

BREXIT – AN INQUIRY INTO THE SOCIOECONOMIC AFTEREFFECTS FROM AN INTERNATIONAL AND EUROPEAN PERSPECTIVE

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Abstract

The withdrawal of the United Kingdom from the European Union (Brexit) has attracted wide scholarly and public attention in the past five years, i.e. since the 2016 referendum when people in the UK voted to leave the EU. This paper provides a fresh outlook on the latest positions of the European Union and the United Nations regarding the socioeconomic and political consequences of Brexit. A special emphasis is put on the ongoing codification initiated by the European Commission in December 2020 to counter the adverse effects of Brexit in the EU Member States by providing them with appropriate allocations to cover financial losses in the area of trade, fisheries, employment, customs and others. Apart from careful examination of the Proposal for a Regulation establishing the Brexit Adjustment Reserve, the paper also investigates a selected number of other provisions regulating Brexit's direct effects on citizens and economies. Although Brexit is primarily seen as a matter of European provenance, its impact is additionally assessed from the perspective of the international community as a whole. The paper represents legal-dogmatic research which explores current positive law, doctrine, principles and concepts with the aim of obtaining a detailed understanding of the latest legal framework and trends appertaining to Brexit.

Keywords: Brexit, Brexit Adjustment Reserve, European Union, United Nations.

JEL Classification: K33

1. Introduction

On 29 March 2017, Tim Barrow, the Permanent Representative of the UK to the EU, delivered a six-page notification letter of Prime Minister of the UK Theresa May to President of the European Council Donald Tusk,³ invoking Art. 50 of the Treaty on the Functioning of the EU (TFEU), which triggered the UK's formal withdrawal from the EU.⁴ According to Art. 50 para. 1 of the TFEU "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements",⁵ and the UK's decision to withdraw was rooted in the referendum of 23 June 2016 when people of the UK voted to leave the EU by a 51.89 per cent majority.⁶ Although this was not the first time in the EU's history that some country withdraws from this supranational organisation,⁷ the example of the UK is in many ways precedented and unique. Firstly, the UK was the first fully-fledged Member State to invoke Art. 50 of the TFEU and withdraw from the EU.⁸ Secondly, the importance of the UK in the EU was immense and so were the socioeconomic impacts of its withdrawal. Namely, the UK was the fourth net contributor to the EU budget, with an estimated gross

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³ United Kingdom Notification under Article 50 TEU, XT 20001/17, Brussels, 29 March 2017.

⁴ Striving for Unity: The European Council, May 2016 to June 2018, Report by President Donald Tusk, Publications Office of the European Union, Luxembourg, 2018, p. 12.

⁵ Consolidated version of the Treaty on European Union, Official Journal of the European Union, C 326, 26 October 2012.

⁶ Gordon, Michael, Referendums in the UK Constitution: Authority, Sovereignty and Democracy after Brexit, *European Constitutional Law Review*, Volume 16, Issue 2, 2020, p. 225; Martill, Benjamin; Staiger, Uta, Introduction: Brexit and Beyond, in: Martill, Benjamin; Staiger, Uta (eds.), *Brexit and Beyond: Rethinking the Futures of Europe*, UCL Press, London, 2018, p. 1.

⁷ Earlier examples include Algeria (Algexit), which cut ties with the European Community (EC) in the process of gaining its independence from France in 1962, and Greenland (Grexit), an autonomous Danish territory which left the EC in 1985. In addition, Saint Barthélemy formally left the EU in 2012 (St-Barthexit) when it ceased to be the Outermost Region of the EU and became an Overseas Country or Territory. See: Patel, Kiran Klaus, Something New Under the Sun?: The Lessons of Algeria and Greenland, in: Martill, Benjamin; Staiger, Uta (eds.), *Brexit and Beyond: Rethinking the Futures of Europe*, UCL Press, London, 2018, p. 114.

⁸ A detailed description of the withdrawal process of the UK see in: Miller, Vaugne; Lang, Arabella; Simson-Caird, Jack, *Brexit: How Does the Article 50 Process Work?*, House of Commons Library, Briefing Paper, Number 7551, 16 January 2017.

contribution of 14.05 billion Euros in 2019.⁹ Thirdly, the withdrawal of one of the world's major economies triggered a serious political and economic crisis at the time when the EU was already confronted with a number of various challenges and difficulties such as the COVID-19 pandemic, migration crisis, rise of right-wing populism and anti-European parties, Russian perspectives on the Baltics, 'disobedience' of Hungary and Poland, potential eurozone crisis and many others.¹⁰ As Nugent discreetly noted, Brexit has happened to be "*yet another crisis for the EU*".¹¹

This paper provides a fresh outlook on the latest perspectives of the European Union and the United Nations with regard to the socioeconomic and political repercussions of Brexit. A special emphasis is put on the ongoing codification initiated by the European Commission on 25 December 2020 to counter the adverse effects of Brexit in the EU Member States by providing them with appropriate financial contributions. For that purpose, the Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve is thoroughly analysed, taking into consideration the authors' first-hand experience in the process. To give a wider picture of the current European Union's stance towards Brexit, the paper further investigates a selected number of other provisions regulating Brexit's direct effects on European citizens and economies. Although Brexit is primarily seen as a matter of European provenance, its impact is additionally assessed from the perspective of the international community as a whole. In that respect, the paper summarises the current debates on the future role of the UK in the United Nations Security Council but also the UK's overall post-Brexit position at the UN.

