



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **A**
ECONOMIC AND SCIENTIFIC POLICY



Economic and Monetary Affairs

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**Internal Market and
Consumer Protection**

Proceedings of the Workshop on the consequences of Brexit

Study for the IMCO Committee



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Proceedings of the Workshop on the consequences of Brexit

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Study

Abstract

The workshop organised for the IMCO Committee by the Policy Department A in cooperation with the European Research Centre for Economic and Financial Governance (EURO-CEFG) of the Universities of Leiden, Delft and Rotterdam aimed at discussing the consequences of Brexit on the EU in general and on the policy fields covered by the IMCO Committee in particular. It allowed for a first exchange of opinion on the consequences of Brexit and for questions by EU decision-makers in preparation of the upcoming negotiations.

This document was requested by the European Parliament's Committee on Internal Market and Consumer Protection.

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CONTENTS

LIST OF ABBREVIATIONS	5
EXECUTIVE SUMMARY	6
1. INTRODUCTION	8
2. IMPLICATION OF BREXIT AND GENERAL CONSIDERATIONS	9
2.1. Article 50 TEU: The EU Legal Framework for Brexit and the Road Ahead	9
2.2. The role and Powers of the European Parliament in the Brexit Process	11
2.3. Economic Impact of Brexit on the EU27	12
2.4. Discussion	15
2.4.1. Questions addressed to Professor Amtenbrink	15
2.4.2. Questions addressed to Professor Stoll	16
2.4.3. Questions addressed to Professor Emerson	16
3. SECTORIAL ANALYSIS OF THE CONSEQUENCES OF BREXIT	18
3.1. Economic Impact of Brexit on EU27 – Sectorial Consequences	18
3.2. The Consequences of Brexit for the EU Customs Union and the Internal Market Acquis	20
3.3. The Consequences of Brexit for Public Procurement Legal Standards	23
3.4. The Consequences of Brexit on Services and Establishment: Different Scenarios for Exit and Future Cooperation	25
3.5. Consequences of Brexit in the Area of Consumer Protection	27
3.6. Discussion	28
ANNEX I: AGENDA OF WORKSHOP	32
ANNEX II: SHORT BIOGRAPHIES OF THE EXPERTS	34
Professor Dr. Fabian AMTENBRINK	34
Professor Dr. Peter-Tobias STOLL	34
Dr. Michael EMERSON	35
Professor Dr. Jacques PELKMANS	35
Professor Dr. Piet EECKHOUT	36
Professor Dr. Friedemann KAINER	36
Professor Dr. Sue ARROWSMITH	37
Dr. Malte KRAMME	37
ANNEX III: PRESENTATIONS	38
Presentation by Professor Dr. Fabian AMTENBRINK	38
Presentation by Professor Dr. Tobias STOLL	42

Presentation by Dr. Michael EMERSON	45
Presentation by Professor Dr. Jacques PELKMANS	51
Presentation by Professor Dr. Piet EECKHOUT	61
Presentation by Professor Dr. Friedemann KAINER	65
Presentation by Professor Dr. Sue ARROWSMITH	72
Presentation by Dr. Malte KRAMME	83

LIST OF ABBREVIATIONS

CETA Comprehensive Economic and Trade Agreement

DCFTA Deep and Comprehensive Free Trade Area

EEA European Economic Area

ECJ European Court of Justice

EFTA European Free Trade Association

GATS General Agreement on Trade in Services

GATT General Agreement on Tariffs and Trade

GC General Court

GPA Agreement on Government Procurement

TEU Treaty on European Union

TFEU Treaty on the Functioning of the European Union

WTO World Trade Organization

EXECUTIVE SUMMARY



The policy department organized in cooperation with the European Research Centre for Economic and Financial Governance (EURO-CEFG) of the Universities of Leiden, Delft and Rotterdam a workshop with the purpose to open a channel for discussion on the possible consequences of Brexit on matters of competence of the Committee of the Internal Market and Consumer Protection, in order to analyse the legal and economic implications of withdrawal of the UK from the EU and scenarios for future cooperation between the two.

The possible outcome of the UK exit from the EU represents a matter of great concern for the citizens, in consideration of the impact that the UK decision to leave will have on the internal market, and for the European Parliament that will have a vote on the outcome of the Article 50 TEU negotiations and any future agreement defining the relationship between the EU and the UK.

Therefore, the workshop intended to gather the evidence which will form the basis for a decision by the European Parliament on the agreement, which is important for the democratic accountability and legitimacy of the process. The presentations focused on the technical issues of the exit and the potential future relationship between EU and UK with respect to specific sectors.

The workshop was divided in two sessions. The first one dealt with the implications of Brexit and general considerations; whereas the second one focused on a sectoral analysis of the consequences of Brexit falling within the remit of the IMCO Committee.

Key issues addressed by the **first panel** related to the connection between the scope of a withdrawal agreement as defined by Article 50 TEU and the future, still undefined, relationship between the EU and the withdrawing Member State. The panel concluded that In the UK's case this future relationship will most likely be managed through a Free Trade Agreement, but its structure will much depend on the political choices of both the EU and the UK. The involvement of the European Parliament in the process leading to a possible withdrawal agreement with the UK is from the very beginning paramount. The experts recommended that the European Parliament shall carefully scrutinize its mandate in the agreement enhancing its involvement in its operational phase. Cooperation between the European Parliament and the UK Parliament will be a key element to ensure the legitimacy and the rule of law of the withdrawal process. This interparliamentary cooperation, initiated during the membership of the UK, must continue after a possible withdrawal. The outlook at the economic situation shows an insignificant impact on the EU's GDP after a Brexit would emerge, while it must be considered as a big systemic shock event for the UK economy. The sensibility of the political

situation in some Member States and the uncertainty regarding the results of the negotiations under Article 50 TEU may activate a disruptive cycles of impact that could change the model results leading to an even more negative impact on the UK's national economy.

The **second panel** dealing with the Brexit's impact on the policy fields covered by IMCO came to the following conclusions. In relation to trade in services, Prof. Dr Jacques Pelkmans stated that the trade benefits of EU membership range between 51 per cent and 104 per cent extra trade, depending on the study. Both the UK and the EU27 would be affected, with trading falling, whether trade is done through deep free trade agreement, or with World Trade Organisation (WTO) rules. However, a greater amount of trade will be lost, if trading is based solely on WTO rules. He criticised the White Paper's failure to introduce a joint EU/UK set of disciplines to ensure that the EU acquis is maintained. Foreign Direct Investment (FDI) to the UK will suffer, as the appeal of access to EU27 will be diminished. Prof. Dr Friedemann Kainer (University of Mannheim) said the ideal solution would be passporting, as liberalising trade in services requires regulation, such as common standards for licences, allowing mutual recognition. He suggested that the best solution for the future relation from a market point of view would be EEA membership. Regarding trade in goods, Prof. Dr Piet Eeckhout (University College London) explained that regulatory and tax barriers were comparable in EU and WTO law. He pointed out, however, that WTO law and EU law differ when it comes to mutual recognition and the harmonisation of technical regulations. The UK currently fully complies with the EU internal market acquis, but it might diverge from it in the future. The starting point for the future relations could be to enable a system mutual recognition. However, the EU acquis cannot survive without an independent arbitrator, but the UK does not want to continue following the European Court of Justice (ECJ).

In the final discussion session on the panels' observations, Lord Soley of Hammersmith, a member of the House of Lords, agreed with Prof. Dr Stoll remark on the importance of the relationship between the UK and EU parliaments, arguing that whatever the eventual outcome of the Brexit negotiations, a dysfunctional relationship would be detrimental. To this end, he proposed the establishment of a formal inter-parliamentary committee to promote dialogue, which he said could begin discussions before any formal negotiations. IMCO Chair Vicky Ford was keen on the idea, saying that this would be an extraordinarily positive outcome from the workshop. Lord Soley agreed to see what cross-party support exists for such a committee amongst MPs and Peers.



1. INTRODUCTION

Ms. Vicky Ford (Chair of IMCO Committee, MEP) opened the workshop indicating that all people present at the workshop know the background, including the UK Prime Minister's ambition, to trigger Article 50 before the end of March. The European Parliament will have a vote on the outcome of the Article 50 negotiations, and many are trying to think of the consequences of exit, and the future potential relationships. Hence, the European Parliament will play an important role. Being aware of this role, many Committees are trying to focus on both the consequences of Brexit and on the possible future relationship between the EU and the UK. Democratic accountability and legitimacy are key guiding principles in the European Parliament operation therefore, although the vote of the European Parliament on the outcome of the negotiation under Article 50 TEU will represent a difficult decision, the Parliament will try to base it on good evidence.

Ms. Ford has been heartened to hear Michel Barnier and Theresa May talk about their hopes for a close new partnership between the EU and the UK going forward.

Ms. Ford noted that the workshop would be split into two sessions. They are here in the spirit of wanting to make evidence based policy. In the light of these considerations, this workshop is made to help the Parliament to have the necessary evidences to make that decision.

2. IMPLICATION OF BREXIT AND GENERAL CONSIDERATIONS

Dita Charanzova (Vice-Chair of the IMCO Committee, MEP), opening and chairing the first of the two panel sessions, said that Brexit will have a great effect on the internal market. Nothing like this has happened in the past so many concerns have been raised. What will Brexit mean in practical terms? The answer to these questions is still unknown but, with the contribution of the main experts in the field, the present workshop will help to clarify them.

Three keynote presentations were delivered in the first panel:

1. **Professor Dr Fabian Amtenbrink** (European Research Centre for Economic and Financial Governance (EURO – CEFG) Erasmus University Rotterdam) - **Article 50 TEU: The EU Legal Framework for Brexit and the Road Ahead.**
2. **Professor Dr Peter-Tobias Stoll** (Institute for International Law and European Law, University of Göttingen) – **The Role and Powers of the European Parliament in the Brexit Process.**
3. **Dr Michael Emerson** (Centre for European and Policy Studies (CEPS), Brussels) – **Economic Impact of Brexit on the EU27.**



2.1. Article 50 TEU: The EU Legal Framework for Brexit and the Road Ahead

The clear framework for the withdrawal of a Member State (Member State) from the EU provided by Article 50 TEU hinders legal problems which lay in the conclusion of a withdrawal agreement and in the connection between that agreement and the future, still undefined, relationship between the EU and the withdrawing Member State. In the UK's case this relationship will probably be managed through a Free Trade Agreement, but its structure will much depend on the political choices of both the EU and the UK.

In the first presentation, **Professor Fabian Amtenbrink** (Erasmus University Rotterdam, The Netherlands) focused on two key issues arising from the UK's exit from the EU.

Firstly, he analysed the legal obligations arising from Article 50 TEU that provides the legal framework for the withdrawal of a Member State from the EU.

He explained that the only legal obligation for the EU under Article 50 (2) TEU is to enter into a negotiation with the withdrawing Member State, because there is no legal obligation under the same Article to conclude an agreement, nor does its successful conclusion represent a *conditio sine qua non* for the exit.

Furthermore, he pointed out to the existence of a link between the withdrawal agreement and the future relationship between the EU and the withdrawing Member State through the wording of Article 50 (2) TEU which requires the withdrawing State to set out the arrangements for the withdrawal considering its future relationship with the EU.

This connection entails that although the withdrawal agreement and the future relationship must be considered separate agreements, they are closely linked and shall be negotiated in parallel. The necessity for parallel negotiations, however, meets a problem linked to the EU's competences to negotiate and conclude free trade agreements in Article 207 TFEU. Article 207(3) TFEU refers namely to 'third countries' as counterparties for such agreements. Yet, before the a withdrawal agreement with the UK enters into force, the UK can hardly be considered a 'third country' in terms of Article 207 TFEU, which would preclude any formal opening of negotiations between the EU and the UK with a view to conclude comprehensive free trade agreements.

Professor Amténbrink also analysed the possibility, under Article 50, for the withdrawing Member State to renounce to the exit from the EU. His analysis demonstrated that once the withdrawal agreement has entered into force the only possibility for the ex - Member State is to apply for EU membership under Article 49 TEU. If the Member State concerned changed its mind before the entry into force of the withdrawal agreement, there would still be debate regarding the possibility of withdrawing from the withdrawal procedure.



Someone might argue that there is a possibility of revoking the notification at any time before the entry into force of the agreement, according to Articles 65-68 of the Vienna Convention on the Law of the Treaty (VCLT). However, others argue that a unilateral right of withdrawal is not in line with the structure and purpose of Article 50 TEU. The latter interpretation would have the benefit, it is argued, to deter Member State from triggering Article 50 easily without suffering the consequences of a possible failed negotiation. Furthermore, under Article 50 (3) TEU the prolongation of the negotiations is possible only with a unanimous vote in the European Council and through an extensive interpretation of this provision, the conclusion of a prohibition of a unilateral reverse to the withdrawal procedure can perhaps be drawn.

Secondly, Professor Amténbrink focused on the legal nature and the scope of the UK's relationship with the EU after the withdrawal.

In the absence of a deal with the EU, the UK would be considered a third country and their relationship would be governed by WTO rules. This would create a legal problem considering that although the UK is a WTO Member on its own right, it has no separate schedules under WTO law because at the moment, it is represented by the EU. An option would be to reach an agreement between EU and UK for separating the UK's WTO commitments from those of the EU, which would in turn require the consent of all others WTO members.

Another possible scenario is the EEA agreement. It covers the four freedoms as well as competition law, state aid rules, public procurement and consumer protection, but it cannot be considered a fully-fledged customs union, in sharp contrast to the EU. Also under this scenario legal problems would arise.

There must be an agreement between EEA/EFTA Member State and EU Member State on one side and UK on the other. This, namely, means that UK must re-join EFTA in order to be able to negotiate the agreement and, secondly, the agreement must have to be submitted for ratification in all EEA countries according to their own constitutional requirements. From a political point of view, this agreement seems unlikely to Professor Amtenbrink, but he believes that it could be considered as one of the options during a transitional period until the conclusion of a definitive agreement.

In Professor Amtenbrink's opinion, the most probable, as well as the most difficult scenario would be an FTA agreement. In this case, there is no specific 'blueprint' for the future relationship between the EU and UK, as there are many different models and types of agreement governing the relationship between the EU and third countries. In which case, the scope and structure of the EU-UK agreement would be dependent mainly on the UK's and EU's policy choices which are yet to be made.

2.2. The role and Powers of the European Parliament in the Brexit Process

The involvement of the European Parliament in the agreement with the UK from the very beginning is paramount and, considering that Brexit agreement will probably be a "leaving agreement", the European Parliament shall carefully scrutinize its mandate in the agreement enhancing its involvement in its operational phase. In that moment the cooperation between the European Parliament and the UK Parliament will be a key element to ensure the legitimacy and rule of law of the withdrawal process. This cooperation, initiated during the membership of the UK, must continue after the withdrawal.

In the second presentation, **Professor Stoll** (Institute for International Law and European Law, University of Göttingen) started from the main assumption that as the UK referendum will logically affect individuals and businesses in the UK, the involvement of the EU Parliament in the agreement will be essential because it has a substantial and procedural role.

On the substantial dimension, it represents citizens' interests in the EU law legal order and it ensures respect for the rule of law in the Brexit process. On the other side, its procedural role cannot be ignored. Each legislation and change to legislation must be approved by the Parliament and, in the Brexit process, these changes will basically depend on the agreement to be reached under Article 50 TEU between EU and the UK.

Professor Stoll considered three major issues, namely, the making of the agreement, the potential involvement of the Parliament in the implementation of the agreement and inter-parliamentary cooperation.

As regard the first issue, the speaker emphasizes that in relation to the possible scenarios of the UK exit there will probably be a sequence of agreements: first a withdrawal agreement to be reached at time of the membership of the UK and, once the UK have left the EU, one or more successive agreements. It is, therefore, important to analyse the role of the European Parliament in both the internal context, in relation to its own institutions, and in the implementation of its external function through parliamentary cooperation with parliaments in third states.

