



DCU Brexit Institute

6th Brexit Report

23 June 2023

50 Years Since Ireland's
EU Membership,
25 Years Since the
Good Friday Agreement



Ollscoil Chathair
Bhaile Átha Cliath
Dublin City University



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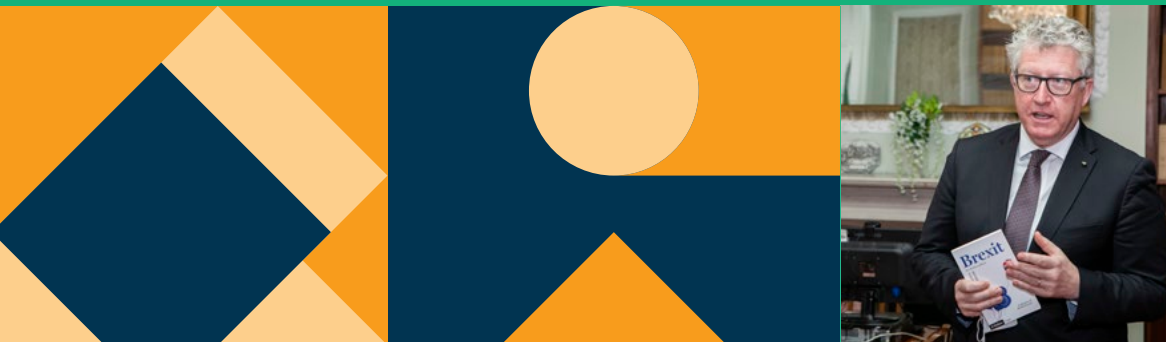
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This report was edited by the Director and the Team of the DCU Brexit Institute – Federico Fabbrini, Ian Cooper, Lucrezia Rossi, Christy Ann Petit – and graphically designed by Garvan Doherty.

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Preface

by Prof Daire Keogh, DCU President



The publication of the DCU Brexit Institute's sixth annual report comes at a particularly timely moment in the life of our University. In our new five-year University strategy, we have laid out a vision for DCU as "a leading innovative European university", an ambition which is about our character as much as our impact.

Since its establishment in June 2017, the Brexit Institute has become a focal point for analysis and debate on the evolving relationship between the United Kingdom (UK) and the European Union (EU), and on the future of Europe more broadly. From this point of view, the Institute's work has been significant in laying the foundations for the University's ambitions. As you will see from this report, the Brexit Institute's track record during the past 12 months confirms DCU's standing as a truly European University, with an ever-growing reputation in Ireland and across the EU. I want to congratulate the Institute team for yet another successful year of activities and achievements. To begin

with, the Brexit Institute hosted a rich agenda of events in Dublin, Brussels and online, including an event to mark the 25th anniversary of the Belfast/Good Friday Agreement and the creation of the Windsor Framework, which featured former Taoiseach Bertie Ahern as keynote speaker.

Prof Fabbrini spent the past academic year as a Fellow at Princeton University, and then at the European University Institute. Happily, this has meant that the Brexit Institute has been able to organise joint events with, and in, these two institutions for the first time. The Institute also built on its record of funding



successes, securing support through the Jean Monnet Action programme, the Department of Foreign Affairs' Communicating Europe Initiative, and Horizon Europe.

Finally, the Institute has continued its solid publication output too, including Prof Fabbrini's "EU Fiscal Capacity: Legal Integration after Covid-19 and the War in Ukraine", which is his eighth publication with Oxford University Press in as many years.

I want to thank our sponsors, AIB and GSK Stockmann for their vision and ongoing support. They have helped the Brexit

Institute to carve out a unique position in the field of European Affairs - more than a think tank, given its University grounding, but more than a standard academic department, given its outward-looking focus.

As major challenges and opportunities continue to shape the future of Ireland, the UK and the EU, the Brexit Institute remains an important centre for thought leadership, nationally and internationally, and a flagship initiative of our University.

Introduction

by Prof Federico Fabbrini
Founding Director of the Brexit Institute

While years pass, some dates never fade from collective memory. On 23 June 2016, in one of the most momentous events in European history, the United Kingdom (UK) voted to leave the European Union (EU). A year later, on 23 June 2017, Dublin City University created the Brexit Institute, as Ireland's only and Europe's first centre specifically designed to assess Brexit and the future of Europe from a research and policy perspective

In the six years since its establishment, the Brexit Institute has continued to serve as the primary forum in Ireland to shed light on the intricacies of Brexit. At the same time, the Institute has steadily expanded its thought leadership on the unprecedented developments affecting European integration, including the Covid-19 pandemic and the war in Ukraine. As such, the Institute has increasingly served as DCU's European law & policy observatory - a hub for European affairs.

This annual report highlights how the Institute has fulfilled its mission in the past academic year, serving as the main DCU forum to debate key milestones and new developments. Indeed, 2023 marked both the 25th anniversary of the Belfast Good Friday Agreement, and the 50th anniversary of Ireland's entry in the EU. Yet, the past twelve months were also

rich in new developments, both on EU-UK relations, and on the future of Europe more generally, which the Institute duly illuminated.

On the Brexit front, instability continued to characterize UK politics: in summer 2022 a series of political scandals eventually led to the resignation of Prime Minister Boris Johnson - the man who had been elected to get Brexit done. Following an electoral competition within the Conservative Party, Liz Truss - who as Foreign Secretary had clashed with the EU on Northern Ireland (NI) - was chosen as Tory Leader and new Prime Minister over Rishi Sunak.

However, the reckless economic policy choices of the new government - inspired by a hard-Brexit deregulatory vision of transforming Britain into a Singapore-



on-Thames, with plans for tax cuts and government spending at a time of rising inflation and booming energy costs -- led to unprecedented disruption on the financial markets and forced Truss to resign after less than 50 days in office, making her the shortest serving Prime Minister in UK history.

Despite the efforts by Johnson to return at the government's helm, following Truss's departure Tory MPs chose to nominate -- without holding a party contest -- Rishi Sunak as the new Prime Minister. Since taking over in October 2022, Sunak has charted a more cautious path, abandoning the confrontational stance that his two predecessors had taken against the EU, and seeking to mend ties with its closest trade and security partner.

This strategy paid off and in late February 2023 the EU and the UK announced a ground breaking deal on NI: the Windsor Framework. This agreement, which was approved by both the UK Parliament and the EU institutions and formalized in March 2023 by the EU-UK Joint Committee, introduced a number of targeted amendments to the Protocol on Ireland/NI, facilitating trade in goods, access of medical products and tax requirements.

Beyond the technicalities, however, the Windsor Framework defused the tensions that the Protocol had caused in EU-UK relations, paving the way towards a deepening of cooperation, including on financial services with a new Memorandum of Understanding (MoU) released in May 2023. Moreover, it created a more favorable context to mark the celebrations of the 25th anniversary of the Belfast Good Friday Agreement in April 2023 -- although failing to immediately restore devolved governance in NI.

On the European side, otherwise, Brexit constituted only a distraction in light of

the ever growing impact that the war in Ukraine had on European integration. In summer 2022, in fact, the European Council promised EU membership to Ukraine and other countries from the Eastern neighborhood, and in the subsequent months the EU intensified its financial and military support to the Ukrainian government, including through new funding instruments.

Moreover, the trend towards the consolidation of an EU fiscal capacity -- which had started with the establishment of the Next Generation EU Recovery Fund in 2021 -- was matched by the adoption of new, ground-breaking EU instruments in the field of energy, industry and trade, including a new platform for the joint purchase of gas, joint procurement of weapons and milestone laws on climate change, carbon border tax, digital services, banking, and critical raw materials.

Yet if policy developments increasingly pointed in the direction of what French President Macron calls a "European sovereignty", important political developments in several member states challenged this path: Euro-skeptic parties

"The Brexit Institute has steadily expanded its thought leadership on the unprecedented developments affecting European integration, including the Covid-19 pandemic and the war in Ukraine."

triumphed in elections in a number of member states, including Italy and Sweden, and disagreement on the concept of open strategic autonomy hampered the ability of the EU to chart a clear geopolitical stance.

Finally, from an institutional perspective, the past 12 months witnessed the emergence of the European Political Community -- a new organization comprising the 27 EUMS with 20 partners, which held its first meeting in Prague in October 2022 -- and the relaunch of the Council of Europe -- a human rights-focused organization established in 1948 which hosted its 4th ever leaders' summit in Reykjavik in May 2023 -- suggesting that the form of Europe's future remains open.

Given this background, it is unsurprising that in the past year the Brexit Institute -- with its unique outlook, more than a think-tank, due to its University grounding, but more than a standard academic department, due to its policy focus -- has remained as active and dynamic as ever before, organizing events, applying successfully for research funding, and publishing a large amount of timely open-access commentaries on public affairs.