The paper represents legal-dogmatic research which explores current positive law, doctrine, principles, concepts and studies with the aim of obtaining a detailed understanding of the latest legal framework and trends appertaining to Brexit. In the chapter following the introductory remarks, the authors outline the legal basis and chronology of the withdrawal of the UK from the EU as stipulated by Art. 50 of the TFEU. For the fact that it is widely believed that Brexit will have "*far-reaching economic, constitutional and geopolitical consequences*",¹² the next two, central chapters of the paper focus on the newest international and EU policy interventions, inquiries and responses to the chain of events triggered by Brexit. Understandably, the EU's actions are more closely and lengthy scrutinised in order to illustrate the specificities of the ongoing negotiations between the European Parliament and the Council on the measures foreseen by the Brexit Adjustment Reserve to cover the financial losses of the Member States in the area of trade, fisheries, employment, customs, information etc. Close attention is also paid to the UK-UN interrelatedness in the Brexit and post-Brexit period. Finally, the concluding remarks summarise the paper's findings, underlying the original elements of the study, which differentiate it from the existing scholarly writings on Brexit. This particularly refers to the portrayal of the real-time codification process, which reached the level of a political trilogue at the time of the completion of this paper.

2. Legal basis of Brexit

Brexit was the first occasion in the history of the EU when Art. 50 of the TFEU – the so-called "withdrawal clause" regulating the process of the voluntary and unilateral withdrawal of a Member State from the EU, was invoked.¹³ Once the UK notified the European Council of its intention to

⁹ The three largest net contributors to the EU budget are Germany, France and Italy. See: Amount Contributed to the Budget of the European Union (EU) in 2019, by Member State. The document is available online at: <https://www.statista.com/statistics/316691/eu-budget-contributions-by-country/> (12 June 2021); Keep, Matthew, *The UK's Contribution to the EU Budget*, House of Commons Library, Briefing Paper, Number CBP 7886, 4 January 2021.

¹⁰ Hix, Simon, *Decentralised Federalism – A New Model for the EU*, in: Martill, Benjamin; Staiger, Uta (eds.), *Brexit and Beyond: Rethinking the Futures of Europe*, UCL Press, London, 2018, p. 72.

¹¹ Nugent, Neill, *Brexit: Yet Another Crisis for the EU*, in: Martill, Benjamin; Staiger, Uta (eds.), *Brexit and Beyond: Rethinking the Futures of Europe*, UCL Press, London, 2018, pp. 54-62.

¹² Cameron, David, *Brexit Will Have Far-reaching Economic, Constitutional, and Geopolitical Consequences*, 24 June 2016. The article is available online at: <https://macmillan.yale.edu/news/brexit-will-have-far-reaching-economic-constitutional-and-geopolitical-consequences>. (27 May 2021).

¹³ For more on Art. 50 of the TFEU see: Eeckhout, Piet; Frantziou, Eleni, *Brexit and Article 50 TEU: A Constitutionalist Reading*, *Common Market Law Review*, Volume 54, Issue 3, 2017, pp. 695 – 733.

withdraw pursuant to Art. 50 para 2 of the TFEU on 29 April 2017,¹⁴ a month later, the EU27 leaders adopted guidelines for negotiations at the special meeting of the European Council, setting out the path towards effective preservation of interests of the EU and its Member States, citizens and businesses affected by Brexit. The European Council's guidelines underline the approach to negotiations, core principles, procedural arrangements for an orderly withdrawal and overall positions on the EU-UK future relationship.¹⁵ To comprehend the essence of forthcoming EU-UK affairs, a closer look needs to be taken at the guidelines' core principles, originally laid out in the statement of Heads of State or Government and of the Presidents of the European Council and the European Commission of 29 June 2016. In Point 4 of the statement, the importance of preserving the balance of rights and obligations in any agreement which the EU concludes with the UK as a third country is particularly stressed. It is also noted that the UK is required to accept all four freedoms in order to access the Single Market. Moreover, the EU leaders genuinely expressed their hope to preserve a close post-Brexit partnership with the UK.¹⁶ The adoption of the European Council's guidelines formally initiated another phase in the Brexit process – opening of negotiations and conclusion of a withdrawal agreement. This is explicitly stipulated in Art. 50 para. 2 of the TFEU stated hereinabove, which specifies that “[i]n the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.”¹⁷

On 15 May 2017, the Council adopted a decision which initiated the immediate opening of negotiations with a view to concluding the Withdrawal Agreement by nominating the Commission as the Union negotiator and authorizing it to open negotiations.¹⁸ The decision was soon followed by a set of negotiating directives for the (selected) matters particularly important in the first phase of the negotiations (e.g. safeguarding the status and rights of the EU27 citizens, settling financial obligations, supporting peace, stability and reconciliation on the island of Ireland, agreeing on arrangements as regards the Sovereign Base Areas of the United Kingdom in Cyprus and many others).¹⁹ Apart from the Council, the European Parliament also promptly took its position on the red lines and necessary actions leading to the conclusion of the Withdrawal Agreement in the Resolution of 5 April 2017.²⁰

After seven rounds of negotiations,²¹ the European Commission published the draft Withdrawal Agreement between the EU and the UK on 28 February 2018²² while the lengthy negotiations were finalised on 25 November 2018 when EU leaders endorsed the Withdrawal Agreement²³ and approved the Political Declaration on the framework for the future relationship.²⁴ The Agreement came into force after the UK and the EU had ratified it on 29 and 30 January 2020

¹⁴ Art. 50 para. 2 reads as follows: “A Member State which decides to withdraw shall notify the European Council of its intention”. Consolidated version of the Treaty on European Union.