The Parliament's involvement in the creation of the agreement is really intense, it comes from the Treaties and finds its source in the Parliament's power to give the final consent to the agreement, as well as the possibility to ask the ECJ for an opinion on it. The EP will have

to be involved from the very beginning in the drafting of the agreement and receive all the necessary information.

However, once an agreement is adopted, the involvement of the Parliament becomes less prominent, indeed, it has only to be informed and may issue declarations.

This led Professor Stoll to analyse the link between the role of the Parliament in the operation of the agreement and interparliamentary cooperation on this matter. He noted that the European Parliament, in the fulfilment of its internal function, normally works in conjunction with parliaments of Member State, including the UK Parliament. This, in the context of Brexit means that the UK Parliament will cooperate with the European Parliament during the negotiations on the withdrawal agreement.

Further, he questioned whether the European Parliament can maintain the relationship with the UK parliament even after the UK has exited the EU, as expression of the external function of the Parliament based on interparliamentary agreements.

In the light of the possible Brexit scenarios, interparliamentary activities can take different forms depending on the agreement between the two main parties.

In the CETA model, for instance, although an informal dialogue exists, there is no specific mention of the joined work of the parliaments in the agreement itself. On the other hand, in other agreements, such as the EEA Agreement, the EU-Turkey arrangements or the EU-Ukraine Association Agreement, interparliamentary work is embedded in the agreement and, in some cases, it is structured by means of a Joint Parliamentary Committee which can make direct recommendations to the Treaty bodies.

In relation to the operational phase of an international agreement, Professor Stoll highlighted the great importance of enhancing the parliamentary involvement in it because of the modern structure of the current international agreements.

In these agreements, the position of the EU is determined by the Council which can also authorize the Commission to approve modification of the agreement through the legal device of the delegation of powers. These kind of agreements are considered to be "living agreements" because they have their own institutions that can make important decisions and going as far to modify the annexes without ratification by the Member States. In this case, the role of the Parliament is paramount because of the powers of the treaty bodies.

In the context of Brexit this role of the European Parliament becomes much more important as there are sensitive issues, including those of the citizens' rights and freedoms. This entails that the Parliament could consider a more restrictive approach in relation to the power of other institutions, trying on the contrary, to amplify its own power.

The involvement of the Parliament in this case is really crucial for guaranteeing respect for the rule of law and the legitimacy of the Brexit process. Therefore, it would need to be extended also in the operational phase through Interinstitutional arrangements or the inclusion of provisions on interparliamentary cooperation, such as the Joint Parliamentary Committee, in the agreement itself.

2.3. Economic Impact of Brexit on the EU27

Economic model results show an insignificant economic impact on EU GDP after Brexit, but they rely on normal conditions for policy adjustment while Brexit must be considered as a big systemic shock event. The sensibility of the political situation in some countries and the uncertainty regarding the results of the negotiations under Article 50 TEU may activate a disruptive cycle of impacts that would change the model results.



In his presentation **Dr Emerson** (Centre for European and Policy Studies (CEPS)) focused on three sections: the most relevant scenario for Brexit; the Big Picture model results on the economic impact of Brexit; and a final section focused on the possible results beyond these models.

In the first section, Dr Emerson clarified that the majority of the studies, antecedent to the pub-

lishing of the White Paper from the UK Government, have focused mainly on two opposite scenarios, namely, an agreement similar to the EEA Agreement, granting advanced free trade conditions for good and services, and the WTO model in case of no agreement between the UK and the EU.

However, he specified that the UK has made clear that it aims for a “comprehensive FTA” which namely means that the possible agreement fluctuates between a CETA-like agreement and a Deep and Comprehensive Free Trade Area (DCFTA).

In his view, the UK should better specify which type of model would prefer, considering that important differences exist between them. Indeed, while CETA is a purely ‘international agreement’, with no single market acquis, the DCFTA includes most single market acquis.

He noted that a careful reading of the White Paper would lead to the conclusion that the DCFTA model would be the most preferable choice for the UK, but this is still a guess considering the political problems linked to the drafting of this kind of agreement.

Turning to the economic aspect, he explained some figures showing the degree of interdependence between the EU and the UK on the trade of goods and services and pointed out that in both these fields, although some differences exist in the numerical data, the UK relies much more on the EU than the latter does on the UK.

Subsequently, Dr Emerson explained the economic results of various calculations of the economic impact of Brexit on EU’s and UK’s respective GDP. Despite the high number of these models, he noticed a great degree of convergence in the results. They showed that the cumulative impact on the EU GDP by 2030 will be insignificant, fluctuating between 0.1 to 0.5% of GDP and would be even less in case of accumulation of these result in 10 annual equal amounts (the impact will range from 0.01-0.05% of GDP annually).

On the contrary, the data show significant negative impact in terms of macroeconomic performance for the UK. The cumulative impact would range from 3 to 7% of GDP by 2030 and in case of accumulation of these results in a 10-year period, the loss of GDP would be between 0.3 to 0.7% annually.

However, Dr Emerson believes that the economic consequences of Brexit cannot be based only on the model results because Brexit is not a normal policy adjustment but is instead a massive systemic shock.

In terms of methodology, Dr Emerson specified that the most advanced models are those made by HM Treasury and OECD because they made an effort to incorporate some dynamic

effect on the economy while the other models, although useful, are more comparative model results.

Furthermore, Dr Emerson considered the effect of Brexit on imports and exports of EU27 with the UK, with Ireland the most exposed country, followed by Belgium and the Netherlands, but the data for these two latter countries are exaggerated because of large amounts of transit trade ingesting both imports and exports.

He analysed also the Member State losses of GDP by 2030 and confirmed that the big loss will occur in the UK, followed by Ireland, Belgium and Luxembourg.

Moreover, he explained the economic consequence of Brexit on Foreign Direct Investment (FDI). The UK is importer and exporter of a massive amount of FDI from the EU (27% of UK GDP for investment and 38% on the inward side) while these figures are much smaller proportionally for the EU.

Furthermore, Dr Emerson noted that the UK has been an investment 'location of choice' for FDI. The impact of Brexit here cannot be modelled, he argued, and we would have to speculate on the probability of relocation and the gains for the EU. Ireland, for example, has the chance to recoup through FDI.

Dr Emerson also noted that the EU27 and the Euro system are facing a period of great vulnerability. In some states, such as the Netherlands and France, there is a populist anxiety looking at the next election. At the same time, some countries in the euro system, such as Greece and Italy, are facing also great economic difficulties and this EU vulnerability, joined with the uncertain results of the negotiations under Article 50 TEU may bring to negative consequences.

Dr Emerson focused especially on the case of no agreement under Article 50 TEU where, probably, the UK would take aggressive action for a highly competitive tax regime (regulatory competition). In this case, the EU's answer is still unknown but the economic impact of the Brexit would depend also on this.



2.4. Discussion

2.4.1. Questions addressed to Professor Amtenbrink



Dr Andreas Schwab, MEP, asked why the WTO model represented that much of a difficult choice for the future relationship between the EU and the UK.

Professor Amtenbrink explained that the UK is a Member of the WTO on its own right, but all the concessions under the WTO have been negotiated by the EU on behalf of all its Member State, including the UK. Once the UK has exited from the EU, it would have to

negotiate its own schedule of commitments with the other WTO members.

Mr Nicola Danti, MEP, asked whether it was possible that a new political act, such as a referendum, held prior to the end of the negotiations or before the two-year period ran out, could block the UK's exit from the EU under Article 50.

According to **Professor Amtenbrink**, legally speaking, once the notification has been handed in by the UK Government, a reversal of the Article 50 process is not possible because of the structure of Article 50 TEU, at least not without the consent of the European Council. Although some might argue that there would be this possibility during the negotiations, the legal answer to this question is that once the agreement is made, or the 2 years are passed, the only option for the UK would be to apply again to become a member of the EU.



2.4.2. Questions addressed to Professor Stoll

Mr Daniel Dalton, MEP, asked how the European Parliament could continue to have an involvement post Brexit.

Professor Stoll argued that this issue was linked with interparliamentary cooperation that could start at the beginning of the negotiations and continue after that, as an expression of the external function of the European Parliament. This cooperation could take different forms. On one hand, it could be informal. On the other hand, it could be formalised if the cooperation between the parliaments was embedded in the agreement itself. In this case, there would be a form of 'enhanced' cooperation that would cover also the operational part of the agreement.

2.4.3. Questions addressed to Professor Emerson

Ms Diane James, MEP, inquired about the role of the regulations that the EU has put in place in the EU's assessment of the shock in case of Brexit. These represented a huge cost for the EU (6% according to the Institute for fiscal studies) but the UK would not have to absorb them anymore once it leaves the EU. Could this lead the UK to gain a positive economic advantage?

Professor Emerson believes that the UK could decide to become a radically deregulated economy but this is a political choice. Currently, a large number of EU regulations are technical product standards for the movement of goods which are safety product standards that are voluntarily worked out by the European Standards Organizations. It is simply inconceivable that the UK will decide not to have product standard regulations anymore. On the contrary, probably the UK will try to design its own 'lighter' product standard regulation but this would necessitate the creation of a huge bureaucracy, therefore, the better scenario for the UK to follow is to remain a member of the various European standard-setting bodies.

Ms Krisztina Morvai, MEP, stated that considering the EU as uniform and speaking of the impact of Brexit on EU27 is distortive because of the enormous differences between new Member States from Eastern Europe and Western European countries.

Eastern and Central Europeans have been forced, by bad economic conditions, to use the freedom of movement and to move to the UK for work.

She asked what the impact of Brexit would be on Eastern and Central Europeans working in the UK and also on new Member States from the perspective of internal migration within the EU considering that it is, in her opinion, an unjust union based on differences between rich countries and poor countries. Differences clarified in a recent economic statistics showing that there is a tenfold difference in the minimum wage between Bulgaria and Germany and other countries.

The Chair of the IMCO Committee, **Ms Vicky Ford**, said that this topic would be discussed during the second panel.

Ms Dita Charanzova (Vice-Chair of the IMCO Committee, MEP), closing the first of the two panel sessions, concluded that the presentations have triggered a lot of questions from the Members and from the public.



3. **SECTORIAL ANALYSIS OF THE CONSEQUENCES OF BREXIT**

Five presentations were given in the second panel:

- 1) **Professor Dr J. Pelkmans**, (Centre for European and Policy Studies (CEPS), Brussels) – *Economic Impact of Brexit on EU27. Part 2, Sectorial Consequences.*
- 2) **Professor Dr P. Eeckhout** (UCL - University College London) - *The Consequences of Brexit for the EU Customs Union and the Internal Market Acquis.*
- 3) **Professor Dr S. Arrowsmith** (University of Nottingham) – *The Consequences of Brexit for Public Procurement Legal Standards.*
- 4) **Professor Dr F. Kainer** (University of Mannheim) – *The Consequences of Brexit on Services and Establishment: Different Scenarios for Exit and Future Cooperation.*
- 5) **Dr M. Kramme** (University of Bayreuth) – *Consequences of Brexit in the Area of Consumer Protection.*

3.1. **Economic Impact of Brexit on EU27 – Sectorial Consequences**

The application of the economic literature on the “benefits of EU membership” shows that Brexit would have a huge impact on EU27 trade in all relevant fields: goods, services, FDI, public procurement and consumer protection even though the lack of sectorial analysis in the economic literature impedes a complete awareness regarding the size of this impact.

The White Paper of the UK government, with its “light” approach, could minimize the costs of the UK exit from the EU by granting the coexistence of EU and UK law, but the credibility of this Paper is undermined by its own vagueness and ambiguity.

Professor Pelkmans considered the effect of Brexit on EU27 trade. He drew a distinction between the overall EU27 trade and bilateral trade relations.

As regards bilateral trade, according to the expert, a sound approach is that of the Treasury study which has considered the “benefits of EU membership” literature. This starts from the assumption that when the UK leaves the EU, the benefits of the EU membership would be lost. Applying this literature to trade, the results vary in a range between 51 to 104% and Treasury itself came to a range of 68 to 85%.

These figures are the more probable result in the case of a hard Brexit and they show that the UK exit will have a considerable effect on EU trade.

This result becomes less relevant in case of a soft Brexit (for instance in case of an FTA agreement). The output in this case would be still a lot but 2/3 less than in the case of hard Brexit.

The problem with a sectorial analysis on the effect of Brexit is that the literature is still emerging, therefore there is not an overall idea on the sectorial effect of Brexit on EU27. Therefore, the expert took into consideration a Dutch study regarding the Brexit effect on Dutch exports to the UK by 2030 and explained that although this is a study for one specific country, it gives the idea of the size of the effect on trade.

He considered the effect of a soft and hard Brexit on the trade in some specific sectors. For instance, he considered the processed foods sector where there would be huge losses considering that the UK is a very important client for Dutch agro-food exports. For this sector, with the WTO option, there would be 9.6 per cent less trade, and with an FTA, there would be 6.7 per cent less trade, for example. He made the same analysis in other sectors, in order to

show that sectoral effects can be rough. Extending this study to other EU Member States, it is obvious that the consequence of Brexit on trade do not represent a triviality for the EU.

The second part of the presentation focused on the differences between soft and hard Brexit and Professor Pelkmans considered this distinction in the light of the UK Government's White Paper which starts from the main assumption that following Brexit, by 2019, the UK will be considered a sort of "domestic form of EU" because EU rules currently forming part of the UK law would be maintained. This means that apart from a clear break for the immigration and the jurisdiction of the European Court of Justice, the UK, while being formally outside the EU, would remain, in practical terms, inside it.

For the effect on trade this would be of huge importance. This, namely, would mean that there would be no trading cost because the rules will be roughly the same, with a consequent change in the results of the economic analysis already carried that are mainly based on the big differences between the UK and EU after the exit.

Interestingly, the expert explained that although the White Paper is a suggestive presentation, it must be dismissed: it is not yet filled in and, furthermore, it shows ambivalence and gaps.

- 1) The UK has clearly rejected the EEA option which is the single market option with a clear consequence to be outside that market and, at the same time the White Paper is clear in rejecting also the Customs Union.
- 2) There is no proposal to introduce EU/UK disciplines to ensure the EU acquis is maintained over time. This is also the problem, Professor Pelkmans argues, with respect to Switzerland.
- 3) The Paper assumes tariff-free mutual access, and this would mean the conclusion of an FTA. However, Professor Pelkmans questioned whether a DCFTA-type acquis would be equated with 'taking back control' as demanded by Vote Leave in the run-up to the UK referendum on the UK's relationship with the EU.

Having rejected the reliability of the White Paper position, Professor Pelkmans considered that Brexit will show its hardness over time even though it is difficult to be aware about the speed of its effects.

The third aspect of Professor Pelkmans presentation regarded the cost of leaving the customs Union. He explained that the UK does not want to be in the Customs Union with the EU because it does not want to face the same problem as Turkey which cannot negotiate its own tariffs with other countries. However, being out of a Customs Union will be costly for both the EU and the UK.

The costs vary but can be high, in particular for value chains. Professor Pelkmans took into consideration the difficult position of Airbus which expected zero barriers, costs and inspections, therefore, they feel 'completely cheated'. A possible solution, according to the expert, would be to negotiate with the EU regarding the possibility to remain in the Customs Union but this options has not even been mentioned by the UK.

As regards the free movement of goods the expert said that if the White Paper was not followed, Brexit would present a deviation from the free movements of goods to an extent that is still not possible to foresee.

Therefore, if one took the wording of the White Paper at face value, trade costs would seem very low, probably close to zero, on the first day the UK is out, but in the expert's view this was extremely unlikely to happen.

Professor Pelkmans also believes that as regards services the situation is complex because an agreement in this field must be extremely detailed unless the UK would fully abide by the

EU acquis that should also be further improved in the interests of the UK itself which greatly relies on it. Therefore, a free movement “à la Suisse” would be too incomplete for the UK and would not be beneficial for the structure of its economy.

