



Ollscoil Chathair
Bhaile Átha Cliath
Dublin City University

DCU Brexit Institute 4th Brexit Report

23 June 2021



5 Years Since the
Brexit Referendum
6 Months Since the
Trade and Cooperation
Agreement



This report was edited by the Director and the Team of the DCU Brexit Institute — Prof Federico Fabbrini, Ian Cooper, Katherine Martin and Matteo Bottero — and graphically designed by Garvan Doherty.

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Preface

Prof Daire Keogh
DCU President



The past academic year has been extraordinary in so many ways. Due to the pandemic, the University has had to reimagine and realign the way it works, pivoting to online Teaching and Learning, and adapting research to meet the unprecedented challenges.

The Brexit Institute, like the wider university, has successfully navigated this 'new normal', thanks to the spirit of innovation and dedication that is at the core of the DCU DNA. In fact, the Institute has exploited the new opportunities presented by the world of Zoom, to greatly expand its international network and include audiences which would have been unimaginable just twelve months ago.

In the past year, the Brexit Institute maintained an impressive track-record of one event per month, engaging with top level decision-makers at national and European level, and producing dozens of working papers, policy reports and books.

A particular highlight was the event to mark the publication by Prof. Federico Fabbrini of his monograph "Brexit & the Future of the European Union". We were honoured to be joined at the launch by Enrico Letta (former PM of Italy, and Dean of the School of International Affairs at Science Po) and Alex Stubb (former PM of Finland, and Director of the School of Transnational Governance at the EUI) who shared their insights on this subject and attracted a large and highly engaged international audience.

Alongside its research and policy output, the Brexit Institute successfully launched a Massive Open Online Course (MOOC) on "The European Union: from Crisis to Recovery" on the FutureLearn platform, which attracted thousands of students. The MOOC was one of the outputs of the EU-funded Jean Monnet Network BRIDGE. At a time when much of Europe was in lockdown, the course allowed a large audience of learners to pursue their study of European affairs online.

The MOOC also received funding from the Irish Department of Foreign Affairs and Trade under their Communicating Europe Initiative. This was in addition to funding the Brexit Institute received from its core sponsors, AIB, Grant Thornton and GSK Stockmann. As always, we are very grateful for their generous and essential support.

The DCU Brexit Institute is Ireland's only, and Europe's first, centre created to analyse the UK's withdrawal from the EU, and the future of Europe. It has made research and policy development in the realm of European Affairs an important part of DCU's activities. Post-Brexit, and post-pandemic, Europe will continue to face many significant challenges. For that reason the University is committed to supporting the Institute's important work, and to further strengthening DCU's international role in this dynamic space.

Introduction

Prof Federico Fabbrini,
Founding Director
DCU Brexit Institute



On Thursday 4 February 2021, the President of DCU, Prof Daire Keogh, in conjunction with the DCU Brexit Institute, hosted an event on the launch of Federico Fabbrini's new book entitled "Brexit and the Future of the EU" (Oxford University Press, 2020). The event was opened by Professor Daire Keogh (DCU President) and followed by the speeches of the former Prime Minister of Italy and Dean of the School of International Affairs at Science Po Enrico Letta and the former Prime Minister of Finland and Director of the School of Transnational Governance at the European University Institute Alex Stubb. The event was attended among others by the Former Taoiseach Bertie Ahern, and was moderated by Shona Murray (Euronews).

Five years ago – on 23 June 2016 – the people of the United Kingdom (UK) voted to leave the European Union (EU), putting in motion a tectonic shift which is still producing its effects today. Four years ago – on 23 June 2017 – Dublin City University (DCU) established the Brexit Institute, as a high level forum to analyze from a research and policy perspective the implications of the withdrawal of the UK and the prospects for the future of Europe.

In the past 12 months, the Brexit Institute has fulfilled its mission with remarkable intensity, including by successfully navigating the challenges posed by the global Covid-19 pandemic. In fact, developments occurring both in EU-UK relations, and in the future of Europe more generally, have provided a wealth of material to work on – and the Brexit Institute has not shied away from its responsibility to document and debate these milestones.

As the reader will know, the last year was a crucial one for Brexit. After the formal UK withdrawal from the EU on 31 January 2020, the parties negotiated a new agreement regulating their framework of new relations. Despite a profound difference of visions, which repeatedly seemed to lead towards a no deal at the end of the transition period of 31 December 2020, on Christmas' Eve 2020 the EU and the UK reached agreement on a new treaty.

The Trade and Cooperation Agreement (TCA), which entered provisionally into force on 1 January 2021, establishes a new free trade deal for goods between the EU and the UK, with the removal of customs tariffs and quotas – although not of customs formalities. Moreover, the TCA also sets up a framework for cooperation in justice and home affairs, as well as partnership in some specific policy areas, such as fisheries, energy and the fight against climate change.

Yet, the TCA – which was eventually ratified by the European Parliament at the end of April 2021, thus becoming fully operational from 1 May 2021 – is a thin deal, which does not cover for instance services, including financial services, defense and cooperation on education. As such, it is likely that new negotiations will be needed between the parties, and indeed the TCA foresees that supplemental agreements may be concluded in the future to fill these gaps.

Otherwise, the entry into force of the TCA also coincided with the full application of the Protocol on Ireland / Northern Ireland attached to the Withdrawal Agreement, which kicked in with the end of the transition period. In its first months, however, the Protocol immediately stirred political controversy in Northern Ireland, leading to ongoing frictions between the EU and the UK, and suggesting that relationships between the parties will remain tense in the near future.

Besides Brexit, the last year however has also been extremely intense for the EU more generally. In response to the pandemic, the EU made an unprecedented step forward in the process of integration. On the basis of proposals by the Commission, and by France and Germany, the European Council in July 2020 approved a massive €750bn Recovery Fund, designed to support the rebuilding of the EU economy beyond the pandemic, based on EU grants and loans to member states.

The Recovery Fund, which is known as “Next Generation EU”, marked a paradigm change in the functioning of the EU, as the Commission was for the first time in history allowed to raise significant resources from the financial markets issuing common debt on behalf of all member states. In fact, according to some observers, the Recovery Fund is a dividend of Brexit, as the UK would have likely opposed such a shift of taxing and spending power to the EU.

“The Brexit Institute has been extremely active in tracking developments with regard to both Brexit and the future of Europe.”

Otherwise, if the EU made a major step forward in integrating its economic policies in response to Covid-19, the pandemic posed significant challenges to the functioning of the EU in other areas, putting under pressure the Schengen free movement zone, and exposing the ever greater problem of rule of law backsliding. Moreover, the EU proved less efficient than the UK in rolling out vaccines in Q1 of 2021, revealing several persistent shortcomings in its governance system.

It is partially in response to those issues that eventually, on 10 March 2021 the EU institutions signed a Joint Declaration on the Conference on the Future of Europe, which was formally launched on 9 May 2021. This initiative, which is several years in the making, is designed as a participatory

process to reflect on the future of Europe. Yet, its outcome remains wide open, and it may potentially lead to much needed reforms of the EU constitutional settlement.

As this report highlights, the Brexit Institute has been extremely active in tracking developments both with regard to Brexit and with regard to the future of Europe, providing thought leadership on both. Indeed by leveraging its unique features as more than a think-tank, due to its academic grounding, and yet more than a standard academic department, due to its focus on engagement, the Brexit Institute has consolidated its role as the go-to place on Brexit and EU affairs.



Enrico Letta speaking at the book launch

As in the previous three years, the Brexit Institute has organized a large amount of high-level conferences, seminars and book launches – maintaining the impressive pace of one event per month. Topics analyzed ranged broadly from the US presidential elections to “Next Generation EU”, from the Brexit transition period to the new TCA – and featured as ever an impressive set of keynote speakers, including Commissioners, EP Presidents and Finance and EU Affairs Ministers.

“The Brexit Institute MOOC provided an extraordinary tool to communicate the EU at a time when Covid-19-related restrictions prevented in-person gatherings.”

Moreover, the Brexit Institute also carried forward its important research and policy work with publications, including weekly blogs, monthly working papers, and several books. In this respect, I am pleased to underline in particular the book series on “The Law & Politics of Brexit” which I edit at Oxford University Press, and which now includes a Volume III “The New Framework of EU-UK Relations”, publishing in 2021 with a Preface by EP President David Maria Sassoli.

At the same time, in the past year the Brexit Institute has also expanded its operation in the field of education. In particular, in the framework of the Jean Monnet Network BRIDGE, and in collaboration with its partners therein, the Brexit Institute produced a Massive Open Online Course (MOOC) on “The EU: From Crisis to Recovery”. This cutting edge, visually attractive course, was made available open access on FutureLearn and attracted thousands of learners.

The Brexit Institute MOOC provided an extraordinary tool to communicate the EU at a time when Covid-19-related restrictions prevented in-person gathering – and in fact this project also received support from the Irish Department of Foreign Affairs (DFA). Otherwise, the success of this initiative led to the Brexit Institute taking a bigger role in the DCU Master in European Law and Policy (MELP), which is a flagship program running online next year with a new Brexit focus.

The successes of the Brexit Institute on research, policy, and educational activities were also matched by important results in terms of international networking, engagement and funding. Besides the already mentioned support from the DFA, the Brexit Institute also won funding under the EU Erasmus+ program for a Jean Monnet Project called RELAY, which adds to the Jean Monnet Network called BRIDGE we have led since summer 2019.

In fact – reflecting also the ever-growing international standing and reputation of the Brexit Institute – in the past 12 months we organized events held (virtually) at, and in cooperation with, the European Central Bank (Legal Service) and the European Parliament (Research Service): both initiatives, planned in the framework of the Jean Monnet Network BRIDGE, provided excellent opportunities for engagement at the highest level, and for the dissemination of our work.

Yet, the Brexit Institute would not be able to carry out its activities if it weren't for the generous support of our core sponsors - AIB, Grant Thornton and GSK Stockmann – which I want to sincerely thank for their trust. In fact, while GSK Stockman joined as a new Brexit Institute core sponsor in September 2020, in April 2021 AIB announced that it would renew its sponsorship of the Brexit Institute until 2024, hence pushing our operation forward for 3 more years.

The annual report that you have in your hands seeks to provide a short and accessible overview of all the achievements of the Brexit Institute which occurred since last summer. Just as in the prior 3

reports published by the Brexit Institute in 2018, 2019 and 2020, this booklet, which is prefaced by DCU President Daire Keogh, includes original contributions designed also to showcase the wealth of expertise of Brexit Institute staff and affiliates, as well as of several of our closest partners!

In terms of structure, this report is divided in two parts. Specifically, part I focuses on Brexit and EU-UK relations, while part II is mostly concerned with EU developments and the future of Europe. Each contribution is set to correspond to an event which the Brexit Institute organized in the past 12 months but given the thematic partition, the report does not follow a strict chronological order: rather, the list of events is reported in the Facts and Figures at the end of the report.

Part I is opened by a contribution by Giovanni Zaccaroni, which considers the dynamics of disintegration in Europe. This is followed by a piece by Ken McDonagh on the impact of the US presidential elections on Brexit, which is echoed in Gezim Visoka's comment on EU and UK foreign policy after Brexit. Eileen Connolly and John Doyle examine the end of the Brexit transition period, and its consequences for Northern Ireland, while Matteo Bottero sheds light on the TCA.

Part II features contributions by Stefania Baroncelli on the euro-crisis, by Renata Uitz on migration and the rule of law crisis, and by Helle Krunke on populism. Moreover, Christine Neuhold and Fèlix Ruiz Cabré discuss the changes in the European architecture of economic governance resulting from "Next Generation EU", which connects also to the topic of Ian Cooper's contribution on institutional change in Europe and differentiated governance.

As the chapters of this report reveal, much is still going on both in Brexit and the future of Europe. At the same time, as the facts and figures annexed at the end of this report underline, the Brexit Institute has established itself as an indispensable centre to shed light on those processes. So I expect the report will provide for good reading. And I hope that you will continue to follow the work of the Brexit Institute and cooperate with us in the future!

