitly prevented from receiving any 'net transfer from the EU budget'.

position is untenable and certainly not in Ireland's interest. Britain is an essential part of the European research ecosystem; its higher education sector is the 'collaborator of choice', and the excellence of British research is reflected in the disproportionate success it enjoys in Horizon 2020, receiving 15% of all available funds. In the Humanities and Social Sciences, too, British researchers received over 30% of the European Research Council awards in the period 2007-15. Yet while this is an indicator of research excellence, it also illustrates the exposure of British universities to a Brexit shock, as these transfers account for a quarter of the national research budgets in these disciplines. Moreover, the [British Academy](#) has emphasised the importance of ERC grants, and EU funding in general, as a 'pull factor' in the battle to attract talent, and fear of an exodus of the 50,000 EU academic staff working in British universities has placed immigration policy firmly on Sam Gyimah's agenda.

The uncertainty of Brexit, and the threatened exclusion of our closest partner from the European research community, has significant implications for the Irish higher education sector. [Niall Fitzgerald](#), chair of the Leverhulme Trust, characterised these as a 'catalyst rather than a catastrophe', but to date Ireland has failed to respond adequately to either the challenges or the opportunities presented by Britain's ambiguous future in EU research. Over 13,000 Irish students study in UK universities, including Northern Ireland, and the state does not have the absorptive capacity to educate them at home. 3,500 British students attend higher education institutes here, and Ireland is the 7th largest provider of academic staff to British universities. In research, too, there are currently in excess of 900 collaborative projects between Ireland and the UK funded by the EU's flagship Horizon 2020 programme. Reflecting on the priority of that Ireland-UK relationship, the president of the [Royal Irish Academy](#) (RIA) recently observed that, between 2012 and 2016, over 12,900 research papers were produced from collaborations between Irish and UK researchers; more than all the publications with France and Germany combined.

Dismissed as 'Scrooge-like' by [Thomas Jørgenson](#), senior policy coordinator at the EUA, this draconian

Education and research in Ireland will be greatly undermined if Britain is excluded from EU

programmes as the latest soundings from Brussels threaten. The Irish government must offer its support for the UK remaining within the [European Research Area](#). However, Brexit has potential to elevate the higher education sector in Ireland. As an English speaking country with an assured EU base and access to large-scale research funding, Ireland offers a unique and attractive proposition to EU and non-EU researchers and students alike. In this regard, it has a once off opportunity to become a world leading research centre. Regrettably, the state has been slow to recognise this opportunity or to apply an appropriately ambitious strategy, and it has failed, unlike the UK, to explicitly name Education and Research as a national priority in the Brexit debate. The Minister's [Action Plan for Education 2018](#) has incidental references to Brexit and one paragraph entitled '[Being Brexit Ready](#)', but it is largely focussed on the 'Skills-for-growth' agenda; to date we have not seen the promised 'strategy ... to attract world-leading researchers to Ireland' nor the creation of 'additional awards funded by the Research Council'. [Science Foundation Ireland](#) has offered a range of targeted proposals, including developing a support structure for joint-professorships between the UK and Ireland. Most recently, in May 2018, it launched an ambitious €100m 'post graduate training programme to meet industry skills needs', and we hope that this will be followed by more broadly based initiatives across the Higher Education sector. Brexit presents particular challenges to Northern Ireland, and 96% of respondents to the [RIA taskforce survey](#) believed it would have negative effects for the region. Sustained action is required to enhance cross-border collaboration and, in addition to the 'backstop' and other novelties, the Irish government should promote a special status 'education area' for the island of Ireland.

Ultimately, the impact of Brexit on higher education and research in Ireland will be determined by the Irish government's willingness to invest in the sector. Brexit initiatives cannot be applied in a vacuum and there is simply no chance of Ireland maximising the

opportunities within a grossly under-funded system of higher education. The [Brexit taskforce of the Royal Irish Academy](#) highlighted 'alarming signs of strain across the sector' including underfunding and declining student-staff ratios, which at 20:1 are considerably above the OECD average (14:1) and will be compounded by the substantial population growth which the Department of Education has projected to 2029. The ability to attract top-flight researchers is limited by structural challenges, just as the '[Shanowen Shakedown](#)' and USI-led demonstrations across Ireland in response to student-housing shortages, demonstrate the challenges in making Ireland a destination of choice for international students.

