

Table of Contents

Foreword	V
----------------	---

Gregor Schusterschitz

The two Brexit Agreements of 2019 and 2020: Negotiation and Post-Negotiation Dynamics and Challenges		3
I.	Introduction	3
II.	The negotiations for the Withdrawal Agreement 2017–2019.....	6
	A. The first phase until December 2017 – difficult beginnings and the EU-UK Joint Report	6
	B. The negotiations between December 2017 and March 2018 – the Withdrawal Agreement	7
	C. The negotiations between April and June 2018 – tiny technical steps but nothing more	8
	D. First Finale of negotiations July till November 2018	9
	E. Attempts to ratify the Withdrawal Agreement	10
	F. Renegotiation of the Northern Ireland Protocol and conclusion of the Withdrawal Agreement July till December 2019	11
	G. Ongoing EU work during the negotiations for the Withdrawal Agreement	11
III.	The negotiations for the Trade and Cooperation Agreement 2020	12
	A. First phase of negotiations: exchange of positions in COVID times (March – June 2020)	13
	B. Second phase: movement on EU side and first compromises (June – October 2020)	14
	C. Finale (October – December 2020)	15
IV.	Common features of the negotiations	16
	A. Procedures within Council	16
	1. Working methods of the Council	16

Jaeger • Lehmann • Somek • Waibel (eds) Consolidating Brexit



2. Inclusiveness on EU side	18
3. Functioning cohesion within the EU Council	19
B. Main political aim of both sides	20
C. Unique negotiation process	21
D. Time pressure	21
E. Two phases	22
F. Parallelism	23
G. Contingency planning	24
H. Northern Ireland as stumbling block	25
V. Outlook	27

Ulrike Köhler

Overview of the Agreements: What's in, what's out, what's left ... 29

I. What's in	29
A. What's in the Withdrawal Agreement	30
1. The six Parts of the Withdrawal Agreement	30
a. Part One: Common Provisions (Art. 1–8)	30
b. Part Two: Citizen's Rights (Art. 9–39)	31
c. Part Three: Separation Provisions (Art. 40–125)	31
d. Part Four: Transition (Art. 126–132)	32
e. Part Five: Financial Provisions (Art. 133–157)	32
f. Part Six: Institutional and Final provisions (Art. 158–185)	33
2. The three Protocols to the Withdrawal Agreement	33
a. Protocol on Ireland/Northern Ireland	33
b. Protocol relating to the Sovereign Base Areas in Cyprus	35
c. Protocol on Gibraltar	35
B. What's in the Trade and Cooperation Agreement	35
1. The seven Parts of the Trade and Cooperation Agreement	36
a. Part One: Common and Institutional Provisions (Art. 1–14)	36
b. Part Two: Trade, Transport, Fisheries and other Arrangements (Art. 15–521)	37
c. Part Three: Law Enforcement and Judicial Cooperation in Criminal Matters (Art. 522–701)	38
d. Part Four: Thematic Cooperation (Art. 702–707)	38

	e. Part Five: Participation in Union Programmes, Sound Financial Management and Financial Provisions (Art. 708–733)	38
	f. Part Six: Dispute Settlement and Horizontal Provisions (Art. 734–773)	38
	g. Part Seven: Final Provisions (Art. 774–783)	39
	2. The annexes, protocols, declarations and other agreements	39
II.	What's out	39
	a. Movement of persons	40
	b. Erasmus+	40
	c. Migration	41
	d. Foreign and defence policy	41
	e. European Court of Justice	42
	f. EU databases and networks	42
	g. Data protection standards	42
	h. Others	42
III.	What's left	43
	a. Implementation of the Withdrawal Agreement, including the Protocol on Ireland/Northern Ireland and the Windsor Framework	43
	b. Implementation of the TCA	44
	c. Gibraltar	45
IV.	Outlook: What's out vs. what's left	46

Thomas Stölzl

A more continental EU? Shifting internal EU dynamics post Brexit

49

I.	EU Institutions	50
II.	Debate on the Future of Europe	52
III.	Policy Examples	55
IV.	Changes to cooperation among groups of Member States	57
	A. German-French cooperation	58
	B. Visegrád Group	60
	C. Nordics	61
	D. Benelux	62
	E. Southern Countries	62
	F. Coalitions important to Austria	63

1.	Slavkov format between Austria, Czech Republic and Slovakia	63
2.	Central 5	64
3.	Frugal 5/Future 5	64
V.	Consequences of the Russian war of aggression against Ukraine	65
VI.	Outlook	66

