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"Brexit and its (VAT and Custom Duties) consequences: a Tax Law perspective"

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Introduction

The starting point for this dissertation is identified in the European Union, a supranational political and economic union risen from the hashes of the second world war, in name of post-conflict cooperation the European Coal and Steel community ECSC was created through a treaty signed in Paris on 18 April 1951 by six Nations, some years later in 1957 the six countries formalised other two treaties known as Treaties of Rome, thus creating the European Economic Community (EEC) and the European Atomic Energy Community (Euratom), after that, many years later, in 1992 the signing of the treaty of European Union or Maastricht Treaty fixed a milestone, introducing clear rules, and implementing the single market and Naming the always growing community European Union (EU) after that, the number of countries that joined EU rose considerably until reaching the number of 28. In June 2016 an event that never happened in the history of the EU occurred, namely one of the 28 countries, the United Kingdom, decided to withdraw from exercising article 50 of the Treaty on European Union, which gives the possibility to every member state to withdraw from the Union, therefore the number of Member states being now equal to 27. The process of withdrawal from the EU has not been easy for both the UK and the EU since as said the first time in the history of the community there was not a precedent case to use as a reference point for the process. The effects that this event has produced and still produces are not good for sure, the uncertainty risen among all the stakeholders has caused many economic and political problems.

The scope of this document is to go through some aspects of the big Brexit case, in particular, the analysis will focus on two aspects that have been a source of uncertainty and complexity, mainly VAT and Customs Duties; the reason for limiting the range of the paper on only this arguments is since the effects of Brexit are numerous and embrace many fields, even if considering only the Tax perspective.

In other to analyse these topics, the work is composed of three chapters. The first one will reveal the voting process that led to a such decision for British citizens, and the historical reasons and cultural reasons that influenced such a choice; moving further the chapter will disclose how the two parties have managed the separation, which essentially results in a partial overview of the so-called Withdrawal Agreement with particular emphasis on the part from III to VI and the protocols. A more comprehensive examination will be provided on the transition period, which has been fundamental for arranging all the details on the new equilibrium between the UK and the EU and the

modus operandi on the effective withdrawal, that materialize in the trade and cooperation agreement, a document that will be examined as the last element of the chapter for being one of the main agreements that the two parties have arranged.
In the second chapter, the main focus will be on VAT rules, providing a detailed analysis of what are the rules in the single market which were in force for the UK before Brexit with reference to the EU Council Directive 2006/112/EC covering all the taxable transactions and the facilitations that EU provides to the business that is trading inside the single market area such as the simplification for distance selling which is a very current topic in the 3.0 economy everybody is living in; the second step of the chapter is going through the new UK rules that have origin in the Value Added Tax Act of 1994, and are in place since the finish of the transition period, the aim of the chapter will be to make a comparison between the two regulations to understand what changed, and what are the pros and cons of this situation. During the examination of the taxable transactions, some practical cases will be mentioned that have been subject to a request for a preliminary ruling by the Court of Justice of the European Union.
Finally, the third chapter will provide an introductory part on the rules of the Customs union which follow regulation number 952/2013, its principles, and strategy for the near future; the analysis will then shift to the UK regulations in place during the transition period which essentially did not have a considerable impact on UK businesses and on post-Brexit regulations on customs duties, which are the result of an ongoing process of gradual implementation, pictured by the border operating model, of rules that have been divided into three phases; the reasons for such smooth process are identifiable in the need for UK businesses to adapt with a new system and also to avoid that too many regulatory changes would discourage importers, which cannot benefits to the access on the single market thus including not having anymore the privileges given by the Union Customs Code, to keep trading. At the same time being EU the strongest contracting party, considered the UK as a third country since the beginning of implementing all the customs requirements provided all at once, thus creating an imbalance of requirements between Importing in the UK from the EU and vice versa. The last element of the chapter will be the analysis of the rules of origins that the two parties have agreed on in the 3rd chapter of the TCA. Throughout the various chapters, some paragraph will be dedicated to the analysis of the topics taking into consideration the provisions of the Ireland/Northern Ireland Protocol, which was agreed upon due to the peculiar situation in Northern Ireland which have been adding a further element of complexity to an already difficult situation. This last agreement as we will see is giving hard time to the stability of the relationship

between the two parties against all the good intentions that, at least on paper, have been the starting point in the creation of the new equilibrium between the two parties. It is worth noting, for example, the impossibility to find reliable sources on Administrative Cooperation which is a fundamental topic in the creation of a long-lasting relationship, and that if dealt with care could be a further element to achieve the intention of a good relationship between the EU and the UK.