¹⁵ Special meeting of the European Council (Art. 50) (29 April 2017) – Guidelines, EUCO XT 20004/17, Brussels, 29 April 2017.

¹⁶ Statement, Informal meeting at 27, Brussels, 29 June 2016. The statement is available online at: <https://www.consilium.europa.eu/media/20462/sn00060-en16.pdf> (27 May 2021).

¹⁷ Consolidated version of the Treaty on European Union.

¹⁸ Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union, XT 21016/17, Brussels, 15 May 2017.

¹⁹ Annex to Council decision (EU, Euratom) 2017/... authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union - Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union, XT 21016/17, ADD 1 REV 2, Brussels, 22 May 2017.

²⁰ European Parliament Resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union, 2017/2593(RSP).

²¹ The first round of the Brexit negotiations was launched on 19 June 2017 by Michel Barnier, the EU Chief Negotiator, and David Davis, Secretary of State of the UK for Exiting the European Union. The full timeline of the negotiations is available online at: Brexit – Overview, <https://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/>. (4 June 2021).

²² Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (2018) 33, 28 February 2018.

²³ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (‘Withdrawal Agreement’), Official Journal of the European Union, L 29/7, 31 January 2020.

²⁴ Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom, Official Journal of the European Union, CI 384/178, 12 November 2019.

respectively. More precisely, it became effective on 31 January 2020 at midnight.²⁵ The objective of this legally binding international treaty is to set out the arrangements for the orderly exit of the UK from the EU in a detailed and comprehensive fashion. Or, as the European Commission plainly put it, “to bring legal certainty where the UK’s withdrawal from the EU created uncertainty”, whereby the most pressing issues encompass citizens’ rights, financial settlements, governance, Protocols on Ireland/Northern Ireland, Gibraltar and Cyprus, transition and others.²⁶ Given the complexity of the withdrawal process, the Withdrawal Agreement foresees a transition or implementation period which started on the date of entry into force of the Agreement and ended on 31 December 2020. The utmost importance of this issue is supported by the fact that there is a separate part regulating the particularities of the transition period (Part Four), but also several hundreds of other references to transition throughout the text of the Withdrawal Agreement.

3. European Union’s response to Brexit

3.1. General remarks

The transition period foreseen by the Withdrawal Agreement was designed as the Brexit transitional phase during which the parties were set to conduct formal negotiations on the future EU-UK partnership and to define a framework for orderly relations in a number of essential areas. From the moment of the notification of the decision of the UK to withdraw in 2017 until the completion of the negotiations and endorsement of the Withdrawal Agreement by the EU leaders in 2018, it was quite uncertain whether the EU and the UK would successfully reach an agreement on the exit of the former. The tough stance of the negotiating parties left open the possibility for the UK to exit the EU without a Withdrawal Agreement and consequently, with no transition period and precise framework for the future EU-UK partnership (the so-called “hard Brexit”).²⁷ Once the transition period ended, the UK stopped participating in EU policies, which has led to the creation of barriers to trade in goods and services and to cross-border mobility. In that regard, Brexit poses a major socioeconomic threat to diverse stakeholders both in the EU and the UK as many economic sectors and businesses encounter difficulties related to the loss of facilitated access to markets. The losses were manifold – from those in profit and jobs to the ones in specific sectors, particularly the fisheries sector. In order to counter and mitigate the negative impact of Brexit, *i.e.* to assist affected businesses and regions, the EU has decided to introduce various support schemes for successful management of a changing working environment and preservation of employment levels.²⁸

The following subchapters investigate the most recent provisions introduced by the EU to help the Member States adjust to new socioeconomic post-Brexit circumstances by providing them with a necessary legal framework and/or funding. The first subchapter revolves around an in-depth analysis of the Proposal for a Regulation establishing the Brexit Adjustment Reserve while the second one summarises the selected provisions regulating Brexit’s aftereffects.

3.2. Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve (BAR)

3.2.1. Objectives of the proposal

In its Point A26, the outcome of the special meeting of the European Council of 17-21 July

²⁵ Brexit – Overview, *loc. cit.* (note 21).

²⁶ The Revised EU-UK Withdrawal Agreement Explained, European Commission. The presentation of the European Commission is available online at: https://ec.europa.eu/info/sites/default/files/slides_the_wa_explained.pdf (2 June 2021).

²⁷ For a detailed analysis of “hard Brexit” and its institutional, budgetary and policy implications see: Fabbrini, Federico, *The Institutional Consequences of a “Hard Brexit”*, In-depth Analysis, Directorate General for Internal Policies of the Union, Policy Department for Citizens’ Rights and Constitutional Affairs, PE 604.961, May 2018.

²⁸ Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve, COM(2020) 854 final, 2020/0380(COD), Brussels, 25 December 2020.