Professor Pelkmans believes that in terms of FDI, the market size argument of going to the UK would be lost, and that FDI could be reduced by 22% (under the WTO option). There could further be secondary negative effects (e.g., a reduction in productivity).

Professor Pelkmans also touched upon the topic of public procurement and stated that the argument is barely analysed in the economic literature. However, he pointed out to the existence of a relation between public procurement and the state aid. The problem after Brexit is how the UK will control state aid. Indeed, this matter, by definition, needs a higher supervision organ that the UK cannot have by itself.

Finally, Professor Pelkmans analysed the issue of consumer protection and he made clear that probably the EU acquis in this matter will be greatly resisted in the UK.

A huge number of findings on the matter are based on “Open Europe” but, according to the expert, there is a mistake in the methodology of that studies because the assessment of a regulation must start with the benefits. The main reason is that although sometimes there are costs in a regulation these might be outweighed by the benefits, therefore these must be the first concern. Open Europe looks at the costs of regulations, not at the benefits.

The expert believes that the EU consumer protection will not be automatically changed by Brexit but if regulations will be cherry-picked on an ad-hoc basis this would probably erode the EU acquis in the UK. He further added that, from the perspective of the EU, EU consumer protection is unlikely to change due to Brexit alone.

After the presentation, the **Chair, Vicky Ford** pointed out that as the UK has expressed its intention not to undermine standards. Professor Pelkmans’s contribution to find a possible solution would be highly appreciated.

3.2. The Consequences of Brexit for the EU Customs Union and the Internal Market Acquis

The UK Parliament approval of the withdrawal agreement is a precondition for the UK exit from the EU, its lack would impede the exit with a consequent necessity for the UK to find a way to remain in the EU.

The different option for the future EU – UK relationship can be compared through different parameters. A comparison based on the basic rules on free trade as well as on the legal effect and the dispute settlement would make the WTO model the best option, but a different conclusion comes if the parameters of the harmonization and implementation of the Internal Market acquis are considered and a problem emerges in relations to State Aid rules and their equivalence with the EU system.

In relation to the rule of origin parameter, a sectorial customs union is something to strictly avoid because of the possible contrast with the WTO rules and its implementation, while, as regards the external trade policy, the only model equivalent to the EU is the Turkey Customs Union.

Finally, a comparison of the CETA Model under all the considered parameters shows that there are very few points where the regime is comparable with the Internal Market.



Professor Eeckhout started his speech by giving important complementary information on the scope of a second referendum in the UK. He made reference to an important study published in the UK which argues that the UK constitutional requirements to withdraw from the EU, considered in the same Article 50 TEU, require the approval of the withdrawal agreement by the UK Parliament (the so-called Three Knights' Opinion). He explained that in legal terms this means that the approval of the UK Parliament is a condition for the UK's exit from the EU and that failure to secure it would oblige the UK to find a way to remain in the EU and the EU itself should accept that. However, he highlighted that the two-year deadline would not suffice in terms of time for negotiating a good agreement between the EU and the UK.

The expert made a legal analysis of the parameters of the Internal Market and the Customs Union relevant for comparing the different options on the table for a new relationship between the EU and the UK.

He believes that the basic rules of free trade in the field of free movement of goods and services in the Internal Market can be compared with the rules of WTO through a reference to the regulatory and tax barriers. Indeed, the WTO law is based on the principle of non-discrimination, these represent an easy parameter to carry on a comparative analysis with the EU trade rules.

The second parameter considered is the harmonization of technical regulations and their implementation through the mutual recognition or equivalence. In this case, the situation is much different from the first parameter because these are specific components of the EU legal order that are sometimes used in some free trade agreements of the EU.

In relation to these two parameters Brexit represents a difficult case because on one hand the UK fully complies with the Internal Market acquis but, on the other hand, one of the main objectives of Brexit, in light of which the agreement shall be made, is to regain power and take back the control that would lead to leave behind the same EU acquis.

For these reasons a comparison between Brexit and the DCFTA with Ukraine would be defective because of the different aims of those processes: while the Ukraine was moving toward the EU acquis, the UK wants to leave that acquis behind.

A possible starting point in relation to the harmonization parameter could be to enable a system of mutual recognition in the agreement between the EU and the UK but, in the expert's view, in this case other elements must be considered. For instance the EU acquis cannot survive without an independent arbitrator, namely the European Court of Justice, but this would clash with the political parameters of Brexit that push towards the elimination of the influence of the Court.

Professor Eeckhout noted that there are not many examples where you have a system of mutual recognition. When it exists, it is very much the third country being asked to respect the EU acquis, which the companies would have to do anyway.

By applying this reasoning to the EU – UK future relationship, the expert hold that from the EU perspective it would be useless to ask the UK to accept the EU acquis in consideration of the fact that all the UK companies trading in the EU in the future will still have to comply with that acquis.

Another important point analysed by the expert regards the legal effect of the agreement and the way in which the disputes are settled. In this field there is an enormous contrast between the EU Membership on one side and WTO rules and the EU FTAs on the other.

In the EU, indeed, the supremacy of EU law is a key element. The EU law is automatically part of the domestic order of any EU Member States and it can be enforced by anybody affected before national court which can make reference to the European Court of Justice.

Professor Eeckhout compared this structure with those of the WTO and the FTAs that the EU has. He found that in relation to this parameter the WTO is probably the better scenario because at least it has a robust functioning dispute settlement system that faces some cases under panels or Appellate Body although there is no comparison with the size of the European Court of Justice's system where hundreds of cases come to the judgement. The expert mentioned that this robust system could face changes because of Donald Trump's presidency.

In the free trade agreements of the EU there is also international dispute settlement, but these are almost never used so far.

Furthermore, normally the EU policy tends to exclude the direct effect of FTAs. According to the expert, this is an interesting element to look into with respect to the future relationship with the UK in order to understand the domestic legal effect of such an agreement and the possibility to give up on the exclusion of direct effect.

The considered elements are hugely important in the expert's opinion, but they must be dealt with a legal perspective considering that the economic studies have shown scarce ability in modelling these issues.

Another parameter on the basis of which to compare the options for a future EU – UK relationship concerns rules of origin. Rules of origin are only excluded in a customs union, and even the EU-Turkey agreement has some. Sectoral customs union agreements are, in Professor Eeckhout's opinion, a violation of WTO law and the most-favoured nation (MFN) principle.

Professor Eeckhout further noted that all the various models include trade defence mechanisms. In this sense a considerable problem would be to what extent the WTO could be considered equivalent to a state aid system because certainly they are not as robust and detailed as the EU state aid rules are.

The last considered parameter is the external trade policy. The expert made clear that normally in all the models there are different trade policies and the Turkey represents the only model where the country is obliged to emulate the EU customs tariff and negotiate similar agreements that the UK has with third countries.

As regards the CETA, the expert believes that there are very few points where the regime is comparable with the Internal Market.

At the end of the presentation, the **Chair, Vicky Ford** highlighted the great importance of a discussion on the parameters.

3.3. The Consequences of Brexit for Public Procurement Legal Standards

The WTO model would be an easier solution to assess the future relationship between the EU and the UK on public procurement because of its structure and of the fact that it is mostly modelled on the EU Internal Market rules. There are some differences between the two but, these will not create significant problems in practice. Therefore, whether the UK will follow the WTO rules it will probably incorporate EU rules in its legislation.

As regards the other trade agreements, the EEA has the advantage of having a system of advertising and database in common with the EU. This specific element of the EEA model would be useful for Britain to reproduce. The other trading agreement in this field are mostly modelled on the WTO, therefore, following one of these models the main problem will be to try to extend the coverage of WTO GPA. Some of these agreement have attempted to deepen that coverage (such as the TTIP or the Swiss agreement) and in the long term this tendency could probably exert some effect also in the WTO.

Professor Arrowsmith made a comparison of different models in relation to the public procurement law.

The topic is important and complex. The expert focused in particular on the WTO model which is relevant for different reasons.

First, the Agreement on Government Procurement (GPA) has a good structure and its standards can be compared to the EU standards in terms of rigor and strength. This is important because people who are affected by breaches of rules, mainly by suppliers in another country, have legal rights under that agreement to enforce in national courts or similar bodies.

Second, GPA is a plurilateral agreement, namely, it is optional, the rules do not automatically apply to all WTO Member States but only to those who signed up to it. When the EU is engaged in trading with other partners it tries to convince them to accept WTO standards and this shows that this model is often used by the EU to negotiate other trade agreements.

Normally, the agreement on public procurement have three key elements: the basic rules on the discrimination of foreign suppliers, product and services; a system of transparent award procedures to make people able to monitor the process and the method used in the award; finally, there are remedies for suppliers.

In the EU, the public procurement rules are embedded in different instruments and different directives can contain similar rules. This creates huge legal problems regarding the choice of the correct legislation and the legal differences between them, especially when they solve the same issue almost in the same way.

As regarding the EEA, it applies the EU's system and rules. One particular element in this model is that there is a common system for advertising, namely the Official Journal, a common approach and a common database to find contracts. This specific characteristic of the EEA cannot be found in other trade agreement, therefore the expert suggested that this

characteristic could be taken into consideration for the future relationship with the UK in the field of public procurement.

There is debate about the GPA. Professor Arrowsmith argued the UK would probably have to join, as only the EU is a signatory party.

The GPA's coverage could be negotiated bilaterally between the EU and the UK and would not have to be extended to others. The EU and the UK could maintain current GPA coverage. There are, however, slight differences compared to the current regime (EU): lower-value procurement is not covered, and the utilities sector is not covered either. One big sector which is not covered by the GPA is water. Be that as it may, differences in coverage are not, Professor Arrowsmith argues, very much different.

This could create a problem if the matter was not covered internally within the UK because public procurement is a devolved function and international rules do not apply, therefore, in case of lack of coverage, the problem would have to be dealt with internally in the UK.

This would have some external implication: if Scottish national authorities need to open up their markets they will just find the best value for their own and they will not care if it comes from Europeans or the English, they will not simply focus on their local area, on the contrary, they will look abroad. This situation will lead to more open markets across the EU.

Furthermore, the WTO GPA does not cover private utilities but this would not have much impact on the UK for different reasons, including the fact that the utilities represent an exception because they have a competitive market place and probably also the water sector will not be covered under WTO rules.

Having a look at the EU coverage in practice, it would probably be different. For instance, defence is not covered, only a very small amount of it is covered by Directives.

Another problem is represented by the concessions that are very important. WTO rules are unclear with regards to concessions.

As regard the transparency of the award procedures, EU rules are more detailed and prescriptive, but Professor Arrowsmith believes that moving from the EU Internal Market rules to WTO rules will not have a big impact in terms of access to the procedure.

Nevertheless, even though WTO rules are not much different from EU rules, they are certainly less explicit and having explicit rules is important for making the people aware of what they have to do and this is exactly the case of EU rules on public procurement.

In spite of these differences, Professor Arrowsmith made clear that if the UK followed the WTO rules, the most likely scenario will be that the UK will put all EU framework in its legislation.

Regarding the remedies, there are not very significant differences. Professor Arrowsmith noted that most other trade agreements are modelled on the GPA anyway and then the parties are concerned with how to expand coverage compared to the GPA.

WTO is the easier solution for the EU – UK relation in the field of public procurement and this simplicity will also depend on the fact that the agreement on this field will be separated from the wide agreement between the EU and the UK because it will be solved in the context of the WTO.

In some agreement there has been the effort to try to deepen the WTO coverage, for instance the Swiss agreement has broad coverage of the utilities, in the TTIP the EU is also trying to embed some elements of the directive that are particularly important and, in the long term, these elements could be incorporated also in the WTO.

3.4. The Consequences of Brexit on Services and Establishment: Different Scenarios for Exit and Future Cooperation

As the impact of Brexit will be important on the freedom of services and establishment, the structure of a Free Trade Agreement must consider also the issue of cross – border trade in services and establishment. The assessment of the models of CETA, FTA EU – Korea and GATS under the conditions for integrated markets shows that they do not reach the EU/EEA standards, indeed there is neither comprehensive scope nor common standard and the quality of the law has not the same dimension of EU law, namely there is no direct effect. The EEA will be the best option for the future relation between the EU and the UK because of the high degree of convergence with the Internal Market law, but also in this case big legal challenges will have to be addressed both as regards the relation with the UK and as regards the EU legislation itself.

Professor Kainer made immediately clear in his presentation that the impact of Brexit will be more evident on the freedom of services and establishment than on the freedom of goods because of the characteristics of the former freedoms.

The first step to undertake in order to make trade in services effective is to identify barriers and this can be a difficult task.

First, domestic rules may set specific standards for consumer or environmental protection, or protection of other public goods, with a great difference in the various legal orders.

Second, sometimes barriers to trade in services do not address the product but the consumer, for example the provision on legal services normally requires a domestic legal diploma and this makes difficult to adapt to the requirement of the domestic law.

Third, trade in services often needs the establishment of a branch or, at least, temporary access. This would conflict with immigration control and affect national interests.

Professor Kainer highlights that in order to liberalize trade in services there must be regulations, such as common standards for licenses and diplomas and Member State shall be obliged to allow mutual recognition of those standards. The best solution in this sense would be using the country of origin principle or “passporting”.

As regards the conditions for integrated markets, applicable to both services and establishment, these require firstly negative integration, namely hindering regulation or discrimination. This issue is faced by the fundamental freedom granting market access and prohibiting discrimination with a view to achieve the mutual recognition in the application of the *Cassis De Dijon* principle.

A second condition for integrated markets is positive integration, namely the approximation of standards. This form of integration makes the mutual recognition easier, cuts off justification of restrictions and allows passporting as a principle. Without these two conditions, the integration is hard to achieve and could require much more time and effort without the guarantee of success.

Another important point according to Professor Kainer concerns the scope of the agreement. Indeed, while in the EU cross-border trade Articles 56 and 49 TFUE are applicable without restriction, international trade agreements tends to have a restricted scope set out in commitments annexed to the treaties rendering much more complex to handle the treaty.

There are different methods for liberalization. Indeed, most agreements have a positive list, namely including specific sectors, while others adopt a negative lists and exclude some sectors from the liberalization.

It could be argued that the negative list method is more efficient in trade liberalization.

The efficiency of liberalization by market law is also dependent on the quality of law, in particular, enforceable laws together with judicial review that allows the enforcement of the rights is the best way to achieve legal unity.

As regards the future relation between EU and UK from a market point of view, the expert believes that the EEA membership would be the best solution because there is a great convergence in terms of Single Market integration and this allows the enjoyment of passporting.

Another possibility could also be a customs union but this only partially concerns the issues under discussion because it addresses tariff-free trade in goods and does not regard services which are not normally subject to tariffs.

More interesting for the trade in service and establishment is the CETA, which is also considered a possible solution for the EU-UK future relationship. This model contains extensive elements of negative integration. The problem here lies with the quality of law because as it is international law, there is no direct effect and as regards positive integration, the other condition for integrated market, there are no common standards although the expert made clear that there could be agreement on mutual recognition.

These characteristics make CETA an ambitious agreement but this does not suffice because as mentioned above, the Parties can require the application of national law and the lack of mutual standards impedes the access to passporting.

Professor Kainer also assessed the General Agreement on Trade in Services (GATS) and concluded that this would be the worst scenario considering that it has no direct effect or common standards even though the judicial review can rely on a good functioning dispute settlement. Professor Kainer further noted that GATS does not allow any passporting for services.

Interestingly, Professor Kainer made a comparison between all the considered models and highlighted that although the market access and non-discrimination rights are present in all regimes, the effects of these rights are extremely different because only the EU and the EEA allow standard setting and have effective, efficient judicial review. Also, the new approach in CETA investor-state dispute system is expected to work very well, making CETA a probable model for EU-UK relationship.

