



Ollscoil Chathair
Bhaile Átha Cliath
Dublin City University

DCU Brexit Institute 5th Brexit Report

23rd June 2022



6 Years Since the
Brexit Referendum

5 Years Since the
Founding of the
Brexit Institute



This report was edited by the Director and the Team of the DCU Brexit Institute — Federico Fabbrini, Ian Cooper, André Woolgar, Christy Ann Petit — and graphically designed by Garvan Doherty.

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Preface

by Prof Daire Keogh,
DCU President



Since its establishment in 2017, the DCU Brexit Institute has become a flagship initiative of the University, creating a hub for research and policy on European affairs on the island of Ireland and beyond.

The Brexit Institute is Ireland's only, and Europe's first, centre dedicated to analysing the United Kingdom's exit from the EU. In Ireland, we have a keen awareness that Brexit is a process rather than an event, and one that remains complex and challenging, as evinced by the divisions on the Protocol.

More than this, the Brexit Institute serves as an international point of reference for cutting-edge reflections on the future of the EU, including the reconstruction of the European economy following the COVID-19 pandemic. With this in mind, I salute the recent success of the Brexit Institute in securing EU funding for the establishment of the Jean Monnet Centre of Excellence REBUILD ("Recovery of Europe, Budget of the Union: Integration, Law & Democracy"), which is DCU's first such centre.

Moreover, I am pleased that the international environment created by the Brexit Institute has facilitated the development of new

teaching and learning programmes at DCU, including the DCU Masters in European Law and Policy (MELP). MELP is a unique interdisciplinary programme, designed to train graduates who want to pursue a career in Europe, and as such aligns with the Irish Government's ambition to increase the number of Irish officials working within EU institutions. We look forward to developing our EU-related research, engagement and teaching initiatives in cooperation with the Irish Department of Foreign Affairs, which has, for the third year in a row, supported the Brexit Institute with a grant under their Communicating Europe Initiative.

None of these achievements would have been possible without the dedication of the Brexit Institute team, led by Prof Federico Fabbrini. In recognition of his scholarship, Federico was recently decorated as a 'Cavaliere dell'ordine della Stella d'Italia' by the President of Italy Sergio Mattarella, at a ceremony hosted by the Italian Ambassador to Ireland, His Excellency Paolo Serpi.

The progress of the Brexit Institute, which this report outlines, provides an excellent foundation for the years ahead. The Institute's

ongoing development would not have been possible without the backing of our corporate sponsors, and I would like to thank AIB and GSK Stockmann for their steadfast support.

As Europe and the world face a seemingly never-ending series of new crises, most recently the brutal Russian invasion of Ukraine, the Brexit Institute at DCU will continue to provide thought leadership and an ideal platform to debate the most defining challenges of our continent.

“I am pleased that the international environment created by the Brexit Institute has facilitated the development of new teaching and learning programmes at DCU, including the DCU Masters in European Law and Policy (MELP).”



Introduction

by Prof Federico Fabbrini

Founding Director of Brexit Institute



The BRIDGE Network held its final multiplier event on on **Friday, 13th May 2022** at the Court of Justice of the European Union in Luxembourg, entitled “**The Rule of Law Crisis and the Supremacy of EU Law**”. It was a collaboration of the DCU Brexit Institute, the Free University of Bozen-Bolzano, the University of Copenhagen and Central European University. The event featured **Judge Lars Bay Larsen** (Vice President of the Court of Justice of the European Union) as the keynote speaker. This was then followed by a panel, featuring **Renata Uitz** (Professor of Comparative Constitutional Law at Central European University) **Federico Fabbrini** (Professor of EU Law at DCU and Founding Director of the DCU Brexit Institute) and **Marcus Peter** (Partner at GSK Stockmann).

Six years ago — on 23rd June 2016 — the people of the United Kingdom (UK) voted to leave the European Union (EU). As a momentous event and an unprecedented process, Brexit had major consequences for Britain, Ireland and the EU, which reverberate today. Since then, however, many new challenges have emerged, profoundly shaping the future of Europe and the world.

Five years ago — on 23rd June 2017 — the DCU Brexit Institute was established at Dublin City University (DCU) as Ireland’s only and Europe’s first centre specifically dedicated to this historical occurrence. Since then, the Brexit Institute has continuously provided a high level forum to analyse Brexit and debate the future of Europe from a research and policy perspective.

In the past 12 months, in particular, the Brexit Institute has honoured its founding mission by offering timely and authoritative assessments of the most important developments relating to Brexit, UK-EU relations, and European affairs more generally. The report that you have in your hands is both a proof and a testament of the Brexit Institute’s ongoing hard work.

As is well known, the last year was yet another roller-coaster. On the Brexit front, the full entry into force in early 2021 of the Protocol on Ireland / Northern Ireland, including checks on goods’ movement in the Irish Sea, led to both a diplomatic confrontation between the EU and the UK, and to political controversy in Northern Ireland.

In July 2021, the UK Government put forward proposals to profoundly revise the Irish Protocol, speaking openly about its readiness to trigger its Article 16 (the so-called Safeguard clause), and suspend its operation. However UK demands were rejected by the European Commission, which in October 2021 instead advanced pragmatic solutions to improve its practical implementation.

Stalled negotiations between Brussels and London compounded growing tensions in Belfast. Unionist parties voiced growing opposition to the Protocol, but unsuccessfully challenged its legality in Northern Ireland’s court. This led to political instability and in March 2022, the Democratic Unionist Party pulled out of the devolved government in Stormont.

Elections in Northern Ireland in May 2022, however, resulted in a tectonic shift, with the historical victory of Sinn Féin, and the simultaneous rise of the non-aligned

Alliance Party. While this seems to presage a positive consent vote by Northern Ireland Assembly on the retention of the Protocol in 2024, it also raises new questions about devolved governance and the prospect of Irish unity.



Otherwise, beyond Brexit, major developments also occurred more broadly in Europe. While in summer 2021, the EU started rolling out its “Next Generation EU” recovery fund — designed to address the socio-economic consequences of the pandemic, and rebuild the EU economy after it — the fight against Covid-19 also progressed overall both in the EU and UK.

However, the explosion of the war in Ukraine caused by the Russian unprovoked aggression, started in February 2022, posed yet a new unprecedented challenge for Europe. A major interstate war on the European continent for the first time since 1945 shattered the illusion of eternal peace, and exposed the weaknesses of the current EU defense capabilities and governance structures.

Ironically, the war in Ukraine facilitated a rapprochement between the EU and the UK. In fact, while the takeover of the Brexit negotiations by the Foreign Office in January 2022 opened the door to a more constructive approach, defense challenges realigned the UK and the EU within NATO, and the UK decided to postpone yet again in April 2022 the customs checks on EU goods.

Yet, the Ukraine war also spurred a debate about European sovereignty and the need to secure its strategic autonomy in the field of security, food and energy. The EU institutions approved in March 2022 a new Strategic Compass, and the re-election of Emmanuel Macron as French President in April 2022 enhanced the prospect of further integration in the area of defense.

In fact, in the course of the current academic year, another important EU development has come to fruition, with the conclusion on 9 May 2022, Europe Day, of the Conference on the Future of Europe. This democratic participatory initiative, originally envisioned to relaunch European integration post-Brexit, has advanced proposals for legal and policy changes which will shape the future.

All these important developments have been at the heart of the activities of the Brexit Institute, which in the past academic year has organised high-level policy events, produced relevant publications and run visible engagement initiatives. As ever, none of this would have been possible without our sponsors, AIB and GSK Stockmann, who I want to sincerely thank. In fact, we are also delighted that this year, GSK Stockmann has agreed to renew its support for 3 more years, till 2025.

In particular, the Brexit Institute has organised 9 events, both online, and in person — notably at the European Court of Justice in Luxembourg. Moreover, the Institute has produced commentaries, papers, and books, including the most recent volume in the book series I edit at Oxford University Press: Federico Fabbrini (ed) “The Law & Politics of Brexit. Volume IV. The Protocol on Ireland/ Northern Ireland” (Oxford University Press 2022), with a Preface by Simon Coveney, Minister of Foreign Affairs of Ireland.

Crucially, then, the Brexit Institute has secured major funding from the EU under its Erasmus+ programme to establish a new Jean Monnet Centre of Excellence called REBUILD (“Recovery of Europe, Budget of the Union:

Integration, Law & Democracy”). This project — which the Institute launched in 2022 and that will run until 2025 — focuses on the innovative NGEU recovery fund, with the aim to explore its governance, funding and values.

REBUILD, besides being the first Jean Monnet Centre of Excellence at DCU, is also the first centre across Europe to examine, from a law and governance perspective, the EU post-pandemic economic recovery, and builds on the Jean Monnet Network BRIDGE, which the Brexit Institute has run from 2019 to 2022. REBUILD also connects to the Irish Department of Foreign Affairs, which has again this year given support to the Institute through its Communicating Europe Initiative.

Like the prior 4 reports published by the Brexit Institute in 2018, 2019, 2020, and 2021, this annual report seeks to provide a short and accessible overview of the main achievements of the Brexit Institute in the past academic year. This booklet, which is prefaced by DCU President Daire Keogh, includes original contributions and key statistical information. Each chapter relates to a specific event hosted by the Brexit Institute, but is primarily designed to showcase the wealth of expertise of DCU academic staff working within the Institute or affiliated with it.

Admittedly, however, this is a special report for the Brexit Institute — as it marks our 5th anniversary, and thus an ideal moment to take stock of our achievements over a prolonged period of time. From this point of view, what the data reveal is both an impressive continuity — as the Institute has maintained a steady output over the years — as well as a never-ending growth — with new projects and initiatives being constantly added to our portfolio.

In terms of structure, the report is divided in two parts — with part I covering the Brexit Institute’s annual work related to Brexit more specifically, and part II instead focusing on the Institute’s initiatives which concern the Future of Europe more broadly. This is then followed by a final “Facts and Figures” section, which lists some significant data about our performance — both this past academic year specifically, and in the past 5 years more broadly.



In **Part I**, Edoardo Celeste examines the question of data protection and data exchange between the EU and the UK, in light of Brexit. Niall Moran assesses the intricacies of the Protocol on Ireland / Northern Ireland, and its effects for the shared island of Ireland. Christy Petit explores how the UK withdrawal from the EU affects financial services. Finally, Ken McDonagh focuses on Brexit, the war in Ukraine and the consequences for European and Irish foreign policy.

In **Part II**, Ian Cooper discusses the dynamics of differentiated integration in a Europe in crises. Janine Silga sheds light on the ongoing challenges that the EU faces in the field of migration, suggesting that the crisis is not over. Goran Dominioni reflects on NGEU and its consequences, including for carbon pricing. Finally, Ian Cooper analyses the outcome of the just-completed Conference on the Future of Europe.

