

## Newsletter

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## 'Brexit' - 15 months on

This TREUP conference was part of a cooperation between Queen's University Belfast School of Law and University of Warsaw, Faculty of Law and Administration, following a first conference on 26 November 2016 in Warsaw.



While academic events on 'Brexit' have proliferated over the past fifteen months, this conference offered a novel perspective in that it moved away from an inward British gaze, focusing instead on the EU and, more specifically, on the key lessons to be learnt from 'Brexit' for the future of the European integration project. The conference was structured around two plenary sessions and four thematic parallel sessions with contributions by leading scholars in the field (p.3)

## Ecological sustainability in the European Union

Ecological sustainability is a core goal for the EU and is of fundamental importance to the continued survival of life on Earth, as epitomised by global challenges such as climate change, outbreaks of famine and drought, continuing depletion of species and dwindling energy resources. Focusing on the concept of ecological sustainability, this seminar identified barriers that EU policy makers face in seeking to achieve this core goal as well as the opportunities for innovative solutions. (p.4)

## Sustainable development in trade agreements

This seminar focused on the interaction between trade liberalisation and sustainable development in the framework of EU trade agreements, discussing the impact of the ECJ's ruling on the Free Trade Agreement with Singapore as well as options to promote the energy Union strategy and the EU China Investment Agreement (p.5)

### Call for papers: EMU, New Economic Governance and Social Justice

We invite papers contributing to the academic debate on how to adjust the increasingly negative "social balance" of Economic and Monetary Union after the global economic crisis. Submission deadline for abstracts (300 words): **Friday 15 December 2017** (treup@qub.ac.uk).

# Editorial

While “Tensions at the Fringes – Regaining the Union’s Purpose” already has completed two years of action, discussions on Europe’s new variegated geographic continue to dominate our work. More projects on the impact of the UK’s withdrawal from the EU on Northern Ireland specifically have sprung up. While these often use the term “Brexit” (as do we), this is of course a misnomer particularly from a Northern Irish perspective! Complementing the work of projects approaching the Northern Irish situation from the perspective on Human Rights, a focus on the physical border or from the perspectives of national and regional law, TREUP continues to promote that there is a European responsibility to maintain the concrete laboratory of European integration on the island of Ireland. The EU has so far taken that responsibility seriously, though many local actors are apprehensive about the projected stepping down of Michael Barnier as the Commission’s chief negotiator in March 2019. TREUP has staged the second larger international academic conference on “Brexit” on 23 September 2018. The conference contributions focused on the question what the EU should learn from “Brexit”, concluding that enhancing its social legitimacy was one of the challenges, as well as addressing the crises for the rule of law on its Eastern fringes alongside the threat of deprivation and conflict on its Western fringes.

The social legitimacy theme is also taken up by the EU Commission, whose new annual working programme for 2018 plans a labour inspectorate. Also agreement on the posted workers directive has recently been achieved, as well as the proclamation of the EU Pillar of Social Rights. Accordingly, the next TREUP seminar, focusing on the social legitimacy of Economic and Monetary Union specifically, promises to be highly topical. The discussion on rule of law from substantive perspectives will be continued with our last conference in summer 2018 themed “In Lieu of Celebrating the EU’s Accession to the European Convention of Human Rights.”

Prof. Dagmar Schiek, 30 October 2018

# Brexit 15 months on—socio-legal perspectives for the EU and Europe

23 September 2017

Opening the conference, **Prof. Dagmar Schiek** highlighted that to date there is little debate, academic and otherwise, on how the EU should respond to the UK's withdrawal. She stressed that among the motives that led a majority of voters to support "Brexit" were some that were shared beyond the UK, including fears of socio-economic exclusion. To address those fears, the EU should, in her view, enhance its social legitimacy – a theme connecting the three presentations on the first panel.