Also the idea of market access is different in the various trade agreements. In EU law, the fundamental freedoms capture not only discrimination and quantitative restriction, but also mere hindrances, concerned with, for example, the recognition of national diplomas. It is possible that in the future also CETA would be developed in a similar manner but at the present stage there are not indicative elements in this sense in the agreement and this must be considered a possible future development that shows in itself the different levels of market integration in the EU law and CETA.

A problem connected to this discussion regards the future EU-UK relation on services and establishment. The EU legislation to be adopted after the UK exit might involve the position of British citizens and companies already exercising their freedoms. The main question raised regards the future of these rights.

A practical example made by the expert is that of English companies (Private Ltd) in Germany. According the ECJ judgement in *Überseering*, such company must be recognized in Germany. When the UK leaves the EU, these companies would be excluded from the scope of Article 49 TFEU. And the same problem will be faced by the British service providers concerning, for example, the recognition of diplomas and licenses.

The problem here is whether or not there is a legal obligation to enact transitory measures.

In this sense a possible legal solution would be the application of the theory of legitimate expectations or the principle of acquired rights. The latter is, however, restricted to property and certain contractual rights.

The expert also suggested another solution, namely the intertemporal application of EU to persons who have a sufficient link to the EU but he also made clear that this theory would need a closer legal examination.

In his view, a solution can be based on fundamental freedoms themselves, but the best guarantee for securing the British citizens and companies' right would be to find a political solution. He believes a better solution would be to enact EU legislation.

The other models do not reach the EU and EEA standards which represents the best option for the future EU-UK relations.

After Brexit there will be great challenges: during the negotiation process with the UK the main objective will be to extend the scope of freedom of services and establishment as much as possible in order to find a mechanism for common standards and for the EU itself the main goal will be to try to assess the problem of the legitimate expectations and try to fit it in the EU legal order.

3.5. Consequences of Brexit in the Area of Consumer Protection

Although in the EEA model there is reduced harmonization in some fields, it guarantees a comparable level of consumer protection, therefore, it does not represent a threat for the consumers. On the contrary, under WTO rules the UK will not be bound by the EU law anymore and the EU27 consumer protection will depend on the issues of jurisdiction, applicable law and cross – border enforcement. For other models, as the outcome of the negotiation is still unpredictable, the level of consumer protection is difficult to define.

Dr Kramme analysed the future relation between EU and the UK as regards the issue of consumer protection with a special focus on two possible models - EEA membership and a "hard Brexit" scenario of falling back on WTO rules.

Starting with the EEA model, he explained that consumer protection under the EEA is comparable to the EU legislation in this field. Indeed, the EEA incorporates the four fundamental freedoms of the Single Market and, at the time of signing, the *acquis* was also implemented. This includes Annex XIX on consumer protection.

The EEA agreement provides with a mechanism of dynamic implementation of the EU secondary legislation under Article 99 of EEA Agreement.

This mechanism requires the European Commission to inform the European Free Trade Association (EFTA) when a legislation of EEA interest is planned, in order to seek advice from EEA experts.

After the adoption of the new act by the EU, the EEA Joint Committee shall decide to adopt that Act with a view to permitting its simultaneous application, under Article 102 EEA Agreement.

Namely, the EFTA states have no powers on the EU legislative process. They have a legal obligation to adopt: they are obliged to adopt EU legislation without participating in the decision – making process. For this structure this model is far from being the outcome of the negotiations after Brexit but it is the better guarantee for consumer protection because it covers almost all the EU *acquis* in the field, even in the sectors of travel and transport, as well as financial services.

Dr Kramme also made an analysis on the matters that are not covered by the agreement and explained that although some relevant EU legislation in the field of judicial cooperation

in civil matters are not covered, in practical terms this does not produce relevant effects because the consumer protection level in contract law is comparable and the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is applicable as well.

This namely means that the EEA model does not raise major consumer protection issues.

On the contrary, Dr. Kramme noticed that under the WTO model, in case of hard Brexit, the EU Treaties will cease to apply to the UK after Brexit, and the UK will be considered as all other third countries without a special agreement with the EU and the UK will not be bound by the EU law anymore.

This finding has to be separated from another legal issue, namely whether the EU law will still apply under the UK legal order and this would depend, inter alia, on how the UK legislator administers the withdrawal procedure. In particular, UK primary legislation implementing EU Directives remains part of the UK legal order until such legislation is revoked. On the contrary, a revocation of the European Communities Act (ECA 1972) would terminate the applicability of EU Regulations under the UK legal order.

Dr Kramme clarified that although the outcome of the negotiation cannot be foreseen, the changes in the EU and UK legislation will gradually separate the two orders and even though the UK adopted all EU consumer protection legislation, the validity and interpretation of that law will differ from the EU because the UK will not fall under the jurisdiction of the European Court of Justice (ECJ) anymore.

Therefore, according to Dr Kramme, the protection of EU27 consumers will depend on the applicability of EU law, which on itself depends on the issue of jurisdiction, and cross-border enforcement.

He also gave an example on how to determine the jurisdiction and the applicable law. The example concerned an EU citizen using an online shopping service based in the UK and shows that after Brexit there would be uncertainty if the jurisdiction and the applicable law will still be governed by the now applicable Brussels I bis Regulation and Rome I Regulation.

He recommended to clarify this issue in the negotiations. In this connection, he noted that the agreement between the EU and Denmark on jurisdiction could be a 'role model' for these purposes.

3.6. Discussion

Ms Vicky Ford, MEP, specified that although the free movement of labour is not a competence of the IMCO Committee, the mutual recognition of professional qualifications is an open question. Citizens' rights is one of the main issue that both the EU and the UK want to resolve and in this sense it is very important to continue focusing on the mutual recognition of professional qualifications be-



cause this is the key for potentially unlocking several other issues.

She made clear that, in her point of view, the UK would probably not be against a legal resolution mechanism, on the contrary the UK's concern is with the way in which the ECJ works, therefore, to work on solutions based on an international perspective or other forms of jurisdiction would be helpful.

In the discussion after the II panel **Ms Catherine Bearder, MEP**, raised a first question regarding the WTO scenario. She asked about the duration of the process for the UK to renegotiate its WTO commitments with all other countries and, in this context, she also asked whether there are some other countries that only rely on WTO rules for their trade relationships.

Ms Catherine Bearder's second question concerned new products coming in the market. She said that at the moment in the EU there are valuable authorities, such as the European Medical Agency, that are not present in the UK. She asked how the import of a new UK product will be assessed without the authorization of a competent authority as it is at the present.

Another key point was raised by **Lord Soley of Hammersmith** (Labour Party Member of the House of Lords). His Lordship came back to the issue of the relation between the UK and EU parliaments that was analysed during the first panel, considering himself that relationship as an extremely important one indeed.

His Lordship made clear that irrespective of the outcome of the negotiations, namely 'hard' or 'soft' Brexit, it is of paramount importance for the EU and the UK to continue having a functional relationship because bad relations between the two Parliaments would undermine the efforts of those actors that promote the EU, strengthening only the role of those who were against Europe. He also added that, in his opinion, a second EU referendum would not change the result and that MPs will not be in a position to override Brexit, therefore, it is important to start to assess the future relationship as soon as possible.

Following this reasoning, his Lordship proposed the establishment of a formal committee between the two Parliaments that could step up interparliamentary communication in a moment before the starting of the formal negotiations. This communication on matters of common interest would create the basis for discussion on more difficult issues to be incorporated in the agreement under Article 50.

This proposal according to **Lord Soley of Hammersmith** would be supported by a great number of both MPs and Peers.

Ms Vicky Ford, was really pleased about Lord Soley's suggestion regarding it as an extraordinarily positive outcome from the workshop, also in the light of Professor Stoll's presentation on interparliamentary cooperation. She also asked his cooperation in order to understand whether there is cross-party support in both the House of Lords and the House of Commons for such an interparliamentary committee in the future.

Lord Soley showed his willingness in this sense although he made clear that this will be a wider issue rather than one for the House of Lords EU Select Committee.

Ms Krisztina Morvai, MEP, in relation to her previous question made clear that in her opinion the Internal Market concerns all the freedoms, including the free movement of people and workers. Therefore, she needs to know who is in charge of the negotiations on behalf of Eastern and Central European workers currently working in the UK. Furthermore, she specified that as they are citizens of the European Union, their interests need to be represented.

Ms Vicky Ford, MEP, clarified that of course she agreed on the fact that the Internal Market

includes also the free movement of workers but this matter does not fall within the ambit this Committee whose competence is limited to free movement of goods, services, consumer affairs and other related issues. However, there are problems related to the workers' rights such as mutual recognition of professional qualifications that can be considered linked with the trade in services and fall, therefore, within the competence of the Committee.

Ms Vicky Ford, MEP, also addressed **Ms Bearder's** questions regarding new products entering the market. She said that the answer is linked to the current assessment of new products that want to enter the EU market from outside the EU. These products have to meet EU standards and have to go through notified bodies and this will be the same for new UK products after Brexit but, referring to the previous discussion regarding product standards, she also specified that to continue meeting the EU standards will be in the interest of British exporters.

Dr Emerson addressed the other questions formulated by **Ms Catherine Bearder, MEP**, about the WTO and he said that probably the majority of WTO members have signed regional trade agreements or other FTAs with other countries and in his view Britain will do the same with the rest of the world.

In Dr Emerson's opinion, the UK will remain a part of pan-European bodies even after the exit because for the UK would be very difficult, in terms of cost and time, to start elaborating its own standards and set up new bodies also because the new standards could not grant the UK access to the internal market.

Dr Emerson reacted to Lord Soley's observation, he clarified that is opinion a good relationship between the EU and the UK Parliament will depend on the UK's willingness to remain compliant with EU Single Market law. He made clear that understanding what the UK British Government aims to achieve from the negotiations will be a precondition for the accountability and transparency of the negotiations for both the UK and EU Parliaments. Both Parliaments should press, in his opinion, for opened negotiations.

Ms Vicky Ford, MEP, in addition, said that the UK made clear in its White Paper that it wants to continue cooperation on standard-setting and in her view this could only be possible with the cooperation of the UK's European partners. She also added that this was in principle possible because the EU bodies already cooperate with third countries.

More in depth on this topic, **Ms Catherine Bearder, MEP**, asked whether the UK will have to pay to be part of those bodies.

Ms Vicky Ford, MEP, said that there was a huge amount of issues that were still not clear from both sides but the panel discussion and the workshop had highlighted extremely interesting possible solutions and that she was certain that both the EU and the UK wanted to find a solution for all these issues including, primarily, that of citizens' and workers' rights.



ANNEX I: AGENDA OF WORKSHOP

WORKSHOP

Consequences of Brexit

Tuesday, 28 February 2017 from 10.00 to 12.30
European Parliament, room ASP 3G-2, Brussels

AGENDA

Chairs: Mrs Vicky FORD (IMCO Committee Chair) and Mrs Dita CHARANZOVÁ (IMCO Committee Vice-Chair)

10:00 – Opening and welcome by the Co-Chairs

Part 1 – Consequences of Brexit: general considerations

10:05 – 10:15 **Article 50 TEU: The EU legal framework for the Brexit**
Professor Dr. Fabian Amtenbrink, Erasmus University Rotterdam

10:15 - 10:25 **The Role and powers of the European Parliament in the Brexit process**
Professor Dr. Tobias Stoll, University of Göttingen

10:25 - 10:35 **The economic impact of Brexit: available government and academic research - work in progress**
Dr. Michael Emerson, CEPS

10:35 - 10:50 **Questions & Answers**

Part 2 – Sectorial analysis of consequences of Brexit

10:50 – 11:05 **Trade flows and their potential disruptions in the areas of customs, free movement of goods, services, direct investment, public procurement and consumer protection under different Brexit scenarios**
Professor Dr. Jacques Pelkmans, CEPS

11:05 – 11:20 **The consequences of Brexit on customs, trade, and free movement of goods (tariffs and other customs levies; compliance costs; procedural regulations; free movement of goods: mutual recognition and harmonised rules; market surveillance and safety): legal standards for rights and obligations under different scenarios for exit and future cooperation agreement or lack thereof**
Professor Dr. Piet Eeckhout, University College London

- 11:20 – 11:35 The consequences of Brexit on services: legal standards for rights and obligations under different scenarios for exit and future cooperation agreement or lack thereof:**
Professor Dr. Friedemann Kainer, University of Mannheim
- 11:35 – 11:50 The consequences of Brexit on the public procurement: legal standards for rights and obligations under different scenarios for exit and future cooperation agreement or lack thereof**
Professor Dr. Sue Arrowsmith, University of Nottingham
- 11:50 – 12:05 The consequences of Brexit on consumer protection: legal standards for rights and obligations under different scenarios for exit and future cooperation agreement or lack thereof**
Dr. Malte Kramme, University of Bayreuth, Research Centre for Consumer Law
- 12:05 – 12:25 Questions & Answers**
- 12:25 – 12:30 Closing remarks by the Co-Chairs**

ANNEX II: SHORT BIOGRAPHIES OF THE EXPERTS

Professor Dr. Fabian AMTENBRINK



Fabian Amtenbrink is Vice Dean and professor at the Erasmus School of Law of the Erasmus University Rotterdam, where he holds the Chair of European Union Law. Since 2009 he is also Visiting Professor at the College of Europe in Bruges. Moreover, he is Scientific Director of the European Research Centre for Economic and Financial Governance, a joint research initiative initiated by researchers from the Leiden University, Delft University of Technology and Erasmus University Rotterdam (<http://euro-cefg.eu>). His research and international publications focus on constitutional and institutional aspects of European Union law, as well as legal

issues of (European) economic and monetary integration.

Professor Amtenbrink, who studied law at the Freie Universität of Berlin (Germany) where he is fully qualified to practice law, holds a Dutch doctorate in law (PhD) on the democratic accountability of the ECB. He serves on the editorial board of the *European Law Review* and the *Netherlands Yearbook for International Law*, as well as being a principle editor of the *Nijhoff Studies in EU Law Series* (Brill).

For further information, please visit <http://professoramtenbrink.eu/> .

Professor Dr. Peter-Tobias STOLL



Dr. Peter-Tobias Stoll is a full professor for public law and international law at the Faculty of Law of the Georg-August-Universität Göttingen, Germany and the managing director of the Institute for International Law and European Law. His research areas include international and Union law and particular the interfaces between economic law, including trade and investment and environmental and consumer protection. Recently, he has focused on EU trade agreements and related constitutional issues.

Tobias Stoll has studied law in Hamburg, Lausanne and Bonn and obtained his doctorate at Kiel University and his habilitation at the Heidelberg Faculty. Before joining the Göttingen Faculty, he has been senior research fellow at the Max Planck Institute for Foreign Public Law and Public International Law, Heidelberg.

Stoll has published widely on trade and environmental as well as on Union law issues. He is one of the co- chairs of the Interest group for international economic law of the European Society for International Law (ESIL) and is a member of the Committee on Sustainable Development and the Green Economy in International Trade Law of the International Law Association (ILA). He served as advisor and expert to the Federal government, the German Bundestag and the United Nations.

Dr. Michael EMERSON



Michael Emerson is a graduate in politics, philosophy and economics from Balliol College, Oxford University. After some years at the OECD in Paris, he joined the European Commission in 1973, where until 1990 he worked as an economist on macroeconomic affairs, and as economic adviser to the President. In 1991 he was appointed as the EU's first Ambassador to the USSR (subsequently Russia). Returning from Russia in 1996 Emerson joined the London School of Economics as Senior Research Fellow, and from 1998 at the Centre for European Policy Studies (CEPS) in Brussels. Emerson has published extensively on European affairs and external relations. He has worked intensely on the Brexit question over the last two years, alongside a research project on the three new Association Agreements and DCFTAs of the EU with Georgia, Moldova and Ukraine.