All in all, what this report highlights, therefore is, the need for continuing reflection on Brexit and the future of the EU. As more than a standard academic department — due to its focus on policy and engagement — and yet more than a think tank — due to its academic grounding — the Brexit Institute provides the ideal venue to this end. In fact, as 5 years of activities have made clear, the Brexit Institute, thanks to its international and interdisciplinary team, is an indispensable hub for thought leadership, cutting-edge research, and enlightened debate.

As we move beyond the celebrations for its 5th birthday, therefore, the Brexit Institute at DCU will continue to serve as an authoritative and reliable partner, for academia, business, governments and civil society alike to inform reflections on the key challenges of our time. As the Founding Director of the Institute, therefore, I commend to you the reading of this report! Thank you for your support and attention, and I look forward to our ongoing cooperation.

“In the past 12 months, in particular, the Brexit Institute has honoured its founding mission by offering timely and authoritative assessments of the most important developments relating to Brexit, UK-EU relations, and European affairs more generally.”

Prof Federico Fabbrini

The background image is a low-angle, upward-looking shot of modern skyscrapers. The buildings feature glass facades that reflect the sky and clouds. The sky is filled with soft, white clouds against a pale blue background. A large, semi-transparent teal rectangle covers the upper right portion of the image. On the left side, there is a solid orange rectangle. The text 'Part I:' is centered within the orange rectangle, and the word 'Brexit' is centered below it, overlapping the teal rectangle.

Part I:

Brexit

Brexit and Cross-Border Data Protection

by Dr Edoardo Celeste

Assistant Professor of Law,
Innovation and Technology



The Brexit Institute hosted, on **Thursday, 16th September 2021**, an event on **"Cross-Border Data Protection After Brexit"**, convened in cooperation with the DCU Law Research Centre and the Cross Border Data Protection Network, funded under the ESCR-IRC UK-Ireland Networking Grant. The event featured a keynote speech by **Viviane Reding** (former Vice President of the European Commission, responsible for Justice, Fundamental Rights and Citizenship), and a high-level roundtable moderated by **Karlin Lillington** (The Irish Times) and featuring **Mike Harris** (Grant Thornton) **Orla Lynsky** (London School of Economics) and **Edoardo Celeste** (DCU).

The United Kingdom's decision to withdraw from the EU generated manifold disrupting effects at the economic, social and legal level, and on both sides of the English Channel. The digital field has not been exempted. With Brexit, the UK has left one of the most advanced groups of states for the protection and exchange of personal data, which is currently at the forefront of legal innovation in regulating online content, services and disrupting digital technologies, such as artificial intelligence-based tools.

After Brexit, the UK has become a 'third country' from a data protection perspective, meaning that personal data cannot be freely transferred from the EU to the UK in the absence of a specific legal mechanism, in line with the requirements set out for international data transfers by the EU General Data Protection Regulation (GDPR). In June 2021, the EU Commission adopted a decision determining that the UK data protection regime offers an adequate level of protection, thus allowing for the free transfer of personal data to the UK. This decision, however, has been vocally contested, in particular in light of the current architecture of UK national security law, which has been repeatedly judged both by national and European courts as not in line with basic fundamental rights. This circumstance exposes a serious risk of instability of the newly adopted adequacy decision, potentially open to legal challenges, especially by data protection and privacy activists and advocacy groups. This is a threat that goes beyond mere academic speculation, as the recent case law of the Court of Justice of the EU, invalidating twice the EU Commission's adequacy decisions adopted in relation to the United States, has shown.

One could think that the precarious equilibrium created by the adequacy decision would make the UK desist from introducing new regulations in the digital field that could potentially undermine its adequacy status vis-à-vis the EU, especially in light of the strategic economic importance of data exchanges with EU member states. Yet in September 2021, the UK Government published



a consultation document including the blueprint of a new model for data regulation. EU legislation in the digital field is presented as potentially hampering the development of a flourishing UK economy in the technology sector. The objective of the consultation, which closed in November 2021, was then to suggest a new UK model of approaching the digital transition: less bureaucratic and more open to innovation. The UK aims to establish itself as a new champion in the digital services and artificial intelligence field.

If, on the one hand, the departure from the EU offers to the UK the possibility to reacquire its legislative sovereignty in the digital field, on the other hand, the potential emergence of a new UK regulatory model governing data protection, and the use of digital technologies more broadly, highlights new challenges from a cross-border cooperation perspective. Indeed, the consultation also included proposals that would significantly increase the divergence between UK and EU law. For example, one idea is to remove the right to human intervention in the context of automated decision making, which is one of the cornerstones of the EU human-centric approach to artificial intelligence. In the EU, indeed, a decision having significant legal effects cannot rely solely on the input of a machine, in order to prevent the dystopian scenario where multiple aspects of our society would be blindly determined by algorithms. Another proposal is to subject the action of the Information Commissioner's Office, the British data protection authority, to ministerial guidance and oversight. In this way, a national supervisory agency, which the Charter of Fundamental Rights of the EU as well as extensive European case law require to be independent from political control, would have to follow ministerial instructions on which practices or sectors to prioritise, for example.

As is apparent, these kinds of proposals, if effectively implemented, would compel the EU to revoke its adequacy decision in relation to the UK, in light of the fact that the level of protection of personal data offered by a similar legal framework in the UK could not be considered as 'adequate' from a European perspective. Or alternatively, they would expose the adequacy decision even more to the risk of legal challenges in court, further increasing the climate of uncertainty and instability that has characterised cross-border data transfers in the last few months.

On 10th May 2022, the UK government has made announcements in this regard, stating its decision, in light of the results of the consultation, to go ahead with such proposed plans. While this does not trigger an immediate revocation of the EU adequacy decision until these proposals reach a more advanced legislative status, the news sensibly increases the level of alert of EU institutions, national data protection authorities and the commercial sector at large. Indeed, if eventually approved, the new UK data model will necessarily require a revision of the legal mechanisms on which hundreds of companies and institutions rely on a daily basis to transfer data across the English Channel: a development not to be underestimated, due to its associated costs as well as its legal and operational complexities.



“The UK aims to establish itself as a new champion in the digital services and artificial intelligence field. These kinds of proposals, if effectively implemented, would compel the EU to revoke its adequacy decision in relation to the UK.”

Dr Edoardo Celeste

Brexit and the Northern Ireland Protocol

by Dr Niall Moran

Assistant Professor in Economic Law



On 18th – 19th November 2021, the DCU Brexit Institute hosted a conference, constituting the book workshop preliminary to the publication of Federico Fabbrini (ed), “[The Law & Politics of Brexit. Volume 4. The Protocol on Ireland / Northern Ireland](#)” (Oxford University Press), the fourth edition of the Law & Politics of Brexit series. It included a keynote by [Maroš Šefčovič](#), Vice-President of the European Commission for Interinstitutional Relations and featured an Opening Statement by [Simon Coveney TD](#) (Minister of Foreign Affairs of Ireland). It featured chapter presentations by [Michael Keating](#) (Aberdeen), [Katy Hayward](#) (QUB), [Oran Doyle](#) (TCD), [Aoife O’Donoghue](#) (Durham), [Imelda Maher](#) (UCD), [Rory O’Connell](#) (UU), [Niall Moran](#) (DCU), [Catherine Barnard](#) (Cambridge University), [Graham Butler](#) (Aarhus University), [Joris Larik](#) (Leiden University), [Robert Howse](#) (NYU) and [Brendan O’Leary](#) (University of Pennsylvania).

The results of the May 2022 Northern Ireland Assembly election were a historic outcome and a positive one for supporters of the Protocol on Ireland and Northern Ireland. Sinn Féin topped the poll, a first for a nationalist party in Northern Ireland. The centrist Alliance Party increased their first preference vote share by 50% (from 9% to 13.5% of first preference votes) and more than doubled the number of their seats (from 8 to 17). Three fifths of MLAs (54 out of 90) were elected on mandates to support the Protocol. (Sixty percent would typically be a decisive number in many other voting contexts; several US states require a 60% supermajority for constitutional amendments, while it takes 60% of votes in the US Senate to overcome the filibuster.)

While this bodes well for the medium term and the 2024 democratic consent vote that will be put to MLAs, there is currently a stalemate in terms of the short-term prospects for the Northern Ireland Executive. The DUP and its leader, Jeffrey Donaldson, made it clear on May 9 that they will not nominate a deputy First Minister unless the UK government takes “[decisive action](#)” on the Protocol. On May 13, the NI Assembly failed to elect a speaker.

On a visit to Belfast on May 16, Boris Johnson stated that he does not wish the Protocol ended, but rather wanted to see “sensible” changes to it. He warned that the UK government would enact unilateral changes to parts of the Brexit agreement unless the EU engaged in “[genuine dialogue](#)”. The next day, foreign secretary Liz Truss confirmed legislative plans to “[make changes](#)” to the Protocol in the coming weeks. Later that day, Simon Coveney stated that the decision to unilaterally disapply parts of “[an internationally binding agreement is damaging to trust](#)” and would only make it harder to find lasting solutions. Despite the fact that the proposed Bill would rewrite an international treaty through domestic legislation, Truss has insisted that it would be “consistent with our obligations in international law”. It remains to be seen what mixture of carrot and stick the EU will adopt

over the coming weeks in response to the UK's legislative plans. The EU will undoubtedly bear in mind doubts as to whether such legislation would be passed and the possibility that this is a tactic being used to get the EU to move further than its October 2021 proposals.

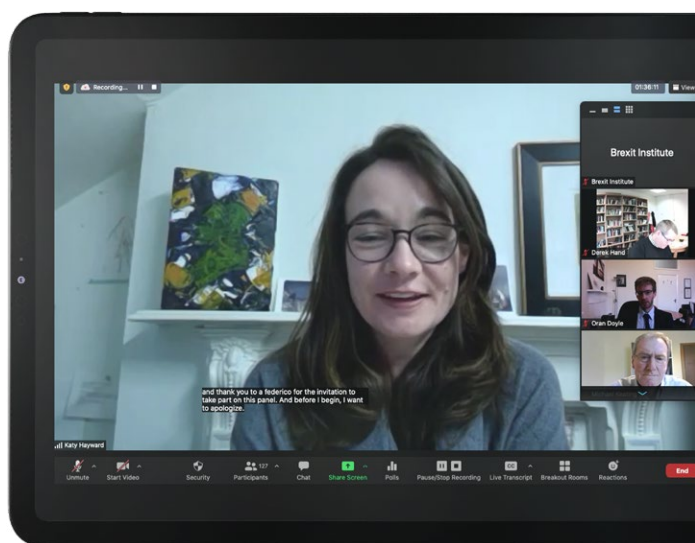
Consent and the vote itself

Democratic consent is at the heart of the Protocol and the 1998 Good Friday Agreement. Article 18 of the Protocol provides that the continued application of its economic provisions – Articles 5-10 – will be subject to a vote from elected Members of the Legislative Assembly (MLAs) before the end of 2024. It is important to underline the fact that Article 18 requires a simple majority of support, rather than cross-community support, for the Protocol to continue to apply. Based on the May 5 vote, this simple majority would certainly be met.