The first plenary panel, on the EU's social legitimacy after the UK's withdrawal, opened with University of Cambridge **Prof. Catherine Barnard's** interim evaluation of empirical research (conducted with Dr. Amy Ludlow) into benefit claims before the competence UK tribunals. The research confirmed that EU free movers are less represented among the claimants, and frequently are successful in challenging low allocations. **Prof. Mary Daly** (University of Oxford) deliberated on how the EU's social policy will most likely move forward after the UK's departure. She reviewed the EU Commission's latest white paper on the future of Europe from a social policy perspective, indicating that "doing much more together socially" could become a viable option if addressing the problems of long term care and unemployment alongside the co-ordination of social policy at EU levels. Closing this panel, **Prof Frank Vandenbroucke** (University of Amsterdam) presented his vision of a "Social Union", in which the EU does not provide "social Europe" but instead creates a holding environment for national welfare states, which would continue to remain solely responsible for social integration in Europe.

The second plenary panel, chaired by **Prof. Yvonne Galligan** (Queen's University Belfast) started with a presentation by **Dr Steve Terrett** of a joint paper with **Prof. Robert Grzeszczak** (both University of Warsaw) on the Polish government's slow dismantling of fundamental pillars of the rule of law, and the EU's lack of reaction to this problem to date. The paper concluded that the EU Commission had probably correctly weighed the opportunities to successfully conclude an "Article 7 challenge" (given the likely vote of Hungary) and that the Treaty change necessitated by "Brexit" could offer an opportunity for reform around the rule of law. **Prof. Dagmar Schiek** (Queen's University Belfast) followed with a paper on the potential reaction of the EU to the specific threats to the island of Ireland emanating from



'Brexit'. She identified the geographical position of Ireland as one basis for the negative consequences resulting from the physical cut-off of the island from the EU by the UK, and

the relevance of EU law for the relatively peaceful coexistence of the two states on the island. She stressed that withdrawing the legal frames for socio-economic and civic integration would endanger the relative normality which had evolved on the island of Ireland and presented five building blocks by which the EU could contribute to a continuation of this process post-Brexit, including the extension of the EU Internal Market and Customs Union, EU funding programmes and the EU equality acquis to Northern Ireland. **Dr Nikos Skoutaris** (University of East Anglia) focused on the effect of de-integration on border conflicts. By detailing the border conflict solution on Cyprus he illustrated options to construct a border as well as EU coverage beyond its external borders, but concluded that these did not prevent disruption on the island of Cyprus. He argued that more flexibility would be needed for post-Brexit solutions.

The conference also included four parallel panels, running in two streams, on the following themes: free movement and social policy; the internal market and free trade; EU environmental law and policy; and European polity and society. The parallel panels included contributions from experts in those fields: **Prof. Łukasz Pisarczyk** (University of Warsaw), **Konstantinos Polomarkakis** (University of Bristol), **Dr Konstanze von Papp** (Keele University), **Dr Dylan Geraets** (Catholique University of Leuven), **Dr Bastiaan Kemp & Dr Stephan Rameloo** (University of Maastricht), **Marta Ostrowska** (University of Warsaw), **Jędrzej Mańnicki**



# Innovative approaches to ecological sustainability in the European Union: challenges and opportunities in a global economic crisis

26 May 2017

Focusing on the concept of ecological sustainability, this TREUP seminar explored the barriers that EU policy makers face in seeking to achieve this core goal, and the opportunities that these create to develop innovative solutions.

The first panel explored the principle of ecological sustainability and its role within EU law and policy. Prof **Elisa Morgera** (Strathclyde) analysed the extent to which international standards on ecological sustainability arising from the Convention on Biological Diversity are reflected in EU law and external relations. Prof. **Wilmore** (Bristol) identified key problems with the EU ecosystem agenda and argued that a shared vision- expressed in a simple language and focused on the outcomes of our planet needs- is badly needed.

The second panel analysed the challenges in integrating ecological sustainability within other EU policies. Taking a Dutch wind farm with identified negative impact on the fauna as a case study, **Sanne Akerboom** (Utrecht) discussed the problems arising within the decision-making process at the national level and possible solutions to mitigate the losses stemming from the EU law-making level. **Celia Le Lievre** (UCC Ireland) used the offshore renewable energy sector as a specific case study to challenge EU legislation governing environmental impact assessments (EIA) with re-

gards to EU objectives for decarbonisation. She recommended to move away from the current risk-averse approach towards risk-management strategies, following examples in both the USA and Canada. **Ludivine Petetin** (Cardiff) scrutinized the role and impact of environmental measures under EU law under CAP to achieve sustainable agriculture in England and Wales.