At the same time, the past year was also unique. On the one hand, I was fortunate to be on sabbatical, first and foremost as a Fellow in Law, Ethics and Public Policy at Princeton University (School of Public & International Affairs, and University Centre for Human Values) and then as a Fernand Braudel Fellow at the European University Institute: this opened the

opportunity to organize Brexit Institute events in partnership with, and at, these two prestigious institutions.

On the other hand, the Brexit Institute was fortunate to strengthen, enlarge and diversify its international team. In September 2022 my French colleague Christy Petit took over as the Institute's Deputy Director, playing a larger role in the day-to-day management; while in February 2023 the Institute hired a new German colleague, Niels Kirst as Assistant Professor of EU Law, bringing additional expertise on EU and US rule of law matters.

Thanks to its internal intellectual resources -- and with the financial support of our sponsors, AIB and GSK Stockmann, which I want to warmly thank for their support -- the Institute hosted in the past 12 months 9 events, including in Dublin, Brussels, Princeton and Florence, plus online. These events featured a string of leading keynote speakers, including the, former prime minister of Italy Guiliano Amato, former Taoiseach of Ireland Bertie Ahern, and former prime minister of Belgium and President of the European Council Herman Van Rompuy.

Moreover, the Brexit Institute published a significant volume of blogs, commentaries, working papers and podcasts; it delivered a report commissioned by the European Parliament Economic & Monetary Affairs Committee on "Recent trends in UK financial sector regulation and possible implications for the EU, including its approach to equivalence"; and celebrated the appearance of a new book on "EU

Fiscal Capacity”, published by Oxford University Press.

Finally, the Brexit Institute -- which already houses the Jean Monnet Centre of Excellence REBUILD, with its annual conference and biannual seminars -- also won funding for two new Jean Monnet Modules “NGEU Law”, run by Christy Petit, and “Post-Brexit Law”, which I lead, and was awarded a grant by the Irish Department of Foreign Affairs to celebrate the milestone of 50 years of Ireland’s membership in the EU.

At the same time, last summer the Brexit Institute was successful in receiving funding as part of a large consortium of European institutions, led by the University of Groningen, for a new Horizon Europe project called REGROUP which focuses on the resilience of democracies during Covid-19. In my role as PI of the Work-package on “Legal and Constitutional Issues” I hence organized a conference in Princeton in April 2023 on “Constitutionalism after Covid-19”.

As every June in the past 6 years, the report that you have in your hands provides a helpful summary of the key annual achievements of the Brexit Institute. At the same time, as ever, the report includes brand-new commentaries by key members of the Institute’s team, and colleagues from the broader University community. Each chapter matches one of the Institute’s annual activities but provides original views on the topics addressed on these occasions.

As such, the report is structured in 3 parts. Part I focuses on EU-UK relations and includes contributions by Niall Moran on the Ireland/Ni Protocol, Ian Cooper on the Windsor Framework, and Christy Petit on UK financial regulation. Part II focuses instead on the future of Europe and includes contributions by Christy Petit on EU banking law, Niels Kirst on Next

Generation EU and Ken McDonagh on the war in Ukraine and European integration.

Finally, Part III marks a number of partnerships, notably to highlight the added value for the Brexit Institute of my sabbatical at Princeton University and the European University Institute, with contributions by Ian Cooper, Edoardo Celeste and Niall Moran. The report ends then with some key facts and figures, including news by Lucrezia Rossi about a study trip to the EU institutions in Brussels organized in March 2023 in the framework of the Jean Monnet Module NGEULaw.

All in all, therefore, this report is a testament to the ongoing value of the Brexit Institute and a stepping stone towards the future. The Institute is a trusted voice for scholars and students, business leaders and government officials, diplomats and citizens at large. As one of the most active, visible and impactful programmes at DCU, you can expect the Brexit Institute to remain a consistent presence in the new academic year, and we look forward to your involvement!

For now, enjoy the reading and thanks for your support!

“This report is a testament to the ongoing value of the Brexit Institute as a trusted voice for scholars and students, business leaders and government officials, diplomats and citizens at large.”



Part I: Bridging EU-UK Relations

Brexit and the Northern Ireland Protocol

by Dr Niall Moran
Assistant Professor in Economic Law

On **Thursday 15 September 2022**, the DCU Brexit Institute held an online event on “**The Future of the Northern Ireland Protocol and EU-UK Relations After Boris Johnson**”. It consisted of a keynote speech by MEP **David McAllister** (Chairman of the Foreign Affairs Committee, European Parliament), followed by a roundtable discussion chaired by **Suzanne Lynch** (Journalist, POLITICO), which included contributions by **Niall Moran** (Assistant Professor in Economic Law, Dublin City University), **John McGrane** (Director General, The British Irish Chamber of Commerce) and **Ian Cooper** (Research Fellow, DCU Brexit Institute).

The past year has seen a dramatic turnaround in EU-UK relations over Northern Ireland. In September 2022 the EU and the UK were deeply embroiled in negotiations on an update to the Protocol on Ireland/ Northern Ireland (NIP), even while the UK government was pressing ahead with its controversial proposed NIP Bill, which could have badly damaged EU-UK relations. In July 2022 the NIP Bill had gone through third reading at the House of Commons and was set to proceed to the House of Lords. The proposed Bill was seen to be a serious escalation from the UK as it sought to make unilateral changes to the NIP, which is an international agreement. However, a positive outcome to the EU-UK negotiations was reached in February 2023, with an agreement dubbed the Windsor Framework.

The Windsor Framework halted the adoption of the NIP Bill and amended the Northern Ireland Protocol. This amendment gives Northern Ireland MLAs more of a voice around the application of EU laws in Northern Ireland. The principal mechanism for this is the Stormont Brake,

“A positive outcome to the EU-UK negotiations was reached in February 2023, with an agreement dubbed the Windsor Framework.”



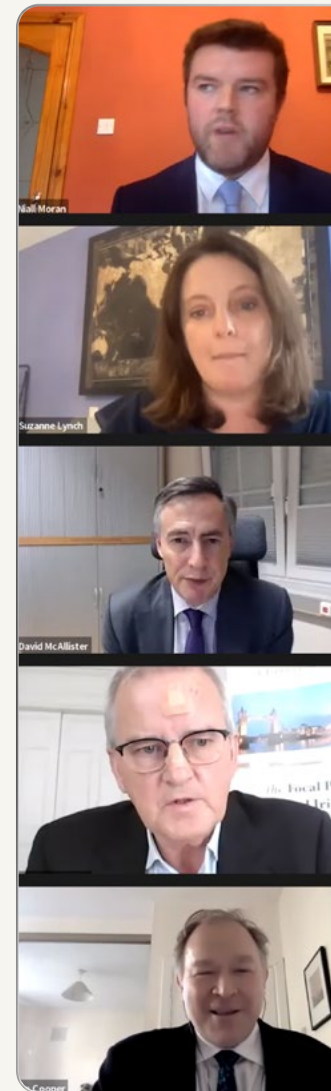
contained in Article 13(3a) of the amended Protocol. This Brake can be invoked at the request of 30 MLAs against new or amended EU laws only. It is unlikely that this instrument will be invoked in anything other than exceptional circumstances. The Framework also provides for new data-sharing arrangements on movements of goods from Great Britain to Northern Ireland.

While the Windsor Framework has seen a de-escalation in tensions, the threat of legislation such as the NIP Bill will not be quickly forgotten. Indeed, this was not the UK government's first use of such legislation, with the NIP Bill being reminiscent of the UK Internal Market Bill 2020, which sought to preserve "a free flow of goods between Great Britain and Northern Ireland". At the time, UK minister for Northern Ireland Brandon Lewis acknowledged the Bill in its original form "break[s] international law in a very specific and limited way".

The year 2021 also saw considerable discussion of Article 16 of the NIP and whether the UK government would trigger this safeguards provision. While the focus at that time was on the

'will they or won't they' element of the UK triggering Article 16, the UK was treading a finer line with legislation such as the NIP Bill. The proposal of this Bill in parliament may have already broken international law in terms of the UK's obligation to perform its binding obligations in good faith in accordance with Article 26 of the Vienna Convention on the Law of Treaties. Any step towards unilaterally disapplying parts of an internationally binding agreement can be seen as a breach of this good faith principle. An example of this would be active preparations for the design of a dual regulatory scheme as the UK was undertaking in 2022.