Articles 5-10 mainly concern customs and the movement of goods (Article 5); technical regulations (7); VAT and excise (8); the single electricity market (9); and state aid (10). Article 5 in particular applies the entirety of EU customs legislation, including the EU Customs Code, to the UK in respect of Northern Ireland, subject to limited exceptions. Subsequent consent votes would take place after four more years, or eight years if a vote demonstrated cross-community support for these provisions. As the threshold for cross-community support requires at least 40% of unionist designated representatives to vote in favour of the Protocol (18.6(b)), this would not be met based on the mandates of unionist MLAs in this election.

The short-term

The Northern Ireland Assembly maintains a unique arrangement whereby a significant amount of power lies in the hands of the largest parties from two specific sections of the community (unionists and nationalists). MLAs must designate themselves as belonging



to either of these categories, or else the 'other' designation applies to them. Those in the 'other' designation, such as the Alliance Party, may not occupy the roles of first or deputy first minister. Thus the largest unionist and nationalist party have effective vetoes on the formation of an Executive. Cross-community support is also needed for passing budgets, votes of confidence etc, and MLAs in the 'other' category are also [second class](#) in this regard.

The Democratic Unionist Party (DUP) saw its vote fall by one quarter (from 28% in 2017 to 21.3% in 2022) in this election. Nonetheless, it remains the largest unionist party by some distance, having secured 25 seats compared to its closest rival, the more pragmatic Ulster Unionist Party, which won nine seats and 11.2% of first preference votes. Despite this fall in support, the DUP retains a veto over the formation of an Executive as the largest unionist party.

While DUP opposition to the Protocol was clear before the election on May 5, their manifesto made no reference to their entering into government being conditional on such action from the UK government. Their 60 page manifesto contained a sole reference to the UK government in the section on the Protocol, stating that "The Government knows that the Protocol does not enjoy the support

of Unionists” and that “Now is the moment to send a clear signal that the Irish Sea border must go and the Protocol must be replaced by arrangements that restore Northern Ireland’s place within the United Kingdom internal market.” Its April 2022 ‘Remove the NI Protocol’ document contained the same paragraph, briefly elaborating that “The UK Government’s Command Paper last summer was a step in the right direction, but we need agreement or unilateral action.”

The medium term

The DUP appears to have gotten at least some of the decisive action it sought from the UK government. Both of the abovementioned DUP documents contain seven tests for any new EU-UK arrangements, including that that they must “avoid any diversion of trade” and result in “no checks on goods going... from Great Britain to Northern Ireland”. These seven tests appear to go considerably further than the UK’s July 2021 [Command Paper](#), which for example acknowledged the need for risk-based controls on consignments of agri-food goods moving into Northern Ireland (paragraph 50). The EU rejected the prospect of renegotiating the Protocol the day the UK Command Paper was released. The DUP must bear in mind that moving beyond the positions expressed in the Command Paper could only realistically happen on a unilateral basis. This position would be opposed by nationalist and centrist parties in the NI Assembly, not to mention the lack of support for moving beyond the position set out in David Frost’s Command Paper in the rest of the UK.

In terms of the formation of a NI Executive, the Alliance Party has long sought to end the designation system and to replace the cross-community voting system with a weighted

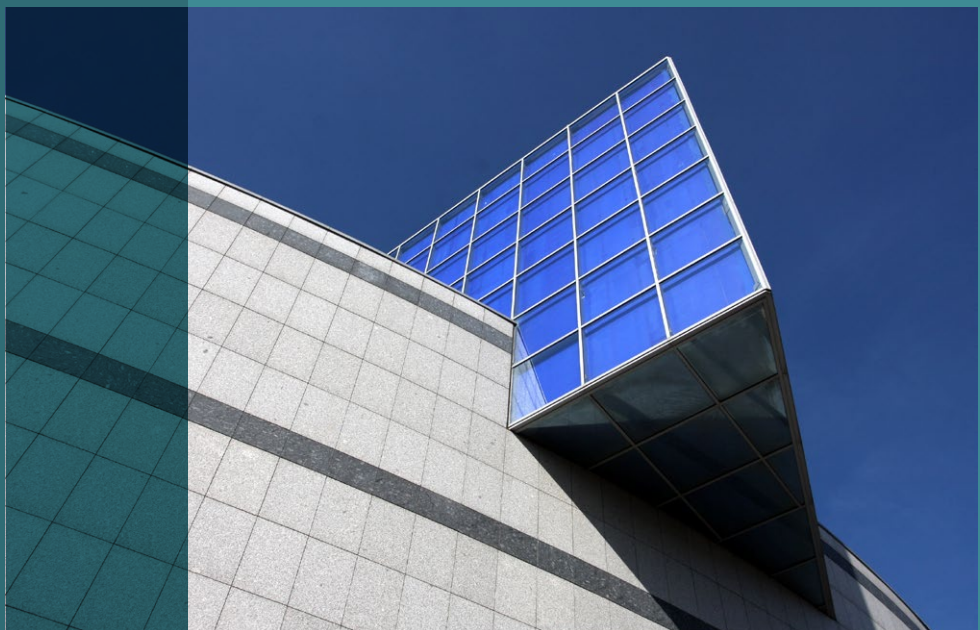
majority system, which could see the exclusion of the largest unionist or nationalist party from the executive. The argument for the current arrangement depends upon those wielding this veto power acting in good faith and with full disclosure. If a NI Executive cannot be formed over the coming months, because DUP demands from another actor (the UK government) are not met, the power-sharing process loses credibility and voters will understandably become frustrated. This is particularly the case where these demands were not openly expressed to the electorate in advance of the May 5 election.

It is not a given that a party receiving 21% of votes will have a perpetual veto over the formation of a NI Executive. The DUP’s position would be further weakened if it fails to seriously negotiate and a stalemate persists. Nonetheless, the current and unique power-sharing arrangements in Northern Ireland represent a balanced institutional accommodation in response to longstanding cross-community divisions. For those wishing to preserve the system in its current form, there is a responsibility to engage openly and constructively on issues surrounding the Protocol with all stakeholders, including other parties in NI, the UK government, EU, and most importantly with voters. If the DUP persists with its current stance, parties may well divide along the lines of those who wish to uphold different unique arrangements – the Protocol or the designation system – and its accompanying vetoes.

In spite of short-term uncertainty concerning UK legislative plans as well as the formation of a NI Executive, the election of 54 MLAs with mandates to support the Protocol is reassuring ahead of the 2024 consent vote.

“The Protocol provides that the continued application of its economic provisions will be subject to a vote from elected MLAs before the end of 2024. It is important to underline the fact that this requires a simple majority, rather than cross-community support. Based on the May 5 vote, this simple majority would certainly be met.”

Dr Niall Moran



Brexit and Financial Services

by Dr Christy Ann Petit

Assistant Professor on
EU Banking and Finance Law



On Thursday, 2nd December 2021, the DCU Brexit Institute held an event on “Financial Services after Brexit”. The event focussed on the impact of Brexit on both the future of the city of London and the EU plans for the development of a capital markets union (CMU) — and was generously sponsored by Eversheds Sutherland. The event was opened by Lord Jonathan Hill (former European Commissioner for Financial Stability, Financial Services and Capital Markets Union, and recently chairman of the UK Listing Review). It featured a panel of experts, moderated by John Peet (Editor at The Economist) including Tom Hall (Manager at AIB), Deborah Hutton (Partner at Eversheds Sutherlands), Valerio Scollo (Partner at GSK Stockmann Luxembourg) and Christy Ann Petit (Assistant Professor of EU Banking Law, Brexit Institute).

Since 1 January 2021, UK businesses have lost the passporting rights to provide financial services in the EU Member States on the basis of the freedom of establishment and freedom of services. They can now rely only on a very limited set of equivalence decisions to access the EU's single market, provisionally extended for central counterparties (CCPs). The City is now an offshore financial centre for EU-based entities and the UK is treated by the EU as a third country. As long as financial services are not part of the NI Protocol, nor a devolved competency, any evolutions in the field apply to the UK as a whole.

Brexit and financial services: ever more legal and policy divergence?

The UK has developed its own position on banking and financial services and started to diverge from the EU legal framework, notwithstanding some common trends. This is observed with the approach to FinTech and digital finance, Solvency II legislation (insurance), and for the UK financial system alignment with net zero emission.

As regards the FinTech approach, the UK Government identified digital finance as a key area of post-Brexit growth (after the Kalifa review concluded in April 2021) with the use of regulatory sandboxes built by the Financial Conduct Authority. The UK has, to some extent, followed the lead of the EU, with its digital finance and retail payments package from September 2020, which also pushed for regulatory sandboxes and innovation hubs within the EU. But the UK approach differs with a more agile ecosystem to date.

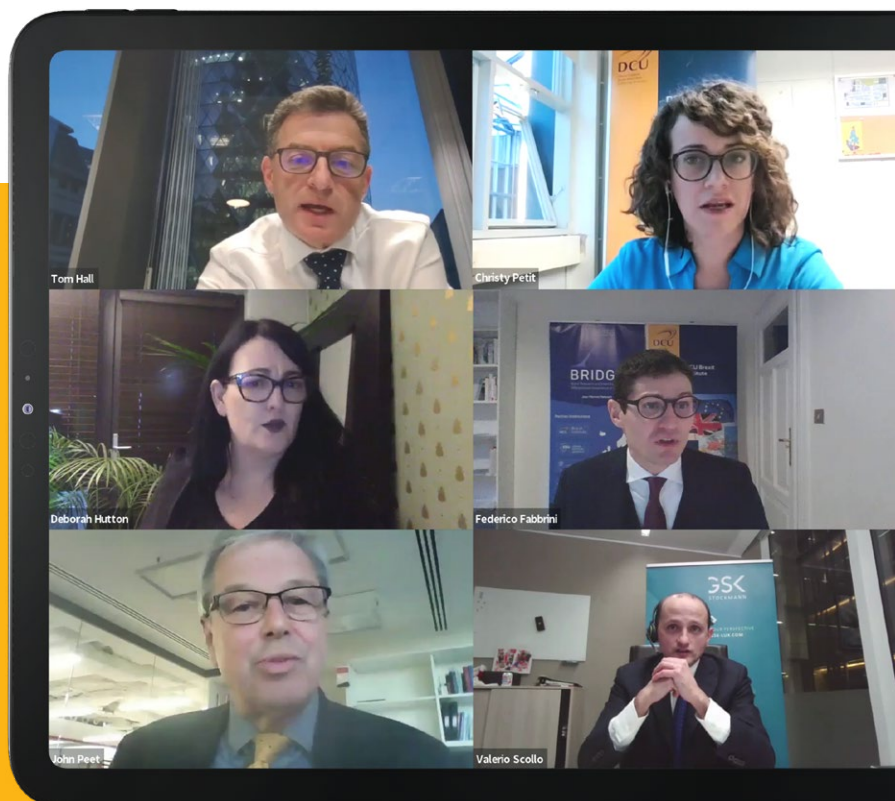
In the insurance sector, the UK started to review the Solvency II regime with the objectives to lower requirements for insurance firms (e.g. risk margin reduction and matching adjustment in line with the UK markets), despite some concerns expressed by the UK Prudential Regulation Authority (PRA). In the EU, the review of Solvency II forms part of the measures to deepen the Capital Markets Union, including a long-term orientation, reinsurance, and a new Directive for the Recovery and Resolution of insurance and reinsurance undertakings. The UK's strategy for greening its financial sector was launched with a Roadmap (October 2021),

including the adoption of sustainability disclosure requirements (SDR). The UK's own future Green taxonomy will diverge from the one developed in the EU, to account for the specificities of the UK economy. It is still too early to assess whether the policy approach will actually make the UK the world's first net zero aligned financial centre (as asserted by the Chancellor of the Exchequer, Rishi Sunak, at the last COP26). However, this presumed leadership needs to be put in a wider international context, including some initiatives taken by the Taskforce on Climate-Related Financial Disclosures (TCFD) and the Network for Greening the Financial System (NGFS) (the former being industry-led while the latter led by central banks and supervisory authorities).