A decade of austerity has eroded the quality and standing of Irish education, as graphically illustrated by the continued decline of Irish Universities within the global rankings. Rhetoric and cosmetic initiatives will not compensate for a failure to invest in line with the recommendations of the [Cassells Report](#), or the Government's own '[Innovation 2020](#)' strategy. There are few aspects of Brexit that have a potential silver-lining for Ireland, but the higher education and research sector provides one such prospect. Political courage is required not just to leverage the opportunities of Brexit, but to put our house in order, and to provide the higher education system required to deliver national economic and social development and the Taoiseach's '[Republic of Opportunity](#)'.

Daire Keogh,
Professor of History and Deputy President, DCU





Conclusion

The DCU Brexit Institute organized in cooperation with the Irish Department of Foreign Affairs (DFA) a number of events outside of Ireland to raise awareness about Brexit and promote the debate on the future of Europe in several key European capitals. On 1 February 2018 the DCU Brexit Institute held an event with the Irish Embassy to Italy in **Rome** on **“Brexit and the Future of Europe: Irish and Italian Perspectives”** which was opened by Ambassador Colm O’Floinn, featured a keynote speech of Sandro Gozi (Minister of State for European Affairs of Italy) and a panel with Brigid Laffan (European University Institute), Michele Valensise (Villa Vigoni) and Federico Fabbrini (DCU), moderated by Leonardo Maisano (Il Sole 24 Ore). On 26 March 2018 the DCU Brexit Institute held an event with the Irish Embassy to the UK in **London** on **“Brexit and the Future EU-UK Relations”**, which was opened by Ambassador Adrian O’Neill, featured a keynote speech by Keir Starmer (UK Shadow Secretary of State for Exiting the EU) and a panel with Catherine Barnard (University of Cambridge), Henry Newman (Open Europe) and Federico Fabbrini (DCU), moderated by Fiona Mitchell (RTE). Finally, on 9 April 2018, the DCU Brexit Institute held an event with the Irish Permanent Representation to the EU in **Brussels** on **“One Year to Withdrawal”**, which was opened by Permanent Representative Declan Kelleher, featured a keynote speech by **Phil Hogan** (European Commissioner for Agriculture) and a panel with Emer Deane (DFA), Stefaan de Rynck (EU Commission Article 50 Task Force), and Federico Fabbrini (DCU), moderated by Mehreen Khan (Financial Times).

The decision of the United Kingdom (UK) to leave the European Union (EU) constitutes a momentous event: while for the first time in European history a member state withdraws from the EU, Brexit raises huge challenges for the UK constitutional settlement in Scotland and Northern Ireland, for the relations between the UK and Ireland, as well as for the future of the EU as such.

Since its creation – exactly a year after the Brexit referendum, on 23 June 2017 – the Brexit Institute of Dublin City University (DCU) has represented a unique platform to debate and document Brexit – and as Ireland’s only and Europe’s first center specifically focused on discussing this topic, the Brexit Institute has emerged as a leading voice in the international arena.

This booklet, which included contributions by academics from Schools and Faculties across DCU, is the latest output we have produced to provide expertise and insight on the Brexit debate. However, as the ‘facts and figures’ reported in the next pages highlight, the DCU Brexit Institute has delivered on its mission of providing expertise on Brexit through multiple avenues.

First, the DCU Brexit Institute has organized over a dozen high-level events, involving a balanced assortment of speakers from Ireland, Europe and the UK – and featuring keynote addresses by some of the most distinguished authorities in the field, including current and former Presidents and Commissioners, Ministers of Foreign Affairs, and Members of the EU, UK and Irish Parliaments.

Second, the DCU Brexit Institute has produced a continuing stream of scholarly output, with the publication of weekly blogs, monthly working papers – as well as a book and a policy report for the European Parliament – hence contributing to a focused, interdisciplinary analysis of the problems raised by Brexit, and bringing forward some innovative ideas on how to deal with the challenges ahead.