CHAPTER 1

Overview of the UK-EU separation

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1.1 Reasons for the withdrawal of the UK from the EU

The aim of this paper is giving a general overview of what is the complicated Brexit situation with a focus on the changes occurred in VAT and Custom duties since UK is no longer part of the EU, the thesis is going to provide a synthesis of all the process of before, during and post Brexit, thus considering the reasons and the expectation that Britain had on this event, from a social, economic and cultural standpoint followed by a brief exposition of what where the measures that took place in order to smooth out the impact of such big event on the economy of the country, through the so-called "transition period" and in particular how was managed; the bulk of the paper will be about on how Brexit affected indirect taxes in UK, and in particular the change on VAT and custom duties law and what are the effects of this changes on the economy as a wide literature might confirm "without any doubt" there are changes on the economies therefore many policies are implemented in order to attract foreign capital. The referendum of the 23rd June 2016 as Marine Le Pen, at that time member of the European Parliament, said during the extraordinary plenary of the European Parliament held on the 28th June 2016, five days after the results of the voting process in the UK, she said: "The vote of the British friends in favor of the exit of the United Kingdom from EU is the most important historical event in that the continent has had witnessed since the fall of the Berlin wall" that to imagine the importance and the impact that this events had and is having on the structure of the continent. It's of easy understanding that having a country exercising Article 50 of the EU treaty i.e. the clause of withdrawal is not an easy task it takes a great amount of effort from both parties; the document that has been issued after the notification of intention of UK to withdraw from EU the 29th march 2017 required a lot of work from the European

Commission, eventually, the 12th of November 2019 the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01) was published on the official journal of European Union. While the content of this agreement will be discussed in the following pages, we now focus on the reasons behind such a great step of the Britains toward a future diverging from the EU cause. For the sake of understanding the reason for Brexit is important to clarify the historical economic, social and political factors that played a major role in this decision from the UK, this brief overview does not have the role of explaining in a detailed manner all the circumstances that led to this decision that is deferred to other papers but to give the reader the basics inputs to better understand the reasons of the choice and consequences of the referendum that took place in the country the 23rd June 2016.

1.1.1 History, society, and politics

The history of Great Britain as a major role in understanding this choice, in fact as Wind M. confirms the UK's history, is characterized by an uneasy relationship with Europe and in particular, its obsession with sovereignty is and always has been special compared to most other member states so that it may have influenced the decision to leave the EU and to hold a referendum in the first place[1]. The relationship between the UK and EU which lasted 45 years has always been complicated, beginning with the fact that the UK joined the EEC only because the EFTA was unsuccessful, the free trade zone promoted in 1960 by London to achieve a good economic influence in the area of the old continent, nevertheless the flattened of the British economy compared to the galloping economy of France and Germany made the Prime minister of that time Edward Heat in 1966 to come to terms with EU. From there, De Gaulle's veto didn't allow the UK to be accepted in the European Market for 6 years. The fight with Brussels began shortly after the 1975 referendum, in 1980 Margaret Thatcher criticised widely many aspects of the governance of Brussels[2]. and 1984, at a summit in Fontainebleau, the UK obtained its famous 'rebate' from the EEC, eventually, in 1988 the potential European Monetary Union became a

[1] WIND, M., 2017, Why the British Conception of Sovereignty Was the Main Reason for Brexit – And Why the British 'Leave-Vote' May End up Saving Rather Than Undermining the EU. *University of Copenhagen*

[2] PALMER J., 1988, Thatcher sets face against united Europe, *The Guardian* (online), available at https://www.theguardian.com/business/1988/sep/21/emu.theeuro [Last accessed 28/10/2022].

proper issue following in 1992 after the Maastricht treaty[3] where London did not join,[4] UK Prime Minister John Major, did not call a referendum on the Maastricht Treaty but ended up opting out of the single currency.[5] In 1997 Tony Blair followed the same position as Margaret, when he took over in 1997 the UK moved closer to Europe. Speaking to the European Parliament finally seemed to be inclined toward stronger cooperation not only economically wise but also from the perspective of safety and cooperation in 2005 Blair wore the clothes of a passionate pro-European even if for foreign affairs he held the traditional Britannic position[6]. The malcontent over Europe within the conservative party grew even more serious under Prime Minister David Cameron and he promised already when elected in 2010 to 'bring back powers from Brussels'. After Cameron came to power several polls made it clear, that it was British conservative voters who were escaping the Tories and were more attracted to the new anti-EU party[7]. As could be understood from this brief synthesis of the history of the UK in the EU the "relationship" between the two registered many up and down which could be considered an interesting starting point for understanding why the UK it's deeply different from all the others country when talking about Europe. According to the writings of Federico Fabbrini, Brexit is the result of a complicated and special British conception of what it means to be a sovereign state in the 21st century the feeling of intolerance toward the EU can be synthesised also by a quote from Thatcher: 'We are not asking the Community or anyone else for money. We are simply asking to have our own money back.' The UK was at the time poor if compared to the other members of the Community but ended up becoming the biggest net contributor to the EU budget. This was mainly because the UK had relatively little agriculture and thus a rather small share of farm subsidies, which at the time made up more than 70% of the EU budget[8]. The British people today understand the EU as heavy bureaucratic machinery that is the cause of many non-positive changes in their society. A vote for Brexit moreover was for some also a way to reinvigorate the past British 'Grandeur' with the UK becoming an economic powerhouse by itself. It's worth noting that the Brexit referendum is the result of decades