Unique equivalence remaining in financial services and Single Financial Market

Regulatory equivalence, as recognised by the European Commission, was kept to the bare minimum with two decisions granted. To be sure, such equivalence means that some rules applied in the UK are deemed (temporarily)

equivalent to those applied in the EU. One equivalence decision was applicable on a temporary basis for central securities depositories (CSDs) for settlement of mainly Irish securities. But this equivalence expired on 1 July 2021, and before that, around €100 billion of Irish securities moved from London to Brussels (March 2021). Moreover, another equivalence decision was granted for the use of UK clearing houses for derivatives transactions, initially until the end of June 2022. The European Commission extended the equivalence for UK-based CCPs until 30 June 2025 to avoid a 'cliff-edge' scenario, as stated by Commissioner McGuinness in November 2021, and to ensure financial stability in the short term. The regulatory and supervisory framework applicable to CCPs established in the UK is then considered equivalent, in accordance with the European Market Infrastructure Regulation No 648/2012 (EMIR Regulation). Currently, London Clearing House (LCH Ltd) and US-based ICE Clear Europe Ltd – two systemically important UK CCPs – remain the major players for euro-denominated derivatives.



While this second equivalence still exists, the EU is attempting to build its own infrastructures, with measures to attract and facilitate market players' activities, as well as to subject them to adequate rules and checks. In particular, the objective is to have a central clearing capacity located in the EU, to disconnect from the overreliance on third countries' CCPs that might raise financial stability issues. This ongoing policy work has two main components: ensuring a domestic capacity with EU CCPs and clearing solutions provided by EU infrastructures, and, the EU supervisory architecture to monitor and manage the risks. In this regard, the latest recommendations from the European Securities and Markets Authority (ESMA) included the reduction of EU clearing participants' exposures to UK CCPs, enhancing the EU supervisory framework for CCPs as well as mitigating the risks that remain at UK CCPs.

At a general level, if technical discussions have been led for UK-EU regulatory cooperation, the concrete implementation and policy follow ups stalled. The EU and the UK adopted the Joint Declaration on Financial Services Regulatory Cooperation, including some principles for transparency and dialogue on equivalence decisions. But, the Memorandum of Understanding to establish structured regulatory cooperation on financial services has not been formally signed yet. A report from the UK European Affairs Committee is expected on this issue.

“Regulatory equivalence, as recognised by the European Commission, was kept to the bare minimum with just two decisions granted. Such equivalence means that some rules applied in the UK are deemed (temporarily) equivalent to those applied in the EU.”

Dr Christy Ann Petit

Brexit and the War in Ukraine

by Dr Ken McDonagh

Associate Professor of International Relations and Head of the School of Law and Government



On Thursday, 31st March 2022, the DCU Brexit Institute held an event on “The War in Ukraine and the Future of the EU”. The event was opened by Daire Keogh (President of DCU) and included an opening statement by Thomas Byrne TD (Minister of State for European Affairs of Ireland). It was then followed by a high-level roundtable of experts, chaired by Judy Dempsey (Senior Fellow at Carnegie Europe and editor in chief of Strategic Europe), that featured Sacha Garben (Permanent Professor of EU Law, College of Europe, Bruges), Anand Menon (Professor of European Politics, King’s College London & Director, UK in a Changing Europe), Kenneth McDonagh (Associate Professor of International Relations and Head of the School of Law and Government, DCU), and Federico Fabbrini (Professor of EU Law & Founding Director, DCU Brexit Institute). This was followed by a Presentation on the DCU Masters in European Law and Policy 2022-23.

The Russian invasion of Ukraine on February 24th caught the world by surprise in its scale and what it told us about the strategic orientation of Vladimir Putin’s Russia. The primary aim of the invasion was regime change and the installation of a Moscow-friendly regime in Kyiv. Russia has failed utterly in that task. The secondary aim of the invasion was to prevent NATO expansion and weaken unity in the West; that too has failed. With Sweden and Finland moving toward NATO membership, [severe sanctions](#) have been imposed by the US, the UK, the EU, Japan, Australia, Canada and New Zealand and the provision of substantial military aid to Ukraine, including a historic first use of the [European Peace Facility \(EPF\)](#). Even though Germany has [dragged its feet](#), even its harshest critics would concede that the ‘zeitenwende’ reflects a significant shift in Germany’s language on security and defence.

However, beneath this level of unity, the friction of Brexit remains a serious risk to Western Unity. Prior to the invasion, the Northern Ireland Protocol was again looming as an issue. At the start of February, the DUP first minister Paul Givan [resigned](#). The British government again signalled its unhappiness with the existing protocol and it looked as though another round of brinksmanship on the issue was looming. The Russian invasion removed the immediacy of the issue but not the underlying threat.

Even in the response to the war, unnecessary friction began to emerge – the UK [moved faster and more decisively on arms and military supplies](#) while the EU took longer to mobilise via the EPF. The EU invoked the [Temporary Protection Directive](#) giving immediate access and residency rights to displaced Ukrainians while the UK created a [convoluted application system](#). Priti Patel, the Home Secretary, even raised the issue of [‘security threats’ to the UK from Ukrainian refugees](#) entering Ireland and the common travel area under the EU approach. On sanctions too, the UK and EU moved at [different paces, prioritising](#)

different targets. The UK moved to remove tariffs on all Ukrainian goods earlier than the EU, although the fact that some of these were already covered by the Association Agreement led to unhelpful one-upmanship among the keyboard warriors of Brexit-Remainer front.

Ultimately, there has been more that united the UK and EU in their approach to the Russian invasion; it has been helpful that NATO and Washington have been the drivers of policy in the security area, but Brexit has created friction that weakens both the EU and the UK. Although the Foreign Secretary, Liz Truss, has attended Foreign Affairs Council meetings, Boris Johnson was not invited to a European Council following his ridiculous comparison of Brexit to the resistance of Ukraine to foreign domination. In this context, the UK/EU relationship has become another vector of instability where coordination and unity is required.

Like Groundhog Day, the UK government was expected to announce a plan for legislation to unilaterally disapply aspects of the Northern Ireland Protocol in the Queen's speech on the 8th of May. Such a move will exacerbate tensions in the EU-UK relationship. The timing, a day before Victory Day celebrations in

Moscow – widely believed to be a key target for Putin in the current war, couldn't have been worse. In the end, it was not included in the Queen's speech but the threat remains on the table. Although any disagreement will be unlikely to fracture Western resolve on Ukraine it will create further tension and difficulty in the EU-UK relationship.

Zooming out, the Russian invasion of Ukraine has brought home to the EU the reality of its geopolitical neighbourhood. Those who argued that Moscow was potentially a partner rather than an adversary have lost credibility. The EU needs to coordinate on defence and security matters in a more streamlined and effective way than previously. It also needs to deal with Russian influence within the Union, whether it is politicians or parties with dubious financial ties to Moscow or governments such as Victor Orban's Fidesz in Hungary that have been little more than fifth columns for Moscow in the current conflict. The EU needs to both get its house in order and work closely with external partners.

Brexit hinders this in two ways. One is the more immediate. As outlined above it presents an additional coordination problem. Having the UK outside of EU decision making forums creates one more moving part and source of



uncertainty. The ongoing tensions over the Protocol and Brexit more broadly make managing this relationship more difficult and this points to the second, broader point. The EU is, by definition, a multilateral actor and post-Brexit, the UK has increasingly set its face against that multilateral order. Brexit can only succeed if the UK can do better as a bilateral actor than as a member of multilateral fora and better comparatively than EU member states. For now, the US is aligned with the EU but a second Biden term is far from guaranteed. If 2016 was a breaking point in the post-Cold War order, then 2022 might be the moment when those cracks deepen and widen irreparably – not because Putin succeeded in his objective, but because the West has been unable to remove the unnecessary frictions created by Brexit.

“Ultimately, there has been more that united the UK and EU in their approach to the Russian invasion, but Brexit has created friction that weakens both the EU and the UK. In this context the UK-EU relationship has become another vector of instability where coordination and unity is required.”

Dr Ken McDonagh



Part 2:

The Future of Europe

Differentiated Governance and the Future of Europe

by Dr Ian Cooper

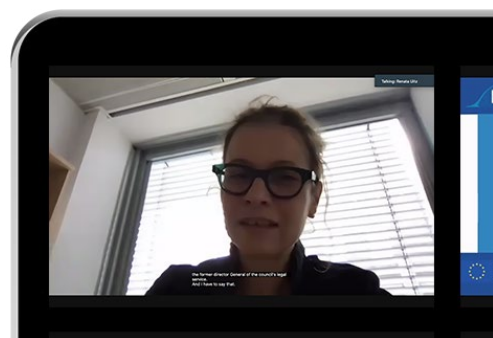
Researcher at the Brexit Institute



On October 11th-12th 2021, the DCU Brexit Institute hosted the seventh conference of the BRIDGE Network event series, “Differentiated Governance in the Post-Crises EU”, in collaboration with University of Copenhagen, University of Bozen and Bolzano, and the Central European University. The first day featured two panels with presentations by Viktor Kazai (CEU), Niels Kirst (DCU), Beatrice Monciunskaitė (DCU), Jenny Pullicino Orlando (KU), Teodora Milojkovic (CEU), Havva Yesil (DCU), Theresia Morandell (unibz), Giacomo Pignatiello (University of Siena). The second day was a publication workshop for the journal European Papers, with presentations by Ian Cooper and Federico Fabbrini (DCU), Helle Krunke (KU), Stefania Baroncelli (unibz), Christy Ann Petit (DCU), Stefania Baroncelli (unibz), Renata Uitz (CEU) and Janine Silga (DCU). A final Keynote Speech was given by Jean-Claude Piris (former Director General of the EU Council Legal Service).