Professor Dr. Jacques PELKMANS



Jacques Pelkmans is Senior Fellow at CEPS (www.ceps.eu) in Brussels and visiting professor at the College of Europe in Bruges. Between 2001 and August 2012 he was Jan Tinbergen Chair and Director of the Economics department at the College. A Ph.D. in economics from Tilburg University, he has been associate professor of economics at the European University Institute in Florence, professor of Economics at the European Institute of Public Administration (Maastricht) and professor for European Economic Integration at Maastricht University. He has held a part-time position at the WRR (think-tank of the Dutch Prime minister), is founding Director of the European Institute of Asian Studies in Brussels and was professor in 'Business & Europe' at the Vlerick Business School (Gent, Leuven, Beijing, and St. Petersburg). Dr. Pelkmans has been advisor to the European Commission, the OECD, the World Bank, UNIDO, ASEAN and governments in Europe and Asia. He was a member of the Eminent Persons Group of ASEAN reporting to the ASEAN leaders in the Singapore Summit of January 1992, and co-chair of the Indonesia/EU High Level Group preparing a trade and economic partnership and FTA (2010/11). In 2015, he was a member of the High Level Group on the Single Market Strategy appointed by the European Parliament. His research interests comprise several specialized areas in European economic integration (e.g. EU regulation, the internal market, network industries, European standards, regulatory impact assessment, EU trade and investment policy, incl. TTIP and CETA) besides design and technical aspects of ASEAN economic integration (esp. the AEC), plus ASEM.

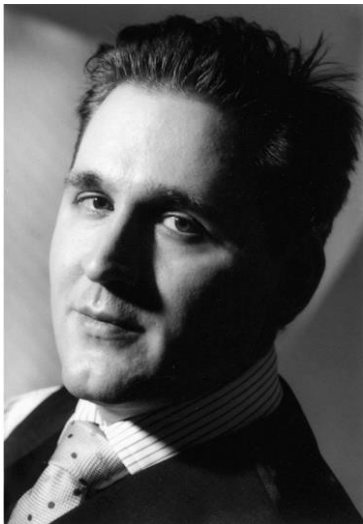
Professor Dr. Piet ECKHOUT



Piet Eeckhout is Professor of EU Law, and Deputy Dean at the Faculty of Laws, University College London. He is also Academic Director of UCL's European Institute. He joined UCL in 2012. Before joining UCL he was Director of the Centre of European Law, at King's College London (1998-2012). He studied law (lic.iur.) and European law (lic.Eur.iur – equivalent to LLM) at the University of Ghent, Belgium, where he also obtained his PhD degree. Before coming to London in 1998 he taught at the University of Ghent and at the University of Brussels (VUB). Between 1994 and 1998 he worked in the chambers of Advocate General Jacobs at the European Court of Justice.

Piet has been co-editor of the Yearbook of European Law (OUP) and of Current Legal Problems (UCL/OUP). With David Anderson QC he edits the Oxford EU Law Library (OUP), and he is currently launching a new journal – Europe and the World – A Law Review – together with Prof Christina Eckes (Amsterdam) and Dr. Anne Thies (Reading). The journal will be published by UCL Press and is open access.

Professor Dr. Friedemann KAINER



Friedemann Kainer, Professor at University of Mannheim (Chair of Civil Law, German and European Economic and Labour Law, senior member of the Mannheim Center for Competition and Innovation (MaCCI), director of the Mannheim University Institute for Law of Companies (IURUM). He studied law at University of Heidelberg, earned a PhD at the Heidelberg Institute for German and European Company and Business Law in 2002 (thesis: Takeovers and Mergers in the Law of the Internal Market – Effects of the Fundamental Freedoms on Private Law – awarded with the Fritz Grunebaum Prize), was Senior Researcher and Lecturer (Wissenschaftlicher Assistent) until 2011. Habilitation in 2012 (thesis: Equal treatment in Private Law).

Visiting lecturer at Universities of Krakow, Belgrade and Cluj, visiting researcher in Belfast (2008). Expert in numerous missions in Eastern Europe for the German Foundation for Legal Cooperation (now: GIZ). Fields of research: law of the single market, European cartel and business law, labour law.

Professor Dr. Sue ARROWSMITH



Sue Arrowsmith is Achilles Professor of Public Procurement Law and Policy at the University of Nottingham, where she is also Director of the Public Procurement Research Group and of the postgraduate Executive programme in Public Procurement Law and Policy (LLM/Diploma/Certificate).

Professor Arrowsmith's publications have been extensively cited by courts and legislators both in the UK and in other parts of Europe, in the ECJ, and in Africa, North America and Asia. Authored books include *The Law of Public and Utilities Procurement* (3rd ed. 2014), (with J. Linarelli and D. Wallace Jr) *Regulating Public Procurement*;

National and International perspectives (2000) and *Government Procurement in the WTO* (Kluwer, 2003). Recent edited collections include (with Peter Kunzlik) *Social and Environmental Policies in EC Procurement Law: New Directive and New Directions* (2009; CUP); (with R. D. Anderson), *The WTO Regime on Government Procurement: Challenge and Reform* (CUP, 2011); (with S. Treumer) *Competitive Dialogue in EU Procurement Law* (2012, CUP); and (with Geo Quinot), *Public Procurement Regulation in Africa* (CUP, 2013).

Professor Arrowsmith is a member of the UNCITRAL Procurement Experts Group and was a member of the World Bank International Advisory Group on Procurement for its recent overhaul of its policies on procurement in developing countries. She was previously a member for nearly 20 years of the European Commission's independent Advisory Committee for the Opening Up of Public Procurement, and has been consultant for the UK government, UN, WTO, European Commission, OECD, EU, European Central Bank, ILO and the Law Commission of England and Wales, as well as for law firms and private companies. She is Co-Director of the series of conferences *Public Procurement: Global Revolution*, first launched in 1996, and the next (eighth) of which will be held in Nottingham in June 2017.

Dr. Malte KRAMME



Dr. jur. Malte Kramme studied law at the universities of Osnabrück and Lausanne, first state exam in 2006. After his legal clerkship (Rechtsreferendariat) and second state exam (2010) in Hamburg, Malte Kramme worked as an attorney-at-law (Rechtsanwalt) at Linklaters LLP, Berlin, specialising in regulatory and European law. Since October 2013 he is research fellow at the University of Bayreuth's

Research Centre for Consumer Law (Forschungsstelle für Verbraucherrecht). He has various publications in the field of consumer law. Malte Kramme is editor-in-chief of "European Union Private Law Review" (*Zeitschrift für das Privatrecht der Europäischen Union – GPR*) and co-editor of "Brexit und die juristischen Folgen" (*Brexit and the legal consequences*), Baden-Baden (2017).

ANNEX III: PRESENTATIONS

Presentation by Professor Dr. Fabian AMTENBRINK

Workshop: Consequences of Brexit

European Parliament, 28 February 2017

European Research
Centre for Economic and
Financial Governance
euro-cefg.eu

Article 50 TEU: The EU legal framework for Brexit and the road ahead

RESEARCH FELLOWS

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Casper de Vries
Erasmus University Rotterdam



Three key issues

- The substantive legal obligations arising from Article 50 TEU concerning the withdrawal of a Member State from the EU.
- The legal nature and scope of the UK's (legal) relationship with the EU once the act of withdrawal has been completed.
- The implications of this future legal relationship for the EU internal market law and notably the policy fields falling within the ambit of the IMCO Committee.
 - NB: Key policy choices are yet to be made by the EU and the UK.

Article 50 TEU: Withdrawing from the European Union

- Article 50 TEU provides the legal framework for the withdrawal of a Member State from the EU.
 - The withdrawal becomes a reality either from the date of entry into force of the withdrawal agreement or, in the absence thereof, two years after the UK Government gives its notification of withdrawal.
 - If no withdrawal agreement is reached, primary and secondary EU law cease to apply without any transitional legal arrangements.
 - A prolongation of the negotiation period is possible but requires a unanimous vote in the European Council.
 - No legal obligation to conclude a withdrawal agreement.



Article 50 TEU: Withdrawing from the European Union

- The wording of Article 50 TEU provides little information regarding the scope of the withdrawal agreement.
 - The agreement with the withdrawing State shall set out the arrangements for the withdrawal, 'taking account of the framework for its future relationship with the Union' (Article 50(2) TEU).
 - The reference to the 'framework for its future relationship' links the withdrawal agreement to the future framework and therefore with the policy choices to be made by the EU and the UK.
 - The withdrawal agreement does not itself define the future framework. A separate agreement is needed, which should in principle be negotiated in parallel with the withdrawal agreement.



Article 50 TEU: Withdrawing from the European Union

- Once the withdrawal has become a reality, there is no going back for the withdrawing State.
- However, there is disagreement as to whether the Article 50 TEU process can be reversed before the process of withdrawal is concluded.
 - On the one hand, it is argued that it can be reversed and that when the withdrawing Member State changes its mind, there is no decision to withdraw pursuant to Article 50(1) TEU. This view also draws on Articles 65-68 of the VCLT.
 - Others argue that it could not be reversed unilaterally, as such a right would not be in line with the purpose or structure of Article 50 TEU.



Three scenarios for the future EU-UK relationship

- **The 'fall-back' option (WTO law)**
 - The UK does not have an individual schedule of concessions, as it is part of the EU's combined schedules. It would have to negotiate one.
 - An agreement could be reached between the EU and the UK to separate the WTO commitments of the UK from those of the EU.
 - In any eventuality, the agreement of all other 163 WTO members would be needed.
- **Membership of the European Economic Area (EEA)**
 - The UK would need to return to EFTA in order to join the EEA.
 - EEA Agreement enables States to participate fully in the internal market.



Three scenarios for the future EU-UK relationship

▪ Tailor-made arrangements

- There is no single 'blueprint' for such treaties.
- Different options include customs unions; association agreements; stabilisation agreements; free trade agreements; economic partnership agreements; and partnership and cooperation agreements.
- A (comprehensive) Free Trade Agreement (FTA) is the most likely scenario.
- FTAs come with a lesser degree of sectoral coverage (notably in services) and do not give automatic access to the single market. They typically come with no obligations on free movement of people, budget contributions or legal oversight by the CJEU.

Thank you for your attention

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Presentation by Professor Dr. Tobias STOLL

European Parliament Committee on Internal Market and Consumer Protection
Workshop on the consequences of Brexit

The Role and Powers of the European Parliament in the Brexit Process



GEORG-AUGUST-UNIVERSITÄT
GÖTTINGEN

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Acknowledgement

This presentation partly draws from results of an



International Conference on the Role of the European Parliament in the Conclusion and Implementation of Agreements on International Economic Law Issues

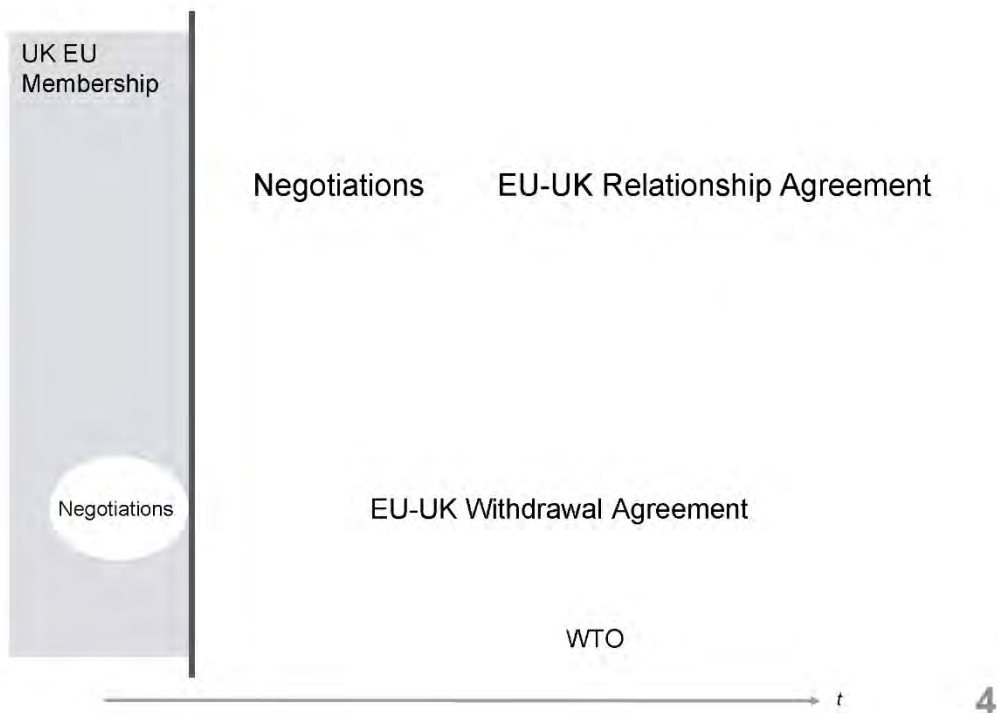
organized jointly by

- the *European Parliament*, represented by the *Policy Department A: Economic and Scientific Policies*
- and the *Interest Group on International Economic Law* of the *European Society of International Law*

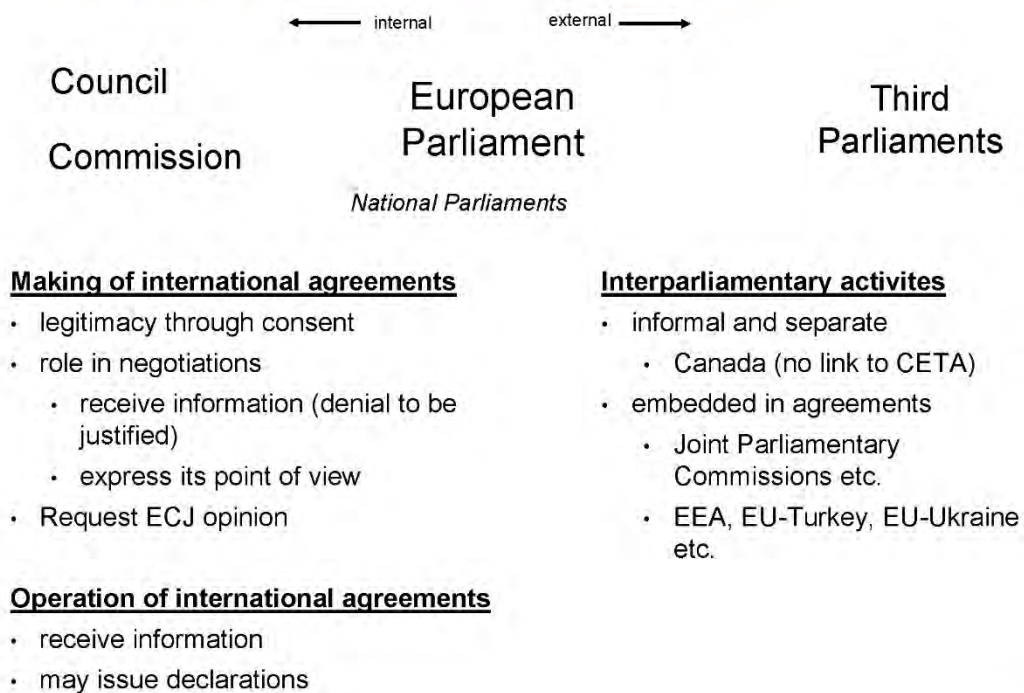
in Brussels on December 9, 2016.

2

Stages of the Brexit process



The role of the EP in international matters



The role of the EP in the operation of agreements

- **„Living agreements“ – very likely format for Brexit agreements**
 - further development of agreement by treaty bodies
 - who take decisions on amendments of Annexes / interpretations
 - which take effect without full ratification (*hence no EP consent*)
- **Role for Commission and Council**
 - EU positions in treaty bodies proposed by COM and adopted by Council
 - COM may be authorized by Council to approve modifications of agreement
- **Role for the European Parliament**
 - currently limited: will only be informed and may issue declarations
 - May raise concerns in view of the European principle of democracy / legitimacy
 - strengthening of role of EP in the operational context is therefore advisable
 - by interinstitutional arrangements
 - by establishing an interparliamentary body in the EU-UK agreements

6

In sum ...