Prof Federico Fabbrini is Full Professor of EU Law at the School of Law and Government of DCU, and the Founding Director of the Brexit Institute.





Part I: Brexit

Legal Disintegration? Brexit, the Judgment of the German Constitutional Court in Weiss and the Future of Europe

by Giovanni Zaccaroni



On Thursday 17th September 2020, the DCU Brexit Institute hosted an event on “Legal Disintegration? Brexit, the Judgment of the German Constitutional Court in Weiss and the Future of Europe”. The event featured opening remarks by Lord Thomas (Member of the House of Lords, and former Lord Chief Justice of England and Wales) followed by a panel discussion between Amelie Champsaur (Partner at Cleary Gottlieb Paris), Mark Dawson (Professor of Law at Hertie School of Governance Berlin), Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute) and Daniel Kelemen (Professor of Political Science at Rutgers University, USA), chaired by Mary Hallissey (Law Society).

A lot can be said on the endless saga of the seemingly troubled relationship between the German Constitutional Court (GCC) and the process of EU legal and political integration. 2020 was a turning point not only for Brexit, but also for the relationship between the European Court of Justice (ECJ) and Karlsruhe, almost 50 years since the Solange I case that, in 1974, laid the foundation for the close scrutiny operated by the GCC over the process of EU integration.

The judgment of the GCC follows a series of decisions of the ECJ on the EU and national powers and competences in the Economic and Monetary Union (EMU), that started in 2013 with the Pringle judgment on the compatibility of the European Stability Mechanism (ESM) with the Treaty framework and continued in 2015 with the Gauweiler judgment on the Outright Monetary Transactions (OMT) programme of the European Central Bank, and in 2018 with the Weiss judgment on the Public Sector Purchase Programme (PSPP) programme. The difference, as many of us would have already noticed, is that the previous litigation was born from the need to react to the Euro crisis, while the Weiss judgment of the GCC was released in the midst of the pandemic crisis that crossed Europe in 2020 and continued into 2021.

The judgement in the German Constitutional Court on the PSPP of the ECB

The Public Sector Purchase Programme (PSPP) of the European Central Bank is a special programme of the purchase of national bonds that, together with other programmes, was conceived by the ECB as an overall answer to the economic crisis that afflicted the Eurozone starting in 2009. Such a broader asset purchase programme is composed – besides the PSPP – of the Covered Bonds Purchase Programme (CBPP3), the Asset Backed Securities Purchase Programme (ABSPP) and the Corporate Sector Purchase Programme (CSPP). In 2018, following a preliminary ruling of the very same German Constitutional Court, the European Court of Justice ruled in favour of the legitimacy of the PSPP programme and its compatibility with the EU Treaty framework.

However, the ECJ judgment was applied and interpreted by the referring judge (the GCC) as a confirmation of the possibility that the PSPP programme was adopted without the necessary power

and competences at EU level to back a similar extensive programme of purchase of public sector bonds. On 5 May 2020, the GCC made the unprecedented declaration that the judgment of the ECJ in Weiss had failed to assess with a sufficient degree of detail the proportionality of the PSPP, and that therefore the compatibility of the programme with the EU Treaty framework needed to be reassessed. The GCC ordered that, “Based on their responsibility with regard to European integration [...] the Federal Government and the Bundestag are required to take steps seeking to ensure that the European Central Bank conducts a proportionality assessment. They must clearly communicate their legal view to the European Central Bank or take other steps to ensure that conformity with the Treaties is restored”. In this way, the GCC did not directly ask the ECJ to comply with a supposedly higher proportionality scrutiny, but instead, committed the ECB to provide an answer to the German executive and legislator. This decision was unprecedented. It also failed to consider that the EU institutions are, by virtue of the EU Treaties, solely subject to the jurisdiction of the Court of Justice of the EU, the only court that can require the ECB to take action.

“There is an ongoing challenge to the role that the ECJ has assumed as the final authority on the compatibility of national measures with European law.”

The ECB's Compliance with the Proportionality Scrutiny

To come to terms with the GCC decision, the Governing Council of the ECB was required, within a period of three months, ‘to present its deliberations regarding the proportionality of the programme.’ The ECB eventually provided the German government and Parliament with the required answer on the proportionality of the PSPP. However, as Dolores Utrilla noted, instead of adopting new acts, the compliance with the proportionality scrutiny was conducted through the release of several meeting minutes indicating that an effective debate amongst ECB members on the economic effects of the asset purchases had taken place. Such a debate was indeed revealing of a proportionality based approach to the decision-making process in the asset purchase. Eventually, the German Finance Minister as well as the Bundestag (the German Parliament) agreed that the proportionality due-diligence conducted by the ECB met the requirements outlined in the GCC ruling. Therefore, the Bundesbank was allowed to continue its participation in the PSPP.

The litigation before the German Constitutional Court on the EU Post-Pandemic Response

This was not however the last chapter of the saga on the relationship between the ECJ and the GCC regarding the latter's close scrutiny over the process of EU integration. Another legal challenge was put before the GCC against the economic measures to fight the pandemic presented by the European Commission in the summer of 2020 and finally



agreed by the Council and the Parliament towards the end of 2020, that is usually known with the name of 'Recovery and Resilience Facility'. The court application was coupled with a request for interim measures to suspend the ratification by the German Government of the Own-Resources decision until the case in front of the GCC was decided. Although we are still waiting for the final decision, which will most likely come in late 2021 or early 2022, the GCC has already dismissed the request for interim measures, allowing the German government to ratify the Own-Resources decision.

Brexit, the Future of Europe and the Relationship between EU and national Constitutional Courts

The issue of the relationship between the ECJ and national courts remains open to discussion. There is an ongoing challenge, more or less subtle depending on the specific style and legal tradition of the constitutional jurisdiction, to the role that the ECJ has assumed as the final authority on the compatibility of national measures with European law. The complexity and abundance of EU legal rules both written (legislation) and unwritten (i.e. general principles) has amplified the possibility that the rulings of EU Courts could affect not only ordinary national legislation but national constitutions, as the Italian Taricco saga showed. This has prompted national constitutional courts to reaffirm the importance and relevance of their own jurisdictions, to the point of starting to erode the authority and legitimacy of the ECJ as the highest court of the bloc. This battle can go on indefinitely, until a new balance is found between the EU and the national constitutional courts. Or it could perhaps lead both parties to understand that they eventually belong to the same legal space, and that the threat posed by one to the other affects the stability of the whole legal and political construction. So soon after the departure of the United Kingdom, legal disintegration remains a genuine threat to the integrity of the EU.

Dr Giovanni Zaccaroni is Lecturer in European and Comparative Law, University of Malta and was previously a Post-Doc researcher at the Brexit Institute.



Brexit, the US Presidential Elections and the Future of Transatlantic Relations

by Kenneth Mc Donagh



On Thursday 15 October 2020, the DCU Brexit Institute hosted an online event on “Brexit, the US Presidential Elections and the Future of Transatlantic Relations,” with the sponsorship of Eversheds Sutherland. The event took place just days before the fateful US Presidential Elections, and at a critical time in an unprecedented presidential campaign shaped by the Covid-19 pandemic. The event featured Nicholas Burns (Professor of Diplomacy and International Relations at the Harvard Kennedy School of Government and former US Under Secretary of State for Political Affairs) as a keynote speaker as well as a panel chaired by Suzanne Lynch (US correspondent of the Irish Times) and including Alan Brady (EVP & Head of Syndicated & International Finance – US Branch Manager of AIB at New York), Deborah Hutton (Partner & Head of Asset Management & Regulatory team in Eversheds Sutherland) and Kenneth McDonagh (Associate Professor of International Relations and US Politics at DCU).

As the night of November 3rd 2020 drew to a close, an audible sigh of relief emerged from EU capitals as it became clear that Joseph R Biden would be the 46th President of the United States. The attempts to overturn the result and the scenes on January 6th seem in hindsight more Walworth Farce than Munich Putsch. However, we should not be in any doubt that the core pillars of transatlantic cooperation were severely tested by the Trump administration, and they remain precarious. This outcome was not a foregone conclusion, because an even vaguely competent response to the Coronavirus pandemic would likely have secured a second Trump term. The questions remaining for the EU are, what does the future relationship look like and what does it mean to be a multilateral actor in an increasingly unilateral world?

The first 100 days of the Biden administration clearly indicated a shift in tone and character in the US disposition to the world. The new President quickly returned the US to the Paris Agreement on Climate Change and the World Health Organization, and indicated a return to the negotiating table to bring the Iran nuclear deal back to life – crucially identifying the EU as the mediator and enabler of this mission. But the Biden administration has also continued elements of the Trump administration’s approach: it is hard to describe the policy of blocking vaccine exports as anything other than America First, and he initially did not increase the cap on refugees from the historic lows set by Trump. Similarly, the decision to withdraw from Afghanistan highlights President Biden’s scepticism about the role of the United States as the world’s policeman. But isolationism is not the correct term for Biden’s foreign policy; for example, the new administration has been more directly critical of China than his predecessor and seems more likely to edge towards confrontation. On Russia, there have been mixed signals and muted protests over Russia’s military build-up on the border with Ukraine and treatment of Alexei Navalny as a political prisoner.

But what should concern Europe is that while the US is returning as a partner there is an increasing number of issues where either interests or priorities differ. The nature of transatlantic relations has been changing since the end of the Cold War, and the Trump administration in many ways simply removed the veneer of civility that had surrounded the breakup to date. The EU did not stand still in 2016 as first the UK and then the US succumbed to populist waves and attempted to withdraw from the multilateral order of the 21st century. In the area of security and defence, new initiatives took shape from the EU Global Strategy (2016) to the launch of PESCO. More recently, the EU has added an Indo-Pacific strategy to its foreign

policy positioning. In light of a more globally ambitious EU, the question is, what parts of the transatlantic partnership should be rebuilt, what parts can be rebuilt and what parts can we not afford to allow to fail?

Complicating this picture is Brexit. Although the European Parliament has now ratified the Trade and Cooperation Agreement and Britain has reinstated the diplomatic status of the EU Ambassador to the UK, the relationship across the Channel and the Irish sea remains tense. From a US perspective, they have lost a bridge and translator to Brussels. For Brussels, a large and capable partner, the UK, has become remote and unpredictable.

“With Brexit, the US has lost a bridge and translator to Brussels. For Brussels, a large and capable partner, the UK, has become remote and unpredictable.”

There are three areas where cooperation and engagement remain imperative. With Russia probing the boundaries of the Eastern Neighbourhood, the role of NATO in European Security remains paramount. Steps by the EU to develop an independent capability will take time to deliver and are unlikely to replicate the capability and strength of NATO. For NATO and non-NATO member state alike, any EU capability will be refracted through its interoperability with NATO.

The Biden administration is pushing for a global corporate tax rate and an end to tax shelters, in a move that dovetails with one side of the debate on this issue within the EU. For a country like Ireland, the writing is on the wall and though Biden’s Irish roots may help us in other policy areas, planning for a common corporate tax base needs to be included in our FDI strategy from now on.