The Russian invasion of Ukraine has led to a renewed focus on how the EU relates to its closest neighbors. Many have called for Ukraine to be made a candidate for EU membership. Currently, Ukraine is not a candidate but is part of the EU’s “Eastern Partnership” policy, and enjoys a close economic relationship through its Association Agreement with a Deep and Comprehensive Free Trade Area (DCFTA) with the EU. Russia, for its part, has been expelled from the Council of Europe, the political group which safeguards democracy and the rule of law and that includes almost all European nations. The divergent paths of Ukraine and Russia demonstrate how non-EU countries are part of a larger system of “external differentiation” of EU governance structures. The research of the BRIDGE Network included an Interactive Map Project that highlighted both internal and external differentiation.

External differentiation is the phenomenon in which there is variation in the extent to which EU rules and governance structures exert authority on states and territories outside the EU. The EU has quite different kinds of relationships with its nearest neighbors, including association countries and partners, such as Turkey, with which the EU has a partial customs union. 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), which set the terms of the withdrawal, but which also features separate governance arrangements for the Ireland/Northern Ireland Protocol. The authority of EU law is different in each of these three layers, as is apparent in the varying role of the ECJ, which is excluded from the TCA, has a transitional role in the WA, and has a continuing role in overseeing the Protocol.

The reference to Northern Ireland 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 remains closely linked to the EU, within the single market for goods and de facto within the 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 as a currency and are integrated into the EU customs union.

More generally, the distinction between the member states of the EU and close neighbors that are EU non-members is most striking in the fact that many non-member states are not only subject to EU rules but to some extent subject to EU governance structures. Yet this external governance is also differentiated insofar as the authority of the EU varies not only across states and territories but by policy area. A good indicator of this is the variation in neighboring states' relations with the most important economic institutions of the EU – the Single Market, the Customs Union and the euro currency. A number of neighboring states are implicated in each of these EU institutions, but in each case, the states in question are different. The Single Market comprises all the EU-27 plus seven non-EU states that are partially integrated within it, which are: Iceland, Liechtenstein and Norway, by virtue of the European Economic Area (EEA); Switzerland, through numerous bilateral agreements; and Georgia, Moldova, and Ukraine, each of which has an Association Agreement with a Deep and Comprehensive Free Trade Area (DCFTA) with the EU. The Customs Union comprises the EU-27 plus four neighboring states which have a customs agreement with the EU – Turkey and three microstates (Andorra, Monaco and San Marino). Finally, in addition to the nineteen Eurozone states within the EU, six states outside the EU use the euro as their currency – four microstates (Andorra, Monaco, San Marino and Vatican City) which do so by agreement with the EU, and two states which do so on a unilateral basis, Kosovo and Montenegro.

External differentiation is also a feature of the EU's cooperation with neighboring countries on migration policy. The four EFTA states (Iceland, Liechtenstein, Norway, and Switzerland) are part of the Schengen area of passport-free travel (even while five EU member states are outside of it) and are also participants in the Dublin Regulation on asylum. Ireland, one of the EU's non-Schengen states, has its own bilateral arrangement for passport-free travel with a non-EU state, the Ireland-UK Common Travel Area.



“Many have called for Ukraine to be made a candidate for EU membership. Currently, Ukraine is not a candidate but is part of the the EU’s Eastern Partnership policy, and enjoys a close economic relationship through its Association Agreement with a Deep and Comprehensive Free Trade Area.”

Dr Ian Cooper



Rule of Law, Migration, and the Future of Europe

by Dr Janine Silga

Assistant Professor in EU Migration Law



On January 27th-28th 2022, the CEU Democracy Institute hosted the eighth conference of the BRIDGE Network event series: “**The Rule of Law Crisis and the Future of EU Governance**”, in collaboration with the DCU Brexit Institute, the University of Copenhagen and University of Bozen and Bolzano. It featured opening remarks by **Laszlo Bruszt** (Professor of Sociology & Co-Director, CEU DI) and **HE Ronan Gargan** (Irish Ambassador to Hungary), and a keynote address by **Adam Bodnar**, (Professor of Law and Dean, Law Faculty, SWPS & Former Human Rights Ombudsman of Poland). In addition, it featured five panels with presentations by **Federico Fabbrini** (DCU), **Armin von Bogdandy** (MPiL), **Justin Frosini** (Bocconi / SAIS Europe), **Ruzha Smilova** (Sofia University / Centre for Liberal Strategies), **Renata Uitz** (CEU), **Janine Silga** (DCU), **Magdalena Smieszek** (CEU), **Leila Hadj Abdou** (University of Vienna), **Orsolya Farkas** (unibz), **Dimitry Kochenov** (CEU DI), **Ana Bobic** (CJEU), **Stefania Baroncelli** (unibz), **Ronan McCrea** (UCL), **Maciej Bernatt** (University of Warsaw), **Teodora Milojkovic** (CEU), **Viktor Kazai** (CEU), **Zoltan Fleck** (ELTE), and **Barbara Grabowska Moroz** (CEU DI).

It is impossible not to connect the EU asylum policy with the ‘rule of law’ broadly understood and in particular with the way in which the Court of Justice of the European Union (CJEU) has recently developed this notion with respect to the right to an effective remedy. As is well known, the concept of the rule of law is closely connected with the EU’s foundational values. According to Article 2 TEU, these values include: ‘...[T]he respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.’ Because there are human beings living within the EU, this provision also covers migrants. However, the way in which the EU migration policy – including the specific migration regime of asylum – was conceived reflects a differentiated understanding of these values in this particular context. As expressed in article 67(1) TFEU, the Area of Freedom, Security and Justice – including migration and asylum – entails respect not only for fundamental rights but also for ‘the different legal systems and traditions of the Member States’.

This emphasis on the legal systems and traditions of Member States points to the accepted fact that national migration policies are bound to differ from one another. What is unclear, however, is the extent to which they are supposed to be different and in particular if this might entail a different understanding of how the rule of law applies to non-nationals. This is especially important in the field of asylum, which is also a fundamental right in EU law – as provided in article 18 of the Charter of Fundamental Rights.

When it comes to the rule of law, in its [judgment of February 2018](#) based on a claim of the Trade Union of the Portuguese Judiciary, the Court clearly stated that: ‘The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law’ (para. 36).

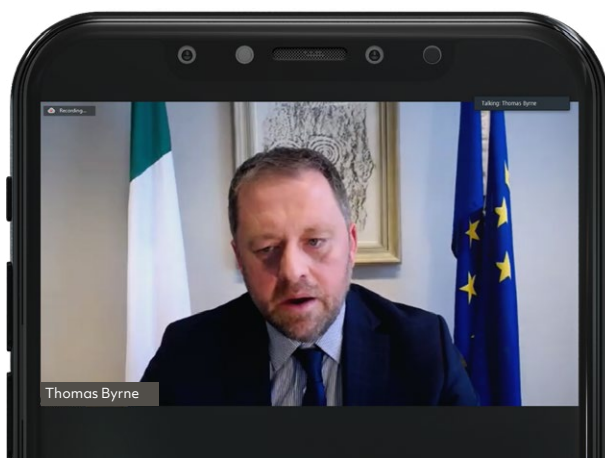
As the scholarship already extensively commented, this ruling built a rather

unexpected bridge between article 2 TEU and article 19(1) TEU. In doing so, the Court overcame the thorny question pertaining to the material scope of application of article 47 of the Charter of Fundamental Rights, which had been considered – thus far – the only textual and formal translation of the principle of the right of individuals to effective judicial protection under EU law. Indeed, the material application of the Charter – including article 47 thereof – is limited to situations in which Member States ‘are implementing Union law’ – or EU institutions broadly understood. This astute extension of the scope of application of the right to an effective remedy – thanks to the newly gained relevance of art. 19(1) TEU – was the first step for the Court to develop its case law on judicial independence in the Member States especially concerned with rule of law backsliding.

When it comes to asylum, it is important to clarify immediately that the right to an effective remedy is not particularly controversial in this field, whether from the legislative or judicial point of view. The relevant instrument in this sense is the so-called ‘[Procedures Directive](#)’ whose main objective is to adopt common standards as regards national procedures for granting and withdrawing international protection (recital 12). This instrument includes an article 46 ‘on the right to an effective remedy’.

In spite of the importance of the rule of law in the context of the EU asylum policy and in particular the right to effective judicial protection, it is surprising that the Court of

Justice has so far shied away from explicitly linking its very well-developed case law relating to the rule of law ‘crisis’ to its case law pertaining to the so-called 2015/2016 migration ‘crisis’. The only instance in which the Court was invited by its Advocate General – Michal Bobek – to link these two dimensions of its case law was in the 2019 [Torubarov](#) decision. While the Court largely echoed the conclusions of its Advocate General, it did not follow his invitation to deal with this situation as part of its case law on the rule of law ‘crisis’ – in this case in the Hungarian context. This is not to say that the Court did not condemn the treatment of asylum-seekers and refugees in Hungary – far from it. After [Torubarov](#), the Court adopted several decisions in this sense, the latest prominent example being a [Grand Chamber case of November 2021](#). It appears, therefore, that the Court has been quite vocal in condemning – with the support of the European Commission – the violations of the fundamental right to asylum by Hungary. The fact that these rulings were adopted in the course of very little time and in the particular context of the ongoing rule of law crisis may all point to the underlying intention of the Court to set some limits as to how Member States may react in the context of both the rule of law and migration crisis. However, the connection is implicit – at best – and it does definitely not go as far as fully embracing the recent judicial developments which are part of the ongoing constitutional crisis. While this is problematic, the [recent validation](#) of the ‘[conditionality regulation](#)’ will hopefully provide a wealth of opportunities for the Court to bridge this gap.



“It is surprising that the Court of Justice has so far shied away from explicitly linking its very well-developed case law relating to the rule of law crisis to its case law pertaining to the so-called migration ‘crisis’ of 2015-2016.”

Dr Janine Silga



Next Generation EU and the Future of Europe

by Dr Goran Dominioni

Assistant Professor in Environmental Law



On 24th-25th February 2022, the DCU Brexit Institute held a conference to launch the **Jean Monnet Centre of Excellence REBUILD**, on Next Generation EU (NGEU). It featured an opening Keynote Speech by **Pascal Donohoe** (Eurogroup President and Irish Minister of Finance), and Introductory Remarks by **Florentine Hopmeier** (Cabinet of Ursula von der Leyen). It featured presentations by **Erik Jones** (Director of the Robert Schuman Centre, EUI), **Laure Clement Wilz** (Université Paris-Est Créteil), **Fabian Amtenbrink** (Erasmus University Rotterdam), **Christy Ann Petit** (DCU), **Julio Baquero Cruz** (Legal Service, European Commission), **Michael Breen** (DCU), **Richard Crowe** (Legal Service, European Parliament), **Amy Verdun** (University of Victoria), **Diarmuid Torney** (DCU), **Edoardo Celeste** (DCU), **Petra Bard** (CEU), **Carlo Garbarino** (Bocconi University), **Goran Dominioni** (DCU), **Niall Moran** (DCU), **Tomasz Woźniakowski** (Nicolaus Copernicus University), **Federico Fabbrini** (DCU), **Vivien Schmidt** (University of Boston), and **Shahin Vallee** (OECD).