To briefly recall some of the legal issues with the NIP Bill, it was unacceptable to the EU as it would have removed most of the NIP from UK law. This would have been contrary to the UK's treaty obligations as the Withdrawal Agreement requires that its provisions, as well as the NIP, have direct effect (Article 4.1) and supremacy (4.2) in UK law. Disapplying these provisions would constitute a breach of *pacta sunt servanda*, a fundamental



also have been a flagrant breach of Article 5 of the Withdrawal Agreement, requiring the parties “to refrain from any measures which could jeopardise the attainment of the [Agreement’s] objectives.”

The UK defended the Bill under the principle of necessity in international law. Given the circumstances, this was an attempt to defend the indefensible. To take just one of the tests for necessity under customary international law, it must be the “only way” to protect the state interest in question. However, the UK government openly described the Bill as being “without prejudice to the UK’s right to take measures [elsewhere]”.

Given the potential threat to the integrity of the Single Market, the EU could not afford to be complacent and regard this proposed Bill as a mere negotiating tactic. EU preparations included advancing the adoption of its Regulation on the implementation and enforcement of the Withdrawal Agreement and Trade and Cooperation Agreement (TCA). Had the Bill come into law, it was generally seen that there were three responses the EU could have taken:

- 1 dispute resolution and the mechanisms provided for under the agreements and international law
- 2 termination of the TCA or
- 3 swift retaliation and placing tariffs on sensitive UK goods

Options 2 or 3 could well have led to an EU-UK trade war. Ultimately, if a Bill such as the NIP Bill were to pass, the route of dispute settlement would likely be the soundest option for the EU, even if a decision on retaliation would take longer to be authorised (100-130 days). The EU could also opt to do this concurrently with triggering the 9 or 12 month termination clauses for the TCA.

Fortunately, such considerations proved to be speculative and the Windsor Framework was agreed. While the UK government and the UUP have endorsed this Framework, there is dissatisfaction with the Framework among some unionists. The May 2023 local elections in Northern Ireland saw the unionist vote shift slightly towards parties rejecting

“While the Windsor Framework has seen a de-escalation in tensions, the threat of legislation such as the Northern Ireland Protocol Bill will not be quickly forgotten.”

the Windsor Framework (the DUP and TUV), while the overall unionist vote dropped slightly compared to the 2022 Northern Ireland Assembly election (38.1% compared to 40.1%). In light of these results, a softening of the DUP’s position is unlikely to be imminent. The Windsor Framework goes some way to meeting unionist concerns but inevitably fell short of the DUP’s ‘seven tests’ for new EU-UK arrangements. These tests go considerably further than David Frost’s 2021 Command Paper and if these tests are a pre-requisite for power-sharing, a return to Stormont will be unlikely in the short term. Unfortunately some of the key benefits of the Windsor Framework require Stormont to be up and running in order to be realised.

Brexit and the Windsor Framework

by Dr Ian Cooper
Research Fellow, Brexit Institute

On **Thursday 6 April 2023**, the DCU Brexit Institute hosted an online event, **The 25th Anniversary of the Belfast Good Friday Agreement and the Windsor Framework**. The event featured a Keynote Address from former Taoiseach **Bertie Ahern**. This was followed by a panel discussion featuring **Federico Fabbrini** (Dublin City University) and **Mary C. Murphy** (University College Cork), introduced by **Kenneth McDonagh** (Dublin City University), and chaired by **Mark Landler** (New York Times).



Over the past year, the changing character of politics in Northern Ireland, as well as in the United Kingdom (UK) and its evolving relations with the European Union (EU), may be illustrated with reference to three instances in the reign of the new monarch, King Charles III.

First, when the new king ascended the throne after the death of his mother, Queen Elizabeth II, he embarked upon a tour of the devolved regions of his kingdom. In Scotland, he was ceremoniously welcomed by the First Minister in the Scottish Parliament, which passed a motion of condolence in honour of the late queen. A similar ceremony took place in Wales, where the king met the Welsh First Minister and received a motion of condolence from the Senedd Cymru. However, the same formalities were not in evidence when he visited Northern Ireland, the one part of his realm which lacks a functioning devolved government.

The most recent elections to the Northern Ireland Assembly, in May 2022, had brought an upheaval to the politics of the region. For the first time, a nationalist party, Sinn Féin, came in first place, giving them the right to nominate the post of First Minister. This was despite the fact that overall, parties designated unionist won slightly more seats (37 out of 90) than nationalist parties (35 out of 90), while major gains were made by “other” parties that do not identify as either (18 out of 90), most notably the Alliance Party.

“The newly agreed Windsor Framework was tailor-made to appeal to unionists, right down to its name.”

After the vote, the Democratic Unionist Party (DUP), which had come in second place, refused to nominate a Deputy First Minister to the executive, or even to nominate a Speaker to Stormont, so that under the power-sharing rules, Northern Ireland could have neither a functioning government nor assembly. The stated reason for the abstention was an objection to the Northern Ireland Protocol (NIP), a legal text that is part of the EU-UK Withdrawal Agreement that had enabled Brexit, which the DUP sees as threatening Northern Ireland's place within the UK.

So when Charles made his first visit as king it was not to Stormont, the seat of government in Northern Ireland, but to Hillsborough Castle, the royal residence in the region. There he met the party leaders in an informal capacity, including Sinn Féin's leader in Northern Ireland, Michelle O'Neill, who was First Minister Designate. Because there was no sitting assembly, the official message of condolence was delivered by the previous Speaker, outgoing Sinn Féin MLA Alex Maskey, himself a former militant nationalist and prisoner.

The second instance occurred in February, when King Charles welcomed a courtesy call from European Commission President Ursula Von der Leyen. This was at Windsor Castle, which provided the suitably august backdrop for Von der Leyen to announce, jointly with Prime Minister Rishi Sunak, the newly agreed Windsor Framework – which was tailor-made to appeal to unionists, right down to its name.

Sunak was already King Charles' second prime minister, having replaced Liz Truss after the implosion of her brief and disastrous premiership. Sunak took a more pragmatic approach to EU-UK relations, shelving the provocative NIP bill, and seeking to find a workable solution to the Northern Ireland problem. The Windsor Framework included a mechanism, the Stormont Brake, which would give the assembly the power to raise objections to new EU single market rules before they come into effect. Even this, however, was not sufficient to entice the DUP to restore devolved government.

The ongoing stalemate meant that there was no sitting government in Northern Ireland to welcome US President Joe Biden when he came in April to commemorate the 25th anniversary of the Belfast Good Friday Agreement; like King Charles before him, Biden sidestepped Stormont during his visit.

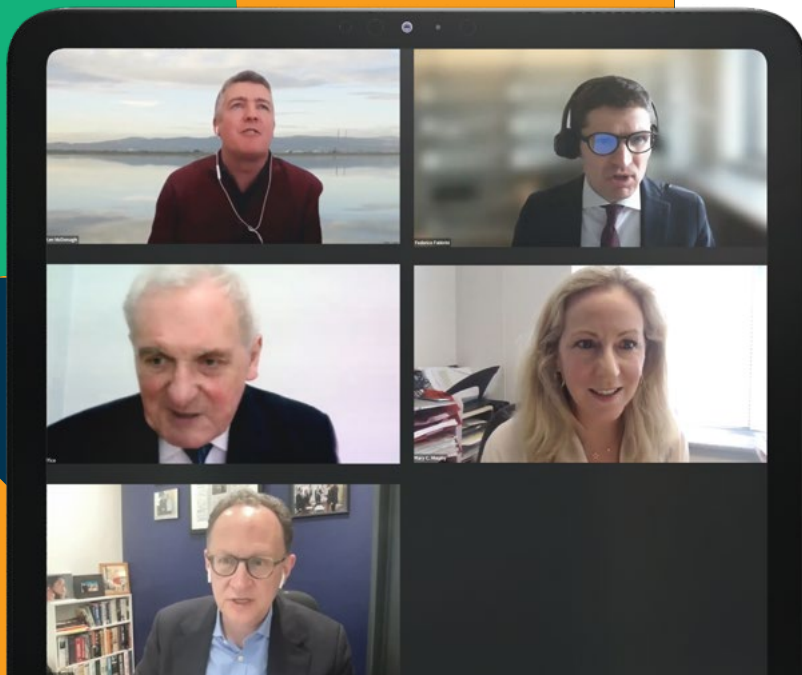
The third instance was the local elections in Northern Ireland, which were delayed by the coronation of King Charles. Most UK local elections had taken place on May 4, two days before the coronation. However, the election in Northern Ireland was postponed to May 18, because the vote count there – which takes longer due to the use of the Single Transferable Vote

system – would have run into Saturday and clashed with the coronation. The latter event was notably attended by the above-mentioned Alex Maskey and Michelle O'Neill, among the many dignitaries from Northern Ireland.