[3] HERKERT K., LOWEN L., MCKINNELL W., ROSE, T., 2009, Treaty Of Maastricht.

[4] The Member States which signed the Maastricht Treaty in 1992, were: Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, the Netherland, the United Kingdom. With UK not joining the common currency.

[5] GLENCROSS 2016, New budget, old dilemmas, *Centre for European Reform* pp. 8-9, 14

[6] STEPHENS, P., 2001, The Blair Government and Europe. The Political Quarterly, pp. 67-75

[7] LANDALE, J., 2016, EU reform deal: What Cameron wanted and what he got BBC News (online) available at https://www.bbc.com/news/uk-politics-eu-referendum-35622105 [Last accessed 27/10/2022]

[8] FABBRINI F., 2017, The Law & Politics of Brexit pp. 225

of internal division in the British Conservative Party on the issue of European integration. Hence, as with many other EU referendums, this referendum was called for domestic party political and electoral reasons[9]. After the Conservative Party won an outright majority in the May 2015 General Election[10], Cameron as anticipated set out to negotiate a 'new settlement' for Britain in Europe, promising to win a host of concessions from Brussels. On February 2016, Cameron finalized a deal with 27 other European leaders including the power to limit EU migrants, a treaty change so the UK would not be bound by an ever closer union, and the ability for the UK to enact 'an emergency safeguard' to protect the interests of the City of London and British businesses[11]. Yet this much-heralded 'new settlement' was widely derided by the British press for amounting to very little, and the announcement of the deal even led to a boost for the Leave side in the polls. The deal subsequently was not crucial in the referendum campaign. All the major parties in Parliament wanted to remain in the EU, including the major opposition party, Labour. The parties who voted for Remain had business interests and trade unions on their side. The governing Conservative Party itself was divided in the campaign with several members, including the former mayor of London (and now foreign secretary) Boris Johnson campaigning to leave the EU.

1.1.2 Statistical studies on voting behaviour for Brexit

One of the factors that have always been crucial in shaping public opinion is propaganda, which was widely used also in this context; The newspapers were split when it came to recommending an In or Out vote. A media study of the campaign by Loughborough University shows that Conservative politicians dominated media coverage on both sides of the campaign, accounting for almost two-thirds of all referendum-related media appearances, with David Cameron the most prominent In campaigner and Boris Johnson the most prominent Out campaigner The 'poll of polls', shown in Figure 1, reveals a very close race with a slight lead for the Remain side during most of the campaign, but with some fluctuation in the last month of the campaign when several polls indicated a leave majority.

[9] PROSSER C., 2016, Calling European Union Treaty Referendums: Electoral and Institutional Politics. pp. 182–199

[10] Election results: Conservatives win majority *BBC News* (online) available at https://www.bbc.com/news/election-2015-32633099#comments

[11] JENSEN, M., D. SNAITH, H., 2016, When Politics Prevails: The Political Economy of a Brexit.