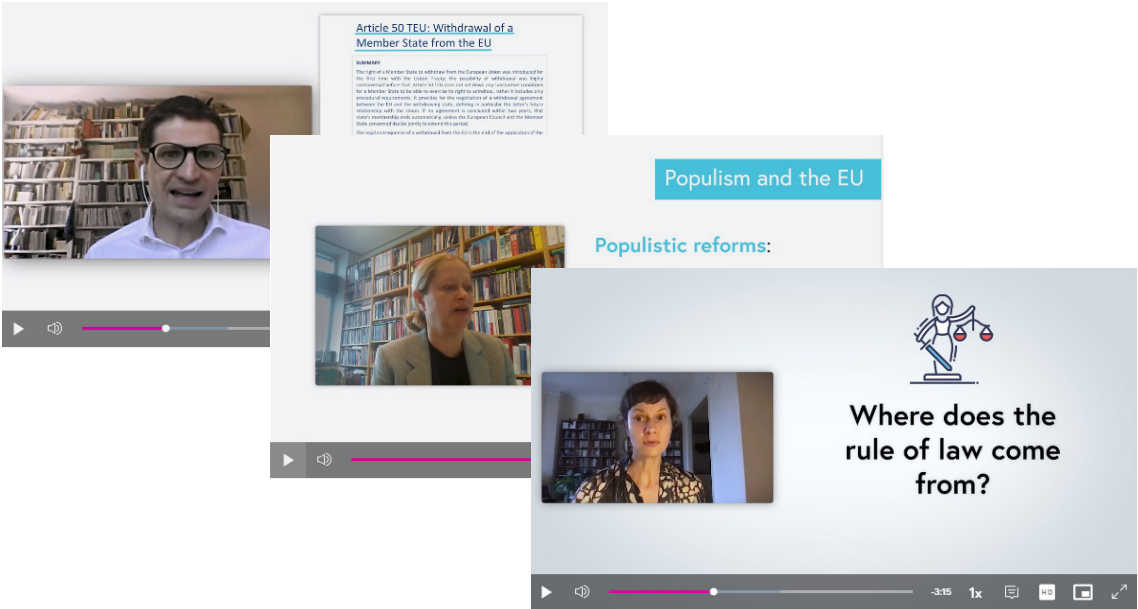
On Climate Change, the return of the US to the Paris Agreement should not be grounds for complacency. If anything the Trump inter-regnum only copper-fastens the need to move towards more ambitious and more binding targets if we are to mitigate the worst effects of a rapidly warming world.

The future of the Trans-Atlantic partnership will carry echoes of its past but it will be less monolithic and more open to different configurations of cooperation where interests and capabilities overlap. The EU has coined the term ‘Variable Geometry Multilateralism’ to describe how it will engage with different



partners in different issue areas. An alternative way of looking at this is 'Plug & Play' partnership. The challenge for the EU is developing the institutional capacity and decision-making structures that allow it the adaptability and flexibility to engage in a more dynamic world.

Dr Kenneth McDonagh is Associate Professor of International Relations at the School of Law and Government at Dublin City University, and will be the new Head of School of Law & Government.



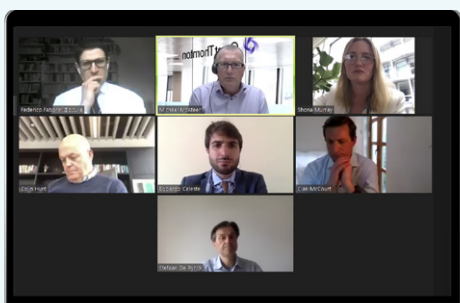
Images of the DCU Brexit Institute's MOOC

Beyond the Transition Period: Brexit and the Conference on the Future of Europe

by Eileen Connolly and John Doyle



On Thursday 26th November 2020, the DCU Brexit Institute hosted an event on “Beyond the Transition Period: Brexit and the Conference on the Future of Europe”. The event was opened by Professor Daire Keogh (DCU President) and followed by an opening speech by the Irish Minister of State for EU Affairs Thomas Byrne. The event continued with a round-table between Professor Vernon Bogdanor (Kings’ College London), Professor John Doyle (Dean of DCU Faculty of Humanities and Social Sciences), Professor Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute) and Louise Kelly (Partner of Grant Thornton Belfast), moderated by Shona Murray (Euronews).



The Protocol on Ireland/Northern Ireland attached to the Withdrawal Agreement (WA) settled the contentious issue of the trade border between the European Union (EU) and the United Kingdom (UK), paving the way for the finalisation of the Trade and Cooperation Agreement (TCA). That a trade border was necessary to protect the integrity of the Single Market was accepted by both sides and the purpose of the Protocol was to avoid the imposition of a hard border on the island of Ireland, which the Irish government and others had effectively argued would undermine the provisions of the 1998 Belfast Good Friday Peace Agreement. The protocol remains a problematic political issue on the island of Ireland and therefore also for the UK government, as the location of the trade border between Ireland and the UK is at the heart of the deep political divisions in Northern Ireland (NI). With the inclusion of the Protocol into the WA, these political divisions are now a part of the permanent institutional relationship between the EU and the UK, and as the framework of this new EU-UK relationship still requires detailed negotiated in many areas, the Protocol will be an ongoing irritant in these negotiations.

The NI Protocol is not an historic episode that has been resolved; it is an integral part of the EU-UK relationship, and the agreement to have the customs and regulatory border in the Irish Sea (between Britain and NI) can only be replaced by a new EU-UK agreement. However, given the political sensitivities on the issue of the ‘Sea Border’, its application will inevitably give rise to on-going disputes, which unionists in NI will seek to politicise. Unionist opposition to the sea border will continue for the foreseeable future as the deep divisions in Northern Ireland on its constitutional status have intensified post Brexit and will remain a source of friction in the EU-UK relationship. The politically problematic nature of the NI Protocol means that its implementation will go beyond the regulation of trade.

Brexit broke the fragile political balance that was put in place by the Belfast Good Friday

Agreement, and while the Protocol preserves the integrity of that Agreement, the debate on Brexit and the process of the negotiation of the TCA have both deepened and shifted political cleavages in Northern Ireland.

Politically the island of Ireland is a different place in 2021 compared to 2016, prior to the Brexit referendum. Constitutional change through a possible referendum on Irish unity is now a significant political demand in a way it was not in 2015.

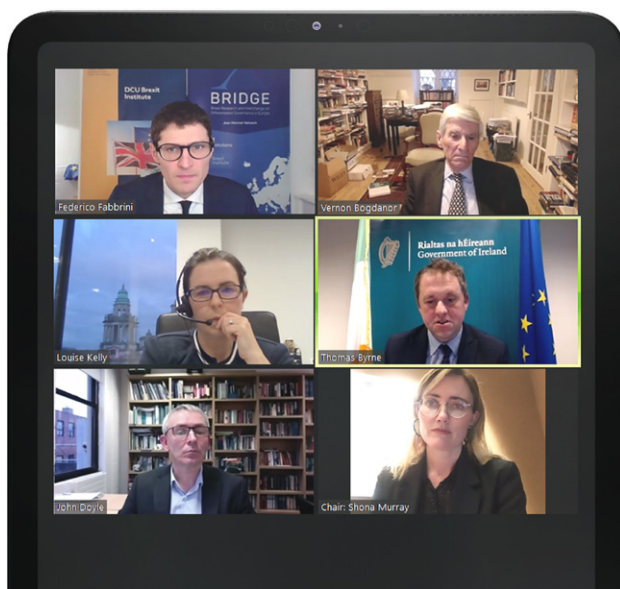
This much-increased support for a referendum on a united Ireland includes those who see it as a way for NI to re-join the EU. The UK government chose the option of the Irish Sea Border to avoid a 'no deal' Brexit, while prioritising Great Britain leaving the single market and customs union, given the EU's refusal to sign a deal that compromised the Belfast Good Friday Agreement by placing a land border on the island of Ireland. Unionists assert the primacy of the link with the UK, and from this perspective their preference was for a land border on the island. As a result, they view the Protocol both as a defeat and a threat that Northern Ireland will inevitably slide towards a united Ireland, with political integration following economic integration. As a new EU-UK relationship emerges, the UK will have to deal with the impact of its policy choices on the volatile politics of Northern Ireland and its internal constitutional conflicts. The intersection between the intensified political debate on the future of the island of Ireland, and the trenchant opposition to the protocol from the unionist minority in NI adds an element of unpredictable volatility to the UK's future relationship with the EU.

“Politically the island of Ireland is a different place in 2021 compared to 2016, prior to the Brexit referendum.”

How the UK Government implements the NI Protocol will be a key determinant of its future relationship with the EU, including the ongoing negotiation of many issues remaining to be resolved in that relationship. From the beginning, implementation of the Protocol has been problematic, culminating with the UK Government's unilateral extension of the transitional arrangements in response to political lobbying against the protocol by unionist politicians and violent street protests by loyalist youths in NI. Notwithstanding these very tense beginnings, given it took almost four years to negotiate the Brexit deal, and that the negotiation of the Protocol was one of the most difficult aspects of that process taking a considerable proportion of the allocated time, future major revisions of the Protocol appear to be unlikely. Similarly, the cost of a unilateral UK withdrawal from the Protocol to the WA will be the collapse of the entire TCA. However, the UK is also aware that there are costs for the EU in abandoning the TCA and will push negotiations on the implementation of the Protocol to the limits of the agreement.

Prof Eileen Connolly is Professor of International Politics at Dublin City University.

Prof John Doyle is Full Professor of International Conflict Resolution at Dublin City University.



The Framework of New EU-UK Relations

by Matteo Bottero



On 4-5 March 2021, the DCU Brexit Institute hosted an event which constituted the book workshop anticipating the publication of Federico Fabbrini (ed), **The Law & Politics of Brexit. Volume 3. The Framework of Future EU-UK Relations** (forthcoming with Oxford University Press). The conference featured numerous renowned scholars who were also authors of chapters in the forthcoming book, analysing the post-Brexit EU-UK relationship from different perspectives. The conference concluded with a final High-Level Debate, chaired by Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute), between Sir Ivan Rogers (former UK Permanent Representative to the EU) and Ambassador Tom Hanney (Ireland Permanent Representative to the EU).

At the end of the transition period set by the Withdrawal Agreement (WA) on 1 January 2021, the United Kingdom lost all the rights and obligations it had as an EU Member State. The same day, the EU-UK Trade and Cooperation Agreement (TCA) started its provisional application and conferred new rights and obligations on both the EU and the UK, which are now interfacing as sovereign actors under international law. The compromise found with the TCA, which was formally ratified by the European Parliament on 28 April 2021, regulates EU-UK Relations by providing concrete responses in different economic areas, but it is not capable of – nor specifically designed to – addressing the whole series of implications related to Brexit.

The UK had traditionally been one of the strongest supporters of the EU single market, acknowledging the economic benefits resulting from the free movement of persons, services, goods and capital across the Union. However, the TCA envisages arrangements primarily with regard to trade in goods, and even those rules appear rather unprofitable and peculiar, especially with regard to the Northern Ireland Protocol. Following the UK exit from the EU Single Market and Customs Union, and despite the creation of a free trade area with no tariffs or quotas on products, an array of trade barriers entailing customs controls and formalities are now in place for all businesses operating across the EU-UK border. The resulting amount of paperwork and additional costs, as well as uncertainty, has already caused economic damage to certain sectors, especially those dealing with food and drink exports.

The only exception concerns trade in goods between the EU and Northern Ireland, which is regulated by the Protocol on Ireland and Northern Ireland included in the WA. By virtue of this Protocol, Northern Ireland remains in the EU's Single Market for goods, since no hard border is established between Ireland and Northern Ireland in full respect of the Good Friday (Belfast) Agreement, and EU customs duties apply to products imported from any third country, including the UK, unless there is no risk that those goods will move to the EU. The singular position of Northern Ireland caused already some frictions on 3 March 2021, when the UK Government unilaterally decided to postpone the full implementation of the NI Protocol with respect to the movement of agri-food products from the UK to Northern Ireland. In response, the European Commission initiated an infringement procedure before

the Court of Justice of the European Union (CJEU) against the UK, for violation of the NI Protocol and of the good faith obligation under the WA.

Given the limited scope of the TCA, since 1 January 2021 the EU principles of free movement of persons, free provision of services and freedom of establishment no longer apply to the UK. Although the negative effects of Brexit on the mobility of persons have been masked by the current COVID-19 crisis, the existing rules allow mobility for certain privileged categories only, such as students, researchers, volunteers, highly skilled workers, and seasonal workers who are covered by the EU's directives on third-country nationals or by specific national legislation.

“An array of trade barriers entailing customs controls and formalities are now in place for all businesses operating across the EU-UK border.”