The local election results were historic because, for the first time, national parties won a greater vote share than unionist parties. Also for the first time, Sinn Féin became the largest party in local government. However, this result has not yet broken the stalemate preventing the restoration of devolved government in Northern Ireland.

The Windsor Framework, which has now been approved by the House of Commons and by the EU institutions, has brought about a normalization of EU-UK relations. But the framework cannot be fully implemented until the institutions of devolved government are restored. There can be no Stormont Brake without a sitting assembly at Stormont.

“The Windsor Framework has normalized EU-UK relations, but it cannot be fully implemented until the institutions of devolved government are restored.”



Brexit and Financial Services

by Dr Christy Ann Petit

Assistant Professor on EU Banking and Finance
Law, Deputy Director of the Brexit Institute

On **22 May 2023**, the Brexit Institute held an event in partnership with the European Economic and Social Committee (EESC) on **EU and UK Financial Services Regulation Post-Brexit**, in Brussels, presenting a recent study published for the Committee on Economic and Monetary Affairs (ECON) of the European Parliament, co-authored by **Christy Ann Petit** (Dublin City University) and **Thorsten Beck** (European University Institute). **Antonio García del Riego** (EESC, MiraltaBank) opened the event with his welcoming remarks. Panellists also included **Andreas Heinzmann** (GSK Stockmann), **Massimo Zaffiro** (DG FISMA), and Christy Ann Petit. Federico Fabbrini (Dublin City University) chaired and moderated the roundtable.

Cooperation between the UK and EU in the financial sector has been limited. While the Trade and Cooperation Agreement (TCA) includes a thin financial sector chapter, closer cooperation has been hindered by the stand-off over the Northern Ireland Protocol. The resolution of this conflict with the Windsor Framework agreement is starting to enable closer cooperation in financial services, including the forthcoming establishment of a Joint UK-EU Regulatory Forum, once the draft EU-UK Memorandum of Understanding (MoU) establishing a framework for financial services regulatory cooperation, published on 19 May 2023, will be signed off. In the report for the European Parliament published in February 2023, we (myself and my co-author, Thorsten Beck) summarised and discussed recent trends in financial sector legislation and regulation in the UK, divergence between the EU and the UK and threats from this divergence for financial stability in the EU. Furthermore, we assessed the equivalence policy of the EU, and options to deepen regulatory cooperation while ensuring financial stability, market integrity and competitiveness. The study underscored the need to balance competitiveness with stability, market integrity, and investor protection while navigating the changing regulatory landscape post-Brexit.

The UK is implementing a regulatory approach that transfers most rules from statutory level to the regulators' rulebook, emphasizing a principles-based approach to 'smarter' and more flexible regulation. The Financial Services and



“Divergence between the UK and EU regulation of financial services is an expected outcome following Brexit.”

Markets Bill aims to amend, repeal, or replace specific EU laws impacting financial services and insurance activities. This regulatory overhaul is accompanied by the controversial Retained EU Law (Revocation & Reform) Bill (REUL Bill), which presents implementation challenges due to the extensive amendments, repeals, and replacements required, and that may well be trimmed down significantly in comparison with the initial political intent of the UK Government. The UK regulators' mandate will include secondary objectives geared towards international competitiveness and growth of the UK economy, contributing to establish the City as a competitive financial hub worldwide.

Divergence between UK and EU regulation is an expected outcome following Brexit. The Report identified several areas of potential regulatory divergence, including the implementation of Basel III reforms, reforms to the

Solvency II regulatory framework for insurers, wholesale markets and capital market reforms, fintech and crypto asset regulation, and the UK's adoption of its own green taxonomy. While limited divergence has occurred so far and this is confirmed by the more minimalist approach to REULs by the UK Government this year, the authors anticipate more substantial divergence across different segments of the financial sector in the next five to ten years.

The Report elaborated on three scenarios of divergence: low, medium, and high. Under low divergence, some adjustments to UK regulations would occur to increase competitiveness, but major divergence, especially in areas with international standards, would be unlikely. Under medium divergence, more significant divergence would occur, particularly in areas like green finance and digital finance where international standards are less important. Under high divergence, the UK would aggressively diverge from EU rules, replacing or significantly amending existing EU rules and adopting divergent rules in areas seen as growth opportunities, such as crypto assets.

Moreover, the report also examined the concept of equivalence, which allows the EU to recognize a third country's regulatory and supervisory framework as equivalent. Equivalence decisions are based on proportionality and a risk-



based assessment, but political factors and concerns about stability, data exchange, supervisory cooperation, and EU strategic autonomy also influence these decisions. Equivalence is contingent, limited, and requires reciprocity. The unique equivalence granted to the UK for Central Clearing Counterparties (CCPs) is, for now, timed until June 2025. The EU is working on developing its own clearing infrastructure to redirect clearing from London, reflecting financial stability concerns. Against this backdrop, the study also took a stance on the different options for future EU equivalence towards the UK financial sector, namely: no equivalence (once the current CCPs' equivalence lapses in June 2025 and without any extension or renewal); no additional equivalence, or a unique temporary equivalence - should the CCPs equivalence be further extended beyond June 2025 as requested by some stakeholders; a bundle of equivalence or multiple partial equivalence; and a furnished and unlimited equivalence regime that we consider unlikely.

All in all, the event considered the challenges and opportunities raised by the recently published draft EU-UK MoU for financial services regulatory cooperation. This timely event allowed the panellists to discuss the most recent developments in EU-UK financial services cooperation and engage on the potential future developments in financial sector regulation on both sides of the Channel.

“Equivalence decisions are based on proportionality and a risk-based assessment, but they are also influenced by concerns about EU strategic autonomy.”





Part II: Rebuilding the EU

EU and Banking Union

by Dr Christy Ann Petit
Assistant Professor on EU Banking and Finance
Law, Deputy Director of the Brexit Institute

On **Thursday, 3rd November 2022**, the DCU Brexit Institute and the Jean Monnet Centre of Excellence REBUILD organized an online event focused on the topic of **"Banking Union after Next Generation EU"**. It consisted of a panel discussion chaired by **Christy Ann Petit** (Dublin City University), featuring **Pedro Gustavo Teixeira** (Director General Secretariat to the Supervisory Board at European Central Bank/Single Supervisory Mechanism), **Jens-Hinrich Binder** (University of Tübingen), **Brian Hayes** (Banking & Payments Federation Ireland) and **Blanaid Clarke** (Trinity College Dublin).



The Banking Union event started with a warm welcome and introductions by Christy Ann Petit, Assistant Professor at Dublin City University and Deputy Director of the DCU Brexit Institute, who chaired the panel. Pedro Gustavo Teixeira (Director General Secretariat to the Supervisory Board at European Central Bank/Single Supervisory Mechanism) gave the introductory remarks. With a significant experience and knowledge of these matters, he provided his insights on the foundations and more recent developments of the Banking Union since the Covid-19 Pandemic. The panel of experts featured Prof. Jens-Hinrich Binder, who holds the Chair in Private Law, Commercial Law, Company Law, and Securities Law at the University of Tübingen; Brian Hayes, the CEO of Banking & Payments Federation Ireland, who shared his expertise with a deep understanding of the Irish banking sector and some industry insights on the different challenges the Banking Union faces. Prof. Blanaid Clarke, who holds the McCann FitzGerald Chair of Corporate Law at Trinity College Dublin, brought her extensive knowledge and experience in banking governance, bank culture and accountability, diversity, and corporate law to the panel.

This event played a pivotal role in fostering the understanding of the challenges that remain open for the Banking Union, considering the stalled (political) agreement to complete it at the June 2022 Eurogroup meeting, and beyond, in the context of Next Generation EU.

Let us draw three main takeaways from the discussions.

1 Firstly, the Banking Union is one of the most important steps in furthering EU integration, as a project triggered by the global financial crisis and the euro debt crisis. This observation remains true in the aftermath of the pandemic. This outbreak highlighted the role of the banking sector in supporting the resilience of the economy and, thereafter, its recovery. The EU recovery post-Covid relied on risk sharing, a key concept at the core of the Banking Union. This concept explains the sequential creation of the pillars within the Banking Union, which started off with the first pillar – the Single Supervisory Mechanism (SSM) – as a pre-condition for risk sharing that is supposed to come once a fully-fledged common deposit insurance scheme can be adopted and implemented at EU level. In sum, to come full circle, the progress made with the Banking Union will require, ultimately, a European stabilisation capacity – in other words, a common response with sustainable fiscal capacity that goes beyond national lines.