1. The *making* of Brexit agreement(s): A role for the EP aside from consent
 - **Good opportunities to get involved in the negotiation process**
2. The *operation* of agreements - a emerging area for parliamentary control?
 - **Principle of democracy: careful look at treaty provisions**
 - **EP involvement should be facilitated**
3. Exploring and embedding *interparliamentary elements* in different stages of EU-UK relationship
 - **Liaison with UK Parliament before Brexit?**
 - **Interparliamentary structures should become part of both agreements**
 - **This would help to strengthen the role of the EP in the operation of agreements**

7

Presentation by Dr. Michael EMERSON



Economic impact of Brexit on the EU27

28 February 2017
European Parliament, IMCO Committee workshop

Michael Emerson
Associate Senior Research Fellow, **CEPS** (Brussels)



CEPS_thinktank

www.ceps.eu



What scenario for Brexit?

Most studies have focused on two polar cases:

1. Something close to European Economic Area like Norway, = very advance free trade conditions for goods and services
2. WTO membership conditions, = tariffs between EU and UK, and limited services access

However UK now wants a 'Comprehensive FTA', of which EU has two existing models

3. CETA with Canada, = purely 'international', i.e. with no EU *acquis*
4. DCFTA with Ukraine and others, = with most single market *acquis*

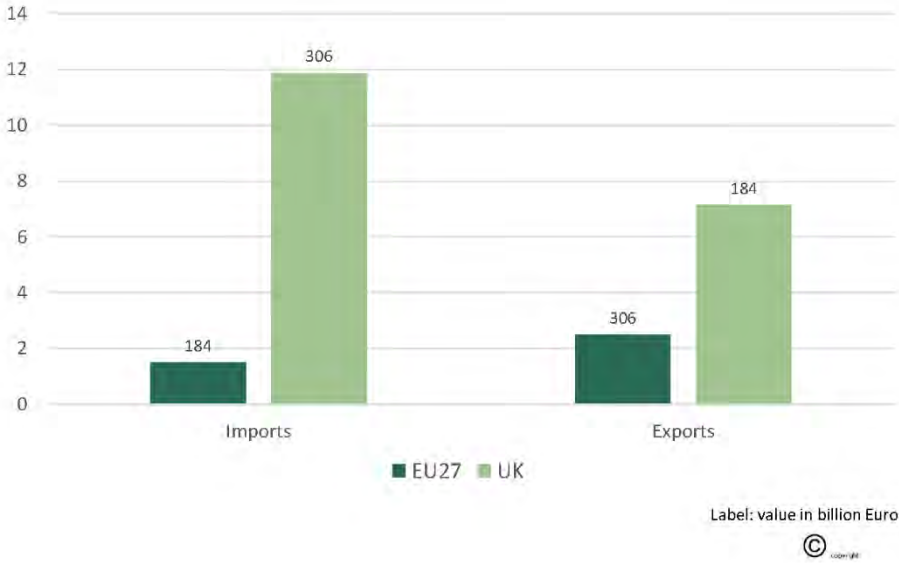
Since UK will remain largely EU-acquis compliant, DCFTA model = most relevant. But whether negotiable with EU unknown

For quantification the DCFTA model would be between 1. and 2.

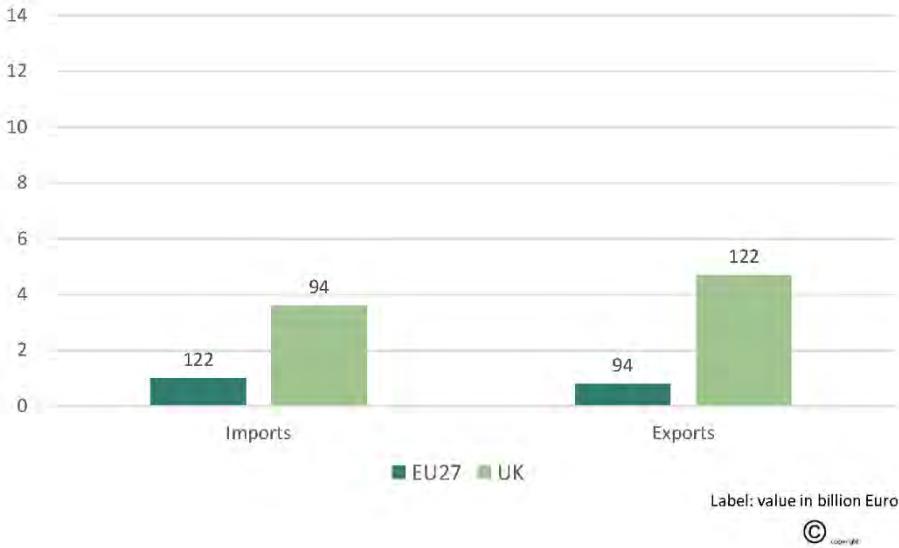




UK-EU27 trade of *goods*, in % GDP



UK-EU27 total trade in *services*, 2015



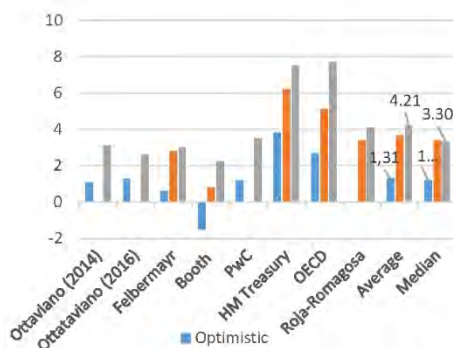


Big picture results

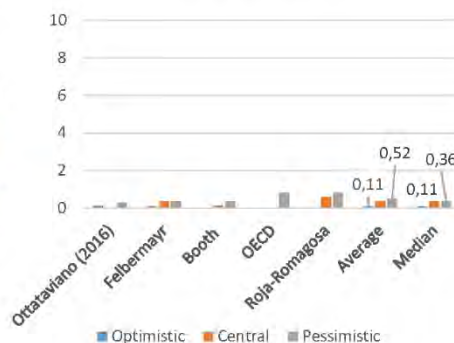
- Model calculations show impact to 2030 to be insignificant in the aggregate for the EU27... 0.1 to 0.5% of GDP by 2030; i.e. 0.01-0.05% of GDP annually if in 10 annual steps
- ... whereas for the UK it could be significantly negative, 3 to 7 % of GDP by 2030, 0.3 to 0.7% annually if in 10 annual steps.
- However results for some small EU27 member states could be significantly negative, especially Ireland (as UK)
- But beyond the models there are further possible impacts to be considered, even if they cannot be quantified, because:
 - Models assume ordinary policy adjustments, but Brexit = big shock event. Could add negatives for EU27 & euro system
 - FDI relocation from UK to EU could be significant, which could add a positive for EU27, and increase negatives for UK



Change in UK's GDP (2030) by type of exit scenario (%)

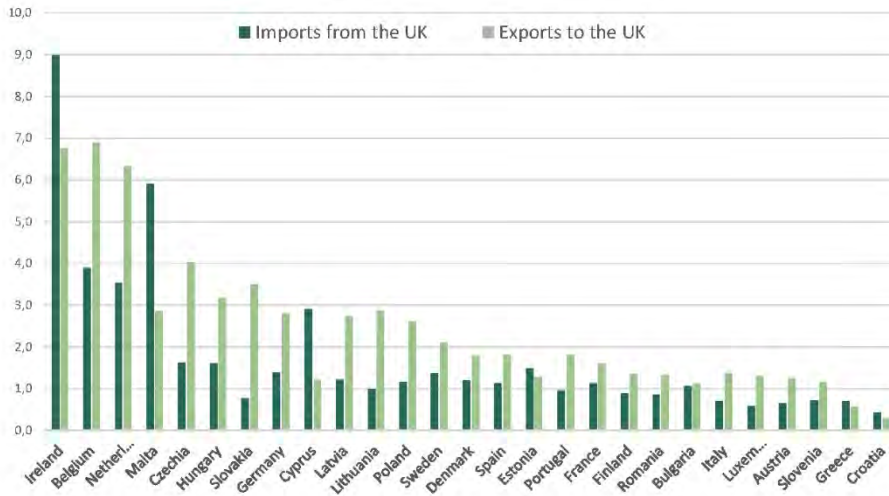


Change in EU27's GDP (2030) by type of exit scenario (%)



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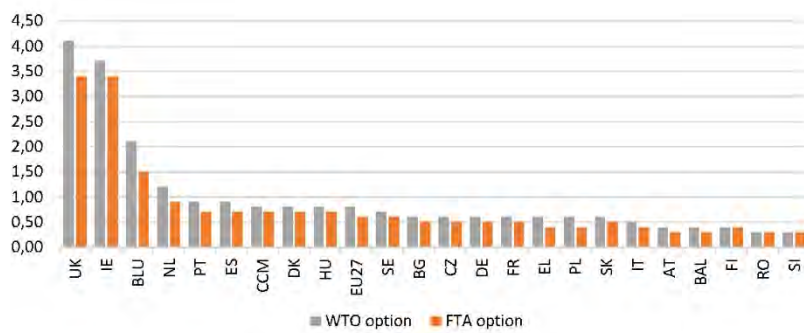
Imports and Exports of EU 27 with the UK, % GDP



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Losses in GDP (2030) by Member States and type of Brexit scenario (%)



Source: Roja-Romagosa (2016).

Note: FTA kicks in after 10 years.

BLU (Belgium and Luxembourg); CCM (Croatia, Cyprus and Malta); BAL (Baltic countries).

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Foreign direct investment

Bilateral FDI between the UK and EU27, total flows and stock, 2015

	Flow				Stock			
	Inward		Outward		Inward		Outward	
	bn Euro	% GDP	bn Euro	% GDP	bn Euro	% GDP	bn Euro	% GDP
EU27	3.7	0.0%	-73	-0.6%	683	5.6%	985	8.1%
UK	-73	-2.8%	3.7	0.1%	985	38.2%	683	26.5%



Beyond the models (1) - FDI

- Foreign direct investment (FDI): a zero-sum game for competition over location
- UK has been 'location of choice' for EU-market oriented FDI
- EU27 now eager to gain FDI market share, and will surely do so for manufacturing and financial services – but amplitude uncertain
- Will aggravate losses for UK, and tip balance of overall advantage from slight negative to slight positive?
- Ireland the most exposed case. From models Ireland loses as much as UK, but also uniquely well placed to capture UK market share





Beyond the models (2) – crisis dynamics

- Models assume ‘normal’ conditions for policy ‘adjustments’
- But Brexit a big systemic shock event
- Populist momentum in next elections (NL, F??)
- Special case of Euro system fragility
- Big open questions for how EU27 system responds
 - What if Art. 50 negotiations fail, 2 year guillotine falls, with mutual protectionism?
 - Further disintegration by contagion?
 - Or, stronger resolve to pull together?
 - Risks for EU27: from neutral to (big?) negatives



Presentation by Professor Dr. Jacques PELKMANS



Thinking ahead for Europe

ECONOMIC IMPACT OF BREXIT ON EU27 PART 2, SECTORIAL CONSEQUENCES

Jacques Pelkmans, Senior Fellow CEPS

28 February 2017

IMCO workshop on Implications of BREXIT, European Parliament



www.ceps.eu



Structure of presentation

1. EU27 – UK economic relations today : goods, services, FDI stocks and EU27 citizens in the UK
2. BREXIT effects on EU27 exports
3. From soft exit (2019) to 'hard BREXIT'?
4. In or out of the EU customs union ?
5. Free goods movement across the Channel ?
6. Free services movement after BREXIT ?
7. For. Dir. Investment: BREXIT effect without barriers
8. BREXIT and public procurement, forgotten chapter?
9. Post-BREXIT consumer protection



Research prepared for Policy Department A at the request of the Committee on Internal Market and Consumer Protection.



3

EU27/UK trade in goods [by product, 2015]

	EU27 Imports (€bn)	Share in total	EU27 Exports (€bn)	Share in total
Animal and vegetable oils, fats and waxes	0.5	0%	1.0	0%
Beverages and tobacco	3.5	2%	5.7	2%
Chemicals and related products	33.4	18%	50.9	17%
Commodities and transactions not classified elsewhere	4.1	2%	2.6	1%
Crude materials, inedible, except fuels	2.9	2%	6.5	2%
Food and live animals	11.5	6%	32.2	11%
Machinery and transport equipment	62.4	34%	126.7	41%
Road Vehicles	19.3	10%	58.8	19%
Aircraft, associated equipment	8.8	5%	4.7	2%
Ship, boat, float, structures	0.4	0%	0.3	0%
Manufactured goods classified chiefly by material	19.0	10%	33.4	11%
Mineral fuels, lubricants and related materials	21.7	12%	10.6	3%
Natural Gas	3.0	1%	0.8	0%
Petroleum and petroleum products	17.7	6%	8.3	3%
Miscellaneous manufactured articles	25.2	14%	36.9	12%
ALL PRODUCTS	184.2	100%	306.4	100%



Research prepared for Policy Department A at the request of the Committee on Internal Market and Consumer Protection.



4

EU27/UK services trade [by sector, 2015]

	EU27 imports from the UK (€bn)	% of GDP	EU27 exports to the UK (€bn)	% of GDP	Trade (€bn)	% of GDP
Transport	14.8	0.1%	12.9	0.1%	27.6	0.2%
Travel	15.0	0.1%	27.7	0.2%	42.7	0.4%
Construction	0.9	0.0%	2.2	0.0%	3.1	0.0%
Insurance and pension services	3.0	0.0%	0.7	0.0%	3.7	0.0%
Financial services	25.1	0.2%	4.5	0.0%	29.6	0.2%
Charges for the use of intellectual property	5.2	0.0%	2.5	0.0%	7.7	0.1%
Telecommunications, computer, and information services	9.3	0.1%	6.7	0.1%	16.0	0.1%
Other business services	22.7	0.2%	18.9	0.2%	41.7	0.3%
Personal, cultural, and recreational services	0.9	0.0%	0.4	0.0%	1.2	0.0%
Government goods and services	0.7	0.0%	2.2	0.0%	2.8	0.0%
Other	3.3	0.0%	1.0	0.0%	4.3	0.0%
SERVICES	100.8	0.8%	79.6	0.7%	180.4	1.5%

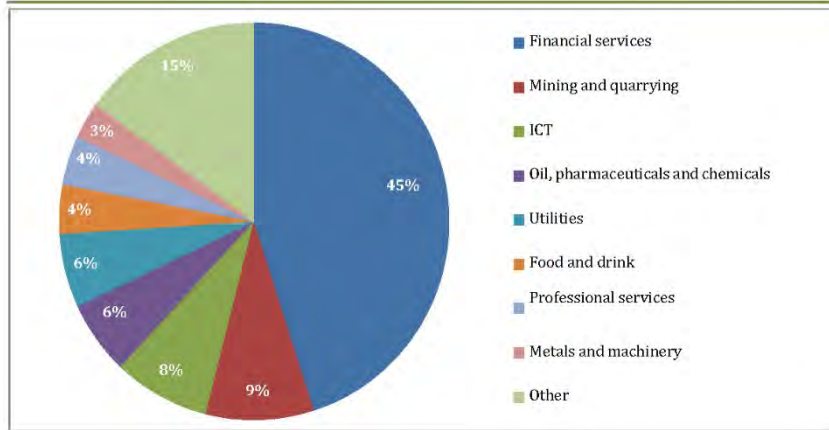


Research prepared for Policy Department A at the request of the Committee on Internal Market and Consumer Protection.