The implications of Brexit for the services sector are equally controversial. Being deprived of their right to provide services across the EU, UK service suppliers are now required to establish themselves in an EU Member State and to fully abide by the law of the host country, instead of benefitting from the more favourable 'country-of-origin' principle applicable within the EU internal market. In the absence of specific provisions in the TCA, the UK financial service sector is expected to suffer major losses and the EU will presumably be called to play a more central role in defining relevant legislation and policies.

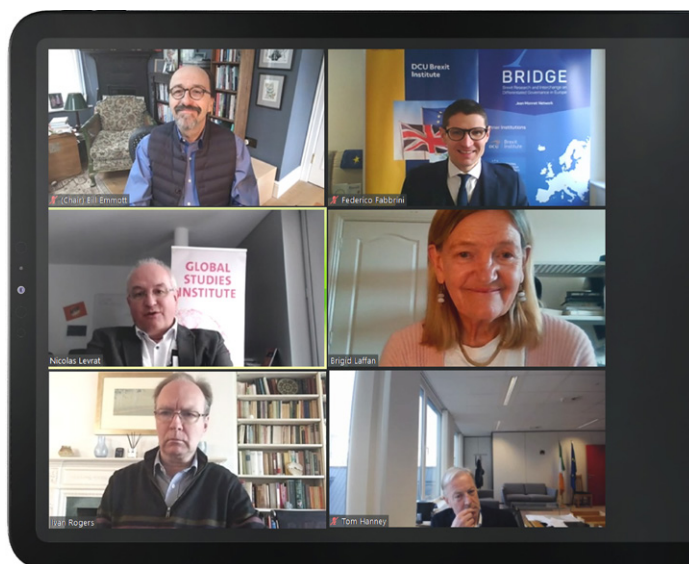
With a view to the future, the TCA leaves open the possibility of EU-UK cooperation in different areas, including arrangements for the mutual recognition of professional qualifications, the development of further customs arrangements, and closer collaboration on health security, cybersecurity and information security. Similarly, the fight against climate change is a part of the TCA that will certainly require concrete actions besides the agreement on common environmental principles and the commitment to carbon neutrality by 2050. Yet, given that

the UK is no longer subject to the CJEU's jurisdiction, the practical implementation of those commitments remains uncertain.

In the final analysis, it is notable that Brexit will inevitably have far-reaching implications in terms of EU governance. The departure of a strong supporter of Single Market liberalisation and the major representative of the non-Eurozone EU Member States will likely alter the pre-existing political balance in the EU institutions. More importantly, in light of the UK's frequent recalcitrance, when it was still a member state, in the EU decision-making in the Council of the European Union with respect to certain policy areas, such as budget and foreign and security policy, the advent of Brexit will possibly clear the way for a smoother European integration process.

Dr Matteo Bottero is a Postdoctoral Researcher at the DCU Brexit Institute.

DCU Brexit Institute





Dr. Volker Baas

"The Framework of New EU-UK Relations"

The Conference "The Framework of New EU-UK Relations" featured four academic panels. Panel 1, entitled "The Process & Context" and chaired by Derek Hand (Dean of the DCU Faculty of Humanities and Social Sciences), featured Michael Cox (London School of Economics), Dagmar Schiek (University College Cork), John Doyle & Eileen Connolly (Dublin City University). Panel 2, entitled "Economic Relations" and chaired by Iain McMenamin (Head of DCU School of Law & Government), Niamh Moloney (LSE), Catherine Barnard and Emilija Leinarte (University of Cambridge) and Paola Mariani and Giorgio Sacerdoti (Bocconi University). Panel 3, entitled "Security Relations" and chaired by Paddy Smyth (formerly Irish Times), featured Ben Tonra (University College Dublin) and Edoardo Celeste (Dublin City University). Panel 4, entitled "The Prospects" and chaired by Bill Emmott (formerly the Economist), featured Nicolas Levrat (University of Geneva), Brigid Laffan (European University Institute), and Federico Fabbrini (DCU Brexit Institute). The event concluded with a **Final High-Level Debate** chaired by Federico Fabbrini (DCU Brexit Institute) and featuring Sir Ivan Rogers (former UK Perm Rep to the EU) and Amb. Tom Hanney (Ireland Perm Rep to the EU).

Brexit & European Foreign Policy

by Gözim Visoka



On Thursday 6th May 2021, the DCU Brexit Institute hosted a webinar entitled “Brexit and European Foreign Policy”. The event, opened by Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute) and chaired by Steven Erlanger (New York Times), featured the participation of Marta Dassù (Former Deputy Minister of Foreign Affairs of Italy and NATO Wise-woman), Kim Darroch (Former UK Ambassador to the US), Erik Jones (Professor of European Studies and International Political Economy, Johns Hopkins University), Gözim Visoka (Associate Professor of Peace and Conflict Studies, DCU), and Javier Solana (Former EU High Representative for Foreign and Security Policy).

One key component of European foreign policy is the EU's enlargement policy. This has been one of the central pillars in managing the EU's relations with surrounding neighbours, and a powerful stimulus for extending democratic and economic reforms in countries who currently aspire to join the EU or have a potential perspective in the future. For over a decade, the EU's enlargement policy in the Western Balkans, and its eastern and southern neighbourhood policies have played a crucial role in reconstructing states and societies shattered by violent conflicts, regime change, and underdevelopment. As the 2014 Enlargement Strategy states: “The EU's enlargement policy contributes to mutual benefits of peace, security and prosperity in Europe. It reinforces the EU's political and economic strength and has a powerful transformative effect on the countries concerned.” However, the EU's enlargement policy has been an experiment in the making, which has constantly changed the criteria and conditions that aspiring states have had to meet in order to join the EU. As much as it has enshrined normative and policy consistency, the enlargement policy has also served as a geopolitical instrument to advance the interests of the EU and its member states.

While the prospects for the enlargement of the EU in the Western Balkans grew worse with the arrival of Juncker's Commission in 2014 – mostly driven by the refugee crisis and the rise of the far right across Europe – Brexit has served as a catalyst and to a certain extent an excuse to stall the EU's enlargement process for the foreseeable future. Notably, the EU's intense negotiations with the UK on the withdrawal process have drawn the attention of the EU away from the Western Balkans, which has weakened its transformative power and undermined the credibility of its enlargement policy.



“The EU enlargement policy has served as a geopolitical instrument to advance the interests of the EU and its member states.”

For decades, the United Kingdom was a strong supporter of Western Balkans' accession to the EU and has served as vital balancer between the competing agendas of Germany and France over the region. The UK has also played a major role in supporting conflict resolution, political and security reforms, and joint responses to emerging threats. Internally, Brexit has exposed the possibility of division within the EU and thus it has consumed considerable attention on managing and handling fragmentation within the existing structures before considering extending membership to other aspirant countries. Moreover, the rise of authoritarianism among the Eastern

bloc, especially in Hungary and Poland, has alarmed the rest of the EU member states about the potential implications of including the Western Balkan countries for the stability and prosperity of the Union.

However, it would be misleading to blame Brexit for stalling the EU's enlargement process. Beyond the short-term dynamics shaped by Brexit, the problem is EU's conditionality policy in the Western Balkans which is broad and constantly changing the scope and targets of required democratic and economic reforms. Short of internal consensus among the member states, the EU's policy in the Western Balkans is increasingly looking similar to its policy on Turkey. The accession talks with Turkey began in 2005 and since then there has been limited advancement, partially due to Turkey's drifting back to authoritarianism and EU's expansion of conditionality and its complication of the accession criteria. Similarly, the EU's enlargement policy towards the Western Balkans over time has evolved into a containment policy.

The containment policy has aimed to manage the expectations of the Western Balkan countries while ensuring their compliance and cooperation with the EU's agenda on regional stability, peace, and security. As part of this containment policy, the EU tends to drag and prolong the accession process without a clear membership timeline. Montenegro saw the opening of accession talks in 2012, and so far it is the front runner in the accession process. Accession talks with Serbia opened in 2013 but its progress has been slow, largely due to the rise of authoritarianism in the country and slow progress in the normalization of relations with Kosovo. In 2019, the EU failed to open accession negotiations with North Macedonia and Albania due to disagreement among EU member states, especially France and the Netherlands. Bosnia and Herzegovina and Kosovo have not yet opened the accession talks and are caught in different stages of the stabilization and association process.

To disguise this containment policy, the EU has come up with several half-baked initiatives, such as the Berlin Process, regional youth reconciliation, and greater regional and trade connectivity. Short of any better alternative, most of the countries in the Western Balkans have accepted this containment policy. In 2020, the EU published a new Communication to reform the accession process for the Western Balkans, seeking to reshuffle the negotiating chapters, enhance the role for current member states, and introduce a new system for conditionality. The new enlargement policy is nothing but an attempt to shift the enlargement process from a bureaucratic and technical process to a political process, which involves leveraging of the enlargement process for the geopolitical, bilateral and economic interests of concerned member states.

The new policy is not likely to resolve the enlargement fatigue. In fact, greater involvement of member states is likely to turn the entire process into a battlefield to advance self-interest rather than those of the EU as a whole and aspirant states. A common denominator of the stalled EU accession process for the Western Balkans is EU's two-track approach where the European Commission has its own policy track, while the member states pursue their own interests. In the case of Albania and North Macedonia, the European Commission recommended the opening of accession talks. However, the Netherlands has strongly opposed Albania's case citing limited progress in fighting corruption and organized crime, while Bulgaria recently blocked North Macedonia's path over language and history issues. Kosovo is affected by the EU's inability to develop a united policy on the country's independent statehood.

However, the consequence of this policy of never-ending reforms that has created an enlargement fatigue in the Western Balkans now has unintentionally brewed authoritarian practices among the aspirant countries and damaged even more the credibility of the EU as a whole. The EU's failure to hold to its promise of opening the accession doors to the Western Balkans countries has undermined reforms and promoted the rise of populism and authoritarianism similar to some EU member states, which has led the EU to raise doubts about their eventual membership. Serbia has become the regional hub for Russian and Chinese economic and military interests in the southeast Europe,



affecting the security of Montenegro and North Macedonia, while Turkey has expanded its economic and political influence over Bosnia and Herzegovina, Albania, and Kosovo. The EU has delayed over a decade the visa liberalization for Kosovo, which in turn has undermined the EU's credibility and transformative power, especially its ability to steer the normalization of relations with Serbia.

In sum, the enlargement policy of the EU should not be tied to the never-ending internal developments – such as Brexit – within the EU and the member states, nor left in the hands of the member states, especially those who have geopolitical and bilateral stakes in the region. Only a credible and predictable enlargement path for the Western Balkans is likely to serve the EU's long-term regional interests and serve its purpose of uniting Europe and overcoming historical conflict through peaceful transformation and reconciliation.

Dr Gëzim Visoka is Associate Professor of Peace and Conflict Studies in the School of Law and Government at DCU.



Part II: Future of Europe

Beyond the Euro-crisis: Covid-19 and the Future of Europe

by Stefania Baroncelli



On 1-2 October 2020, the Free University of Bozen-Bolzano hosted the first Partner conference of the BRIDGE network, in collaboration with DCU Brexit Institute, the University of Copenhagen and Central European University. The conference, “Beyond the Euro-crisis: Covid-19 and the Future of Europe” which was postponed from its original date in February due to the pandemic, took place mostly online via Zoom and featured numerous BRIDGE network scholars. However, the final session took place in person at the Eurac, Bolzano, and was also livestreamed. The ‘High-Level Dialogue: Brexit, the EU Recovery Plan and the Future of Europe’ featured Stefania Baroncelli (University of Bozen-Bolzano), Massimo Fabio (KPMG Italy) and Pier-Carlo Padoan (MP and former Minister of Finance of Italy), and was chaired by Federico Fabbrini (DCU Brexit Institute).