2 Secondly, there is still resistance among Member States to implement mutualisation of risk sharing arrangements. This lack of progress is compensated by other achievements, such as the following: banking regulation that has allowed some risk reduction and made bank sounder (CRR and CRD for the core secondary legal acts of the Single Rulebook) also thanks to efficient supervision; the daisy chain regulation; the scope of resolution

“The Banking Union is one of the most important steps in furthering EU integration, as a project triggered by the global financial crisis and the euro debt crisis.”

broadened to small and medium sized institutions; and the clarifications of the Public Interest Assessment. (A notable recent development is that the Crisis Management and Deposit Insurance Proposals were published on 18 April 2023).

3 Thirdly, better bank regulation would need to be even more forward looking, including robust assessments, and a strong focus on good governance, i.e. fit and proper requirements enhanced since the CRD IV. The 2021 banking package review – still to be adopted by the co-legislators – will reinforce such requirements and ensure stronger enforcement and the possibility to hold individuals (both executive and non-executives) more accountable. By looking at a ten-year horizon, the panellists mentioned several key drivers to achieve the Banking Union successes (beyond its completion), such as digitalisation, climate change, good governance, anti-money laundering, and cyber risks.

EU and Next Generation EU

by Dr Niels Kirst

Assistant Professor of European Law

On 19th-20th January 2023, the Jean Monnet Centre of Excellence REBUILD Annual Conference, “**NGEU: Furthering Economic, Legal and Fiscal Integration**” was held at the European Parliament Liaison Office in Ireland. This began with welcome remarks from **Federico Fabbrini** (Dublin City University), **Christy Ann Petit** (Dublin City University) and **Barbara Nolan** (European Commission Representation in Ireland). This was followed by five panels with presentations by the following persons: **Ana Belén Macho Pérez** (Pompeu Fabra University), **Fabian Amtenbrink** (Erasmus University, Rotterdam), **Stefania Baroncelli** (Free University of Bozen, Bolzano), **Edoardo Celeste** (Dublin City University) and **Goran Dominioni** (Dublin City University), **Rosalba Famà** (Bocconi University), **Nuno Albuquerque Matos** (Universidade Católica Portuguesa), **Laurent Pech** (UCD), **Maria Patrin** (University of Florence), **Alastair MacIver** (European Parliament), **Pier Mario Lupinu** (University of Luxembourg & Roma Tre University) and **Anna Machura-Urbaniak** (University of Luxembourg), **Ana Bobić** (Court of Justice of the EU) and **Paul Dermine** (ULB) **Ian Cooper** (Dublin City University), **Niall Moran** (Dublin City University) and **Vasiliki Yiatriou** (EUI). The event concluded with a Roundtable Debate with **Billy Kelleher** MEP.



The European Union (EU, Union) is in a phase of transition – more so than potentially ever: Transitioning from a carbon-based economy towards a green one. Transitioning from an internal market focussed European Commission (Commission) towards a geopolitical

one. Transitioning from an EU budget based on Member State contributions towards issuing joint debt. A crucial part of this transition is the Next Generation EU Fund (NGEU) which was agreed by the European Council in July 2020 and adopted in December 2020.

The NGEU is a milestone for the Union as it allows it to issue joint debt and support the recovery in the Member States with €750 billions of additional funds from 2021 to 2026.

“The core idea of the Jean Monnet Centre of Excellence REBUILD is to explore the NGEU’s governance, values, and resources.”



To discuss these transitions and transformations in the trajectory of the EU in the nascent 21st century, the DCU Brexit Institute held the Annual the Jean Monnet Centre of Excellence REBUILD Conference on NGEU: Furthering Economic Legal and Fiscal Integration in Dublin on 19-20 January 2023, hosted by the European Parliament Liaison Office in Ireland. Ten academics joined from various Universities abroad (five EU Member States), two members of the EU Institutions, ten colleagues from DCU and a colleague from UCD.

REBUILD stands for Recovery of Europe, Budget of the Union: Integration, Law & Democracy. The core idea of the Jean Monnet Centre of Excellence REBUILD is to explore the NGEU’s governance, values, and resources. The NGEU was established in response to the economic and social challenges posed by the Covid-19 fallout in Europe. It has several legal, constitutional, and political features that shape its components, governance, and the issues of accountability and conditionality. It is, therefore, a cutting-edge research project at the forefront of social sciences that explores the NGEU and the evolving role of the EU in the 21st century.

The legal foundation of the NGEU is provided by the European Council’s decision in July 2020 and its adoption by the Council of the EU in December 2020. Subsequently, several EU regulations and implementing rules were adopted, which give texture to the actual working and functioning of the NGEU. These legal instruments set out the framework, objectives, and operational details of the NGEU.

First, the NGEU consists of various funding programs and instruments. The main component is the Recovery and Resilience Facility (RRF Regulation), which provides grants and loans to support Member States’ investments and reforms. Other components include the ReactEU Program (a top-up to the 2014-2020 European Regional Development Fund and European Social Fund allocations), the Just Transition Fund (Pillar I of the Just Transition Mechanism), the Rural Development Fund (Pillar II of the EU’s Common Agricultural Policy), REPowerEU (aiming to increase the resilience of the European Union energy system, by decreasing fossil fuel dependency and diversifying energy supplies) and further technical assistance and administrative support services.

Second, the governance of the NGEU involves a combination of EU-level institutions and national authorities. The Commission plays a central role in the management and coordination of the fund, a revolutionary feature as it gives the Commission vast new oversight powers. The Commission proposed and implemented relevant Regulations and will monitor the use of funds. The Member States prepared and submitted their National Recovery and Resilience Plans (NRRPs), which outlined their reform and investment priorities to access NGEU funds. After applicable scrutiny, those plans were approved by the Commission in 2022, and the Commission subsequently monitors the achievement of milestones and targets within those plans.

Third and most importantly, the NGEU includes a vital accountability aspect. The NGEU strongly emphasises accountability to ensure the transparent and efficient use of funds. The Commission is responsible for monitoring the implementation of NGEU programs and ensuring compliance with the previously agreed milestones and targets. Member States are required to report on the progress of their NRRPs and provide information on the use of funds. This is a new and innovative approach. Finally, the European Parliament (Parliament) plays a role in oversight and scrutiny, reviewing the Commission's reports and conducting inquiries.

Fourth, the NGEU also includes a strong conditionality dimension. The NGEU introduces a new dimension of conditionality to promote the rule of law and sound economic governance. It requires Member States to respect the EU values, including the rule of law, democracy, and fundamental rights. Compliance with these principles is a prerequisite for accessing NGEU funds.

“NGEU represents a unique financial instrument with legal, constitutional, and political dimensions.”

In case of serious breaches, the EU can activate the Conditionality Regulation and suspend the payments of EU funds – as happened with Hungary in 2023.

Ultimately, the NGEU has shifted the political dynamics in the EU. The NGEU has significant political implications as it involves negotiations, cooperation, and consensus-building among the Commission and the Member States. It has given the Commission a much more significant role, power, and increased leverage when negotiating with Member States. This should be welcomed as it allows the EU to safeguard its values on the Member State level.

To sum up, NGEU represents a unique financial instrument with legal, constitutional, and political dimensions. The NGEU will change the EU for years to come. Its governance involves both EU and national authorities. Accountability mechanisms are in place to ensure transparency, efficiency, and quality. The introduction of conditionality enhances the EU's role in promoting the rule of law and democratic values within the Member States – the NGEU will therefore allow the Union to guard its values in the future. The Jean Monnet Centre of Excellence REBUILD will continue to monitor, analyse, and assess the NGEU's role and significance in the future.

EU and the War in Ukraine

by Dr Ken McDonagh

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

On **Wednesday 8 February 2023** Dublin City University hosted the book launch of “**EU Fiscal Capacity: Legal Integration After Covid-19 and the War in Ukraine**” by **Federico Fabbrini** (Oxford University Press). It was chaired by **Daire Keogh** (President, DCU) and moderated by **Shona Murray** (Euronews), and featured the speakers **Giuliano Amato** (former Prime Minister of Italy, former Vice-President of the European Convention) and **Herman Van Rompuy** (former Prime Minister of Belgium, former President of the European Council).

The Russian escalation of its invasion of Ukraine in February 2022 sent shockwaves across Europe. The heroic resistance of Ukraine since then has been made possible by the concrete assistance of Western Allies but Ukraine is still fighting with one hand tied behind its back as the US, NATO and the EU continue to drag their heels on delivering vital weapon systems. There is a risk that if the current Ukrainian offensive doesn't bear fruit, pressure will increase on Kyiv to make peace while Russia still occupies Ukrainian territory. Such a peace will not deliver justice for the crimes against humanity committed by Russia and will be even less likely to deter Russia in the long term. After the Russian invasion of Georgia in 2008 and of Ukraine in 2014, relations with the West quickly snapped back to a semblance of normality. Trying this again would be a mistake.