The third panel examined the role that economic and community actors can play in ensuring that the EU goals concerning ecological sustainability are being achieved at all levels. **María Dolores Sanchez Galera** (Carlos III, Madrid) defended the 'commons' paradigm for enabling us moving beyond a purely individual rights and market-oriented vision to enlarge legal instruments. **Simona Davidescu** (York) explored the emerging discourse on green economy in Romania arguing that climate change and renewable energy policy reveal the inconsistencies in the emerging green economy discourse. **Alison Hough** (Athlone IT, Ireland) explored the contribution that human rights law can make to environmental law, reminding us how the emphasis on rights was lost as the law became increasingly complex and specialised. Finally, **Peter Doran** (QUB) reviewed the role of a high-level roundtable on measuring wellbeing and its introduction as an organising principle of the 2016 NI Programme for Government.

## TREUP publications 2017

### Working papers

Johns, M. (2017) 'Local Communities and the Protection of Rights for Intra-EU Migrants: Lessons Learned from Wales before the EU Referendum', CETLS Online Paper Series, 6 (1).

### Occasional papers

Schiek, D. (2017) "'Hard Brexit" – How to address the new conundrum for the island of Ireland?' CETLS/TREUP Occasional Paper, February.

Schiek, D. (2017) 'Escaping the jurisdiction of the Court of Justice for the European Union by EUXIT?' ETLS/TREUP Occasional Paper, March .





## Sustainable development in trade agreements: EU and post-Brexit UK perspectives (11 October 2017)

Led by Dr. Billy Melo-Araujo and Dr. Federico Lupo-Pasini (QUB) this seminar aimed to provide law, political science and international relations scholars with the opportunity to explore and discuss various issues surrounding the interaction between trade liberalisation and sustainable development in the framework of EU trade agreements. The first panel, on “Sustainable Development in EU FTAs: Assessing the repercussions of Opinion 2/15 and Brexit”, included presentations by **I-Ju Chen** (University of Birmingham); Prof. **Marc Bungenberg** and Angshuman Hazarika (Saarland University); and **Dr. Billy Melo-Araujo** (Queen’s University Belfast).

I-Ju Chen addressed the implications of CJEU Opinion 2/15 (on the EU-Singapore FTA) for the future integration of sustainable development in the new generation of FTAs. Three main implications were identified: first, that the CCP is to be conducted in the context of the principles and objectives of EU’s external action; second, that the EU is to carry out its commitments for sustainable development through trade and, third, that “sustainable development in trade” primarily relate to commercial policy instruments.

Angshuman Hazarika evaluated the structure of a possible chapter on trade and sustainable development in future EU trade negotiations with

the UK after Brexit. He concluded that, despite current uncertainty (without a clear structure of a UK-EU trade agreement yet in sight) the ongoing negotiations present a unique opportunity for designing a trade agreement with ambitious sustainable development provisions, owing to the existing similarity of legislations on the subject and a common existing trade policy in the form of the present Common Commercial Policy.



Dr. Billy Melo-Araujo assessed the effectiveness of TSD chapters concluding that, while in their present form TSD chapters are little more than a “veneer”, a recent 2017 Commission discussion paper on their reform may be a step in the right direction, although these should not necessarily be regarded as being mutually exclusive.

The second panel, entitled “Sustainable Development in EU trade Policy – Looking beyond FTAs” included presentations by **Dr. Ilaria Espa** (World Trade Institute), **Cees Verburg** (University of Groningen) and **Dr. Federico Lupo-**

**Pasini** (Queen’s University Belfast).

Cees Verburg examined whether investment protection in the ECT undermines or supports sustainable development. He concluded that, based on legislation passed over the past 19 years, the ECT may not undermine the EU’s and Member States’ ability to legislate in pursuit of sustainable development and also pointed to some lessons to be learned from CETA.