Covid-19 can be seen as a fundamental step for the European Union, a ‘Hamiltonian moment’ that will lead to profound changes in the European Economic and Monetary Union (EMU) by virtue of the principle of path dependency. Once an EU fiscal capacity has been created, there will be no going back as the EU’s fiscal power will become the ‘new normal’.

The reference is to Alexander Hamilton, the first American Secretary of the Treasury, who managed to convince his contemporaries to replace the war-time debt of the former colonies and to convert it into joint obligations held by the new federation as a federal debt. Because, as Hamilton maintained in 1792, the “proper funding of the present debt will render it a national blessing”. It is difficult to compare the European and American cases. On the American continent, the pooling concerned the past debt accumulated by states due to war. In Europe, pooling concerns future debt, which will be contracted on the European market to invest in long-term projects. Past debt will remain unchanged, despite the temporary suspension of the Stability and Growth Pact. Yet, despite the historical and technical differences, the symbolic meaning is clear: can the pandemic function as a trigger, setting off a virtuous process of cooperation and solidarity among member states eventually leading to a union with a federal character?



Massimo Fabio, Partner, KPMG in Italy

According to the latest public opinion polling with Eurobarometer, support for a European economic and monetary union with one single currency has reached new highs: 79% of citizens in the euro area are in favour of the euro, the highest point reached since 2004. The citizens seem in favour of this development, although almost half of Europeans are not satisfied with the measures adopted by the EU (but even more by their member state) to fight Covid-19 (49%).

The Obstacles Ahead

The Stability and Growth Pact has only been suspended, not abolished. The same principle applies to the rules on State aid. If the Pact is brought back into force in 2023, as proposed, it will be difficult to see an improvement in economic growth. On the other hand, the so-called “frugal” countries, such as Austria, Denmark and the Netherlands, remain opposed to the suspension of the Pact and will try to reinstate it.

Change will depend on the success of the Recovery Fund. From this point of view, a huge responsibility lies with Italy and Spain, the two countries that will benefit most from the possibilities offered by the Recovery Plan. A first difficulty lies in the procedure itself, which is based on the European Semester, a procedure that has proven ineffective in past years and of little impact on member states. A second difficulty relates to the effectiveness of public administration and local authorities in using European funds for funded projects.

What is needed is a multi-level organization involving states along with national, regional and local administrations, with a shared strategy. Not all territories have been affected in the same way by the pandemic, but rather in a differentiated manner. For example, cities that are destinations for cultural or artistic tourism have suffered disproportionately. Cohesion policy will have a fundamental role in ensuring the effectiveness of projects and helping the transition to a greener and more resilient economy. Unfortunately, the experience of the past is not very positive: the timing of cohesion policy has strongly conditioned the implementation of European projects, especially in Italy, due to a general weakness of the public investment system. This is why the Draghi government has proposed to modify the law on public procurement.

The Institutional Level

Other legal difficulties are related to the EU budget rules, which are too rigid, in particular the unanimity voting rule required by Art. 311 TFEU for the Council. According to this rule, only with unanimity is it possible to establish new categories of own resources or to abolish an existing category. This decision enters into force only with the approval of the member states in accordance with their respective constitutional rules. There is a need for a more efficient and more democratic system of decision-making in tax matters based on qualified majority voting. Of course, this would require a modification of the Treaties.



Pier-Carlo Padoa

Another issue which has to be discussed is the division between monetary and fiscal policy. The structure of EMU, according to which economic policy is the responsibility of the states and monetary policy is the remit of the ECB, seems no longer appropriate for the post-Covid era, as it places a huge and untenable responsibility on the ECB, which has been challenged by the German Constitutional Court.

How to Protect the Judiciary?

The development of the European Constitution has been accompanied by the jurisprudence of the Court of Justice (ECJ). This court, however, has recently been the subject of numerous attacks by national Constitutional Courts – for example, the Weiss case on “quantitative easing”, in which the

“Can the pandemic function as a trigger, setting off a virtuous process of cooperation eventually leading to a union with a federal character?”

German Constitutional Court attacked the European Central Bank (ECB) and the ECJ on the ground that they lacked competence. On April 29, 2021, the German Constitutional Court definitively closed the proceedings initiated against the ECB and, consequently, against the ECJ. The German Constitutional Court in fact recognized that the ECB’s decision to purchase government bonds of member states on the secondary market through the “quantitative easing” procedure was in line with the principle of proportionality and, therefore, did not affect the principle of

transfer of powers. However, such attacks can be dangerous for the development of the Union as they can be used by illiberal governments such as Hungary and Poland to defy the ECJ through their ‘packed’ courts.

The pandemic has shown that Europe is structurally slow in coping with shocks, that have become a recurrent feature of the 21st century. In fact, Covid-19 is only the third crisis after the financial collapse and the sovereign debt crisis. Can a hybrid governance, in imitation of the ESM as recently reformed, work better than the present system? The ESM is outside the system of EU law and has limited judicial review but has the advantage of reacting much faster than the Next Generation EU.

Will the new Conference on the Future of Europe be able to address these issues? Some concepts such as supremacy of EU law and the provisions of the *acquis communautaire* should be recognised more clearly. It would also be useful to provide for a mechanism in case of conflict between the ECJ and national courts. And finally, the rule of unanimity should be dropped in favour of majority in some key fields, such as the budgetary policy.

Prof Stefania Baroncelli is Full Professor of Public Law at the Faculty of Economics of Free University of Bozen-Bolzano.

"Beyond the Euro-crisis: Covid-19 and the Future of Europe"

The Conference **"Beyond the Euro-crisis: Covid-19 and the Future of Europe"** featured four academic panels. Panel 1, entitled **"Economic and Monetary Union after the EuroCrisis and Covid-19"** and chaired by Stefania Baroncelli (University of Bozen-Bolzano), featured Michele Chang (College of Europe), Federico Fabbrini (DCU Brexit Institute), Roberto Tamborini (University of Trento), and Alex Weissensteiner (University of Bozen-Bolzano). Panel 2, entitled **"EMU Governance and Constitutional Differentiation"** and chaired by Ian Cooper (DCU Brexit Institute), featured Sune Klinge (University of Copenhagen), Agnieszka Smolenska (Polityka Insight), and Giovanni Zaccaroni (DCU Brexit Institute). Panel 3, entitled **"The Euro-Crisis in Context: Values, People, Money"** and chaired by Jan Komarek (University of Copenhagen), featured Orsolya Farkas (University of Bozen-Bolzano), Annelieke Mooij (Dublin City University), Maciej Kisilowski (Central European University), and Leila Simona Talani (Kings' College London). Panel 4, entitled **"The ECB, The ECJ and the National Courts"** and chaired by Renata Uitz (Central European University), featured Simon Drugda (University of Copenhagen), Matthias Goldman (University of Frankfurt), and Jan Komarek (University of Copenhagen). The event concluded with a **Final High-Level Dialogue: Brexit, the EU Recovery Plan and the Future of Europe** chaired by Federico Fabbrini (DCU Brexit Institute) and featuring Stefania Baroncelli (University of Bozen-Bolzano), Massimo Fabio (KPMG Italy), and Pier-Carlo Padoan (MP and former Minister of Finance of Italy).



Migration and Differentiation in EU Law and Governance

by Bashir Otukoya



On 14-15 January 2021, the BRIDGE Network held its second Network conference, hosted by the DCU Brexit Institute, in collaboration with the Free University of Bozen-Bolzano, the University of Copenhagen and Central European University. The conference, entitled “Migration and Differentiation in EU Law & Governance”, featured the participation of several scholars from the BRIDGE Network and a High-Level Dialogue chaired by Helle Krunke (University of Copenhagen), featuring Amb. Ferdinando Nelli Feroci (President of the Istituto Affari Internazionali, former European Commissioner, and former Permanent Representative of Italy to the EU) and Prof Miguel Poiras Maduro (Founding Director of the EUI School of Transnational Governance, former Deputy Prime Minister of Portugal, and former ECJ Advocate General).

In a working paper presented at the DCU Brexit Institute fourth conference of the BRIDGE network event series ‘Migration and Differentiation in EU Law & Governance’, I discussed the idea of ‘citizenship tourism’ as a consequence of the free movement of people within the European Union together with the lack of an EU harmonised nationality acquisition framework. The working paper endeavoured to review and expand the debate on the derivative nature of EU citizenship, and the challenges of this legal state of affairs. Citizenship of the European Union (Eurozenship) is a derivative status that can only be accessed through the acquisition of a Member State (MS) nationality. The EU does not have competence over nationality acquisition as this falls within the exercise of State sovereignty and thus the naturalisation process of individual MSs is not within the remit of the European Union. As it currently stands, the acquisition of the nationality of a MS, which gives rise to the acquisition of Eurozenship, poses a set of issues, not least because the naturalisation processes of individual MS have their own flaws. The varying naturalisation laws and policies of the 27 MS is itself a great hindrance to the acquisition of Eurozenship, since they range from restrictive to liberal ends.

The Irish citizenship acquisition process is on the liberal end of the spectrum. As long as an individual has Irish ancestry or is born on the island of Ireland to a parent with Irish citizenship of at least three years, or having satisfied the conditions for naturalisation, the individual is constitutionally entitled to Irish citizenship. When it comes to naturalisation, however, this constitutional entitlement is at the absolute discretion of the Minister for Justice. What this means is that individuals with Irish affiliation are able to acquire Irish citizenship, regardless of residency in Ireland, whereas individuals without Irish affiliation must satisfy the conditions for naturalisation laid out in section 15 of the Irish Nationality and Citizenship Act 1956, one of which is a reckonable residency of five out of nine years in total.

The upsurge in Irish citizenship applications post-Brexit, as a result of the fear of losing access to the EU internal market, has shown the importance of free movement in a globalised and interconnected world. British nationals acquire Irish citizenship mainly to continue the free movement rights, as well as the many other rights they enjoyed when previously in the EU. On the Henley Passport Index, Ireland ranks 6th with Austria and Italy as the world's most powerful passports, with access to 134 countries without visa requirements, access to 67 percent of the world. When an individual has two passports, British-Irish for example, the right of access to the rest of the world further increases. Yet, although citizenship produces its benefits as an embodiment of rights and freedoms, much has been forgotten or neglected in political discourse and social understandings of the civic obligations that citizenship connotes, as well as the sense of national identity that citizenship epitomises.

British nationals who may, prior to Brexit, have never thought of an Irish identity nevertheless obtain Irish citizenship, despite immigrants resident in Ireland often being told that citizenship is a privilege that is earned. Citizenship can be acquired by way of a simple application by British citizens who are entitled to Irish citizenship in accordance with section 6 of the Irish Nationality and Citizenship Act 1956, whereas other immigrant nationalities must endure a number of hardships that stems from the conditions of citizenship under section 15 of the Irish Nationality and Citizenship Act 1956. Thousands of British nationals are gaining 'citizenship by right' - by virtue of their affinity to the Irish nation - ahead of those immigrants who have truly earned and/or identify as Irish and have to apply for citizenship as a privilege. Their nationality is British, their citizenship is Irish-British (or British-Irish), and their actual residence may perhaps be somewhere else.

"The upsurge in Irish citizenship applications post-Brexit has shown the importance of free movement in a globalised and interconnected world."



instrument for mobility. Indeed, accepting the conceptualisation of citizenship as a legal status that bestows legal rights and civic responsibilities that forms a sense of national identity on its citizens, citizenship in Ireland is not citizenship in this traditional sense.

Irish citizenship acquired through a process devoid of integrative elements does not enable future citizens to form the necessary national identity required to constitute Irish citizenship as citizenship. Those applicants who nevertheless form a national identity, by virtue of a prolonged residence in the State for example, are not rewarded for doing so. Persons outside the territory of Ireland have quicker and easier access to Irish citizenship if they have Irish ancestry, than long-term residents in Ireland.