The EU response to the invasion was swift and impressive. In addition to implementing the Temporary Protection directive for the first time to provide refuge for Ukrainians fleeing the war, the EU went much further than many thought possible in terms of both sanctions and direct military assistance via the European

“The EU response to the invasion went much further than many thought possible in terms of both sanctions and direct military assistance via the European Peace Facility.”

Peace Facility. To date the EU has provided over €3.6 billion to the Ukrainian armed forces; when the contributions of individual member states are factored in this figure reaches €12 billion euro.

However, stockpiles are running low in European armouries and the member states have been criticised for not restocking their arsenals and placing orders with manufacturers in good time. Likewise, although the EU sanctions have held fast, the EU has been less successful in either persuading or deterring other countries from trading directly with Russia or facilitating sanctions evasion. The role of Georgia, where the EU has invested significantly through the Eastern Partnership process, in facilitating sanctions evasion is a clear signal of the limits of EU power, soft or otherwise beyond its borders.

Internally too the shockwaves of the war continue to disrupt politics. Though the worst of the inflation has started to subside, governments across the continent are facing protests and strikes. The largely successful efforts to quickly decouple EU energy markets from Russian supplies were overshadowed by skyrocketing prices. As Europe heads to the polls in 2024, another year of real wages falling could manifest in a further surge in support for far right and Eurosceptic parties across the continent.

More significantly, the EU faces challenges internally on the issue of rule of law. Though Hungary remains firmly in the Commission's crosshairs as billions in EU funds are withheld due to rule of law concerns, Poland has largely evaded serious sanction for its attacks first on judicial independence and now on opposition politicians due to its steadfast role in supporting Ukraine. The EU needs to recognise that illiberalism inside the Union is as grave a threat as authoritarianism outside.

"The fragile European order that emerged with the collapse of the Soviet Union is in grave peril, but the same was said of Kyiv in February 2022."



Although the EU has responded more robustly than many thought possible, ultimately the conflict has reinforced the centrality of the Trans-Atlantic relationship. Sweden and Finland's swift decision to seek membership of NATO are one symptom of this. Another is the reluctance of EU states to get ahead of the US in terms of the types of weapon systems they are willing to donate to Ukraine. While the war has demonstrated how far the EU has come in the area of security and defence it also revealed how far it has yet to go.

As discussed in this review last year, Brexit placed a significant strain on the frictionless cooperation that had provided security in the West since the beginning of the Cold War. The establishment of the European Political Community (EPC) in October 2022 and the progress made on the Northern Ireland Protocol, most notably agreement on the Windsor Framework in February 2023, have helped to ease this friction.

With NATO grappling with similar internal issues as the EU – though in this case with Turkey taking the part of Poland as Hungary's partner in crime – alternative fora such as the EPC may play an important role in shaping Europe's collective response to security challenges. Such alternatives could become even more necessary should Donald Trump return to the White House in 2025.

The world order that emerged at the end of the Cold War promised much but the peace dividend appears to have been

squandered. The multilateral institutions of the second half of the last century appear to be reaching their end. The UN Security Council is hamstrung by permanent members with scant regard for international law. NATO, though given a fillip with the accession of Finland and likely Sweden, remains beholden to authoritarian leaders in Ankara and Budapest. Even the EU faces challenges not only in Hungary and Poland but also in Sweden, Italy, France and elsewhere. The fragile European order that emerged with the collapse of the Soviet Union is in grave peril and the odds seem stacked against its survival. But the same could have been said of Kyiv in February 2022. Like Ukraine, we need to find the courage to fight for our survival and the first step in that direction is to give Kyiv what it needs to win and win decisively.





Part III: Powering Partnerships

Brexit Institute @ Princeton

by Dr Ian Cooper
Research Fellow, Brexit Institute

On **Thursday 1st December 2022** at the DCU Brexit Institute, in partnership with the Princeton University Center for Human Values and Law@Princeton program held an event on **"Brexit From a Global Perspective: How the UK withdrawal from the EU affected Ireland, Northern Ireland, Europe and Transatlantic Relations."** Welcome remarks from **Melissa Lane** (Princeton University) and **Derek Hand** (Dublin City University) were followed by a roundable discussion featuring **Federico Fabbrini** (Dublin City University), **Martin Flaherty** (Fordham Law School), **Fintan O'Toole** (The Irish Times), and **Kim Lane Scheppele** (Princeton University).

Joint Parliamentary Oversight of EU-UK Relations Post-Brexit

From a democratic point of view, a major defect of the post-Brexit EU-UK relationship is that it has been mainly led by the executive actors of the UK and the EU, with relatively little involvement from their respective parliaments. The past year has seen the creation of a new institution intended to redress this balance: the EU-UK Parliamentary Partnership Assembly (PPA).

The creation of the PPA was envisaged by the Trade and Cooperation Agreement (TCA), the treaty that set the terms of the new EU-UK relationship following the UK withdrawal. The PPA is a joint body made up of 35 members of the European Parliament and 35 members of the UK Parliament (21 from the House of Commons, 14 from the House of Lords).

The PPA meets two times per year. Its first meeting was held in May 2022, in Brussels. Its second meeting was this week in London, in November 2022. Its third meeting will take place in Brussels on July 3-4, 2023.

The PPA exercises joint parliamentary oversight over the Partnership Council, the body that is in charge of the implementation of the TCA. The co-chairs of the Partnership Council are Maroš Šefčovič, Vice President of the European Commission, and James Cleverly, the UK Foreign Secretary. The PPA exercises its oversight function by providing a forum for EU and UK parliamentarians to put questions to the co-chairs



of the Partnership Council (or their representatives).

An analysis of the London meeting shows how the new institution is taking shape. Šefčovič was present at the London meeting, but Cleverly was absent, stood in for by Europe minister Leo Docherty. There was a marked change in tone from the first PPA meeting to the second. At the first meeting, which took place at a time when there was little progress in negotiations, the normally mild-mannered Šefčovič was clearly exasperated by the lack of any serious engagement from the UK side. At the second meeting, Šefčovič recognized that a new tone in EU-UK relations had been set since September by Cleverly. This change in tone actually began under the short-lived premiership of Liz Truss, but continued under Rishi Sunak. In retrospect, this improved “mood music” reflected the fact that progress was being made behind the scenes in EU-UK talks regarding the Protocol, which eventually led to the breakthrough of the Windsor Framework in February 2023.

In London, both Šefčovič and Docherty hailed the fact that the “machinery” of the TCA was by then fully up and running. This complex machinery includes not only the Partnership Council but also the 18 Specialised Committees and Trade

“The improved “mood music” reflected the progress being made behind the scenes in EU-UK talks, which eventually led to the breakthrough of the Windsor Framework.”

Specialised Committees, the Domestic Advisory Groups, and the Civil Society Forum – all of which had by then met at least once. The PPA itself is one more piece of the TCA machinery that is now working: at the London meeting, it used one of its powers for the first time, issuing a Recommendation to the Partnership Council on energy cooperation.

A great deal of discussion in London was focused on Northern Ireland. This is despite the fact that the PPA was created to oversee the TCA, and not the Northern Ireland Protocol (NIP), which is part of the Withdrawal Agreement, a separate treaty that set the terms of the divorce.



“The Parliamentary Partnership Assembly cannot fulfil its oversight function unless there is a good working relationship between the EU and UK counterparts.”

There is no dedicated parliamentary body to oversee the Withdrawal Agreement, and the PPA is to some extent filling this gap. After all, the co-chairs of the Joint Committee in charge of the Withdrawal Agreement are also the co-chairs of the Partnership Council – Cleverly and Šefčovič.

Still, it was awkward that there were few representatives from Northern Ireland there to speak up for the region that was the topic of so much discussion. Only one MP in the UK delegation to the PPA is actually from Northern Ireland, Jeffrey Donaldson of the Democratic Unionist Party. The MPs from the other major party in Northern Ireland, Sinn Féin, follow the abstentionist policy of not taking up their seats in the House of Commons, and so cannot sit on the PPA. In part to overcome this lack of representation, the PPA also allows the participation of observers from

the UK's devolved assemblies, including the Northern Ireland Assembly. In this role, Sinn Féin MLA Declan Kearney addressed the meeting, and urged the creation of some form of democratic role for the Northern Ireland institutions in relation to the PPA.

Otherwise, much of the discussion at the London meeting was focused on specific issues where the PPA hopes to make concrete gains in EU-UK relations – specifically in relation to energy cooperation, touring artists and cyber defense, citizens' rights and research cooperation. The meeting was also attended by representatives from the EU's Committee of the Regions and the European Economic and Social Committee.