2020 – conclusions – foresees establishment of a Brexit Adjustment Reserve (BAR) embedded into special instruments outside the EU budget ceilings of the Multiannual Financial Framework (MFF) 2021-2027. The purpose of the new instrument, worth 5 billion Euros, is ‘to counter unforeseen and adverse consequences in Member States and sectors that are worst affected’²⁹. On the same occasion, the European Council also invited the European Commission to prepare a legislative proposal and present it to the co-legislators by November 2020.³⁰

Following the conclusions of the European Council, yet with a slight delay, the European Commission presented the Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve (BAR) on 25 December 2020. The Proposal reiterates that the objective of the Brexit Adjustment Reserve will be providing support “to counter adverse consequences in Member States, regions and sectors, in particular those that are worst affected by the withdrawal of the United Kingdom from the Union”, but also includes the addendum which broadens the objective to mitigating “the related impact on the economic, social and territorial cohesion”.³¹ The legislative proposal is currently under discussion between the two legislators – the European Parliament and the Council. Furthermore, the last political trilogue leading to a final agreement is foreseen for the second half of June 2021.³²

The main idea behind the introduction of the Brexit Adjustment Reserve is to compensate public expenditure of the EU Member States incurred in the process of mitigating the direct consequences of Brexit. The legislative proposal introducing the Brexit Adjustment Reserve represents one of the steps taken to smoothly bring the transition period to an end. As such, it should be seen not only as part of the overall withdrawal process invoked by triggering Art. 50 of the TFEU and related negotiations but also as part of the Commission’s efforts to help the Member States prepare their national administrations for a successful end of the transition period. The architecture of the legislative act is designed to respond flexibly to the specific needs of every Member State and to any unforeseen situation they may encounter in dealing with post-Brexit aftereffects.³³ Since the Brexit Adjustment Reserve means money, it is important to note that this mechanism is complementary to both the Multiannual Financial Framework (MFF) 2021-2027 and the Next Generation EU (NGEU) – the EU’s main financial packages in the coming years. Currently, the Brexit Adjustment Reserve is the only instrument providing the EU Member States with financial assistance, which is “specifically and directly linked to the economic and social consequences” of Brexit.³⁴ Although the Brexit Adjustment Reserve is embedded into the seven-year EU budget (MFF 2021-2027), it covers a shorter period of time, *i.e.* 1 January 2020 – 31 December 2022 (which is still provisionally set and subject to ongoing interinstitutional negotiations). Due to a rather short period of Reserve implementation, the spending of available allocation could prove challenging for some Member States. Strong administrative capacities will certainly play a pivotal role in the Reserve

²⁹ Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, EUCO 10/20, Brussels, 21 July 2020.

³⁰ See Point 134 of the conclusions of the European Council. *Ibid.*

³¹ Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve, *loc. cit.* (note 26).

³² The co-decision procedure for adopting EU legislation was first introduced in 1992. When the Treaty of Lisbon entered into force in 2009, the term ‘co-decision procedure’ was replaced by ‘ordinary legislative procedure’. Nowadays, the latter represents the general rule for adopting EU legislation. In that procedure, two co-legislators – the Council and the European Parliament are equal, which means that they both have a deciding vote or may amend a proposal in a legislative process concerning one of the 85 EU policy areas. The procedure starts with tabling a proposal by the European Commission, which is first analysed by the working bodies of the Council and the European Parliament, responsible for preparing final proposals (usually with a significant number of amendments) for final negotiations between the co-legislators. Although the procedure may be consisted of up to three readings, the co-legislators could agree on a compromise text and conclude the procedure at any reading. Final agreements are reached during interinstitutional negotiations between the Council, the European Parliament and the Commission; therefore, they are referred to as tripartite meetings or trilogues. A legislative act is adopted jointly and on equal footing by the two co-legislators and both of them shall approve an identical text. See: Handbook on the Ordinary Legislative Procedure – A Guide to How the European Parliament Co-legislates, Directorate-General for Internal Policies of the Union Directorate for Legislative and Committee Coordination Legislative Affairs Unit (LEGI), September 2020; Loewenthal, Paul-John, Articles 289-292, in: Kellerbauer, Manuel; Klamert, Marcus; Tomkin, Jonathan (eds.), *The EU Treaties and the Charter of Fundamental Rights – A Commentary*, Oxford University Press, Oxford, 2019, p. 1912.

³³ Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve, *loc. cit.* (note 26).

³⁴ *Ibid.*

successful implementation, so strengthening and expanding them should be crucial in the short term.