How then might we conceive of Irish citizenship when it is easily given to persons who claim Irish affiliation, or can afford to buy citizenship through investment, without dispensation to what that citizenship symbolises and the obligations that it confers? At the moment, Irish citizenship acquired through a process devoid of a national identity equates to a citizenship devoid of significance. These types of citizenship can quickly become a mere

Ireland remains the only English-speaking country and one of two common law countries in the EU. As has been witnessed in the advent of the withdrawal agreement, Ireland acts as the gateway for access to the internal market of the EU for many British nationals with Irish affiliation. Irish citizenship is the key that opens that gate. This dichotomy of access to Eurozenship through Irish citizenship questions the understanding of Irish citizenship and demands a critical reflection on the significance attached to Irish citizenship, of citizenship of the European Union, and of citizenship generally.

Dr Bashir Otukoya is a lecturer in EU Law at the School of Law and Government at Dublin City University.

“Migration and Differentiation in EU Law & Governance”

The Conference **“Migration and Differentiation in EU Law & Governance”** featured four academic panels. Panel 1, entitled **“From the Migration Crisis to the New Migration Pact”** and chaired by Federico Fabbrini (DCU Brexit Institute), featured Leila Hadj-Abdou (University of Vienna & EUI Migration Policy Centre), Susan Rottmann (Özyeğin University), Filippo Scuto (University of Milan), and Vladislava Stoyanova (Lund University). Panel 2, entitled **“Migration, Differentiation and a Europe of Variable Geometry”** and chaired by Stefania Baroncelli (University of Bozen-Bolzano), featured Dia Anagnostou (Panteion University), Marta Pardavi (Hungarian Helsinki Committee), Lilian Tsourdi (University of Maastricht), and Renata Uitz (Central European University). Panel 3, entitled **“Migration, Brexit & the Future of EU-UK Relations”** and chaired by Veronica Corcodel (Dublin City University), featured Orsolya Farkas (University of Bozen-Bolzano), Jonathan Portes (London School of Economics), Stijn Smismans (Cardiff University), Federico Fabbrini & Giovanni Zaccaroni (DCU Brexit Institute). Panel 4, entitled **“Citizenship, Migration and Populism”** and chaired by Renata Uitz (Central European University), featured Athanasia Andriopoulou (University of Copenhagen), Helle Krunke (University of Copenhagen), Bashir Otukoya (Dublin City University), and Lina Papadopoulou (Aristotle University of Thessaloniki). The event concluded with a **Final High-Level Dialogue: Migration, Populism and the Future of Europe** chaired by Helle Krunke (University of Copenhagen) and featuring Amb. Ferdinando Nelli Feroci (President of Istituto Affari Internazionali, former European Commissioner, former Permanent Representative of Italy to the EU) and Prof. Miguel Poiares Maduro (Founding Director of the EUI School of Transnational Governance, former Deputy Prime Minister of Portugal, former ECJ Advocate General).

An Economy that Works for the People: Beyond Brexit and Covid-19

by Christine Neuhold and
Fèlix Ruiz Cabré



On 12th April 2021, the DCU Brexit Institute hosted a day-long conference entitled “An Economy that Works for the People: Beyond Brexit and Covid-19”. The event featured an opening statement by Mr. Paolo Gentiloni, European Commissioner in charge of Economic Affairs, and an opening debate between Thomas Wieser (former President of the Eurogroup Working Group) and Alex Brenninkmeijer (Member of the European Court of Auditors) moderated by Greg Hughes (DCU Vice President for Research). It was organized in the framework of the Jean Monnet Project RELAY, an EU-funded Erasmus+ project, coordinated by Maastricht University, and involving a number of partners across Europe, designed to assess the policy priorities of the new European Commission.

In 2019, the then candidate for European Commission President, Ursula von der Leyen, presented her political guidelines for the European executive for the upcoming five years. These guidelines contain six ‘headline ambitions.’ These spanned from a European Green Deal, to a ‘Europe fit for the Digital Age’, to an ‘economy that works for people.’ In this context, Europe should ‘strive for more’ when it comes to social fairness and prosperity. Strengthening the European social market economy is seen as ‘acutely important.’ Supporting small business, deepening the Economic and Monetary Union and strengthening Europe’s social pillar in order to become a ‘Union of equality’ are also key goals.

Just after these priorities were adopted, COVID-19 arrived. This pandemic of indeed ‘global proportions’ plunged the EU and its Member States into what some refer to as a poly-crisis. The pandemic caused an exogenous shock to the EU institutions and the EU system of governance. Exogeneity made it easier to find solidarity-based solutions: there was no one to blame and, for Europe to overcome this crisis, all member states without exception would struggle to cope – saving jobs, procuring vaccines, stabilizing finances.

To help fix the detrimental effects COVID-19 is having both on the economy and social cohesion within the EU Member States, the European Commission, the European Parliament and EU Member States agreed on a Recovery Plan. The process initially started with a Commission proposal on the EU budget in May 2018. When the pandemic hit Europe, the Commission followed up with a second proposal in May 2020 that also included NextGenerationEU (NGEU), the temporary instrument designed to boost the recovery. In July 2020, after very cumbersome and lengthy negotiations (which lasted for four days and nights) the EU heads of state and government were able to agree to the next long-term budget and NGEU. In November 2020 the European Parliament also gave its approval. In December 2020, the 2021-2027 package was

then finally agreed by the Council of the European Union. This was achieved despite Hungary and Poland initially threatening to veto the proposal. Whereas both Member States disagreed with linking EU monetary support to rule-of-law conditionality, in the end a compromise was found.

Amounting to €1.8 trillion, this is the largest stimulus package ever financed through the EU budget. Note that in February 2021 the Council undertook measures to implement this further by adopting the regulation establishing the Recovery and Resilience Facility (RRF). In order to receive support from the RRF, EU Member States have to put forward plans that not only create linkages across different policy fields but that also resonate strongly with the priorities of the Commission. These 'national recovery and resilience plans' thus have to address issues such as how to engender green and digital transformations and to increase social and territorial cohesion at national level. Such plans had to be submitted under great time-pressure; EU countries had until 30 April 2021 to set out their reform and investment agendas.

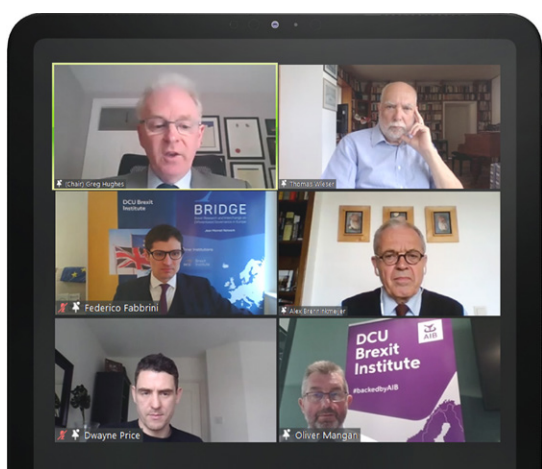
"Historically, new solutions are often born in times of crisis, and the pandemic has shown that 'more Europe is needed'."

NGEU can be seen as a 'test case' for the EU Member States. It is the first time that Member States will have to put together strategic plans on how to spend funds of such proportions. It could be a huge 'game changer' in order to reduce the growth differentials across Member States. Overall the EU's financial response to the crisis is not weaker than that of the United States, which is often praised as more ambitious, if you add it to all the efforts undertaken at Member States level. The EU is also better prepared to tackle the crisis caused by the pandemic as compared to the Eurozone crisis: many lessons have been learned since then,

and as a result the EU's financial governance architecture has been much improved. The Commission has also gained in power and authority when managing the Covid-19 crisis. Nevertheless, there still seems to be the need for an integrated fiscal institution, given that Covid will almost certainly plunge the EU into another financial crisis. As ideas matter, it is key to note that austerity no longer holds the same appeal as it did during the financial crisis.

The European Court of Auditors warns, however, that there is no guarantee that these measures will 'boost sustainable growth and increase convergence' between Member States. The effectiveness of the support will depend crucially on how well it addresses the actual impact of the crisis and increases the Member States' capacity to support their own economies and implement new measures adequately. It is also as yet unclear whether the NGEU will indeed remain a temporary facility or become permanent.

This brings us back to the word 'people' in the title of the European Commission's headline ambition, 'An Economy that Works for the People'. To make sure that the allocation of NGEU funds indeed works for the people, it should be part of a democratic debate that involves Civil Society Organisations, national parliaments, and Social Partners. Universities are also ready to play their part as an important pillar of Europe's knowledge-based society.





Paolo Gentiloni

Looking ahead to the Conference on the Future of Europe it seems that many different outcomes are possible. It will depend on political will whether the Conference will be a success and lead to profound change (by for example allocating competences for health policy to the EU) or, on the contrary, it will simply be another book collecting dust in the library of the EU's ivory tower. There are reasons to be optimistic: historically, new

solutions are often born in times of crisis, and the pandemic has shown that 'more Europe is needed'. Citizens will be keen to get involved in the debate on where they want Europe to go if the process is clear and the results are tangible. As we gradually come out of the pandemic, digital townhall meetings can be a first step in this direction. Let us make sure that our democracy benefits from this crisis's thin silver linings.

Prof Christine Neuhold is full Professor of EU Democratic Governance and Dean of the Faculty of Arts and Social Sciences at Maastricht University (UM).

Fèlix Ruiz Cabré is Policy Officer at Campus Brussel, Maastricht University (UM).

"An Economy that Works for the People: Beyond Brexit and Covid-19"

The Conference "An Economy that Works for the People: Beyond Brexit and Covid-19" started with an Opening Statement by Paolo Gentiloni (European Commissioner for Economy) and with an **High Level Dialogue: The EU Recovery Fund** featuring Alex Brenninkmeijer (Member of European Court of Auditors) and Thomas Wieser (former President of Eurogroup Working Group). Panel 1, entitled "The New EU Economic Policy after Covid-19 and Next Generation EU" and chaired by Christine Neuhold (Maastricht University), featured Michael Breen (Dublin City University), Ramon Marimon (European University Institute), Vivien Schmidt (Boston University), and Bart Vanhercke (European Social Observatory). Panel 2, entitled "The European Economy and the Future of the Eurozone after Brexit" and chaired by Sharon O'Brien (Dublin City University), featured Federico Fabbrini (DCU Brexit Institute), Oliver Mangan (AIB), Dwayne Price (Grant Thornton), and Valerio Scollo (GSK Stockmann). The event concluded with a **High Level Debate: Next Generation EU and the Conference on the Future of Europe** chaired by Federico Fabbrini (DCU Brexit Institute) and featuring Gwendoline Delbos-Corfield (Member of the European Parliament), Domenec Ruiz Devesa (Member of the European Parliament), Sandro Gozi (Member of the European Parliament), and Danuta Hubner (Member of the European Parliament).

Solidarity, Identity and Populism in the EU

by Helle Krunke



On 7-8 June 2021, the University of Copenhagen hosted the second Partner conference of the BRIDGE network event series, in collaboration with the Free University of Bozen-Bolzano, the DCU Brexit Institute and Central European University. The conference, entitled “Solidarity, Identity and Populism in the EU,” began with welcome remarks from Helle Krunke (University of Copenhagen), and featured numerous BRIDGE Network scholars. The event concluded with a Keynote Address by Pat Cox (former President of the European Parliament), chaired by Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute).

Populism is currently one of the greatest threats to constitutional democracy in Europe and to EU integration. Over the past two decades, we have seen how populist political parties have appeared on the political scene, how they have grown, and in some cases even become part of governments.

Though populism is often associated with Eastern Europe - and especially Hungary and Poland - we also find it in South Europe, and one should not be blind to the fact that populism is also present in Northern Europe. However, here the term populism is often not directly applied.

Populism comes in slightly different forms in the various cultural, political and economic contexts across Europe. However, populist parties always claim to represent the ‘true people’. They distance themselves from the so-called ‘elite’ which includes well educated and rich people (including judges), and they always have a strong focus on exclusion of migrants, refugees and often also sexual and religious minorities – in other words ‘the others’ with a reference to Hannah Arendt. We find populist parties both at the far right and at the far left of the political spectrum. That differs across different parts of Europe.