In times of crisis, a focus on immediate short-term problems can make it difficult to maintain effective environmental policies over the long term. In this way, the many crises we currently face - high energy prices, high inflation, and the Russian invasion of Ukraine - risk undermining advances made in pricing carbon worldwide. In this contribution, I will argue that a broader approach to carbon pricing policy could mitigate this risk.

In the last couple of decades, there have been significant advances in carbon pricing policy, both in terms of new carbon taxes and emission trading systems (ETSs) (explicit carbon pricing) that have been implemented in many parts of the world and in terms of the level of ambition of these instruments. It is remarkable that the number of jurisdictions that have implemented these instruments has more than tripled in the last ten years and that some instruments have seen record carbon price hikes in 2021 (World Bank, 2022). Some of these recent high prices – such as those of the EU ETS at the moment of writing – are, in theory, well-aligned with standard metrics of Paris-compatible carbon pricing trajectories (Carbon Pricing Leadership Coalition, 2017).

However, in practice, assessing whether the carbon price applied through a carbon tax or ETS is Paris-compatible has to be assessed by considering the policy environment in which these instruments operate (Carbon Pricing Leadership Coalition, 2017). A less climate ambitious policy environment, *ceteris paribus*, will require implementing higher explicit carbon prices to deliver on the temperature targets of the Paris Agreement.

In response to current energy price hikes and inflation levels, many governments will be facing the difficult task of maintaining climate change ambition while addressing compelling alternative priorities, such as avoiding energy poverty and guaranteeing food security. This is a type of situation that is likely to lead to an inconsistent approach to fiscal policy for climate change – whereby an increase in explicit carbon prices is coupled with a

decrease in implicit carbon prices (for instance, in the form of lower fossil fuel tax rates or increased subsidies for fossil fuel consumption). While some of these inconsistencies can be a necessary response to multiple political priorities, their overall climatic effect can be uncertain. There is also the risk that interest groups that would gain from more lenient fiscal policies for climate change will use the crises to lobby for an unnecessarily favourable treatment.

In this context, it can be useful to keep track of the overall effect of these environmental tax reforms on the effective carbon price (the sum of implicit and explicit carbon prices) applied to GHGs within a jurisdiction. Doing so would provide a more comprehensive metric of the price applied to GHG emissions within a jurisdiction at different points in time. This more comprehensive metric can help public authorities to balance the need to act on climate change with other legitimate priorities.

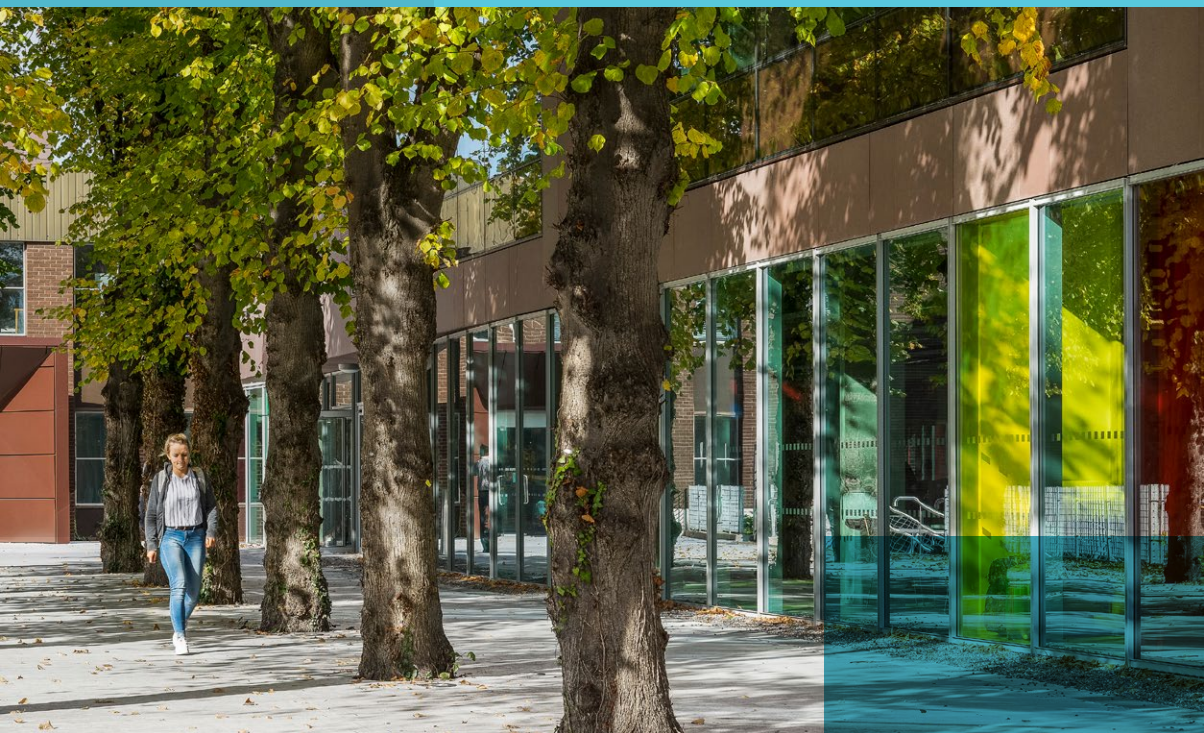
Ideally, governments could also go a step further and commit to maintaining a minimum level of effective carbon prices through time. In some of my recent research (Dominioni, 2022), I have highlighted that the benefits of such an approach go beyond pricing carbon per se. On the one hand, acting on effective carbon prices can create new synergies among government departments involved in different areas of fiscal policy for climate change; this can strengthen their capacity to implement climate policies. On the other, policy action on effective carbon pricing can also integrate finance ministries more directly in climate change policy than focusing exclusively on explicit carbon pricing alone, as not all instruments that price carbon explicitly fall under the auspices of finance ministries (e.g., China ETS).

Currently, there is important work by some international organisations (OECD, 2016; OECD, 2018; OECD, 2021; IMF, 2019) that moves in the direction of making estimates of effective carbon prices for various jurisdictions available. Countries could build on these efforts to estimate their level of effective carbon prices over time.



“In response to current energy price hikes and inflation levels, many governments will be facing the difficult task of maintaining climate change ambition while addressing compelling alternative priorities, such as avoiding energy poverty and guaranteeing food security.”

Dr Goran Dominioni



The Conference on the Future of Europe

by Dr Ian Cooper

Researcher at the Brexit Institute



On Thursday, 16th June 2022, the Brexit Institute and the Jean Monnet Centre of Excellence REBUILD held an event on “**Economic Governance in the EU after the Conference on the Future of Europe**”. The event began with introductory remarks from **Federico Fabbrini**.

This was followed by a panel discussion featuring **Sergio Battelli** (Chair of the EU Affairs Committee of the Italian Chamber of Deputies), **Neale Richmond** (Member of the EU Affairs Joint Committee of the Irish Parliament), and **Paul Dermine** (Référéndaire at the Court of Justice of the European Union), and **Kalypso Nicolaidis** (Chair of Global Affairs at the EU School of Transnational Governance).

On May 9, 2022, the Conference on the Future of Europe completed its work and delivered its final report. This brought to a close an ambitious, sprawling year-long public consultation intended to canvas the views of citizens from across all 27 member states about their wishes and preferences for the future of the European Union (EU). This was a grand experiment in participatory democracy of unprecedented scope (covering a wide array of policy areas) and scale (covering a whole continent).

The idea for the Conference was first suggested by French President Emmanuel Macron. It was originally timed to coincide with the UK’s departure from the EU, and is thus it was to be a public forum for the member states of the EU-27 to contemplate their post-Brexit future. The Conference was supposed to be launched on May 9, 2020, but was postponed due to the outbreak of the Covid-19 pandemic.

The launch was also held up by a failure to agree on which person should be President (i.e. Chair) of the Conference. Some had thought that one charismatic individual should fulfill this role in order to attract greater attention to the Conference. There was some disagreement among the three main EU institutions – the European Parliament, Council, and Commission – over who should be chosen. The European Parliament had nominated Liberal MEP Guy Verhofstadt, but he was reportedly rejected as “too federalist” by some member states. After that a number of names were suggested, but none were ultimately chosen. In the end, they chose the safe (and boring) option of approving a Joint Declaration of all three EU institutions and appointing an Executive Board that represents the three of them equally. This prevented the Conference from benefiting from the presence of a significant personality to represent the Conference as a whole. It also meant that the steering of the Conference was firmly in the hands of the EU institutions and was thus unlikely to pursue radical change outside the framework of the EU treaties.

It is telling to compare the official positions of the three main EU institutions prior to the Conference on how it should proceed. In general, the positions represent traditional differences between these institutions. The European Parliament, the only EU institution with a transnational democratic mandate, tends to favour more European integration, and so wants an open-

ended process that could lead to changes to the EU Treaties. The Council, representing the member states, is more cautious, and has tried to rule out any changes to the Treaties (saying that the Conference is “outside the scope of Article 48 TEU”). The Commission, for its part, takes the middle ground and positions itself as an “honest broker” between the other two.

The architecture of the Conference was designed to provide multiple channels for citizens to make their views known in the process. There was a Multilingual Digital Platform, which enabled ordinary citizens to put forward over 17,000 ideas in relation to the future of Europe. One particular innovation was the creation of four thematic European Citizens’ Panels, each composed of 200 randomly selected European citizens from all EU-27 member states, organized around the main topics of the Conference, which met three times over the course of several months. In addition, similarly structured National Citizens’ Panels were organized separately in six EU member states. Moreover, numerous national events were held in every EU member state within the framework of the Conference. Other events included a European Youth Event involving thousands of youths from across

Europe, and events held under the auspices of the European Economic and Social Committee and the Committee of the Regions, as well as civil society organizations. Finally, all of these inputs were fed into the final deliberative body, the Conference Plenary, made up of hundreds of people including representatives from the European Parliament, Council and the Commission, national MPs, as well as representatives from the European Citizens’ Panels and various other deliberative bodies.

The final report is a fascinating compendium of a 49 general proposals, each of which includes multiple specific elements, making up a list of more than 300 individual measures that are suggestions across several substantive policy fields. Some of these proposals have attracted a great deal of attention, because they would require a change to the EU treaties – for example, the introduction of qualified majority voting for major foreign policy decisions (thus eliminating national vetoes) or the introduction of transnational lists in European Parliament elections. This is controversial, because several member states are opposed to renegotiating the treaties. However, it should also be noted that many of the proposals would not require



treaty change, but could be brought about by ordinary legislation at the EU level, or through the coordination of national policies via “soft law” instruments. Some proposals could be realized through the executive action of the EU on its own, such as in response to the many suggestions that the EU establish EU-level platforms for the sharing of information on best practices in a given policy area.