3.2.2. Architecture of the proposal and co-legislators' starting positions

The Proposal consists of 17 Articles and three Annexes (regulating the allocation method and templates). According to Art. 1 (Subject matter), the Regulation establishing the Brexit Adjustment Reserve “*lays down the objectives of the Reserve, its resources, the forms of Union funding and rules for the implementation of the Reserve, including for the eligibility of expenditure, for management and control, and the financial management*”³⁵. Art. 2 provides relevant definitions and currently, its para. 1 governing the ‘reference period’ is one of the most contested provisions in the Proposal. More precisely, the ‘reference period’ is defined in the original Commission’s Proposal as the period from 1 July 2020 to 31 December 2022. However, the other two co-legislators have opposing views on this matter. In its Amendment 28, the European Parliament stated that the reference period should be from 1 July 2019 to 31 December 2023³⁶ while the Council believes that the optimal period is between 1 January 2020 and 31 December 2023.³⁷ It is obvious that in the end, the co-legislators will have to find a compromise. Art. 3 stipulates the objectives which have already been explained in the earlier subchapter. Art. 4 specifies the geographical coverage and resources for the Reserve, determining that every Member State shall be eligible for support from the Reserve. However, with respect to the resources, there is again a certain divergence of the co-legislators’ views. It is important that the co-legislators reach an agreement on the amount of the allocation – 5 billion Euros, as set out in the conclusions of the European Council of July 2020.³⁸ At the moment, it seems that they have, but their standpoints differ in relation to the models of allocation disbursement. According to the European Parliament, 4 billion Euros shall be disbursed in the form of pre-financing – 2 billion Euros shall be disbursed in 2021 while another 2 billion Euros shall be allocated in 2022. The Council wants to allocate funds differently, through a system of three tranches. The first tranche of 1.6 billion Euros shall be paid in 2021, the second one of 1.2 billion Euros in 2022 and the third one of 1.2 billion Euros in 2023. Like in the event of the ‘reference period’, the negotiating parties will have to look for a compromise. The point on which both co-legislators agree is that the final 1 billion Euros shall be paid out in 2025. Art. 5 lists the measures eligible for financing in the form of a ‘may clause’, *i.e.* in a non-exhaustive way, so that a Member State may choose some other measure if it is directly linked to Brexit’s repercussions. Art. 6 explicitly lists expenditure that is not supported by the Brexit Adjustment Reserve. Other articles of the Proposal regulate matters of financial management, management and control systems and final provisions.

Another particularly important segment of the Proposal is Annex I which lays down the formula for the allocation method of the Brexit Adjustment Reserve.³⁹ At the time of the completion of this paper, the negotiation process was still pending and the formula was subject to alteration, but what was certain is that the method of allocation of funds is going to take into consideration the level of dependency of a Member State on the UK and related post-Brexit losses in certain areas such as trade. There were three factors tabled for negotiations: “*the importance of trade with the UK, the importance of fisheries in the UK exclusive economic zone and the population living in maritime regions bordering the UK*”.⁴⁰ Given the sensitivity and delicacy of the current negotiations, it is

³⁵ *Ibid.*

³⁶ Report on the Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve, COM (2020) 0854 – C9-0433/2020 – 2020/0380 (COD), p. 22.

³⁷ Brexit Adjustment Reserve (BAR): Examination of fourth Presidency compromise proposal, Working Paper, WK 5127/2021 INIT, p. 7.

³⁸ *Ibid.*, p. 8; Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, *loc. cit.* (note 29).

³⁹ Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve, *loc. cit.* (note 28).

⁴⁰ Brexit Adjustment Reserve: MEPs Want Swift Disbursement of €5 Billion Fund, Press Release, European Parliament, 9 June 2021. The press release is available online at: <https://www.europarl.europa.eu/news/en/press-room/20210604IPR05510/brexit-adjustment-reserve-meps-want-swift-disbursement-of-eu5-billion-fund> (10 June 2021); Member States’ Allocations Under the Brexit Adjustment Reserve in the Year 2021, in the Form of Pre-financing, Working Document of the Commission Services, Structural Measures 2021-2027, Fiche no. 13, 12 January 2021, p. 2.

possible to have only a look at the numbers and estimates indicating which Member States will greatly benefit from the original Proposal of the European Commission and which will only slightly benefit. Five Member States with the expected largest allocation are Ireland, the Netherlands, Germany, France and Belgium (Ireland is expected to be provided with the largest amount of allocation and Belgium with the lowest one) while Member States with an insignificant allocation perspective are Slovenia, Croatia, Estonia, Latvia and Lithuania (Slovenia leading the pack and Lithuania at its back).⁴¹ It should be noted that this is only a projection which does not necessarily reflect the final outcome of the negotiation process. Speaking of Annexes II and III, they include templates for an application for financial contribution and for the description of the management and control system respectively.⁴²

At the meeting of the Council's Committee of Permanent Representatives (COREPER II) of 29 April 2021, the Council obtained a mandate from the Member States to start negotiating with the European Parliament on the Proposal. After the European Parliament's Committee on Regional Development (REGI) had adopted the negotiating mandate on 25 May 2020, the European Parliament decided (9 June 2020) that it was ready to start negotiations with the Council on the same day. It is interesting to note that the European Parliament's Committee on Regional Development (REGI) had tabled, prior to the opening of negotiations with the Council, 62 amendments to the Commission's original Proposal.⁴³ When it comes to the expected timeline of negotiations, a political agreement is expected in mid-June so as to make BAR funds available to the Member States as soon as possible.⁴⁴

3.3. Other key Brexit-related acts

There have already been more than a dozen key legislative acts governing Brexit and post-Brexit EU-UK relations.⁴⁵ Due to such a significant number of those acts and the nature of this study, the following lines briefly summarise the three most recent key acts regulating different areas of cooperation, which have recently been published in the Official Journal of the European Union and entered into force.