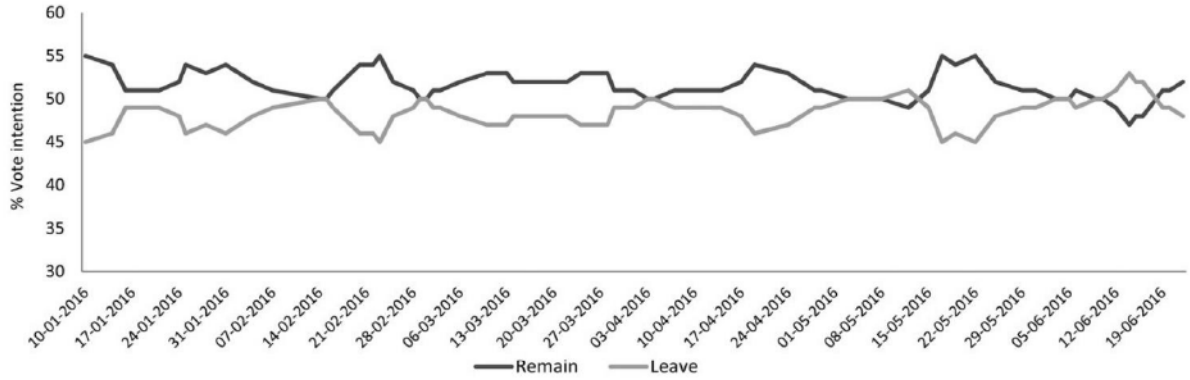

Figure 1. Referendum vote intention Poll of Polls. Source: Poll of Polls of referendum vote intention, compiled by Prof. John Curtice and NatCen Social Research, available at http://whatukthinks.org.

There were two official campaign organizations, 'Britain Stronger in Europe' and 'Vote Leave'. The campaign resulted in two sides one concerning economics and the other immigration. The propaganda was about sustaining "Remain" to avoid the economic risk of a Brexit or sustaining "Leave" to regain control of immigration.[12] The ones who were more inclined to vote Remain hoped that uncertainty on the vote would lead to vote for the status quo since there was an overwhelming consensus among experts that a Brexit outcome would have negative economic consequences for Britain. In contrast, the Leave side underlined how the referendum was a once-in-a-lifetime opportunity to regain control of Britain from the perspective of legislation and border control. Interestingly, as the research of S. Hobolt 2016 pointed out "other issues, such as sovereignty, security, democracy, and devolution, were much more marginal issues in the media coverage of the referendum". According to one YouGov poll, a wide majority of Leave voters thought that the result of this choice would be 'less immigration into Britain' if the UK left the EU, in opposition to what Remain voters thought. Moreover, a YouGov survey asked about whether Britain would improve economically or not following Brexit, and a narrow percentage of Leave voters thought Britain would lose terrain, despite a broad consensus among experts that this would indeed be the case. In contrast, the vast majority of 'Remainers' thought Britain would be worse off economically. To explore voters' reasoning further, the two authors Christopher Wratil and Sara Hobolt designed a survey where a sample of over 5,000 British citizens was asked to think about what they have personally heard during the referendum campaign and summarize the main argument in

[12] SURRIDGE, P., 2021, Leave vs. Remain: is Brexit still the main divide in British politics? *The authoritative source for independent research on UK-EU relations* available at https://ukandeu.ac.uk/leave-vs-remain-brexit-british-politics/ [last accessed 25/10/2022]

their own words[13]. To confirm what was argued before, analyzing these open-ended responses, the finding was that immigration and the economy emerge as the main arguments. Also, several other issues often central to the debate on European integration, democracy, and environmental protection, did not appear as prominent arguments for or against membership in the minds of voters in this referendum debate. The British opinion was clearly in disagreement when considering what to be the main issue of the referendum. The two most common arguments which Remain voters had against Leave relate to the economy, namely the loss of stability in the event of Brexit and the loss of economic benefits of EU membership, whereas leave voters' main concern is about immigration. Another key argument for Leaving voters is the lack of trust in David Cameron and his government. 1263 salient concerns about immigration but also anti-establishment attitudes, displaying the vote as a chance for ordinary citizens to take back control from the élites in Brussels. The analysis of vote choice below shows that such anti-élite sentiments appealed to many Leave voters. The loss of terrain of the EU on the British sentiment could be addressed as Mark Leonard underlines because for some the EU was a promise of peace and stability, for others the Single Market's promise of jobs and prosperity was at the center of attention but these possibilities ceased to be attractive, the disillusion of British people is yet another factor to be taken into consideration when thinking about the reasons that led to the referendum[14], it might be worthy to address factors that played a major role in the choice and more in general how voters decided in such referendum. Another aspect of the research by Hobolt has focused on whether voters decide based on their propensity towards the EU or whether they use the referendum to express their opinion about the government where the former focuses on individuals' values and beliefs and argues that voting behaviour in EU referendums reflects people's underlying, broad attitudes towards European integration[15]. Whereas the latter explains the voting behaviour in the EU where voters are thus expected to use their vote as a means of signalling their dissatisfaction with the government, or the domestic political class more generally.[16] As already said many studies have examined how the importance of the issue of European integration influences patterns of voting behaviour in referendums.

[13] HOBOLT, S.B. AND WRATIL, C. 2016, 'Which argument will win the referendum – immigration, or the economy?

[14] LEONARD 2016, Europe seen from the outside – the British view, European Council on Foreign Relations.