Third, the DCU Brexit Institute, which is proudly sponsored since its founding by **Arthur Cox solicitors**, has developed partnership with a number of public and private organizations – a full list of which is reported below – thus engaging in a detailed, sector by sector examination of the implications that Brexit poses for government, business and society at large.

Yet further work needs to be done. Brexit remains clouded with uncertainties – with critical issues, including the problem of the border between Ireland and Northern Ireland and the protection of the Belfast Good Friday Agreement, to be solved in the short run, and other challenges, including the framework of future EU-UK trade and security relations, still to be teased out for the long run.

In fact, beyond Brexit, major questions surround also the future of Europe at 27. While the euro-crisis, the migration crisis, and the worrying threats to the rule of law emerging in a number of EU member states have created deep cleavages in the EU, a broad debate is ongoing across Europe on how to design the future of the EU – including its budget and policies – after Brexit.

Yet, while Ireland's commitment toward European integration seems stronger than ever, challenges abound. Besides cracks in the transatlantic partnership, the specter of a global trade war and political instability, the rise of populist forces even in a founding EU member states like Italy have raised the prospect that other countries may follow the UK and exit the EU (or the Eurozone).

In this context, it is crucial to have a dedicated center like the DCU Brexit Institute – which is more than a think tank, due to its academic grounding,

but more than a standard academic department, due to its policy side – to continue tracking closely the developments in the Brexit talks, raising awareness on the issues at stake, and providing thought leadership on the future of Europe debates.

As the DCU Brexit Institute moves into its second year of existence, therefore, we will remain a valuable source of expertise for government, business and society at large. And in fact, we aim to expand our partnerships by engaging with a growing numbers of public and private institutions – providing a strong European perspective on the Brexit risks and opportunities ahead.

As such, the DCU Brexit Institute welcomes the possibility of enlarging its network and to support organizations preparing for the UK withdrawal from the EU – which is now only nine months away. While uncertainty remains the fil rouge of Brexit, there is one certainty: the DCU Brexit Institute will be there, as the authoritative center to explore it from a research and policy perspective.

Federico Fabbrini,
Director of DCU Brexit Institute



Facts and Figures



People 35

5 Staff

28 Affiliated Staff

2 Interns

The DCU Brexit Institute involves staff from the School of Law and Government, School of Business, School of Communication, School of History, School of Nursing & Human Sciences



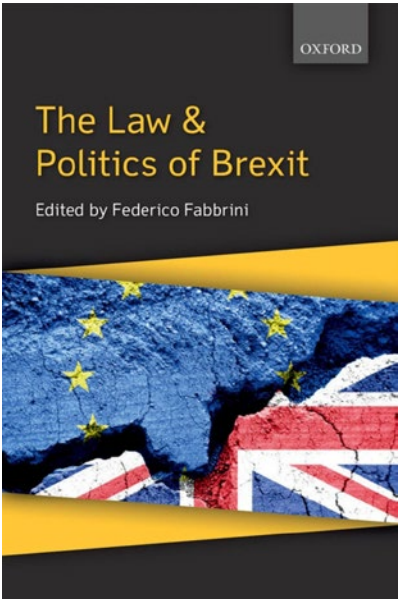
Publications 60

50 Blog Articles

1 Book

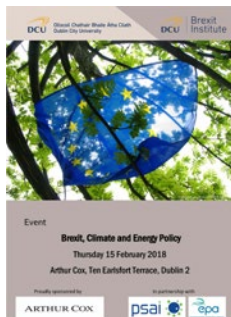
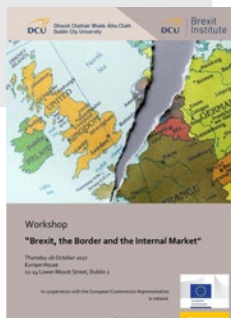
8 Working Papers