"The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part" is certainly one of the most important post-Brexit legislative acts. Its purpose is very generally described in Art. 1 stipulating that the Agreement "*establishes the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties' autonomy and sovereignty*". The cooperation encompasses trade, transport, fisheries and other arrangements, and a wide array of particular cooperation areas can be deduced from a long list of committees and working groups established in the light of Art. 8 and 9 thereof (*e.g.* customs matters, sanitary and phytosanitary measures, public procurement, energy, road transport etc.).⁴⁶

Although Brexit is often perceived from the economic perspective only, a number of legislative acts also regulate non-economic areas and a prime example thereof is "the Agreement

⁴¹ Member States' Allocations Under the Brexit Adjustment Reserve in the Year 2021, in the Form of Pre-financing, *ibid.*

⁴² *Ibid.*

⁴³ Report on the proposal for a regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve, *loc. cit.* (note 34)

⁴⁴ The viewpoint of the European Parliament on the Proposal is well outlined in the statement of Belgian MEP and Rapporteur for the Brexit Adjustment Reserve – Pascal Arimont (EPP), who said: "*We have done everything we can to ensure this urgently-needed assistance can be disbursed quickly and without bureaucratic red tape. In this context, clear and comprehensible criteria are important to us, as this is the only way to make sure funding goes where it is actually needed. With a strong mandate, we can now enter into negotiations with Member States, which we want to conclude before the end of the current Council presidency [Portuguese presidency, emphasis added].*" See more: Brexit Adjustment Reserve: MEPs Want Swift Disbursement of €5 Billion Fund, *loc. cit.* (note 40).

⁴⁵ A full list of acts related to Brexit is available online at: Brexit: EU-UK Relationship, EUR-Lex, <https://eur-lex.europa.eu/content/news/Brexit-UK-withdrawal-from-the-eu.html?locale=en#2.KeyDocs> (7 June 2021).

⁴⁶ The Trade and Cooperation Agreement was published in the Official Journal on 30 April 2021 and entered into force the following day. Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, ST/5198/2021/INIT, Official Journal of the European Union, L 149, 30 April 2021.

between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information”. In accordance with its Art. 1, “[i]n order to fulfil the objectives of strengthening the security of each Party in all ways, this Agreement applies to classified information or material in any form either provided by one Party to the other Party or exchanged between the Parties”. Since the security classification of classified information differs between the EU and the UK, Art. 7 of the Agreement clarifies the corresponding levels of security classification of the two Parties.⁴⁷

Another example of a non-economic legislative act is the “Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy”, the objective of which is described in its Art. 1 as providing “a framework for cooperation between the Parties in the peaceful uses of nuclear energy on the basis of mutual benefit and reciprocity and without prejudice to the respective competences of each Party”. The Agreement does not refer to nuclear weapons or other nuclear explosive devices, or research or development of such weapons and devices. Art. 3 and 4 thereof specify the scope and forms of nuclear cooperation in peaceful uses of nuclear energy between the Parties.⁴⁸

It is beyond any doubt that Brexit has triggered a legislative tsunami, and an increased legislative activity is evident with respect to various EU acts, both legislative and non-legislative. For example, the European Commission has prepared more than a hundred sector-specific stakeholder preparedness notices which describe how administrations, businesses and citizens should prepare themselves for the changes provoked by Brexit. The list of encompassed areas is impressive and range from air transport and animal breeding to value added tax (VAT) and waste shipments.⁴⁹

4. International response to Brexit

4.1. General remarks

As seen in the earlier chapter, Brexit has a profound impact on the EU and particular Member States, initiating a wave of codification which is currently shaping the EU’s post-Brexit space both from the inside (EU-Member States relation) and the outside (EU-UK relation). However, there is the other side of the coin, equally relevant to the UK, which concerns its relations with the rest of the world. Since 1 January 2021, when the UK’s withdrawal from the EU took effect, the UK has acted on the international scene as a solo player and therefore, it needs to redefine its links with countries outside the EU. Scholarly literature has already pointed to some of the most critical areas in which such legal and political reshaping is taking place, *e.g.* existing and new international agreements, trade policy and foreign investment.⁵⁰

The altered legal position of the UK has already resulted in intensified diplomatic and legislative activity. On 15 June 2021, the UK agreed the Free Trade Agreement with Australia, which

⁴⁷ This agreement was published in the Official Journal on 30 April 2021 and entered into force on the same day as the Trade and Cooperation Agreement. Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, ST/5203/2021/INIT, Official Journal of the European Union, L 149, 30 April 2021.

⁴⁸ The Agreement was published in the Official Journal on 30 April 2021 and “shall enter into force on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound” (Art. 24 para. 1). Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy, PUB/2021/318, Official Journal of the European Union, L 150, 30 April 2021.

⁴⁹ Consequences of Brexit. The article is available online at: https://ec.europa.eu/info/relations-united-kingdom/new-normal/consequences-brexit_en (9 June 2021).

⁵⁰ See: Wessel, Ramses A., Consequences of Brexit for International Agreements Concluded by the EU and Its Member States, *Common Market Law Review*, Volume 55 (Special Edition), 2018, pp. 101-131; Cremona, Marise, The Withdrawal Agreement and the EU’s International Agreements, *European Law Review*, Volume 45, Issue 2, 2020, pp. 237-250; Zimmermann, Hubert, Brexit and the External Trade Policy of the EU, *European Review of International Studies*, Volume 6, Issue 1, 2019, pp. 27-46; Breinlich, Holger; Leromain, Elsa; Novy, Dennis; Sampson, Thomas, Voting with Their Money: Brexit and Outward Investment by UK Firms, *European Economic Review*, Volume 124, May 2020, pp. 1-20.

is the UK's first post-Brexit trade deal negotiated from the scratch. The earlier trade deals signed by the UK over the preceding year include 66 old EU trade agreements, which the UK rolled over, and two new ones, signed with Japan (October 2020) and the EU (December 2020). More of them are underway, *e.g.* the one encompassing Norway, Iceland and Liechtenstein.⁵¹ It is believed that the Free Trade Agreement with Australia will be more of a historic and symbolic value than of an economic one since the estimates suggest that the total profit could amount to mere 0.02% of the national GDP. On a more positive note, the deal is seen as an opportunity for paving the way for future alliances either within the original agreement or some new ones.⁵² By comparison, the EU and Australia have not concluded a Free Trade Agreement yet even though the Council's decision on the opening of negotiations was adopted in May 2018.⁵³

The general understanding is that Brexit will externally weaken both the EU and the UK. Impaired economy and the threat of Scottish independence are often recognised as the dominant weakening factors on the part of the UK.⁵⁴ The following lines explore some of the aspects of the 'weakened' UK with respect to the United Nations.