[15] GARRY, J., MARSH, M. AND SINNOTT, R. 2005, Second order versus issue voting effects in EU referendums: evidence from the Irish Nice Treaty referendums, *European Union Politics* pp. 201–221

[16] FRANKLIN, M., MARSH, M. AND MCLAREN, L. 1994, Uncorking the bottle: popular opposition to European unification in the wake of Maastricht, *Journal of Common Market Studies* pp. 455–472

When voters have a greater interest in European affairs, they are more likely to rely on their attitudes toward European integration. As the Brexit referendum was a high-salience referendum with a long and intense campaign and high turnout (72.2 percent), the expectation is that the factor of disillusion translated into Euroscepticism matters, but importantly is also the need to examine from where such opinions originate. Another aspect considered is the one that considers European trade liberalization as a positive factor for citizens with higher levels of education, occupational skills, and income, such individuals will be more supportive of European integration. Moreover, the literature has shown that a divide has emerged between the so-called winners and losers of globalization (e.g., Azmanova 2011; Evans and Mellon 2016;). In brief, the gainers of globalization namely the young and well-educated professionals in urban centers favor more open borders and immigration whereas the working class, less educated and the older oppose such openness. Of course, socioeconomic factors influence attitudes towards European integration, and other works even reveal also the education factor is considered important when analyzing the support of the EU over time, as the less educated are becoming less supportive of the integration project[17]. Carey (2002) has shown that people with a strong national identity are less supportive of European integration. There is also evidence in studies by McLaren (2002, 2006) and others that a general hostility towards other cultures can be translated into Euroscepticism and also in a negative attitude toward immigrants. Hooghe and Marks (2005) as remarked in the study of S. Hobolt have shown that individuals who conceive of their national identity as exclusive of other territorial identities are likely to be considerably more Eurosceptic than those who have multiple nested identities. Hence, the expectation is that a strong national identity, especially English identity, to be associated with the Leave vote, while voters with a European identity would be much more likely to vote to remain in the EU. Yet attitudes toward the political élite may also play a very different role in referendums, as voters used the ballot to punish the political establishment. Mudde 2007 showed how, the Leave campaign sought to frame the referendum as a battle between ordinary people and the political establishment, in line with the populist idea of a fundamental division between the "pure people" and the "corrupt elite". Hence, the Brexit vote was, at least in part, driven by such 'populist attitudes and a general disaffection with the political class[18]. Statistics from

[17] HAKHVERDIAN, A., ET AL. 2013, Euroscepticism and education: a longitudinal study of 12 EU member states, *European Union Politics* pp. 522–41.

[18]IAKHNIS, E., RATHBUN, B., REIFLER, J., SCOTTO T. J., 2018, Populist referendum: Was 'Brexit' an expression of nativist and anti-elitist sentiment? *Research and Politics* pp. 1–7 available at https://journals.sagepub.com/doi/pdf/10.1177/2053168018773964 [Last accessed 25/08/2022]

Strathclyde University showed how the preferences of staying in the EU changed in the public opinion of British society in the sense that since 1993 there has been an increase in the so-called Euroscepticism.[19]To have a complete understanding of the many reasons for the choice of the referendum we now follow the research of Sara B. Hobolt (2016) which defines four sets of factors that shaped vote choices: socioeconomic factors; geographical identities; feelings about the domestic political establishment; and, finally, policy attitudes. These factors happen to be highly interrelated. Considering the dependent variable leave vote intention in the referendum, in the survey of S. Hobolt the respondents were asked: 'If there was a referendum on Britain's membership of the European Union tomorrow, how do you think you would vote?' It has been discovered that there is very considerable stability in the predictors of vote intention and actual vote choice, thanks to the sample size (30,895 respondents), and the number of variables included in the questionnaire made the research significant for understanding the voters' behaviour for Brexit the questionnaire was divided among four models; Starting with the utilitarian one that focuses on how an individual's sociodemographic position influences her attitudes towards the EU, and in turn, vote choice, the impact of the level of education, household income, and age was examined. The second model was the identity one, which included measures of European identity as well as the strength of British and English identity. The author expected that people who feel strongly European would be more likely to remain in the European Union. In contrast, a stronger national identity is expected to be associated with the Leave vote. The third model focused on how people's attitudes towards the domestic political class can shape referendum outcomes. The expectation, in this case, was that attitudes towards the domestic political élite matter. The model included a variable that indicates which party the respondents would vote for. The author expected that if a party recommends a Remain vote, voters who feel close to this party would be more likely to also vote Remain, and vice versa for Leave. However, on the other hand, voters may also use referendums as an opportunity to punish the political establishment and vote against the status quo. The final model has taken into consideration the issue-voting model that assumes that voters base their choices on relevant policy preferences. This model thus has included several items to capture attitudes towards salient issues discussed by each camp in the campaign, including EU immigration, parliamentary sovereignty trade with Europe, and views on whether the EU has made Britain more prosperous, undermined Britain's distinctive identity, and helped

[19] BRIAN, T.,2016 The Economy: a Brexit vote winner? *in Significance*, pp. 6-7,

prevent wars. Given that so much of the debate was focused on what would have happened in the event of Brexit, the model also includes variables capturing the respondents' assessments of whether Brexit will lead to more or less trade and more or less immigration. In line with the expectation, the finding was that the better educated, the young, and the well-off are less likely to vote for Leave compared to those with low skill, the old, and the poor.[20] Simple descriptive statistics reveal a clear educational divide in the Brexit vote.