Dr. Ilaria Espa examined the promotion of renewable energy in the Energy Union Strategy, placing a special focus on the electricity sector. The main goal of the renewable promotion policy is to strive towards a higher integration of the sector in the EU. Achieving this goal, however, requires more coordination among Member States as well as an enhanced cross-border ability of trade in electricity.

Finally, Dr. Federico Lupo-Pasini argued that the EU-China investment agreement on sustainability has no impact on sustainability, contending with the literature on the subject which claims that investment agreement promotes sustainability (through transparency, participation and increased scrutiny).

## Recent publications by TREUP members

Agarin, T. and Yilmaz, G. (2017) 'Talk the talk, or walk the walk? Changing narratives in Europeanization research' *Südosteuropa*, 65(1): 149-169.

Agarin, T. (2017) 'Changes in the narrative of Europeanisation. Reviewing the impact of the union before the crisis' *Südosteuropa*, 65(1): 1-9

Doherty, B., Temple Lang, J., McCrudden, C. McGowan, L. and Phinnemore, D. (2017) 'Northern Ireland and Brexit: the European Economic Area option'. EPC Discussion paper. [http://epc.eu/documents/uploads/pub\\_7576\\_northernirelandandbrexit.pdf](http://epc.eu/documents/uploads/pub_7576_northernirelandandbrexit.pdf)

McGowan, L. and Phinnemore, D. (2017) 'The United Kingdom: Membership in Crisis' in N. Nugent, W. Patterson and D. Dinan (eds) *The European Union in Crisis*, London: Palgrave Macmillan. Pp.77- 99.

Melo Araujo, B. (2017) "Brexit Britain and trade – this is where it gets tricky" *The Conversation*, 29 March 2017. <http://theconversation.com/brexit-britain-and-trade-this-is-where-it-gets-tricky-74481>

Melo Araujo, B. A. (2017) 'Setting the Rules of the Game: Mega-Regionals and the Role of the WTO' *UCLA Journal of International Law and Foreign Affairs*, 21(2), 101-153.

Najy, C. and Phinnemore, D. (2017) 'The Option of Association: The United Kingdom Post-Brexit and the European Free Trade Association', *Foraus Policy Brief*, n. 34.

Phinnemore, D. (2017) 'Article 50 triggered: here's what happens now' *The Conversation*, 29 March 2017. <https://theconversation.com/article-50-triggered-heres-what-happens-now-74436>

Schiek, D. (2017) 'Perspectives on social citizenship in the EU: From Status Positivus to Status Socialis Activus via two forms of transnational solidarity', in D. Kochenov (ed.) *EU Citizenship and Federalism: The Role of Rights*. Cambridge: Cambridge University Press, pp. 341-368.

Schiek (2017) 'Comparing labour laws in the EU Internal Market – a social actor perspective' *International Journal of Labour Law and Industrial Relations*, 33(1): 171-194.

Schiek, D. (2017) 'Intersektionelle Diskriminierung vor dem Europäischen Gerichtshof – Ein erster verfehelter Versuch? Urteil des Europäischen Gerichtshofs vom 24.11. 2016 – Rechtssache Parris' *Europäische Zeitschrift für Arbeitsrecht*, 3: 407-417.

Suttle, O. (2017) *Distributive Justice and World Trade Law: A Political Theory of International Trade Regulation*, Cambridge: Cambridge University Press.

Suttle, O (2017) 'What sorts of things are public morals? A liberal cosmopolitan approach to article XX GATT' *Modern Law Review*, 80(4): 569-599.

Wise, L. and Agarin, T. (2017) 'European style electoral politics in an ethnically divided society. The case of Kosovo', *Südosteuropa*, 65(1): 99-124.

## Forthcoming publications

Galligan, Y (forthcoming) 'Filtering out, filtering in: what place for gender in European economic plans?' in E. Weiner and H. MacRae (eds) *Towards Gendering Institutionalism: Equality in the EU*. London & New York: Rowman and Littlefield International, pp 1-16.

McGowan, L. (forthcoming) *Preparing for Brexit: Actors, Negotiations and Consequences*. London: Palgrave Macmillan.

Melo-Araujo, B. (forthcoming) 'Labour provisions in EU and US mega-regional trade agreements: rhetoric and reality', *International and Comparative Law Quarterly*.