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FDI stock in UK from EU27 [sectors, 2014]



Source: ESRI, 'Scoping the Possible Economic Implications of Brexit on Ireland', 2015

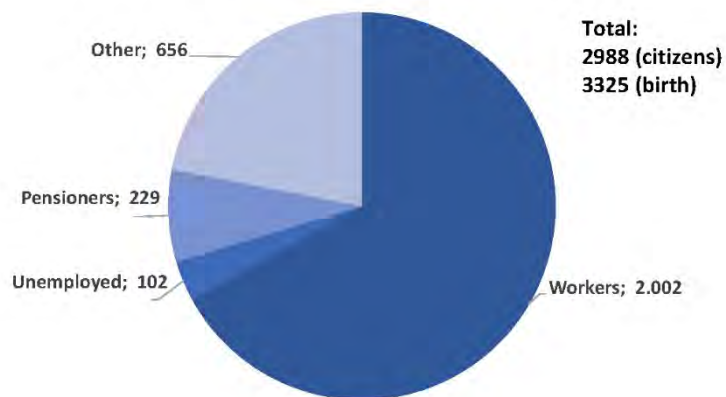


Research prepared for Policy Department A at the request of the Committee on Internal Market and Consumer Protection.



6

EU27 citizens living in the UK [2015]



Research prepared for Policy Department A at the request of the Committee on Internal Market and Consumer Protection.



BREXIT effects on EU27 exports:



to the UK, two studies to illustrate

- Treasury (2016) first gives the effect on **ALL** UK trade [EEA - 9 %, bilateral FTA - 14 % to - 19 %, WTO – 17 % to – 24 %], which are anything but comfortable
- But for **bilateral** trade across the Channel, Treasury utilises the ‘benefits of EU membership’ literature, and finds a range of effects of EU membership on trade with other EU between 51 % - 104 %, with its own (gravity) approach coming to a range of 68 % - 85 % compared to WTO
- A hard BREXIT (to WTO) would see trade shrink this much; a half-hard BREXIT (FTA) would shrink trade somewhat less, namely, with 2/3 of that reduction; both are huge



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BREXIT effects on EU27 exports:



sectorial effects simulated (Worldscan model)

- Rogas (2016) Worldscan simulation shows a fall of EU27 exports to the UK of 56.6 % (WTO) and 31 % (FTA); thus, BREXIT may hurt the EU27 quite a lot
- BREXIT effects on Dutch exports to the UK by 2030 (%)

	WTO option	FTA option
Processed foods	- 9.6	-6.7
metals	- 4.3	-3.2
Chemicals, plastics	- 5.5	-2.5
Motor vehicles, parts	- 7.8	-3.0
Electron. equipment	- 9.8	-6.4
finance	1.5	0.8
Other commerc. services	- 3.2	-2.1
Recreational /other services	- 2.9	-1.8

Note : only selected sectors ; for other sectors, see Rogas (2016), table 4



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From soft exit to 'hard' BREXIT ?

- The recent White Paper - though still open-ended in many respects – is based on the idea that the 2019 starting position of the UK is little else than a “domestic form of EU”
- The single market acquis, if not yet in UK law, will be integrally ‘imported into it’ via the Repeal Act
- presented as if BREXIT is no more, and no less, than a “clear break” (immigration and the CJEU) but otherwise there would be no “trading costs” given the EU acquis in the UK
- If taken for granted, the FTA and WTO simulations would be off the mark ; for trade (and FDI?), BREXIT would mean little



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From soft exit to 'hard' BREXIT? (2)

- This suggestive presentation has to be dismissed
- First, the EEA (= single market acquis) is rejected and so is the customs union
- Second, there is no proposal to introduce joint EU/UK disciplines to ensure the EU acquis is maintained over time
- Third, tariff-free mutual access is more or less assumed – makes sense - but that presupposes a rich/deep FTA ; as noted by Michael Emerson, the DCFTA is a good candidate, esp. because the UK already fully ‘owns’ the EU acquis and migration is not ‘in’. But the DCFTA is clearly based on ‘entrenching the single market acquis’, hence, **not** ‘taking back control’, except for migration and no customs union
- So **BREXIT will harden over time**, unless the UK deeply commits to a DCFTA-type acquis ; is not in White Paper



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Costs of leaving the customs union

- out-of-the-C.U. is a costly option for the UK, and to some extent for the EU; 'free circulation' is an asset
- The trade facilitation literature shows that efficient customs generates only low costs (e.g. 0.3 % - 0.4 % of the invoice price) but this can be much higher when customs are inefficient ; OECD work (2015) shows that the transaction costs of getting goods across the border might be increased by customs procedures by as much as 24 %, so far from trivial
- in the case of origin rules, the range of costs is far wider [some 4 % to 15 % higher trade costs] and product-specific >>> this matters a great deal for EU-27 – UK value chains in automotive products and electronic goods ; these sectors may well reduce the cross-Channel interaction; also, AIRBUS has said so literally



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Free goods movement across the Channel, all-or-nothing-or-most?

- Free movement [here, for goods] combines two essential ingredients: it is a 'right' for [EU] consumers and companies, but subject to overcoming/removing derogations, i.e. assuring SHEIC regulatory objectives
- The White paper suggests that, in 2019, the UK and EU acquis will be the same (except CU + migration), so....?
- So the EU27 and the UK could 'agree' to allow 'free goods movement' in a treaty, under conditions
- So, BREXIT amounts to possible deviations from or erosion of 'free goods movement', if (a) new EU laws are not incorporated in the UK, (b) the UK opts for amendments or new UK laws affecting derogations, (c) the UK does not accept relevant CJEU rulings ; all this could be big or small (?)
- **Core issue**: can 'taking back control' be so light and limited?



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13

Free goods movement (2)

- We are not aware that this very crucial issue has been modelled (indeed, can it ?)
- If the logic of the White Paper (which is open-ended on most of what might happen after the Great Repeal Act, but rejects tariffs) would be accepted on face-value, the costs of BREXIT in goods (apart from trading costs when 'out' of the customs union) would at first be zero
- Without a follow-up of the White paper giving clarity, nobody has any clue



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14

Free services movement across the Channel ?

- In services, 'free movement' in the EU goes far (and the link with unrestricted FDI ought to be taken into account) but it is not fully accomplished [see CETA MS reservations]; is often stuck on weak M.R., restrictive national laws, etc.
- One observes an ongoing incremental deepening of the single services market and the UK used to be in the frontline ; why turning their back on all this ?
- Additional EU issues include infrastructure (in some Netw Industries), supervision, EU Agencies, MS discretion in the TFEU treaty (energy), etc.



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Free services movement (2) ?

- For the UK services are of great economic importance,
- In sectors such as professional services (in a range of subfields such as accountancy/auditing, law firms, financial services, management advice, some ICT) and audio-video-services
- UK is highly dependent on several modes of transport (esp. road haulage, maritime shipping)
- White Paper mostly descriptive, no positioning, so what will the UK want ? Free movement a la Suisse would cut into the UK's own flesh ; for EU27, there are costs too but relatively and absolutely less



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FDI : BREXIT impact & barriers

- The FDI problem in BREXIT are not the 'new' barriers as FDI is practically free for 3rd countries
- The economic issue is that FDI is partly dependent on '**market size**' ; BREXIT reduces access to the large EU27 market ; recent estimates show a FDI reduction of 22 % compared to the WTO option
- However, the lower attractiveness of the UK for FDI has knock-on effects given the nexus between trade and FDI (in value-chains and otherwise) ; it might also affect UK productivity levels negatively (range of 3 % - 7 %)
- Hence, BREXIT is likely to induce some FDI diversion towards EU27, and the more so the harder BREXIT is



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17

BREXIT and public procurement

- Public procurement seems to have been ‘forgotten’ in economic BREXIT studies, so far ; even if *acquis* is maintained in the UK, what about the remedies directive and COM appeal, what about concessions ? ; the Swiss model has public procurement in, but this raises questions about EU *acquis* in the UK
- There can be links with state aids ; how will the EU state aids regime be maintained or not in the UK ?
A MS itself can not discipline its own state aids - would the EU keep a role there, or, is that incompatible with the aversion against the CJEU?



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18

Post-BREXIT consumer protection

- This is about SHEIC objectives and consumer rights ; if, from the consumer end, there would be pressures in the UK to revise/amend the SHEIC resp. consumer *acquis*, it will have consequences for trade and/or trading costs such as non-MR or conformity questions
- PwC, based on Open Europe, suggests UK regulatory change in social/health/safety laws ; environment/climate ; product standards ; this is exactly the gradual hardening of BREXIT when no ‘deep’ FTA and firm commitments are agreed
- However, the EU consumer protection is unlikely to change due to BREXIT alone



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Thank you!

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Internal Market and Consumer Protection.



Presentation by Professor Dr. Piet EECKHOUT



The consequences of Brexit for the EU customs union and the internal market *acquis*

European Parliament – IMCO
28 Feb 2017

Prof Piet Eeckhout
Deputy Dean
Faculty of Laws
UCL



Parameters

- Basic rules free trade (regulatory/tax)
- Harmonisation and internal market (IM) *acquis*
- Mutual recognition (MR) or equivalence
- Legal effect
- Dispute settlement (DS)
- Tariffs
- Rules of origin
- Customs border
- Trade defence
- External trade policy

EEA

- *Basic rules*: equivalent to full membership
- *Harmonisation*: equivalent
- *MR*: equivalent
- *Legal effect*: no direct effect/primacy, but full implementation
- *DS*: EFTA Court
- *Tariffs*: no (except agriculture)
- *Rules of origin*: yes
- *Customs border*: yes
- *Trade defence*: yes
- *External trade policy*: free

WTO

- *Basic rules*: non-discrimination (not so different)
- *Harmonisation*: very limited (IP & incorporation int'l standards)
- *MR*: no
- *Legal effect*: no direct effect
- *DS*: international: panels and Appellate Body
- *Tariffs*: yes
- *Rules of origin*: no
- *Customs border*: yes
- *Trade defence*: yes
- *External trade policy*: free

Customs Union (e.g. Turkey)

- *Basic rules*: equivalent
- *Harmonisation*: partial
- *MR*: no
- *Legal effect*: direct effect
- *DS*: international/national courts & ECJ
- *Tariffs*: no (with exceptions)
- *Rules of origin*: partial
- *Customs border*: yes
- *Trade defence*: yes
- *External trade policy*: equivalent

DCFTA (Ukraine)

- *Basic rules*: WTO
- *Harmonisation*: partial
- *MR*: partial
- *Legal effect*: uncertain
- *DS*: international
- *Tariffs*: no (with exceptions)
- *Rules of origin*: yes
- *Customs border*: yes
- *Trade defence*: yes
- *External trade policy*: free

CETA

- *Basic rules*: WTO
- *Harmonisation*: no
- *MR*: no
- *Legal effect*: international
- *DS*: international
- *Tariffs*: no (with exceptions)
- *Rules of origin*: yes
- *Customs border*: yes
- *Trade defence*: yes
- *External trade policy*: free

	EEA	CU	DCFTA	CETA	WTO
Rules	Member	Member	WTO	WTO	WTO
Harmonisation	x	Partial	Partial	-	-
MR	x	-	Partial	-	-
Legal effect	Domestic	Domestic	Int'l (?)	Int'l	Int'l
DS	EFTA C	Int'l/nat.	Int'l	Int'l	Int'l
Tariffs	Partial	Partial	Partial	Partial	x
Rules of origin	x	Partial	x	x	x
Customs border	x	x	x	x	x
Trade defence	x	x	x	x	x
External trade policy	Free	Equivalent	Free	Free	Free

Presentation by Professor Dr. Friedemann KAINER



The consequences of Brexit on Services and Establishment

Different Scenarios for Exit and Future Cooperation

Prof. Dr. Friedemann Kainer
University of Mannheim

28 February 2017
IMCO workshop on Implications of Brexit
European Parliament



Structure of the Presentation

2

-
1. Trade in Services and Establishment: Challenges for Market Integration
 2. Services and Establishment: Conditions for Integrated Markets
 3. Service Markets and Establishment under the EEA and International Trade Regimes
 4. Challenges for EU-legislation: transitory measures to match legitimate expectations
 5. Conclusion: Challenges for Negotiating
-

Trade in Services and Establishment: Challenges for Market Integration

3

- specific barriers to trade in services and cross border establishment
 - barriers to trade are difficult to identify
 - regulations on services and establishment often address the service supplier
 - services may need temporary access of staff or establishment
- liberalizing trade in services can require regulation
 - common standards for licences or diplomas ...
 - ...allows mutual recognition of standards (e.g., licences, diplomas)
- ideal solution: country-of-origin-principle, “passporting”

Services and Establishment: Conditions for Integrated Markets

4

- negative integration
 - removal of hindering regulation
 - access to the market, competitive equality (national treatment)
 - may lead to mutual recognition of standards and supervision
- positive integration
 - approximation of standards
 - eases mutual recognition
 - cuts off justification of restrictions
 - allows passporting
- scope
 - commitment/annex method in international trade law
 - positive/negative list approach
- reliable, enforceable subjective rights
 - transparent, applicable law; rule of law, direct effect
 - judicial review, legal unity

Service Markets and Establishment under the **EEA**

5

1. Substance of Law

- largely aligned to the EU single market law
- negative integration: fundamental freedoms of TFEU applicable
- positive integration: EEA incorporates EU single market law into EEA law
- scope: comprehensive, only few exceptions in the treaty

2. Quality of Law

- EEA law does not have direct effect
- Member States are obliged to transpose law into national law with direct effect
- judicial review: EFTA Court, ECJ

3. Assessment

- comprehensive integration of service markets
- jurisdiction of the CJEU/EFTA-Court
- passporting

Service Markets and Establishment under a **Customs Union: EU – Turkey Customs Union**

6

1. Substance of Law

- negative integration: freedom of services as a stand still clause; Association Council opened negotiations on further market access
- positive integration: only goods are covered by way of reference to EU secondary law
- instrument rather for goods; services are normally not subject to tariffs

2. Quality of Law

- international law, but direct effect in EU (no reciprocity)
- judicial review: ECJ

3. Assessment

- customs union as such has only little effects on the freedoms of services and establishment
- often basis for closer integration (e.g., Andean Community, Eurasian Economic Union)
- no passporting

Service Markets and Establishment under CETA

7

1. Substance of Law
 - negative integration:
 - national treatment; most-favoured-nation treatment; market access; domestic regulation shall not be arbitrary (clear, transparent, objective)
 - temporary entry/stay of natural persons for business purposes
 - positive integration: framework to facilitate a regime for the mutual recognition of professional qualifications (purpose: future mutual recognition agreements – MRA)
 - scope: negative list approach (but: positive list for the temporary entry of contractual service suppliers and independent professionals)
2. Quality of Law
 - international law, no direct effect (“no private rights”)
 - judicial review: investor-to-state arbitration; dispute settlement
3. Assessment
 - ambitious approach; but: parties can require national license, registering or qualifications
 - no automatic mutual recognition – potential for development
 - no passporting

Service Markets under World Trade Law (GATS)

9

1. Substance of Law
 - negative integration:
 - national treatment; most-favoured-nation treatment; market access
 - mutual recognition: framework for further negotiation
 - domestic regulation: shall be administered in a reasonable, objective and impartial manner
 - positive harmonisation: none
 - scope: unilateral commitments, positive list approach
2. Quality of Law
 - international law; no direct effect
 - Dispute Settlement Understanding
3. assessment
 - UK will remain a member of GATS (details are controversial)
 - commitments can be fixed unilaterally
 - no passporting