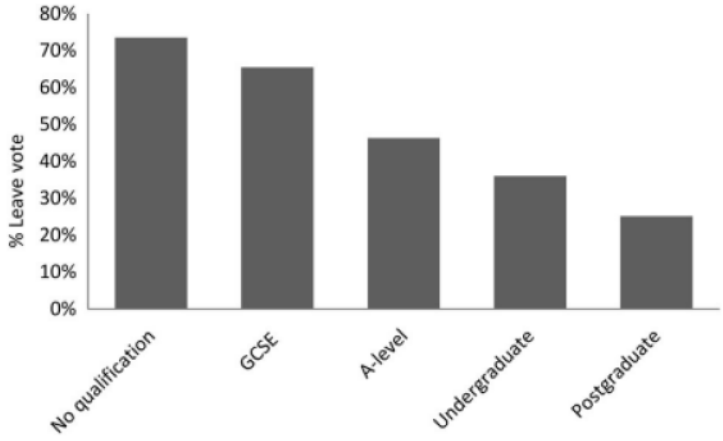

Figure 2. The education gap. Source: BES Online Panel Wave 7.

Figure 2 shows that only a quarter of people with a postgraduate degree voted to leave, whereas over two-thirds of those with no qualifications did so. This shows the strongest effect on education and age. Going from A-level education to an undergraduate degree reduces the probability of voting Leave by about 10 percentage points, all other things being equal. Men are slightly more likely to vote Leave (2 percentage points), as are those with lower incomes and those who feel that their financial situation has deteriorated. These are very substantial differences, especially when it comes to the generation and education gaps Unsurprisingly, European identity in particular is a powerful predictor of the Remain vote[21]. Overall, the results show that deep-seated identities matter when it comes to voting choices. But what about attitudes toward the political class? Model 3 demonstrates that parties matter, but not necessarily as expected. Conservative and

[20] RUNCIMAN, D., 2016, How the education gap is tearing politics apart *The guardian* (online) available at https://www.theguardian.com/politics/2016/oct/05/trump-brexit-education-gap-tearing-politics-apart [Last accessed 15/10/2022]

[21] ALABRESE, E., BECKER, S. O., FETZER, T., NOVY, D. 2019. Who voted for Brexit? Individual and regional data combined. *In European Journal of Political Economy*, pp. 132–150

Labour parties were inclined for remaining whereas the labour voters followed the party preference the conservative ones didn't.[22] The largest effect is found among UKIP supporters, who were 88 percentage points more likely to be Brexiteers which is in line with the fact that the opposition to EU membership is the main policy goal of the party. But for many voters, this referendum represented an opportunity to vote against the political class in its entirety.[23] Interestingly Hobolt in her research showed that: "disapproval of the performance of the government does not affect the Leave vote, at least not when controlling for the preferred party. So the Brexit vote cannot be interpreted as a straightforward punishment of the Cameron government. Finally, turning to the model of the attitude we see even greater explanatory power, as we would expect, since EU issue attitudes should be the most proximal cause of vote choice in such a high-intensity referendum campaign".

To summarise, the results of this study show that:

- Economy and immigration are highly correlated with vote choice.
- Economic perceptions and cultural concerns had a substantial impact on vote choices.
- Those who felt that the EU shrank the identity of Britain were much more inclined to leave, the opposite is also true.
- Those who thought Britain should have many fewer EU migrants were more likely to vote for Brexit compared to those who wanted more migrants.