4.2. United Nations and the post-Brexit United Kingdom

Dee and Smith explain that "*UK's influence at the UN has arguably been boosted by its membership of the EU, which is the most well-organised and well-resourced group at the UN*".⁵⁵ Thus, it is understandable that once the UK left the EU, questions over stability of the UK status in the Security Council arose. Namely, the UK is one of the five permanent members of the Security Council and it has always been considered as one of the most influential among them. There are different views on whether Brexit will affect this influence or not. In her briefing paper "Brexit and the UN Security Council", Lang explores potential different outcomes, from strengthening of the UK's position, having no effect, inflicting loss of the UN legitimacy to linking the matter with the Scotland question.⁵⁶ The argument that Brexit could actually strengthen the UK's position in the Security Council is closely intertwined with recent calls for a reform of permanent seats whereby the UK and French seats will be replaced by the EU seat. The reform was officially proposed by the European Parliament in its 2015 Report on the role of the EU within the UN.⁵⁷ Now, that the circumstances have radically changed so has the balance of power, and Brexit has indeed secured the UK seat. The standpoint that Brexit will not have any direct effect on the UK's permanent membership in the Security Council is explained by the Council's utmost importance not only within the UN system but also in the world as a whole. In other words, such an important UN organ, which is considered as the most powerful multilateral body, could not be affected by Brexit. To assess it broadly enough, this outlook should be perceived in a close relation with the third argument which

⁵¹ The UK's rollover deals have been negotiated with Albania, Andean countries, Canada, Cameroon, Caribbean countries, Central America, Chile, Eastern and Southern Africa, Egypt, Faroe Islands, Georgia, Ghana, Iceland and Norway, Israel, Ivory Coast, Jordan, Kenya, Kosovo, Lebanon, Liechtenstein, Mexico, Moldova, Morocco, North Macedonia, Pacific states, Palestinian Authority, Serbia, Singapore, South Korea, Southern Africa Customs Union, Switzerland, Tunisia, Turkey, Ukraine and Vietnam (listed according to the name of an agreement). See: Edgington, Tom, *Brexit: What Trade Deals Has the UK Done So Far?*, BBC Reality Check, 15 June 2021. The article is available online at: <https://www.bbc.com/news/uk-47213842>. (15 June 2021).

⁵² UK Agrees Historic Trade Deal with Australia, Prime Minister's Office, 15 June 2021. The article is available online at: <https://www.gov.uk/government/news/uk-agrees-historic-trade-deal-with-australia> (15 June 2021); David, Darshini, *UK and Australia in First Post-Brexit Trade Deal*, 15 June 2021. The article is available online at: <https://www.bbc.com/news/business-57478412> (15 June 2021).

⁵³ As of early June 2021, 10 rounds of negotiations were held between the EU and Australia. Report of the 10th round of negotiations for a trade agreement between the European Union and Australia, European Commission, 9-19 March 2021. The Report is available online at: https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159518.pdf. (15 June 2021).

⁵⁴ Cameron, David, *loc. cit.* (note 12).

⁵⁵ Dee, Megan; Smith, Karen E., UK Diplomacy at the UN after Brexit: Challenges and Opportunities, *British Journal of Politics and International Relations*, Volume 19, Issue 3, 2017, p. 529.

⁵⁶ Lang, Arabella, *Brexit and the UN Security Council*, Briefing Paper, House of Commons Library, Number 7597, 19 May 2016, pp. 1-3.

⁵⁷ As part of the Report, Point 5 of the suggestions of the Committee on Constitutional Affairs "[c]alls for the necessary negotiations, procedures and reform of the UN Security Council to be carried out to enable the EU to become a permanent member of that body, with one permanent seat and one single vote". Report on the Role of the EU Within the UN – How to Better Achieve EU Foreign Policy Goals, (2015/2104(INI)), A8-0308/2015, 21 October 2015.

stresses that Brexit could possibly have a negative impact on UN legitimacy. This brings us back to the opening statement of this chapter that the UK's influence in the UN was boosted by its membership to the EU. Without being part of the influential EU, the UK is small in comparison with other four permanent members of the Security Council: China, France, Russia and the USA.⁵⁸ This will be particularly evident if the UK loses Scotland. In addition, China has already questioned the fairness of the permanent seats and called for a reform to increase their number and include some developing countries. If this happens, the UK's seat might become questionable because of some bigger and influential countries that could be deemed more important (e.g. Brazil, Germany, India and Japan).⁵⁹ Finally, as noted earlier in this chapter, the future of the UK's permanent seat is greatly dependent on the final outcome of the Scottish question. In the event of the Scotland's independence, the smaller UK will have difficulty to keep its permanent status and the topical issue of the reform of the Security Council will once again come under the spotlight. If the UK is allowed to keep the permanent seat, it will be necessary to determine who is the rights holder. This will depend on the kind of state succession, *i.e.* whether the case will qualify as secession, separation or dissolution – in the first case, the rights holder is the UK; in the second case both countries; and in the third case none of them. The Charter of the United Nations foresees procedural steps leading to the reform of the Security Council,⁶⁰ but such a scenario seems unlikely in the near future.⁶¹