1 European Parliament Report





Events 13

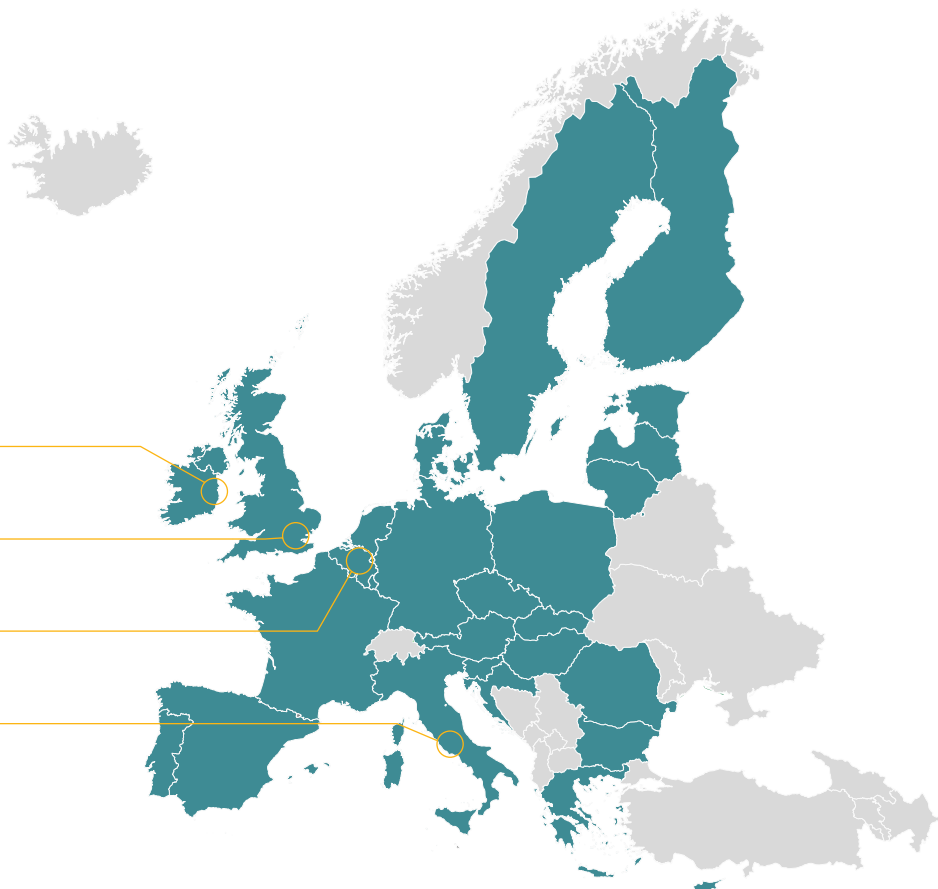


10 in Dublin

1 in London

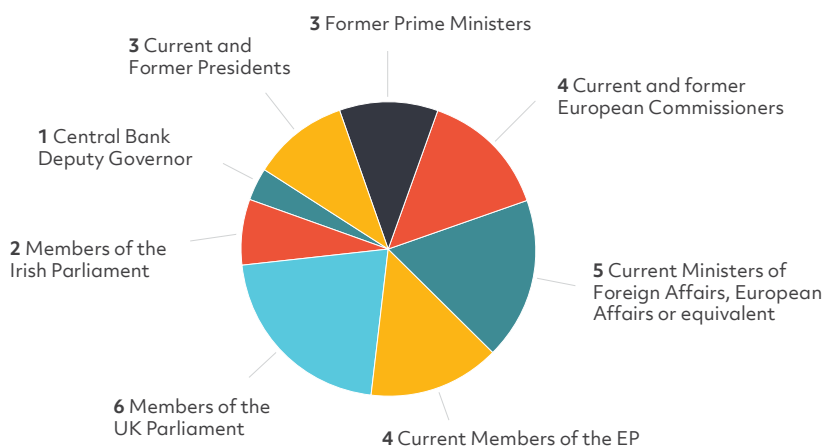
1 in Brussels

1 in Rome





Keynote Speakers 30



Nationalities of Keynote Speakers and Panelists

31	Irish
19	British
24	European
3	North American



Media Coverage

Weekly appearances on print/online/radio/TV



Irish Independent



THE IRISH TIMES

Los Angeles Times




The Guardian



The Telegraph

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