In general, the analysis shows that EU issue attitudes were mobilized during this referendum campaign and helped to shape vote choices. Are such concerns unique to Britain or can we expect similar revolts against the pro-EU élites in other member states? There is evidence that people from the countryside and less educated along with the working class tend to be more Eurosceptic because they feel to be threatened by globalization and immigration as they have a more vulnerable position in the work market. This led to a rise of populism which as we already defined brought the UK where

[22] ARMSTRONG, M., 2019, Voters abandoning Conservative and Labour parties. *Statista* available at https://www.statista.com/chart/17633/voters-abandoning-conservative-and-labour/ [Last accessed 26/09/2022]

[23] IAKHNIS, E., RATHBUN, B., REIFLER, J., SCOTTO T. J., 2018, Populist referendum: Was 'Brexit' an expression of nativist and anti-elitist sentiment? *Research and Politics* pp. 1–7 available at https://journals.sagepub.com/doi/pdf/10.1177/2053168018773964 [Last accessed 17/05/2022]

it is, all over Europe many right-wing parties follow this flow such as the Danish People's Party in Denmark, the Party for Freedom in the Netherlands, Front National in France and so on who gives a voice to the fears of 'ordinary, decent people in opposition to a political establishment that has often failed to listen.[24] Whether this can be a problem for the stability of Europe was subject to the research of Marlene Wind and the resolution was a solid no. Since it is obviously, impossible to predict the future the analysis that she made has been based on a critical examination of the projections made about populism as a general western phenomenon. It can be confirmed by this paper how the special British relationship with Europe is different in terms of wanting to risk its access to the EU market in a referendum. Finally, the paper investigating recent opinion polls showed how populism has decreased during the last period and not only this but also how there is an increase in the fear of empowering right-wing populism. The obsession with 'taking back control' and retrieving some kind of formal sovereignty is to a large extent shared with in particular the Scandinavian countries Whether other countries – i.e., the Scandinavians - in the future will follow in the UK's footsteps is therefore hard to predict. However, a lot will probably depend on the deal that the UK manages to negotiate with Brussels. Denmark in particular has previously on many occasions used the UK as a negotiating shield and as a copycat for deals that Denmark wanted to obtain for itself. It is therefore also quite clear that should the brits get a deal that – when seen from an equally sovereignty-obsessed nation's perspective – is too tempting other referenda on Europe cannot be entirely excluded.[25]

It also divided the nations of the UK: while both England and Wales voted 53 percent Leave, Northern Ireland and Scotland voted Remain (at 56 and 62 percent respectively).[26] Across Europe, we find similar divisions between the so-called winners of globalization and those who feel left behind.

[24] BARTLETT, J., BIRDWELL, J., BANI, M., & BENFIELD, J. 2012. Populism in Europe: Denmark. *Open Society Fundations* available at https://www.opensocietyfoundations.org/publications/populism-europe-denmark [Last accessed 14/09/2022]

[25] WIND, M., 2017, Why the british conception of sovereignty was the main reason for Brexit – and why the british 'leave-vote' may end up saving rather than undermining the EU.

[26] BBC News, Brexit referendum results (Online) available at https://www.bbc.co.uk/news/politics/eu_referendum/results [Last accessed 14/10/2022]

1.2 Overview of the EU-UK Withdrawal Agreement

Being clarified the why of Brexit let's shift the focus to how such a big change has been implemented. It's not a shallow task to settle an agreement between such an important Nation and the EU. This was the result of a long process ended with an agreement named "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)" this document has the purpose of guaranteeing a smooth divorce that wouldn't put the two parties in a tough position to be so the union proposed a phased approach ensuring an orderly withdrawal that protected the citizens who have built their life following the membership of UK in EU[27], ensure that the Union and the UK would respect their financial obligations occurred during the period of membership and finally to make sure that Ireland would be taken care of, more on this later, moreover all the process was done in respect of inclusiveness and transparency, the former guaranteed trough the meeting with all the members states, trough the Brexit Steering Group of the European Parliament and also trough active listening from the EU's consultative bodies from stakeholders, the latter through making public all the documents shared with the stakeholders.[28] The Agreement covers many areas that were grouped into six-parts, for the sake of completeness they will be briefly covered in this paragraph, while some of them which are of greater interest for the deepening of this topic will be treated with more detail. The first part is titled Common Provisions and set the clauses for a proper understanding of the withdrawal agreement. The second part titled Citizens' Rights safeguards the right to live in the counterpart country for the ones who made this choice before the withdrawal of the UK, the rights protected are residence rights, social security, work, and professional qualifications, in addition, the provisions also concerned three protocols: Protocol on the Sovereign Base Areas (SBAs) in Cyprus, protocol on Ireland and Northern Ireland, Protocol on Gibraltar. The applicability of this right is one of the concerns that have been taken care of and being able to smooth out the bureaucracy means applying a system that is easy to implement in particular they are two: a constitutive system in which to enjoy the right of this agreement is required a mandatory application

[27]KELLERBAUER, M., DUMITRIU-SEGNANA, E., LIEFLÄNDER, T., 2022 Book review: The UK-EU Withdrawal Agreement: A Commentary, (Oxford: Oxford University Press, 2021). *In Common Market Law Review* pp. 1250–1251.