The relatively optimistic and pragmatic atmosphere in London seemed to indicate an improved spirit of partnership both on the Partnership Council and within the PPA. This showed that the PPA cannot fulfil its oversight function unless there is a good working relationship between the EU and UK counterparts. After all, if the Partnership Council is gridlocked, there are no joint decisions for the PPA to scrutinize.

Given the significant improvement in relations since the Windsor Framework agreement was announced, it may be expected that a more constructive and optimistic tone will be struck at the third meeting, which will take place in Brussels in July.



Horizon Europe REGROUP Project @ Princeton

by Dr Edoardo Celeste
Assistant Professor of Law, Innovation and Technology

On **27-28 April 2023**, in connection with the Horizon Europe REGROUP project, the DCU Law Research Centre, Princeton School of Public & International Affairs (SPIA), and the Law@Princeton program hosted a conference on “**Constitutionalism after Covid-19: Transatlantic Perspectives on Risk and Resilience**”, co-convened by **Federico Fabbrini** (Dublin City University), **Miguel Centeno** (Princeton University) and **Kim Lane Scheppele** (Princeton University). It also included the participation of **Deborah Pearlstein** (Princeton University / Cardoza Law School), **Konrad Lachmayer** (University of Vienna Law School), **Frances Lee** (Princeton University), **Martin Flaherty** (Princeton University / Fordham Law School), **Jonathan Hafetz** (Seton Hall Law School / ACLU), **Gábor Mészáros** (University of Pecs / Princeton University), **Joelle Grogan** (Kings’ College London / CEU Democracy Institute), **Niels Kirst** (Dublin City University), **Edoardo Celeste** (DCU School of Law & Government), and **Lindsay F. Wiley** (UCLA School of Law).

Covid-19 and Digital Technology: Transatlantic Perspectives on Constitutionalism and Federalism

The Covid-19 pandemic has often been compared with the Spanish Flu of 1918. Over the past few years, media circulated black and white images of people lying in hospital beds or wearing face masks, which spoke for their similarity with what the world witnessed over the past couple of years.

However, one of the biggest differences between the Covid-19 and the Spanish Flu pandemic lies in the use of digital technology. The pandemic that we have just lived through was a ‘technological’ one as demonstrated by the use of digital technology for a variety of aims, such as contact tracing, symptom checking, quarantine and lockdown enforcement, mobility monitoring and telemedicine.

The technical choices related to the use of these digital solutions had a series of constitutional implications. Whether to make the use of contact tracing apps mandatory or voluntary, based on an opt-in or opt-out by the user, using location or proximity data, storing data in a centralized or decentralized way, resorting to private or public companies: these were all key questions that had to be addressed



“The pandemic that we have just lived through was a ‘technological’ one as demonstrated by the use of digital technology for a variety of aims such as contact tracing.”

when deploying these digital technology instruments and that had a direct impact on the fundamental rights of individuals, and in particular on their rights to privacy and to data protection.

In the worst-case scenario, specific technical choices could lead to a higher risk of state systematic surveillance of individuals, for example through a continuous monitoring of people’s location or by altering the original purpose of a digital app. A similar threat of function creep can be also mentioned in relation to private actors, who might easily reuse data collected for the original purpose of fighting the spread of the pandemic thanks to opaque privacy rules.

Of course, not only the rights to privacy and to data protection had been under threat during the recent pandemic, but also other types of basic freedoms. In this context, it is interesting to observe different constitutional approaches among states. In some Asian countries, for instance, the rhetoric insisted on the need to sacrifice the privacy of individuals on the altar of public health. Despite some incautious statements, in the EU the approach was and had to be radically different. Fundamental rights are inalienable; they possess an inner core -what the EU case law has called the ‘essence’- that cannot be totally trampled.

In the EU, certainly, the first few months after the advent of the pandemic were quite confused, but the response adopted by EU institutions was clear. As stated by the EU Commission and the EU Data Protection Board, the bulk collection, access and storage of health and location data is prohibited. What contact tracing apps in the EU can do therefore is limit their processing to proximity data, i.e. information about the likelihood of virus transmission based on the epidemiological distance and duration of contact between two individuals. Data should be collected only for specific purposes and apps should be dismantled at the end of the pandemic to avoid risks of function creep.

However, despite the formal legality of the digital solutions adopted in the EU, the PRIVATT project funded by Science Foundation Ireland showed how people in Ireland continued to reserve a significant lack of trust in the digital technologies deployed by the government. This not only highlights a discrepancy between formal legality and legal reality, but also a worrying degree of data protection illiteracy among the population. This is an issue which the EU legislator tried to address with the General Data Protection Regulation (GDPR) but that it is manifestly still an unsolved problem.

Other lessons learned related to the use of digital technologies during the

“Almost all EU member states adopted the same approach to digital technology solutions in Covid times, allowing for the creation of an EU gateway for their apps to interact.”

Covid-19 pandemic are relevant also from a federalist perspective. Covid-19 was a test – or better, a ‘stress test’ – for federalism and its institutions. One of the main questions was that of the choice between harmonisation or interoperability of digital solutions in federal settings. Comparing the EU and the US, it is possible to observe that in both contexts, surprisingly, no federal single contact tracing apps were deployed, leading to a fragmentation of national digital solutions. The EU only adopted a series of common, non-legally binding guidelines. Almost all EU member states apart from France adopted the same approach to digital technology solutions in Covid times, allowing for the creation of an EU gateway for member states’ apps to interact. Yet the gateway was used by only 19 states at its peak, raising doubts in relation to the effective success of EU harmonisation in this field.

Certainly, a full harmonisation of digital solutions to tackle the spread of the pandemic would hardly be seen as fully within the remit of EU law. However, advantages could have included a higher level of data protection compliance, increased social awareness and literacy about digital rights and the removal of a series of obstacles to a more ‘secure’ freedom of movement. What could instead be criticised is the de facto delegation of the duty to develop fundamental rights compliant digital solutions to fight the spread of Covid-19 to private companies, often non-European, in apparent contrast with recent EU digital sovereignty strategies and with the primary objective of the EU to preserve fundamental rights not only offline, but also online.



Jean Monnet Centre of Excellence REBUILD @ EUI

by Dr Niall Moran
Assistant Professor in Economic Law

On **Monday 12 June 2023** the Jean Monnet Centre of Excellence REBUILD, in partnership with the European University Institute (EUI) Robert Schuman Centre for Advanced Studies (RSCAS), held an event on **“The Commission Legislative Proposal for the New Stability & Growth Pact: An Interdisciplinary Discussion.”** Welcome remarks from **Erik Jones** (Director, RSCAS) were followed by a panel discussion chaired by **Federico Fabbrini** (Dublin City University) featuring **Marco Buti** (EUI), **Adrienne Héritier** (EUI), **Emmanuel Mourlon-Druol** (EUI), and **Anna Peycheva** (EUI).

The Shift from Liberalisation to Defence in EU Trade Policy

In giving a broad overview of EU trade policy over a specific period of time, a piece such as this should cover two main areas: EU measures that liberalise trade (broadly speaking) and measures that strengthen trade defence. Had I written a piece such as this in 2015 when I had recently started working for the EU Commission, the emphasis undoubtedly would have been on the former area. My unit was working on the finishing touches to the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the conclusion of the EU-US Transatlantic Trade and Investment Partnership (TTIP), both of which were top priorities for the Juncker Commission. Since 2016, the emphasis of EU trade policy has decisively shifted in the direction of the latter area.

The outbreak of war in Europe and Russia's invasion of Ukraine in February 2022 was the latest blow to that former mindset. Brexit and Trump was the first such blow in 2016, followed by the U.S.-China trade war in 2018, and Covid-19 measures in 2020 (and this is without mentioning the 2019 demise of the Appellate Body of the World Trade Organization (WTO), a major blow to its institutional structure). The EU has had to adapt its trade policy to adjust to a reality beset by institutional dysfunction at the WTO and shifting momentum away from the rules-based order towards a power-based order in international trading relations

(even if much of the rules-based order remains). As the international trading system has been shaken, EU trade defence instruments (broadly conceived) have increased in prominence.

Recent initiatives in these areas have included the expanded use of sanctions, an anti-coercion instrument (ACI), the EU's carbon-border adjustment mechanism (CBAM), rules on foreign subsidies and procurement, a proposed Directive on due diligence requirements for large EU companies, and rules on co-ordinated FDI screening, inter alia.

Since the invasion of Ukraine, the EU has adopted ten far-reaching sanctions packages targeting the Russian banking system, commodities such as oil and gas, sectors such as aviation and luxury goods, as well as sanctions on diplomats, high-profile individuals and entities including Rosneft and Gazprom Neft. Sanctions in these areas progressively escalated over the course of the first year of the war and enforcement has been stepped up and in some instances extended to operators in third countries.