Katharina Meissner • Adrienne Héritier

	Post-Brexit EU Politics	67
I.	Introduction	67
II.	Post-Brexit EU politics in the near future: the Trade and Cooperation Agreement and its implementation	70
III.	Four scenarios on post-Brexit EU politics	73
	A. Disintegration	73
	B. A European federal state	77
	C. Differentiated integration	83
	D. Covert integration	88
IV.	Conclusion	91

Julia Told

	Brexit: Freedom of Establishment and Company Law	97
I.	Introductory Outline	97
II.	Freedom of Establishment – The inner European regime	100
III.	Private International Law Regimes of Member States	106
	A. General Remarks	106
	B. Incorporation Approach	107
	C. Real-Seat Approach	109
	D. The Regimes of EU-Member States	112
	E. Problems and some solutions for UK-companies and EU-companies after Brexit	113
	1. General remarks	113
	2. UK-companies with their real seat in either Austria, Germany or Greece	116
IV.	International Trade Agreements	123
	A. Trade Cooperation Agreement	124
	B. Bilateral Agreements of Austria, Germany or Greece ...	127

V.	Conclusions	128
VI.	References	129

Ursula Kriebaum

Interstate-dispute Settlement in the EU/UK

Withdrawal Agreement	133
I. Introduction	133
II. The Transition Period	135
III. The CJEU's jurisdiction after the transition period	136
IV. The dispute settlement process according to the Withdrawal Agreement	138
A. The Joint Committee	139
B. The Arbitral Procedure	140
1. Establishment of an Arbitration Panel	141
2. The Proceedings before the Arbitration Panel	142
3. The Role of the CJEU in Arbitration	144
4. The Arbitration Panel's Ruling	145
5. Remedies in case of Non-Compliance with the Arbitration Panel's Ruling	146
V. Conclusions	148

Andromachi Georgiouli • Rosa M. Lastra

Financial regulation in the UK and the EU post-Brexit:

A trend towards decoupling or recoupling?	151
I. Introduction	151
II. Gaining access to the EU single market: An assessment of the available options for the UK as a third country	153
III. UK legal reform and the future of EU retained law	158
IV. A trend towards decoupling or recoupling?	163
V. Conclusion	173
VI. List of references	175

Marcus Klamert

Third-country Financial Service Providers

I. Introduction	185
II. Options for regulating financial services	185

III.	Scope of the regulation of (financial) services under the TCA	188
IV.	Substantive liberalizing rules of the TCA	192
V.	The provisions on financial services in the TCA	194
VI.	Reservations in the TCA	196
VII.	Taking stock	198
	A. Comparison with EU law	198
	B. Comparison with WTO law	199
VIII.	Conclusion	201

Niamh Moloney

Third Countries and EU Financial Market Access: technocracy, politics, and the end of deference? 203

I.	Financial Markets, Third Country Access, and the EU: technocracy and politics	203
II.	Equivalence and Third Country Access to the EU Financial Market	208
	A. Managing Third Country Access	208
	B. The EU Equivalence Regime	211
	C. The Equivalence Regime and Brexit	215
III.	The Brexit-Era Pivot away from Deference	218
	A. The Institutional Setting	218
	B. Equivalence in Practice	219
	C. Legislative Change and the Political Setting	220
IV.	The Implications of the Brexit-era Pivot: an initial diagnosis	225
	A. Brexit Effects: deregulation and regulation	225
	B. Institutional Implications	228
	C. Policy Friction	233
V.	Conclusion	235

Eva Micheler

Improving corporate decision-making through due diligence requirements – a research programme 237

I.	Introduction	238
II.	Due Diligence Requirements	239
III.	International Initiatives	241

IV.	Absorption into national laws	242
V.	EU	243
VI.	UK	245
VII.	Room for co-operation	251

Michelle Everson

	Blindsided by Brexit: In defence of the ›remainder‹ left	253
I.	Brexit as populism: an overdue end to Brexit denial and the quest for left internationalism	254
II.	›Nowhere else to go‹, a cautionary tales of secession	256
III.	Who is lying to whom? The failure of the Left within the UK Constitution	260
IV.	Internationalism beyond Empire: civilising the post national political economy?	262

Martin Loughlin

	Brexit and the British Constitution	267
I.	Introduction	267
II.	The Constitutional Heritage	268
III.	Constitutional Reform	269
IV.	Political Consequences	271
V.	Parliamentary Government	273
VI.	The Territorial Dimension	279
VII.	Conclusion	284
	 Contributors	 287
	Editors	292

□