Why is populism a threat to constitutional democracy? When in power, populist parties typically slowly erode constitutional democracy. The main argument for this is that they represent the ‘people’, the majority – in other words, they possess ‘public’ legitimacy.

From this also follows that other institutions such as the courts have less legitimacy than the political institutions. Based on the public legitimacy argument, all institutions which might criticise political actions and legislation, are undermined. This includes courts, public media and universities.

Courts are particularly significant because they are an integrated and important part of a constitutional democracy. Through their independence from the political institutions, they uphold the constitution, including human rights, minority rights and the rule of law in general. Courts are the final protectors of the constitution and fundamental rights, when the political institutions fail to uphold them and when they misuse their power.

Furthermore, and importantly, courts apply EU law and international human rights conventions, including the European Convention of Human Rights. Populistic initiatives sometimes violate EU law and human rights conventions. Therefore, populist parties are often negative towards the EU, including the European Court of Justice and towards the European Convention on Human Rights and the European Court of Human Rights. In addition, populist parties tend to criticise the national courts, including individual judges, and when in power they often initiate court 'reforms', which weaken court independence, remove critical judges, etc.

Since constitutions normally set limits for those in political power and emphasize court independence and human rights including minority rights, populist governments will sometimes attempt to amend the constitution. Not all reforms can be made based on legislation, regulations issued by the government and interpretations of the constitution. Therefore, the constitution can become an obstacle to populist governments and legislators.

"Populism is normally characterized by a strong national focus and a negative attitude towards international cooperation – and this includes the European Union."

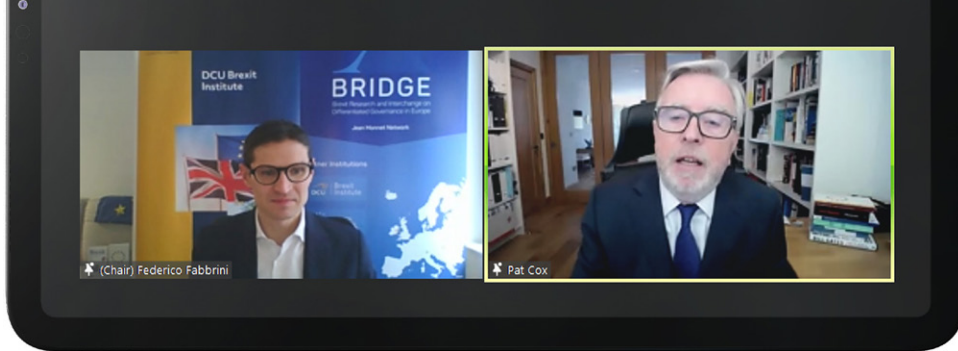
The populist interpretation of democracy is 'majority-democracy' in the strongest sense and sometimes with elements of direct democracy, for instance through referenda. Courts and minorities are down-played in this definition of a democracy.

Why is populism a challenge to the EU? Well, populism is normally characterized by a strong national focus and a negative attitude towards European and international cooperation – and this includes the European Union. This way, Member States ruled by populist parties will often not support EU

membership and initiatives, they will have members in the EU Parliament who are in reality against the EU, and at the end of the day, such member states might even leave the EU – which may create instability in Europe.

Furthermore, populist reforms such as erosion of court independence violate fundamental EU values such as rule of law, legal certainty, the 'recht staat' and the protection of fundamental rights. The populist movements we see in Europe are closely connected to some of the crises, which the EU has experienced over the past 12 to 15 years, especially the economic and financial crisis, and the refugee and migration crisis. But also more recently, the Covid-19 crisis has struck, which challenges Europeanization, globalization and solidarity in the EU, and thus could give further impetus to populism in future.

Prof Helle Krunke is Full Professor of Constitutional Law at the Faculty of Law of University of Copenhagen.



Michael McAteer, Hans-Gert Pöttering, Federico Fabbrini

“Solidarity, Identity and Populism in the EU”

The Conference “Solidarity, Identity and Populism in the EU” featured four academic panels. Panel 1, entitled “**The EU, Democracy and Populism**” and chaired by Helle Krunke (University of Copenhagen), featured Hanna Eklund (University of Copenhagen), Christian Christfort Gormsen (European University Institute), and Boda Zsolt (Centre for Social Sciences). Panel 2, entitled “**Solidarity, Human Values, and Identity Politics**” and chaired by Stefania Baroncelli (University of Bozen-Bolzano), featured Matteo Bottero (Dublin City University), Miriam Cullen (University of Copenhagen), Ian Manners (Lund University), and Renata Uitz (Central European University). Panel 3, entitled “**Nordic Perspectives on Differentiation and Secession**” and chaired by Helle Krunke (University of Copenhagen), featured Ulf Bernitz (University of Stockholm), Graham Butler (Aarhus University), John Erik Fossum (University of Oslo), and Tuomas Ojanen (Helsinki University). Panel 4, entitled “**Post-Crisis Governance and Future of Europe**” and chaired by Renata Uitz (Central European University), featured Matej Avbelj (New University, Ljubljana), Federico Fabbrini (DCU Brexit Institute), Roberto Farneti (University of Bozen-Bolzano), and Janine Silga (University of Luxembourg). The event concluded with a **Keynote Speech** by Pat Cox (former President of the European Parliament).



Post-Pandemic Economic Governance: Online Multiplier Event at the European Central Bank

by Ian Cooper

On 15 December 2020, the DCU Brexit Institute organized within the framework of the Jean Monnet Network BRIDGE the first Multiplier Event in collaboration with the European Central Bank (ECB) on “Post-Pandemic Economic Governance”. The event featured an introduction by Frank Elderson (Member of the ECB Executive Board) and a keynote speech by Philip Lane (Member of the ECB Executive Committee & ECB Chief Economist). This was followed by a panel, chaired by Chiara Zilioli (Director General of ECB Legal Service), featuring presentations by Stefania Baroncelli (University of Bozen-Bolzano) & Annelieke Mooij (Dublin City University), Federico Fabbrini (DCU Brexit Institute) and Renata Uitz (Central European University), Johannes Lindner (ECB), Armin von Bogdandy (Max Planck Institute Heidelberg) and Oliver Glück (Managing Partner, GSK Stockmann)

On 1 July 2021, the DCU Brexit Institute organized the second Multiplier Event on “Post Pandemic Political Governance: The EU Two Years into the New Institutional Cycle” in collaboration with the European Parliament. This event opened by Anthony Teasdale (Director General, European Parliamentary Research Service) featured a keynote speech by Guy Verhofstadt (Co-chair of the Executive Board of the Conference on the Future of Europe, MEP and former Prime Minister of Belgium) and a panel moderated by Silvia Kotanidis (European Parliamentary Research Service), with presentations by Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute), Richard Corbett (Secretariat of the Conference on the Future of Europe, and former MEP), Helle Krunke (University of Copenhagen), Sophia Russack (Centre for European Policy Studies), and Matteo Scotto (Villa Vigoni).

The governance of the European Union (EU) has been significantly altered by the multiple crises – of the euro, migration, rule of law, Brexit, and Covid-19 – that it has endured over the last decade. This has often led to increased differentiation in which the authority of governance structures vary across different regions and territories within and around the EU. In many cases this differentiation has taken forms that do not conform to the standard definition of differentiated integration, which is generally focused on the variation in the applicability of EU rules across EU member states, or the variation in their participation in common EU policies. We suggest the term “differentiated governance” as an alternative term that could apply more broadly to the emerging post-crisis EU.

The case of Brexit helps to illustrate this point. Throughout the negotiations over the EU-UK relationship, one major point of contention was over the question of “governance,” i.e. what structures would be put in place to oversee the agreement? As it turns out there is differentiation even within the very complex structures governing the new relationship, as they are divided into three distinct layers: the Trade and Cooperation Agreement (TCA), which governs the new trading relationship, has separate governance structures from those of the Withdrawal Agreement (WA),

“Multiple crises have led to an increase in differentiated governance across regions and territories both within and around the EU.”

which set the terms of the withdrawal, but which also features separate governance arrangements for the Northern Ireland Protocol (NIP). The authority of EU law is different in each of these three layers, as is apparent in the varying role of the European Court of Justice (ECJ) which is excluded from the TCA, has a transitional role in the WA, and has a continuing role in overseeing the NIP.

The reference to Northern Ireland also highlights another aspect of differentiated governance, that the authority of the EU can vary not only across states but also across other territories. Northern Ireland is a territory that is part of the UK, therefore formally outside the EU, but that *de facto* remains inside the EU for many practical purposes regarding the single market and customs union. It is no coincidence that there are three protocols to the WA, because this is exactly the number of cases in which a UK territory abuts an EU territory – not just Northern Ireland but also Gibraltar, which is now likely to join the Schengen agreement on passport-free travel, and also the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, which use the Euro currency and are integrated into the EU customs union.

The Euro-crisis also created new forms of differentiated governance. While the Eurozone is an instance of “classic” differentiated integration in that it is a case of a common EU policy in which not all EU member states participate (19 out of the 27 current EU member states), the Euro-crisis has led to the creation of new structures of differentiated governance. The best example of this is the European Stability Mechanism (ESM), based

on an intergovernmental agreement among Eurozone states that is separate from the institutional structure of the EU. Similarly the Fiscal Compact treaty is an agreement made outside the EU treaty framework which has different rules for Eurozone and non-Eurozone states, and that authorized the creation of new governance structures for the Eurozone, namely the Euro Summit and the Interparliamentary Conference on Stability, Economic Coordination and Governance.

The Rule of Law crisis has also led to the creation or activation of governance mechanisms that subject certain member states to more intensive scrutiny regarding the Rule of Law, but the effectiveness of these has been questionable. A Cooperation and Verification Mechanism created specifically to monitor rule of law compliance in Romania and Bulgaria has had limited impact – and these two countries are not the worst offenders anyway. The Article 7 procedure, intended to sanction member states in breach of the EU’s fundamental values, including the Rule of Law, has been triggered for the two worst offenders, Poland and Hungary, but thus far the results have been inconclusive – in part because these two countries have used various Rule-of-Law backsliding maneuvers to evade punishment.

The EU Budget offers another possible source of leverage over these countries’ Rule of Law compliance. Unfortunately, Poland and Hungary did not join the European Public Prosecutor’s Office (EPPO), whose mission is to prosecute crimes against the EU budget; their opt-out was legal under the Treaty of Lisbon as the EPPO was created through enhanced cooperation by 22 member states – another instance of differentiated governance (Denmark, Ireland and Sweden also opted out). Most recently, a new mechanism to introduce Rule of Law conditionality into the EU budget and the Covid-19 Recovery Fund was introduced in late 2020, but it is unclear when this will be triggered or how effective it will be.

“Throughout the negotiations over the EU-UK relationship, one major point of contention was over the question of ‘governance’.”

The problem of migration has lately been closely associated with the Rule of Law crisis, as it has been in this policy field that certain member states have acted in open defiance of EU law. Migration has for many years been a policy area in which there has been considerable differentiation: most notably, the Schengen area of passport free travel includes most but not all EU member states, and some non-EU member states. But most

recently there has been de facto differentiation in the form of non-compliance with the rules of the Common European Asylum System (CEAS). Indeed, the proposal for a New Pact on Migration and Asylum seems to accept this state of affairs as it would introduce a system of “flexible contributions” which would in effect allow member states to refuse to take in asylum seekers.