The text for the EU's anti-coercion instrument was agreed in March 2023. This instrument will allow the EU to levy tariffs or take other measures where political interference and coercive pressure is exerted on a Member State or States from foreign actors. The EU Commission has been at pains to emphasise that any intervention under the ACI would be consistent with international law. It has also stated that having this instrument will mean that the need for its use will be less likely (i.e. that foreign powers will be less likely to try to exert (economic) pressure on Member States). This is just one EU initiative that seeks to tackle unfair practices of other WTO Members, with new rules on foreign subsidies and procurement, as well as due diligence requirements for companies also falling into this category.

The CBAM Regulation entered into force on 16 May 2023. It is a climate measure that complements the EU's Emissions Trading

“Since the invasion of Ukraine, the EU has adopted ten far-reaching sanctions packages that progressively escalated over the course of the first year of the war.”



“The EU has exhibited great leadership at the WTO, showing that a two-tier dispute settlement system can function for those Members that still wish to see one in place.”

Scheme and aims to prevent carbon leakage, i.e. that carbon intensive production be moved to countries with lax standards, with these products in turn being sold back into the EU. Such leakage would undermine global climate efforts. The Regulation initially applies to imports of steel, iron, aluminium, cement, electricity and hydrogen.

These, as well as the other abovementioned policies, represent a shift in emphasis for EU trade policy towards a strengthened trade defence toolbox. The cumulative effect of a series of measures such as these may be a shift inwards, where more production will take place within the EU and certain imports decrease. This may seem like a positive outcome, but there are still unknowns such as how other WTO Members will

react to these measures and what their own versions of them may look like. The acceptability of these measures will depend to a certain extent on their design and implementation and the EU must make particular efforts to ensure the final texts for these measures are WTO compatible.

While these defensive trade measures have received most of the headlines in 2022-23, the EU has also taken measures furthering trade liberalisation. In particular, it has concluded trade agreements with Chile and New Zealand as well as agreeing to the Windsor Framework with the United Kingdom. Its efforts at the multilateral level have also been noteworthy; the EU has shown great leadership at the WTO, showing that a two-tier dispute settlement system can function for those Members that still wish to see one in place. The MPIA issued its first award in December 2022 and Japan joined this initiative in March 2023. EU leadership was also on display at the WTO's 12th Ministerial Conference (MC12) where an agreement on fisheries subsidies was reached as well as Declarations on food security and preparedness for future pandemics. Looking forward to 2024, it is hoped EU trade policy will continue this trajectory of leadership at the multilateral level, including in its support of Ukraine, and strike a balance between trade liberalisation and strengthened trade defences.





Part IV: Facts & Figures 2022-2023

Staff

6 Core People from 5 Nationalities



Publications



Book



High Level
Study Report



6 Working Papers (Jean Monnet
Centre of Excellence REBUILD)

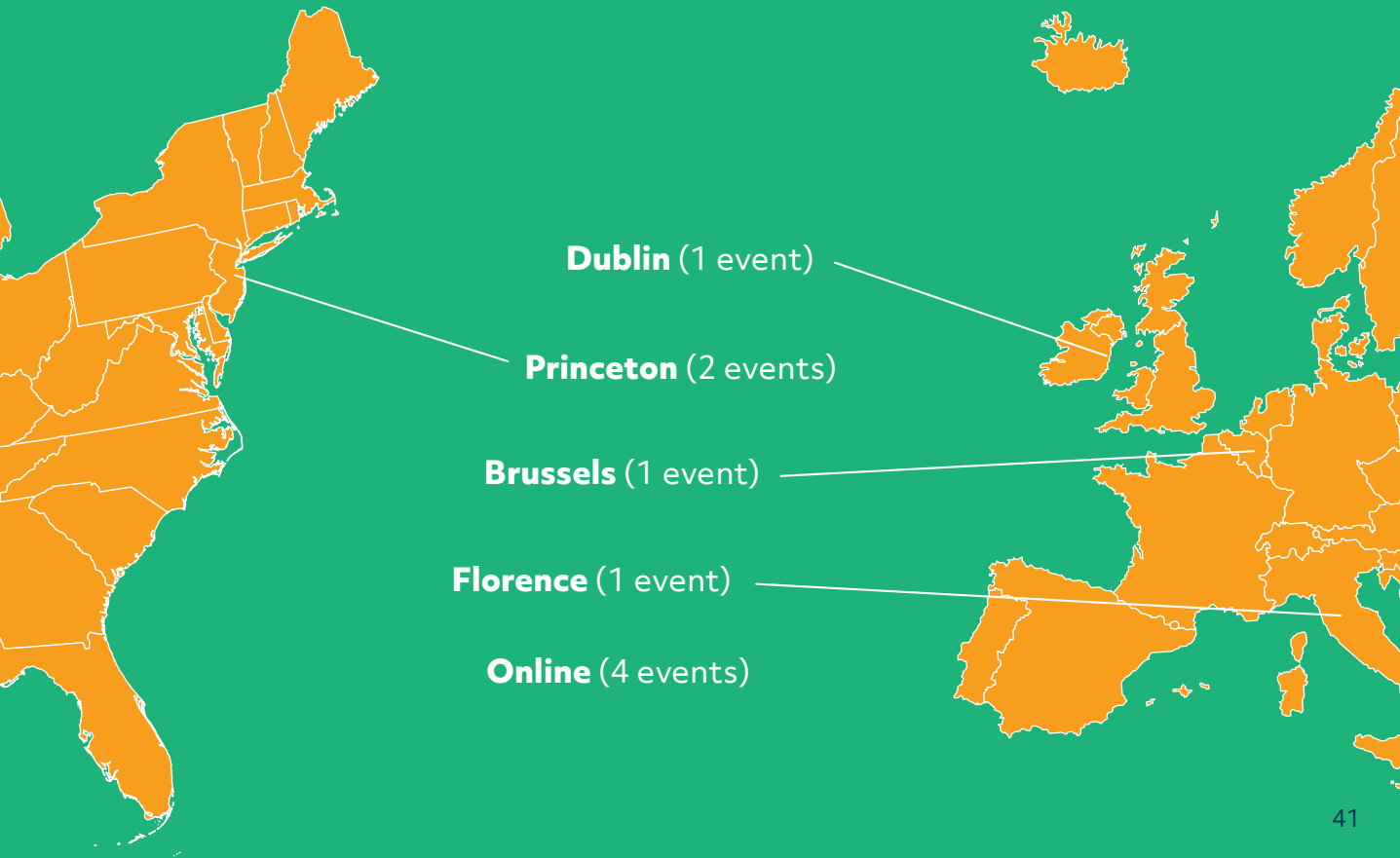


83 Short Comments and Analyses of
Brexit and EU Affairs (**61** Brexit
Institute blogs, **22** Jean Monnet
Centre of Excellence REBUILD blogs)



10 Podcasts

9 Events



Projects

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- 3 Former Prime Ministers



Jean Monnet Module study trip: EU Banking and Finance Law & Policy after NGEU (NGEULaw) - March 2023, Brussels

Lucrezia Rossi and Christy Ann Petit

On 26-28 March 2023 the postgraduate students of the “EU Banking and Finance law & Policy after NGEU” (NGEULAW) Jean Monnet Module, taught by Dr Christy Ann Petit, did a field trip to EU institutions and organisations based in Brussels. This Jean Monnet Module is funded by the European Commission within the framework of the Erasmus+ program.

The study trip gave the students the opportunity to meet with EU officials and representatives from key stakeholders’ organisations in the fields of banking and finance. This allowed them to discuss the most relevant current topics related to the Banking Union, its state of play, and the Next Generation EU reforms and implementation.

The programme started at the European Banking Federation (EBF) – the group representing the banking sector at EU level – with a twofold session that focused on sustainable finance and digital finance. Seminars with EU officials from the Single Resolution Board and the European

Commission (DG FISMA) focused on the Banking Union, REPowerEU, NGEU implementation, and the lessons learned from the latest financial crisis. These sessions allowed the students to exchange views with experts and to gain insights on the implementation of EU policies, including the current review of the Crisis Management and Deposit Insurance (CMDI) framework.

The students were able to deepen their understanding of the functioning of the EU institutions and gain knowledge of the numerous career opportunities available in the European Parliament and beyond, also with exchanges with staff from the Permanent Representation of Ireland to the EU and the European Parliament.

Overall, the students greatly enjoyed the field trip, and benefited from both the learning activities and moments for socialisation and group exchanges. During the course of the three days in Brussels, the students were also able to visit the House of European History and the city centre of Brussels.



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