Service Markets and Establishment: Step Back after Brexit

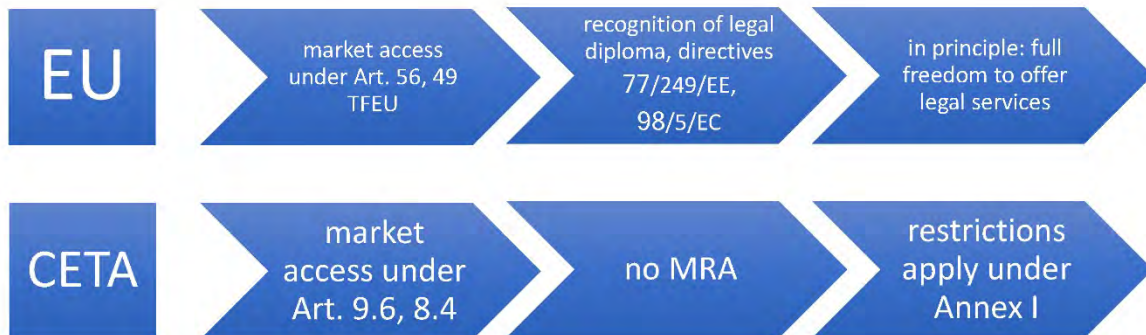
	European Union	CETA	FTA EU-S. Korea	GATS
Negative Integration	Art. 56, 49 TFEU market access, national treatment	Art. 9.6, 9.3: limited market access, national treatment Art. 8.1 ff.: limited market access for investment	Art. 7.5 f., 7.9 f: limited market access, national treatment	Art. XVI, XVII: limited market access, national treatment
Mutual Recognition	Art. 56, 49 TFEU, Principle of origin	framework to de- velop MRA (Art. 11)	mechanism on negotiation of MRA	framework for further negotiation
Common Standards	Art. 114, Art. 62, 53 TFEU	(-)	(-)	(-)
Scope	not restricted	negative list	positive list	positive list, uni- lateral
Direct Effect	yes	no	no	no
Judicial Review	CFEU	arbitration, restricted	restricted	restricted

Services and Establishment under CETA: Market Access in Detail

	EU	CETA
Market Access in the Treaty Law	Art. 56, 49: right to access markets free from unjustifiable discrimination and hindrances (e.g., national diploma) self-executing mutual recognition	Art. 9.6, 8.4: prohibition of free from unjustifiable discriminations and quantitative restrictions no self-executing mutual recognition
Secondary Law	numerous regulations and directives (see EU mapping: overview of internal market and consumer protection related legislation)	negotiation to achieve MRA
Enforcement of Law	direct effect, legal review CJEU	no direct effect, arbitration in investment disputes

Example: Cross-Border legal Service or Establishment of a Law Firm

12



Challenges for EU-legislation: **Transitory Measures to Match Legitimate Expectations**

13

- the problem: service providers and established persons from UK
- the legal issue:
 - when Brexit becomes effective: **UK citizens lose rights under Art. 56, 49 TFEU**
 - expl.: recognition of an English companies (Private Ltd.) in Germany
 - is there a legal obligation to enact transitory measures?
 - possible legal approach:
 - legitimate expectations
 - representation of continued existence of rights vs. Art. 50 TEU?
 - acquired rights
 - but: restricted to property and certain contractual rights
 - intellectual property rights would “survive” Brexit, right to work does not
- possible solution: intertemporal application of law for old cases
- better: EU legislation

Conclusions: Challenges for Negotiation and Regulation

-
1. the design of a free trade agreement must consider the specific challenges for cross-border trade in services and establishment
 2. the models CETA, FTA EU-Korea and GATS lag way behind EU/EEA
 - no comprehensive scope
 - no common standard setting
 - no direct effect of market access and national treatment rules
 3. challenges for the negotiation process with UK
 - to extend the scope of the freedom of services and establishment
 - to find a mechanism for common standards
 - to shape the principle of mutual recognition as self-executing rule
 - to come close to direct effect and effective judicial protection
 4. challenges for EU legislation: adapting secondary law
-

Presentation by Professor Dr. Sue ARROWSMITH

The consequences of Brexit for public procurement legal standards

Professor Sue Arrowsmith
University of Nottingham



Outline

- Models
 - EU procurement regime
 - The EEA (“Norway”) option
 - **The WTO option (Government Procurement Agreement – GPA)**
 - Main focus
 - GPA is robust; plurilateral only; and used as basis for EU agreements
 - Others: Switzerland, CETA, DCFTAs with Ukraine etc
- Transition issues
- Pending measures

EU

Major contracts (main legislation only)

Classic Sector Directive 2014/24
Utilities Directive 2014/25
Concessions Directive 2014/23
(classic and utilities fields)
Defence and Security Directive
2009/81

Remedies Directive 89/665
Utilities Remedies Directive 92/13

Lower value contracts of cross border interest

TFEU (all 3 key elements,
including simplified
transparency requirements)

EEA

- Applies EU rules for all three key elements (*major and lower-value contracts*)
 - Important related legislation also applies e.g. on standardisation (Reg. 1025/2012)
- Same system for notices
 - *Official Journal of the EU* for advertising, award notices etc
 - Standard forms, including European Single Procurement Document
 - Use of Common Procurement Vocabulary (CPV)

WTO Government Procurement Agreement (GPA)

- Plurilateral agreement
- Does the UK have to apply to be Party to the GPA?
 - Yes?



GPA: coverage

- Negotiated “bilaterally” – so EU/UK negotiation needed, and no MFN
 - EU/UK agreement need not be extended to others
- EU: covers (most) procurement covered by the directives, and seeks reciprocity



GPA: coverage

- EU-UK could maintain current GPA coverage
 - UK White Paper envisages “replicating” current WTO commitments

GPA: EU coverage compared with directives

1. GPA covers only major procurement (above directives’ thresholds)
 - However, UK legislation would outlaw local preference?



GPA: EU coverage compared with directives

2. GPA does *not* cover private utilities
3. GPA does not cover some utility sectors (postal services, gas and heat, oil and gas extraction, solid fuels extraction/exploration)

Many UK utilities excluded by “competitive markets” exemption

- Not e.g. water

GPA: EU coverage compared with directives

4. GPA does not cover hard defence (tanks etc)
 - Other fora?
e.g. European Defence Agency



5. GPA does not cover some services (directives’ old “Part B” services - now more regulated in EU)
 - E.g. health and social services; legal services

GPA: EU coverage compared with directives

6. Does not cover most concessions?
 - Needs clarification

7. GPA Art.III.2 allows measures relating to goods or services of persons with disabilities, philanthropic institutions, prison labour

GPA: award procedures

- Similar structure to (old) Utilities Directive
- Single set of procedures for all covered contracts
 - Much preferable to EU approach

GPA: award procedures compared with Classic Sector Directive (selected key points)

1. GPA has no single system for notices
 - UK ContractsFinder; but could UK use OJ?
2. GPA does not require electronic procurement
3. GPA does not require acceptance of self-declarations
4. GPA allows use of negotiation in any competitive procedure when stated in advance
 - EU limits for standard procurement

GPA: award procedures compared with Classic Sector Directive (selected key points)

5. GPA allows greater use of (advertised) qualification systems
 - Similar to (although a bit narrower than) Utilities Directive
6. Directive has detail on:
 - “recurrent” procurement (framework agreements and dynamic purchasing systems) - important
 - electronic auctions
7. Certain GPA rules on drafting specifications apply only “where appropriate”

GPA: remedies

- Remedies for suppliers (GPA Art.XXVIII):
 - Except where State failure to implement

= higher standard than for many WTO rules

GPA: remedies compared with EU directives

- Similar to Remedies Directives, with exceptions:
 - Independence etc of review body
 - Not important as UK already “over-judicialised”
 - Damages can be limited to costs
 - Not important in UK
 - EU 2007 measures do not apply: standstill; ineffectiveness; automatic suspension
 - More important

GPA v EU regime: summary of impact on MS27

- Coverage (assuming UK coverage remains as now)
 - Slightly? more limited market access
 - *But* could go beyond current GPA coverage
- Award procedures
 - Less strict in some ways
 - Not significant, apart from framework agreements?
- Remedies
 - Less strict – but UK review body more of a problem
- More divergence within the UK
 - Still much more simple and standard than many of MS27?

Other (non-accession) trade agreements

- Mostly modelled on GPA
 - Applies to EU agreements with non-GPA Parties as well as GPA parties
 - Latter largely concerned with broadening coverage within GPA framework, if possible
 - e.g. TTIP negotiations on US States' procurement

Other (non-accession) trade agreements

- Some aim at wider coverage and/or deeper standards than GPA, inspired by directives
 - Coverage
 - Switzerland: private utilities (“sub-GPA” standard of award procedures)
 - Award procedures etc e.g.
 - DCFTAs with Ukraine etc: gradual assimilation to *acquis*
 - TTIP negotiations
- Some provisions are “sub-GPA” standards (not of interest for UK)
 - Some entities under CETA

Transition issues (withdrawal agreement)

- Ongoing award procedures
- Arrangements etc already concluded under EU rules:
 - Modifications
 - Call-offs under framework agreements and dynamic purchasing systems; qualification systems
 - Remedies relating to procedures where contract concluded
 - Including ineffectiveness remedy
 - E-invoicing
- Retaining OJEU access for UK?

Pending measures

- Proposed Regulation on access for third country goods and services
 - Could be applied to UK where coverage less than the directives
- Accessibility Act (COM/2015/0615 final)
 - Accessibility obligations in public procurement specifications

Presentation by Dr. Malte KRAMME



Consequences of Brexit in the area of consumer protection

Dr. Malte Kramme

www.verbraucherrecht.uni-bayreuth.de

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Schedule

1. EEA Agreement
2. WTO rules
3. Conclusion

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-2-

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EEA-Model

- Consumer protection under the EEA Agreement is comparable to the EU consumer protection level
- EEA Agreement incorporates the four fundamental freedoms (goods, services, persons, capital)
- At the time of signing, the EC *acquis* was implemented in the EEA Agreement and its Annexes
- Annex XIX covers consumer protection

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-3-

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EEA Model Procedure of adoption

- Mechanism for dynamic adoption of new EU secondary law (Article 98 EEA Agreement):
 - Commission informs EFTA on planned legislation in fields governed by EEA Agreement and seeks advice from EEA experts (Article 99 EEA Agreement)
 - After adoption of the new act by the EU, EEA Joint Committee “shall take a decision” to adopt that act “with a view to permitting a simultaneous application” of the respective act (Article 102 EEA Agreement)

→ EFTA states have no direct influence on the legislative process, but are obliged to adopt EU legislation

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-4-

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EEA-Model Coverage (1)

- Wide coverage of EU consumer protection *acquis*
 - **Consumer contract law:** Consumer Rights Directive (2011/83/EU), Unfair Terms Directive (1993/13/EEC), Consumer Sales Directive (1999/44/EC)
 - **Redress:** Injunctions Directive (2009/22/EC), Regulation on Consumer Protection Cooperation (EC) No 2006/2004, ADR Directive (2013/11/EU) (under scrutiny by EEA/EFTA), ODR Regulation (EU) No 2015/524 (under scrutiny by EEA/EFTA)
 - **Commercial practices with consumer relevance:** Unfair B2C Commercial Practices Directive (2005/29/EC), Misleading Comparative Advertisement Directive (2006/114/EC), Price Indication Directive (98/6/EC)
 - **Product safety:** General Product Safety Directive (2001/95/EC), Regulation (EC) on requirements on accreditation and surveillance for the marketing of products No 765/2008, numerous sector specific product safety legislation

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-5-

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EEA-Model Coverage (2)

- **Travel and Transport:** Package Travel Directive (1990/314/EEC); Package Travel Directive (2015/2302/EU) (currently under scrutiny by EEA/EFTA), Timeshare Directive (2008/122/EC), Air Transport Regulation (EC) No 1008/2008, Air Passenger Rights Regulation (EC) 261/2004, Rail Passenger Rights Regulation (EU) No 1371/2007, Bus Passenger Rights Regulation (EU) No 181/2011
- **Financial Services:** Distance Marketing Directive (2002/65/EU), Banking Directive (2013/36/EU) (under scrutiny by EEA/EFTA), Payment Services Directive (2007/64/EC), Consumer Credit Directive (2008/48/EC), Mortgage Credit Directive (2014/17/EU) (under scrutiny by EEA/EFTA), E-money-Directive (2009/110/EC), Payment Services Directive (2007/64/EC)

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EEA–Model Coverage (3)

Regulations in the field of **Judicial Cooperation in Civil Matters** are **not covered**:

- Brussels I bis Regulation
- Uncontested Claims Regulation No (EC) 805/2004
- Order for Payment Procedure Regulation No (EC) 1896/2006/EU
- Small Claims Regulation No (EC) 861/2007
- Legal Aid for Cross-Border Disputes Directive (2003/8/EC)
- Rome I, Rome II

However: **Lugano Convention** (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) is applicable (overrules Brussels I bis for courts in EFTA and EU member states, if disputes concern EFTA member states)

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-7-

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WTO Model

- Irrespective of possible EU-UK relation agreement, the EU Treaties cease to apply two years after the notification
- Consequence: UK has same relations to EU as other third countries not associated by an agreement
- UK would neither be bound nor entitled by EU law
- EU and UK are WTO members

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-8-

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WTO Model:

Consumer Protection as a Question of Applicability of EU Law

Impact on consumer protection level

- If EU law will still be applicable after Brexit, depends, inter alia, on the UK legislation:
 - Primary UK legislation implementing EU Directives are part of UK legal order → not directly affected by Brexit
 - Applicability of UK secondary legislation implementing UK Directives and applicability of EU Regulations depend on continuous validity/amendment of the UK European Communities Act 1972
- At least at long term, the consumer protection legislation of EU and UK are likely to drift apart (due to changes of EU or UK law or due to different interpretations)

→ From perspective of EU27 consumers, applicability of EU law (conflict of laws rules) will gain in importance

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-9-

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WTO-Model Example: Online Shopping

Example: UK based operator of an online-shop delivers a defective good to a consumer situated in the EU.

Which legal basis governs the jurisdiction?

- **Before Brexit: Brussels I bis Regulation**
- **After Brexit:**
 - Unclear and disputed, if **Brussels Convention 1968** overrules **Brussels I bis Regulation** in member states that are **contracting parties** of Brussels Convention 1968
 - Courts in other member states (**non-contracting parties** of Brussels Convention): **Brussels I bis Regulation** (as far as it is applicable with regard to third countries); as far as it is not applicable, autonomous national rules apply

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-10-

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WTO Model: Example: Online Shopping

Does the consumer have the rights granted by the Consumer Sales Directive (1999/44/EC) if the good is defective?

- At least, if a member state law (implementing 1999/44/EC) is applicable

Determination of applicable conflict of law rules (from the perspective of EU member state courts):

- Applicable law for contractual obligations is governed by **Rome I Regulation (593/2008/EC)**; also applicable with respect to third countries (universal application)
- However it is debatable, if, after Brexit, **Rome Convention 1980** takes precedence over Rome I Regulation

WTO Model: Example: Online Shopping

Applicability of EU consumer law

- **Art. 6 lit. c Rome I Regulation:** Consumer contracts shall be governed by the law of the country of the consumer if that professional: **(a) pursues** his activities in the country of the consumer, or **(b) directs** such activities to that country (...).
 - **What means “directs”? (criteria: online-shop in English?; price indications in EUR; deliveries to EU member states, etc)**
- **Art. 5 (3) Rome Convention:** Consumer contract is governed by the law of the country of the consumer if in that country the conclusion of the contract was preceded by a **specific invitation** or by **advertising**, and he had taken in that country all the steps necessary on his part for the conclusion of the contract.
 - **Comparable, but not identical scope and interpretation problems**

Conclusion

- **EEA-Model**
 - provides for a comparable consumer protection level;
 - however: reduced harmonisation in field of **Judicial Cooperation in Civil Matters**
- **WTO-Model**
 - UK will not be bound to EU consumer protection law
 - To what extent UK sets forth comparable consumer protection standards (by means of autonomous adaption) is in the discretion of the UK legislator
 - Consequence: Protection of EU27 consumers by EU depends on jurisdiction, applicable law and cross-border enforcement
 - Uncertainty with regard to applicable legal framework and its interpretation → **topic for negotiations** (role model: Denmark?)
- **Other models:** Level of consumer protection depends on outcome of negotiations

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-13-

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