What comes next? The EU institutions have entered into a period of reflection to think about how to respond to the Conference proposals. In the coming months, it is certain that the debate over the future of Europe will continue.

“The Conference was an ambitious, sprawling, year-long public consultation to canvas the views of citizens from across all 27 member states about their wishes for the future of the EU. It was a grand experiment in participatory democracy of unprecedented scope, covering a wide array of policy areas, and scale, covering a whole continent.”

The background of the slide is a complex, abstract geometric pattern. It features a grid of squares and rectangles, some of which are slightly offset or rotated, creating a sense of depth and movement. The primary colors are various shades of blue, from deep navy to bright cyan. Interspersed within this grid are several smaller squares that glow with a warm orange or red light. The overall effect is a dynamic, almost architectural composition.

Part 3:

Facts and Figures

2021 - 2022

Staff

Nationalities 10+

Disciplines 5+



1 Director



6 PhDs



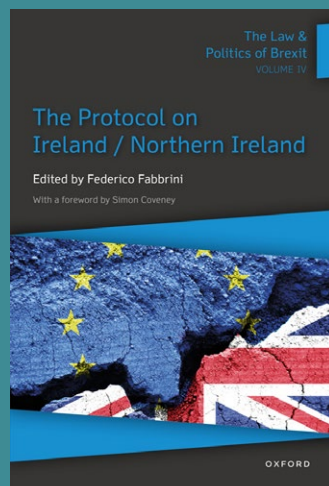
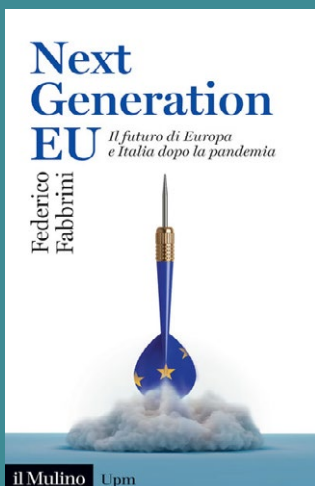
3 Staff



36 Affiliated staff from across DCU

Publications

Books 3



21 Working Papers

12 Brexit Institute,
6 BRIDGE Network,
3 REBUILD Centre

153 Blogs

96 Brexit Institute,
49 BRIDGE Network,
8 REBUILD Centre

Events 10



Interactive Map

In 2021, the Brexit Institute within the BRIDGE Jean Monnet Network completed an Interactive Map project that is a visual guide to differentiated governance inside and outside the EU. The project consists of a map of Internal Differentiation, which shows the differences between the 27 EU member states, and a map of External Differentiation, which shows the differing relationships between the EU and the other 23 states in Europe.



New Projects



The Jean Monnet Centre of Excellence REBUILD is the newest Brexit Institute project, funded under the EU Erasmus+ programme, and led by Prof Federico Fabbrini. REBUILD, which runs from 2022 to 2025, is the first Jean Monnet Centre of Excellence at DCU and the first initiative Europe-wide to focus on the “Next Generation EU” Recovery Fund and its impact on EU integration.

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. The need for informed opinion is as great today as it ever has been to guide us through this new phase of the EU-UK relationship.

David Maria Sassoli, President of the European Parliament



I would like to recognise in particular the exceptional work of Professor Federico Fabbrini and the DCU Brexit Institute. The Brexit Institute is an excellent example of the vital role that academia and think tanks play in aiding Irish policy makers, businesses, and the public to understand the new environment created by Brexit.

Simon Coveney, Minister for Foreign Affairs of Ireland



We must continue to reflect on and engage with the challenges and opportunities that lie before us, and to this end, I wish Professor Fabbrini success with this book [Next Generation EU, 2022] and I look forward to engaging in the ongoing debate it contributes to.

Paschal Donohoe, Eurogroup President and Finance Minister of Ireland

Prizes & Recognitions



On 2nd June 2021, Prof Federico Fabbri was made a knight by President of Italy, Sergio Mattarella. The 'Order of the Star of Italy', is a knighthood given to those who have honoured their country overseas. Professor Fabbri was knighted in recognition of his scholarly achievement. Due to Covid-19, the award ceremony at the presence of Ambassador Paolo Serpi only occurred in April 2022.



In Fall 2021 Prof Federico Fabbri, had the honour of being selected by the Friends of Europe organization to be a European Young Leader in the Friends of Europe's cohort for 2022.

Survey of Media Impact

Media Presence



Youtube

8,729 views Total (DCU Brexit Institute: 14 videos, 6,712 views; BRIDGE Network: 20 videos, 1,708 views; REBUILD Centre: 10 videos, 309 views (23 June 2021 to 25 May 2022))

Podcasts

13 (BRIDGE) - 1,422 total listens; Top= 365 listens (Sir Ivan Rogers, Part 2: After the Referendum) (to 25 May 2022)

Websites

802k impressions, 6k engagement (DCU Brexit Institute, BRIDGE Network, REBUILD Centre- 23 June 2021 to 25 May 2022)



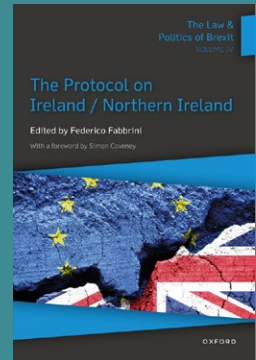
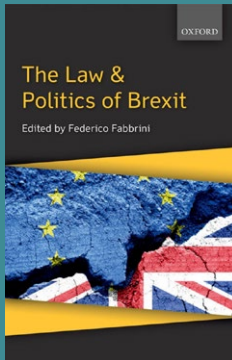
Part 4:

Key Achievements

2017 - 2022

Total Publications

Books 7



87 Working Papers

63 Brexit Institute,
21 BRIDGE Network,
3 REBUILD Centre

691 Blogs

543 Brexit Institute,
140 BRIDGE Network,
8 REBUILD Centre

100 Videos

32 Brexit Institute,
58 BRIDGE Network,
10 REBUILD Centre

26 Podcasts

4 Reports: 3 European
Parliament and 1 Irish
Department of Finance

2 Special
Journal Issues

Events 52

Which Brexit After the UK Elections? - 14/09/17 - Dublin

Brexit, Citizens' Rights and their Protection - 05/10/17 - Dublin

Brexit, the Border and the Internal Market - 26/10/17 - Dublin

Brexit, the Financial Settlement and the Future of EU Finances - 23/11/17 - Dublin

Moving on? From the Divorce to the Future Relations - 07/12/17 - Dublin

Inaugural event "Brexit, Ireland and the Future of Europe"- 25/01/18 - Dublin

Brexit and the Future of Europe: Irish and Italian Perspectives - 01/02/18 - Rome

Brexit, Climate and Energy Policy - 15/02/18 - Dublin

Brexit & the Future EU-UK Relationship - 26/03/18 - London

One Year to Withdrawal: Brexit and the Future EU-UK Relationship? - 09/04/18 - Brussels

Brexit and Financial Services - 12/04/18 - Dublin

Brexit, Medicine and Public Health - 03/05/18 - Dublin

Brexit, Customs and Trade - 14/06/18 - Dublin

Brexit: By Design or By Default? Assessing the state of the Withdrawal Process - 06/09/18 - Dublin

Brexit and the Future of European Foreign Policy - 27/09/18 - Berlin

Brexit and International Development Cooperation - 11/10/18 - Dublin

Brexit and Aviation- 15/11/18 - Dublin

Brexit, the Backstop and the Island of Ireland- 13/12/18 - Dublin

Brexit and Agri-Food - 31/01/19 - Dublin

Breakfast Briefing: "Brexit and SME's" - 27/03/19 - Dublin

Brexit, the terms of Withdrawal and the Framework of future EU-UK Relations - 29/03/19 - Dublin

High-Level Policy Dialogue- 04/04/19 - Dublin

Brexit & European Parliament Elections 2019- 16/05/19 - Dublin

Which Brexit After European Parliament Elections?- 14/06/19 - Dublin

Brexit and the Future of Europe: French & Irish Perspectives- 25/06/19 - Paris

Brexit, the Irish Economy and the Future of European Fintech - 16/09/19 - Dublin

Brexit and Data Protection - 17/10/19 - Dublin

Kick off Conference of the Jean Monnet Network BRIDGE - 30-31/10/19 - Dublin

Brexit and the New EU Institutional Cycle- 12/12/19 - Dublin

Brexit and Banking- 30/01/20 - Dublin

Brexit, Covid-19 and the Transition Period- 11/06/20 - Dublin (virtual)

Legal Disintegration? Brexit, the Judgment of the German Constitutional Court in Weiss and the Future of Europe- 17/09/20 - Dublin (virtual)

Beyond the Euro-crisis: Covid-19 and the Future of Europe- 01-02/10/20 - Bolzano (hybrid)

Brexit, the U.S. Presidential Elections and the Future of Transatlantic Relations- 15/10/20 - Dublin (virtual)

Beyond the Transition Period: Brexit and the Conference on the Future of Europe- 26/11/20 - Dublin (virtual)

Post Pandemic Economic Governance: Multiplier Event at the ECB- 15/12/20 - Frankfurt (virtual)

Migration and Differentiation in EU Law & Governance - 14-15/01/21 - Dublin (virtual)

Launch of Brexit and the Future of the EU by Federico Fabbrini- 04/02/2021 - Dublin (virtual)

The Framework of New EU-UK Relations- 4-5/03/21 - Dublin (virtual)

An Economy that Works for the People: Beyond Brexit and Covid-19 - 12/04/21 - Dublin (virtual)

Brexit and European Foreign Policy - 06/05/21 - Dublin (virtual)

Solidarity, Identity and Populism in the EU - 07-08/06/21 - Copenhagen (virtual)

The Post-Pandemic EU Political System: State-of-Play Two Years into the New Institutional Cycle - Multiplier Event at the European Parliament - 01/07/21 - Brussels (virtual)

Cross-Border Data Protection After Brexit- 16-17/09/21 - Dublin (virtual)

Differentiated Governance in the Post-Crises EU - 11-12/10/21 - Dublin (virtual)

The Protocol on Ireland / Northern Ireland - 18-19/11/21 - Dublin (virtual)

Financial Services After Brexit- 02/12/21 - Dublin (virtual)

The Rule of Law Crisis and the Future of EU Governance - 27-28/01/22 - Budapest (hybrid)

Kick-Off Conference of the Jean Monnet Centre of Excellence REBUILD - 24-25/02/22 - Dublin (virtual)

The War in Ukraine and the Future of the EU- 31/03/22 - Dublin (virtual)

The Rule of Law Crisis and the Supremacy of EU Law - Multiplier Event at the European Court of Justice - 13/05/22 - Luxembourg