Speaking of the broader role of the post-Brexit UK at the UN, Gowan draws attention to three major points in his recent reflection on the UK's performance at the UN within a year after Brexit. First, the post-Brexit UK has not significantly changed its approach to the UN compared to the period before Brexit. It was expected that the UK would aim to strengthen its ties with the USA on the account of the EU but in reality, it has preserved its close relations with the EU Member States, notably France and Germany. For example, it did not support the US attempt of August 2020 to re-impose UN sanctions on Iran but instead stood firm with the E3 (the so-called "EU big three" – France, Germany and Italy), which rejected the US proposal. The same difference in standpoints was evident with respect to the multilateral response to the COVID-19 pandemic when the UK sided with the EU and not the USA. However, at the same time, the UK has kept traditionally good relations with the USA at the UN and it is expected they will even widen with the new US administration in office. The UK also collaborated fruitfully with Germany in the Security Council during the German two-year term that commenced in January 2019, particularly on matters related to Libya and Sudan. In addition, the informal communication between the UK and the EU diplomats has remained productive, confirming their common priorities and interests in a number of areas, such as human rights or finances. Second, as expected, the post-Brexit UK has maintained exceptionally good relations with Australia, Canada and New Zealand (CANZ), but not on the account of the EU. Gowan explains this with roughly the same stance of the UK, the EU and CANZ on the majority of the UN policy issues. Third, the post-Brexit UK has not softened its approach towards China in the UN but has rather remained firm in criticising it for its approach to the Uighurs and Hong Kong, staying on the same wavelength with most of the other EU Member States.⁶²

The nature of this paper limits further examination of the post-Brexit UK-UN interrelatedness, but it is worth noting in the closing lines of this chapter that certain examination of Brexit and its effects on the international community has been conducted within the UN. For example, the 2020 Study of the UN Conference on Trade, Investment and Development (UNCTAD) explored the role

⁵⁸ Art. 23 of the Charter of the United Nations stipulates the composition of the Security Council. See: Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

⁵⁹ Security Council Must Reflect Twenty-First Century Realities, Delegates Tell General Assembly, with Many Calling for Urgent Expansion of Permanent Seats, GA/12288, Seventy-Fifth Session, 16 November 2020.

⁶⁰ According to Art. 108 of the Charter, "Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council". Charter of the United Nations, *loc. cit.* (note 58).

⁶¹ Lang, Arabella, *loc. cit.* (note 56).

⁶² Gowan, Richard, *Brexit Britain at the United Nations*, 16 December 2020. The article is available online at: <https://fpc.org.uk/brexit-britain-at-the-united-nations/> (27 May 2021).

of Brexit's non-tariff measures and their impact on developing countries.⁶³

5. Conclusion

The United Kingdom's decision to leave the European Union has led to tectonic political and socioeconomic changes across Europe and, to a lesser extent, elsewhere in the world. The withdrawal has challenged the essence of European unity, solidarity, sovereignty, and economic and power structures with a two-way effect – on the EU and the UK alike. It goes without saying that such a pivotal historical moment has attracted great interest in academic circles, so Brexit has continuously been part of scholarly narratives for more than five years, *i.e.* since the very first days of its announcement.

This paper adds to the growing number of studies on the socioeconomic and political aftereffects of Brexit, contributing thereto with a novel and comprehensive study on the latest codification process currently taking place at EU level. In addition, it places Brexit in a wider international context, shedding light on some of the most pressing post-Brexit concerns within the United Nations. The analysis has confirmed that Brexit has profoundly impacted a number of exceptionally diverse areas such as trade, fisheries, citizens' rights, diplomacy and so on. It has also proved the EU's readiness to respond effectively to such a political and economic shock. The Proposal of the Regulation establishing the Brexit Adjustment Reserve, which is currently under scrutiny by co-legislators, demonstrates the ability of the EU to protect its economies and citizens from shocks by providing them with funding necessary to secure vital economic sectors and labour markets. This flexibility of the EU institutions and budget related to Brexit carries even greater weight if put in the context of the parallel COVID-19 crisis. Although the paper analyses the ongoing codification, it could be argued that the Brexit Adjustment Reserve will be of great relevance to the EU Member States hardest hit by Brexit in their efforts to bounce back in affected sectors. The same positive attitude could be applied on most of the other recent legislative acts such as the EU-UK Trade Agreement. The coming years will show if they have been appropriately designed, but the basis seems decent.

The paper covers topics which are relevant to academics and practitioners alike. It represents an in-depth summary of topical and up-to-date information on Brexit approached from both the European and universal level. Thus, the theoretical framework used as a background of the analysis builds on International and European Law, encompassing topics ranging from permanent membership in the United Nations Security Council to the ordinary legislative procedure of the EU co-legislators. All this confirms the manifold and complex nature of Brexit as well as its momentous relevance for the timeline of the EU.

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