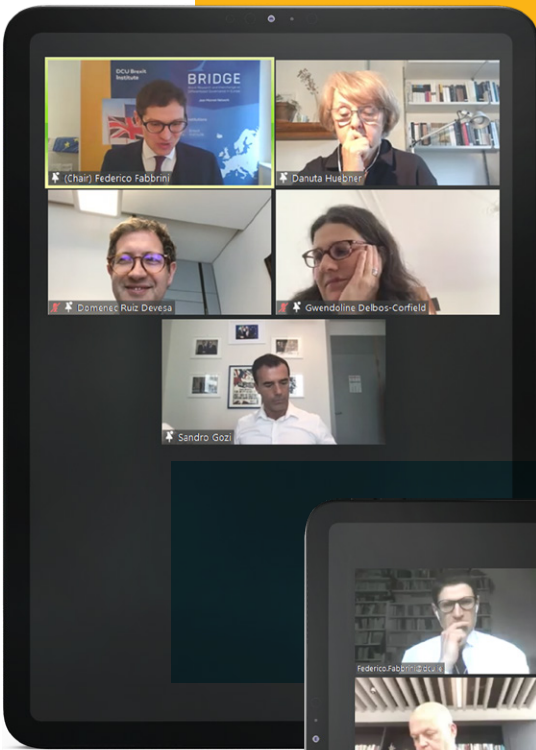
These developments are at the heart of the ongoing three-year research project BRIDGE (Brexit Research and Interchange on Differentiated Governance in Europe). BRIDGE is an EU-funded Jean Monnet Network which is a consortium of four institutions – DCU Brexit Institute, Free University of Bozen-Bolzano, Central European University, and the University of Copenhagen.

Dr Ian Cooper is a Research Fellow at the Brexit Institute and Scientific Coordinator of the BRIDGE Network.

UK Non-Participation in Common Policies

- Did not join single currency (the Euro)
- Did not join optional Eurozone-related measures
- Outside the Schengen area
- Broad opt-out from Area of Freedom, Security and Justice
- "Opt-out" from Charter of Fundamental Rights
- Did not join European Public Prosecutor's Office







DCU Brexit Institute Facts and Figures

People



1 Director



1 Project
Coordinator



2 Full-time
Researchers



40 Affiliated staff
from across DCU

Projects



Since 2019 the Brexit Institute leads the Jean Monnet Network BRIDGE (Brexit Research and Interchange on Differentiated Governance in Europe), a 3-year project funded under the EU Erasmus+ Programme and involving also the Central European University, the Free University of Bozen-Bolzano and the University of Copenhagen focusing on Europe's crises and the future of the EU.



Since 2020 the Brexit Institute is part of the Jean Monnet Project RELAY (Spreading and relating EU affairs beyond the EU institutions), a 2-year initiative funded under the EU Erasmus+ Programme and lead by the University of Maastricht focusing on the Commission's new strategic priorities.



In 2020 and 2021 the Brexit Institute secured funding from the Irish Department of Foreign Affairs under the Communicating Europe Initiative to develop a MOOC and then an interactive map on the EU, as part of the Conference on the Future of Europe.

Performance

Research

High-level output and cutting-edge insight on Brexit and the future of Europe

Policy

Dozen of initiatives with top-notch players attended by up to 200 participants at a time

Engagement

Thought leadership for corporate organizations and public institutions

Publications 2020/2021



3 Books

1 High Level Report

30 Working Papers
(**18** from DCU Brexit Institute,
12 from BRIDGE)

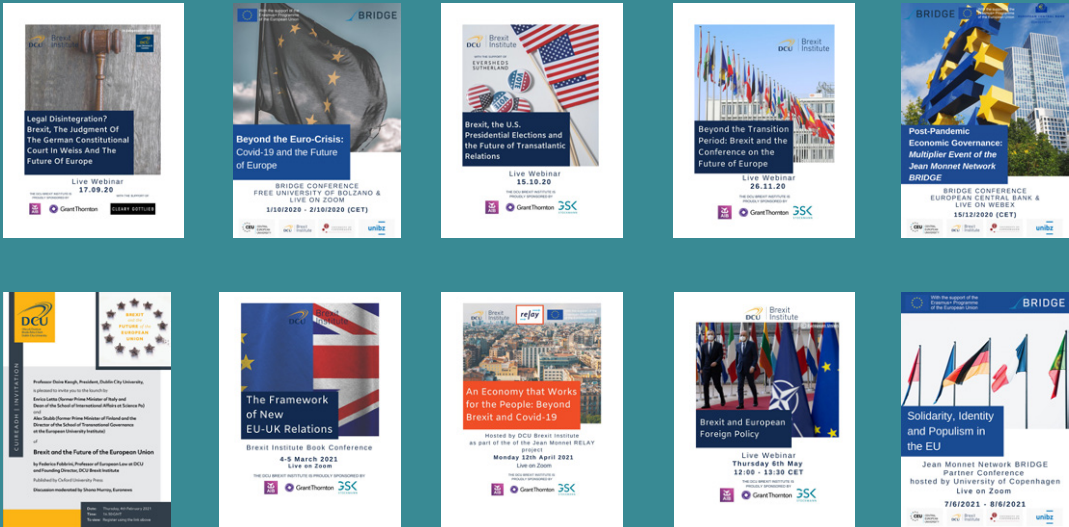


200 Short comments and Analyses of Brexit and EU Affairs

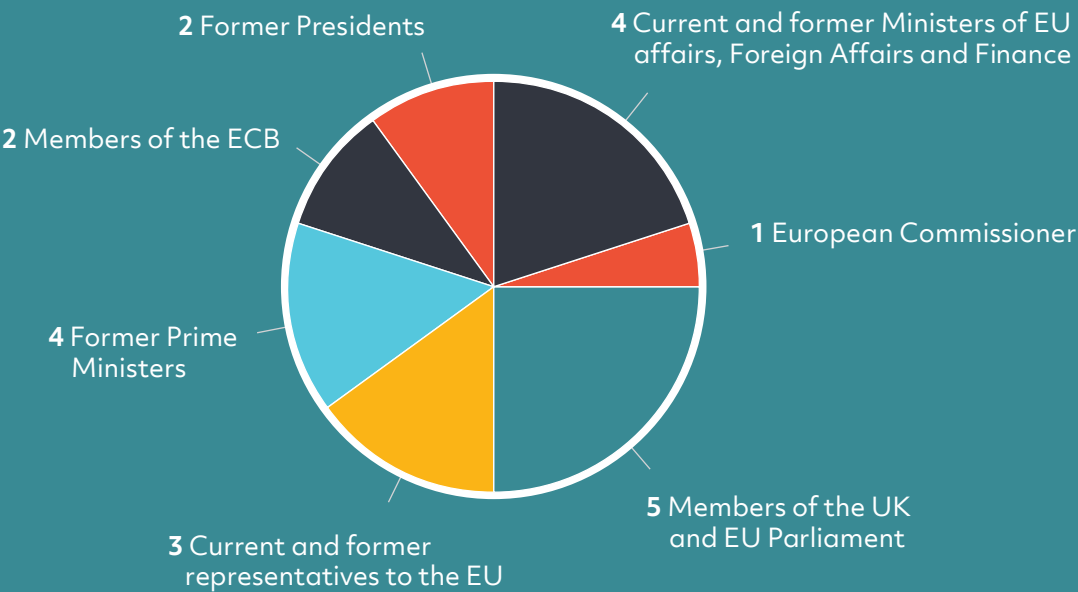
130 Brexit Institute Blogs

70 BRIDGE Blogs

Events 2020/2021 12



Keynote Speakers 2020/2021



Endorsements



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I would like to commend the work of Professor Federico Fabbrini, the Brexit Institute and other expert commentators, for the valuable role they fulfil in analysing and bringing to our attention the many facets of this agreement.

David Maria Sassoli, President of the European Parliament



Paschal Donohoe, Minister for Finance of Ireland and President of the Eurogroup

Thank you also for the excellent work of the Brexit Institute. All of your interventions have been timely and imbued with expertise and authority.



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That is the particular merit of the book you have in your hands, in which Federico Fabbrini and other renowned scholars and researchers provide a detailed analysis of the provisions of this important legal document.

Michel Barnier, EU Chief Brexit Negotiator 2017-2021

Teaching

bridgenetwork.eu/mooc/

Massive Open Online Course (MOOC)

The Brexit Institute produced in 2020 as part of the Jean Monnet Network BRIDGE, and in cooperation with its partners from Central European University, the Free University of Bozen-Bolzano and the University of Copenhagen a MOOC entitled "The European Union: From Crises to Recovery".

Learn about the recent challenges faced by the European Union

The fascinating course is designed to inform the public about the principal challenges that have faced the European Union over recent years including Brexit, the Euro Crisis, Migration, the Rule of Law Crisis, and COVID-19, and to communicate how the EU has responded to these challenges.

Understand the major issues faced by the EU in recent years

You'll gain an insight into some of the most significant events of recent years, including the first withdrawal of a member state (Brexit), as well as the threat to the single currency (Euro Crisis). You'll also discover the reasons behind the Rule of Law Crisis and how this threatens the EU's fundamental values.

Explore the challenge free movement presents and decipher the future of Europe

Get to grips with the challenges that free movement, migration and differentiated governance present for the EU as a whole. You'll then also compare the EU crisis response across different policy areas and across time, and will assess future paths for the development of EU integration.

Master in European Law & Policy (MELP)

DCU, the home of the Brexit Institute, offers a Master in European Law and Policy which is specifically targeted to students interested in gaining a better understanding of the European Union (EU), its legal system and its policies, particularly after Brexit. In fact, following the withdrawal of the United Kingdom from the EU, and with Ireland remaining the only English-language country in the EU and Eurozone, DCU has invested in the new Master in European Law & Policy, and the Brexit Institute is proud to support it, by leading teaching in the core modules of "EU Institutional Law", "Research Methods in EU Law & Policy" and the newly created module "The Law & Politics of Brexit". Speaking in relation to this programme, Denis McShane (UK Minister of European Affairs during the Blair Government), said: "The DCU Master in European Law & Policy steered by the Brexit Institute is the ideal graduate program for anyone interested in understanding the law and politics of Brexit and future of Europe".

dcubrexitinstitute.eu/teaching/

Media



Digital



March 2021

97k impressions



Facebook

March 2021

1074 people



YouTube

4k views over this years youtube videos

Awards



President's Award for Research 2021



Prof Federico Fabbrini

School of Law and Government
DCU Brexit Institute

Professor of Law at DCU and Founding
Director of DCU Brexit Institute

Engagement



Post-Pandemic Economic Governance: Online Multiplier Event at the European Central Bank

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The event featured an introduction by Frank Elderson (Member of the ECB Executive Board), Philip Lane (Member of the ECB Executive Committee and ECB Chief Economist) as the keynote speaker, followed by a panel, chaired by Dr Chiara Zilioli (Director General of ECB Legal Service), featuring presentations by Professor Stefania Baroncelli (University of Bozen-Bolzano) and Annelieke Mooij (Dublin City University), Professor Federico Fabbrini (DCU Brexit Institute) Professor Renata Uitz (Central European University), Dr Johannes Lindner (ECB), Professor Armin von Bogdandy (Max Planck Institute Heidelberg) and Dr Oliver Glück (Managing Partner, GSK Stockmann).



Post Pandemic Political Governance: The EU Two Years into the New Institutional Cycle

On 1 July 2021, the Brexit Institute organized a Policy roundtable on “Post Pandemic Political Governance” at, and in collaboration with, the European Parliamentary Research Service (EPRS) in the framework of the Jean Monnet Network BRIDGE.

The event focused on the institutional developments two years after the start of the 2019-2024 Parliamentary term. This event opened by Anthony Teasdale (Director General, European Parliamentary Research Service) featured a keynote speech by Guy Verhofstadt (Co-chair of the Executive Board of the Conference on the Future of Europe, MEP and former Prime Minister of Belgium) and a panel moderated by Silvia Kotanidis (European Parliamentary Research Service), with presentations by Federico Fabbrini (Professor of EU Law and Director of DCU Brexit Institute), Richard Corbett (Secretariat of the Conference on the Future of Europe, and former MEP), Helle Krunke (University of Copenhagen), Sophia Russack (Centre for European Policy Studies), and Matteo Scotto (Villa Vigoni).

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