Economic Governance in the EU after the Conference on the Future of Europe - 16/06/22 - Dublin (virtual)

Keynote Speakers 82

Bertie Ahern (former Taoiseach)

Joaquin Almunia (former European Commission Vice President for Competition Policy, and Commissioner for Economic & Financial Affairs)

Giuliano Amato (former Prime Minister of Italy; former Vice President of European Convention; President of the Italian Constitutional Court)

László Andor (former European Commissioner for Employment, Social Affairs and Inclusion)

Barry Andrews (MEP)

Baroness Armstrong of Hill Top (Member of the UK House of Lords)

Ernst Hirsch Ballin (former Minister of Justice of the Netherlands)

Sergio Battelli (Chairman of the EU Affairs Committee of the Italian Chamber of Deputies)

Hilary Benn (Chairman of the UK House of Commons Committee on Exiting the EU)

Adam Bodnar (former Human Rights Ombudsman of Poland)

Alex Brenninkmeijer (Member of European Court of Auditors)

Baroness Brown of Cambridge (Deputy Chair of the UK Committee on Climate Change)

John Bruton (former Taoiseach of Ireland)

Laura Burke (Director General of the Environmental Protection Agency)

Nicholas Burns (former US Under Secretary of State for Political)

Thomas Byrne (Minister for EU Affairs of Ireland)

Micheline Calmy-Rey (Former President of Switzerland)

David Campbell Bannerman (MEP)

Ciaran Cannon (Minister for the Diaspora and International Trade of Ireland)

Simon Coveney (Tánaiste and Minister of Foreign Affairs and Trade of Ireland)

Pat Cox (Former European Parliament President)

Marta Dassù (Former Deputy Minister of Foreign Affairs of Italy)

Stefaan De Rynck (European Commission Brexit Task Force)

Gwendoline Delbos-Corfield (MEP)

Domenec Ruiz Devesa (MEP)

Helen Dixon (Data Protection Commissioner of Ireland)

Paschal Donohoe (Eurogroup President and Finance Minister of Ireland)

Bernard Durkan (Member of the Irish Dail)

Baroness Falkner of Margravine (Chairwoman of the UK House of Lords EU Financial Affairs Sub-Committee)

Sir Jonathan Faull (former Director General of the European Commission DG Financial Stability, Financial and Capital Markets Union)

Frances Fitzgerald (MEP)

Paolo Gentiloni (European Commissioner for Economic Affairs)

Stephen Gethins (Member of the UK House of Commons)

Sylvie Goulard (Deputy Governor Banque de France)

Sandro Gozi (Minister of State for EU Affairs of Italy)

Senator Vaclav Hampl (Member of the Czech Senate)

Tom Hanney (Ireland Perm Rep to the EU)

Brian Hayes (MEP)

Michael D. Higgins (President of Ireland)

Lord Jonathan Hill (former European Commissioner for Financial Stability, Financial Services and Capital Markets Union)

Phil Hogan (European Commissioner for Agriculture & Rural Development)

Danuta Hubner (Chairwoman of the European Parliament Constitutional Affairs Committee)

Peter Hustinx (first European Data Protection Supervisor)	Commissioner for Justice, Fundamental Rights and Citizenship)
Georgios Katrougalos (Minister of European Affairs of Greece)	Neale Richmond (Chairman of the Irish Seanad Brexit Committee)
Roderich Kisevetter (Member of the German Bundestag)	Sir Ivan Rogers (former UK Perm Rep to the EU)
Pascal Lamy (former WTO Director General, former European Commissioner for Trade)	Michael Russell (Scottish Minister for UK Negotiations on Scotland's Place in Europe)
Philip Lane (Member of the ECB)	Wolfgang Schuessel (former Chancellor of Austria)
Lars Bay Larsen (Vice President of the EU Court of Justice)	Maroš Šefčovič (European Commission Vice-President for Interinstitutional Relations)
Enrico Letta (former Prime Minister of Italy)	Ed Sibley (Deputy Governor, Central Bank of Ireland)
Denis MacShane (former Europe Minister of the UK)	Alyn Smith (MEP)
Miguel Poaires Maduro (former Deputy Prime Minister of Portugal)	Julie Smith (Member of the UK House of Lords)
Ian Marshall (Member of the Irish Seanad)	Javier Solana (Former EU High Representative for Foreign and Security Policy)
Mary McAleese (former President of Ireland)	Mark Speich (Secretary of State for Federal Affairs, Europe and International Affairs, North Rhine-Westphalia)
Helen McEntee (Minister for EU Affairs of Ireland)	Sir Keir Starmer M.P. (Shadow Secretary of State for Exiting the EU)
Mairead McGuinness (European Parliament Vice President).	Alex Stubb (former Prime Minister of Finland)
Anne Mulder (Member of the Dutch Tweede Kamer)	Baroness Suttie (Member of the UK House of Lords)
Ferdinando Nelli Feroci (former Italy Perm Rep to the EU, former European Commissioner for Industry)	Lord Thomas (Member of the UK House of Lords, and former Lord Chief Justice of England and Wales)
Pier-Carlo Padoan (former Finance Minister of Italy)	Herman Van Rompuy (first President of the European Council)
Georgios Papacostantinou (former Finance Minister of Greece)	Alex White (Member of the Irish Dail)
Alojz Peterle (MEP, former Prime Minister of Slovenia)	Thomas Wieser (former President of Eurogroup Working Group)
Jean-Claude Piris (former Director General of the EU Council Legal Service)	Chiara Zilioli (Director General of ECB Legal Service)
Hans-Gert Pöttering (former European Parliament President)	
Paulo Rangel (MEP)	
Viviane Reding (former European Commission Vice President, and	

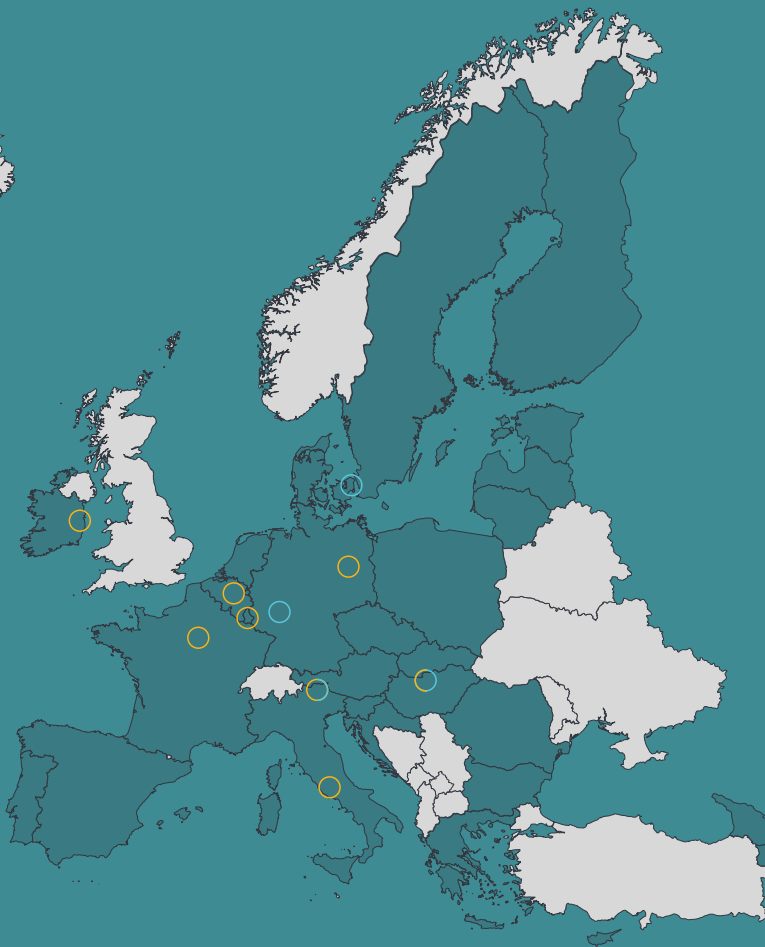
Map of Events

In Person

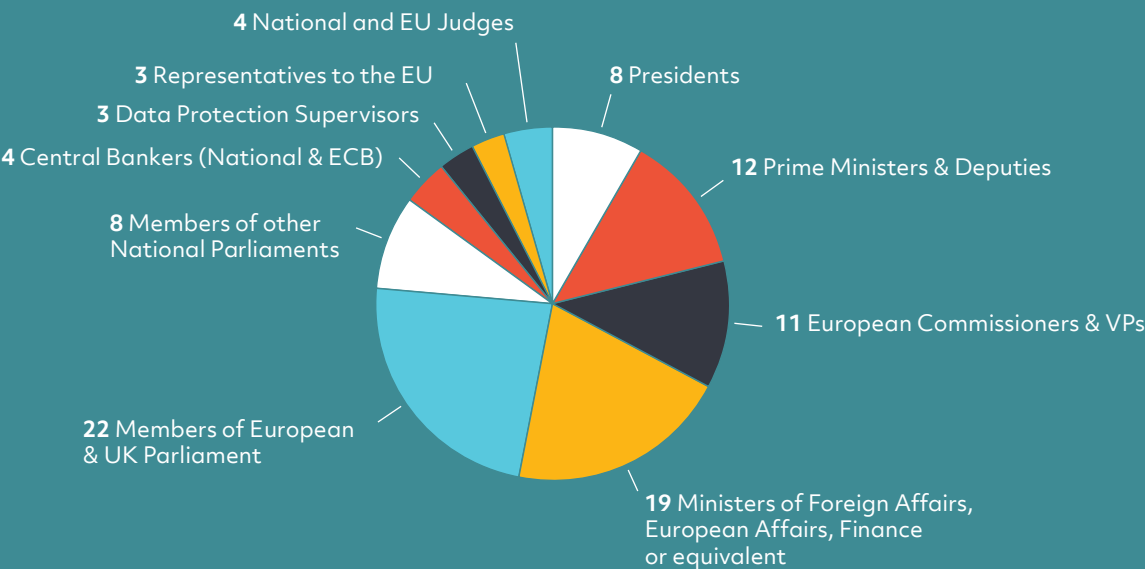
Dublin, Brussels, London, Paris, Berlin, Rome, Bolzano, Budapest, and Luxembourg

Online

Frankfurt, Budapest, Bolzano, and Copenhagen



Keynote Speakers



Projects



Teaching

Master in European Law and Policy


DCU, the home of the Brexit Institute, offers a Masters 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. It is a flexible and innovative online programme which allows students to study the EU at an English-language university based in the EU.

dcubrexitinstitute.eu/teaching/

The European Union: Crisis and Recovery (MOOC)

In 2020, the BRIDGE Network created "The European Union: Crisis and Recovery," a Massive Open Online Course (MOOC) on the FutureLearn Platform. The MOOC taught thousands of learners how the EU has managed, and emerged stronger from, the numerous crises of the last decade, from the Euro-Crisis to Brexit to Covid-19.

bridgenetwork.eu/mooc/

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