Editors' note

Good counsellors lack no clients: you cannot change your place, you need not change
your trade.

Freely adopted from Shakespeare, *Measure for Measure*

The metamorphic nature of Brexit poses a challenge to scholars – and so to the contributors to this book, which went into print in autumn 2020. An EU–UK Trade and Cooperation Agreement (TCA) could finally be reached on 24 December 2020, only a few days before the end of the transition period. Neither does this invalidate the findings in this book nor is that compromise (which by the time this is being written applies only provisionally, the European Parliament yet to give its consent) the end of the Brexit story. This book illustrates and analyses where, and why, tensions persist, what negotiations could possibly have yielded and may yet be to yield for both sides, along with the legal and economic implications.

The sheer volume of the Treaty – 1,246 pages – is treacherous. While a ‘no deal’ Brexit has formally been avoided for the trade of goods, the Brexit sealed by that Treaty is by no means ‘soft’. Essentially, the Treaty has established a free-trade area between the United Kingdom and the European Union, not unlike CETA, agreed by the latter with Canada. As such, the TCA confines the prohibition of customs duties to the parties in their mutual relations. Thus, it establishes no common customs area encompassing all goods in circulation irrespective of their origin, nor does it grant the ‘frictionless trade’ former Prime Minister Theresa May had in mind. Boris Johnson resigned as May’s foreign affairs secretary because he dreaded that, in reverse, her approach would thwart the British striving for regulatory autonomy in the wake of Brexit. In fact, British sovereignty in its economic relations with other countries implies a plethora of red tape, control, and documentation on all British exports to the EU and vice versa, even under the free trade régime agreed in December 2020. While routines may be expected to evolve, the costs remain huge and may even increase over time, as will the numbers of clerks required for filling in customs forms and the numbers of customs officers who will check them – especially when the grace periods for imports from the EU to the UK will be over in April and July 2021, respectively.

As regards to services, the TCA allows for far-reaching restrictions of market access by each side. For some categories of services (such as, for example, telecommunications), the agreement has specific rules in store,

but financial services are not among them. Passporting, which the United Kingdom had aspired to so vehemently, that is, unrestricted access to the entire European financial service market, is not available for British providers, which have the same status as market actors from any third country. For this sector, it has so far been a hard Brexit. British financial service providers must either move their centre of activities to the Union (and cease to be British) or comply with 'equivalent' regulatory requirements in the UK. Tellingly, in January 2021, when EU stocks had ceased to be tradable in the UK, the Amsterdam stock exchange overtook London as the biggest share trading hub in Europe. Negotiations on financial services have continued ever since but without results at the time of writing. The European Commission expects more information on the British regulatory strategy. Whether and when a supplementary agreement on financial services, which would mitigate the hardships of the legal divorce between the EU and the United Kingdom (cf. Chapter 6 of this book), will be reached seems to be in the lap of the gods.

The United Kingdom was successful in fending the 'polish plumber', who stands metaphorically for the intrusion of (mainly Eastern European) workers and self-employed persons competing with British citizens on the labour market. It also appears to have won out over the European Union in barring the European Court of Justice from adjudicating on matters regarding the agreement; this task is assigned to arbitral courts. Other subjects covered by the Treaty are, *inter alia*, fisheries (where the United Kingdom did not completely prevail, as the Union's fishing boats are not kept completely off British waters), intellectual property, subsidies, transport, agreement, cooperation in criminal matters and mutual judicial assistance. The absence of provisions on judicial cooperation in civil and commercial matters appears to endorse the analysis on the settlement of international disputes provided in Chapter 8 of this book.

Sovereignty is a core concern of the Britons and above all it means that all legislation shall be assigned to democratically elected members of the national Parliament. Yet, the TCA is not a shining example of British sovereignty. Parliament passed it within a few days with no time for studying its many pages and taking truly informed decisions. The very agreement will barely increase the sovereign rights of the British parliament, since all serious issues, and there will be many, will be decided on by 19 committees established pursuant to the Treaty. The eminent British scholar of European Law *Paul Craig* found critical words for this shift of powers not back to Britain but to technocratic institutions: 'The committee structure covers all aspects of the TCA, including topics that are overtly normative, such as regulatory cooperation and the level playing field. There is scant if any parliamentary involvement in any of this. [...] The reality is that the TCA regime has diminished democratic oversight of the decisions that will be made thereunder compared to the position under

EU law'. (P. Craigh (2021) Brexit a Drama, The Endgame – Part II, SSRN, February 2021, p. 24).

Economic globalisation implies that products are manufactured (and services provided) internationally and that hence, the national value-added content of a product gradually shrinks. The centripetal forces of free trade zones with nearly unconstrained sovereignty of its partners in matters of international trade will therefore accumulate as the international division of labour increases. The agreements on which they rest will need to be adjusted by their parties or, on a minor scale, by committees established pursuant to the Treaty. After years of idle negotiations, the TCA may be considered a milestone, but it is not the checkered flag. Negotiations on important issues not included in it (such as financial services) are continuing, and dissatisfaction with some of the agreed outcome might also draw both sides back to the negotiation table, just as if no agreement had been reached at all. The TCA is uncompleted and imperfect, which is why it provides for an option to review it once every five years. In other terms, the Brexit story is not finished yet. It is not a singular event but has always been, and will continue to be, an ongoing process. This book shall help understand both its past chapters and the ones yet to be told.

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