[28] See Statement by the Brexit Steering Group on UK government *White paper Press release European Parliament* 12/07/2018 (online) available at https://www.europarl.europa.eu/news/en/press-room/20180712IPR07806/statement-by-the-brexit-steering-group-on-uk-government-white-paper [Last accessed 18/09/2022]

to be applied by UK and EU member states that choose to do so and a Declaratory system in which the benefits of the agreement are automatically given to the one who fits into the conditions, this last system is applied only to EU member states that choose to do so.

1.2.1 Part III Separation issues

Over time, while the UK was still in the union many processes were into place as this was the main goal of the EU itself, winding down all the arrangements such as the four freedoms of movement (i.e. Goods, capital, people, and services) is not something that could be left unarranged, that why part III takes care of "Separation Issues" in particular it provides detailed provisions on the following[29]:

- Goods placed on the market. Which is the Title 1 of this part can be synthesized by Art 41 of the agreement: "The Goods lawfully placed on the market in the EU or the UK before the end of the transition period may continue to freely circulate, without any need for product modifications or re-labeling"[30]. This can be translated as the goods that held the freedom of circulation after the agreement keeping this right.
- Ongoing custom procedures & Ongoing value-added tax and excise duty matters. These two titles are going to be at the core of the paper, in general as for this matter all the customs, VAT, and exercise purposes, the same rules will continue to apply to the movement and transactions that takes place before the end of the transition period
- Intellectual Property. Title IV's purpose is to leave the existing EU intellectual property right protected automatically without any cost or re-examination
- Ongoing police and judicial cooperation in criminal matters. With this title the two parties agree on how criminal matters will be dealt with the orientation is to have a high degree of cooperation as of before Brexit in a such sensitive matter.
- Ongoing judicial cooperation in civil and commercial matters. To all the disputes started before the end of the transition period, the EU law will apply.

[29] KELLERBAUER, M., DUMITRIU-SEGNANA, E., LIEFLÄNDER, T., 2022, Book review: The Withdrawal Agreement, Part Three: Other Separation Provisions *Oxford University Press, 2021. In Common Market Law Review*, pp. 117-120.

[30] AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community Official Journal of the European Union C 384 I

- Data and information processed or obtained before the end of the transition period, or based on this agreement
- Ongoing public procurement and similar procedures. This matter pending before the end of the TP will be completed under EU law
- Euratom-related issues. In the atomic energy field, the UK is now considered the only one responsible for its nuclear safeguard and Euratom's international agreements will no longer apply to the UK.
- Union judicial and administrative procedures, the procedures registered and pending before the end of the transition period will be handled with the EU rules and the Court of justice of the European Union will remain competitive.
- Other issues relate to the functioning of the institutions, bodies, offices, and agencies of the union. All the current privileges and immunities will remain for activities that occurred before the end of the TP the same is true for classified information.

1.2.2 Part IV Transition period

Starting from the 1st of February 2020 the UK is no longer an EU member and lost any kind of decisional power this means that is no longer allowed to join institutional meetings such as the ones of the European Parliament or commission on any other entity of the EU. However, all these institutions keep exercising their powers over physical and juridical persons that live in the UK given by the withdrawal agreement during the TP, for instance, a student that started an Erasmus period in the UK during 2020 had the same conditions as when the country was a member of the union[31]. This period is fundamental for the UK because it gives the time to negotiate the future relationship with the EU and with third countries or international organizations without making at-risk previous agreements. During the TP the rights of UE apply to each sector of intervention, in particular, the UK:[32]

- Held the position in the Customs Union and the single market with all the four freedoms
- Kept applying the EU Laws as if it was a Member State
- Unless authorized to do so, the UK cannot apply new agreements in areas of EU-exclusive competence.
- It no longer has representation in the EU institutions.
- During the TP Common Foreign and Security Policy will apply it will be able to participate in missions and operations or projects but without any leading position or decision-making role.
- Participation in justice and internal affairs during the transition period was possible. The possibility was also to exercise the right to opt for "in or out" of the changes in this sector.

In the agreement, there was a possibility of extending the TP up to two years after the deadline of 2020 which coincides with the end of the EU budgetary period this possibility was declined after the 1st July 2020 the UK refused to extend the TP

[31] European Commission *The UK and Erasmus+* available at https://erasmus-plus.ec.europa.eu/the-uk-and-erasmus [Last accessed 10/09/2022]
[32] Brexit: What is the transition period? 2020 BBC News (Online) available at https://www.bbc.com/news/uk-politics-50838994 [Last accessed 10/09/2022]

1.2.3 Part V Financial Settlement

As in a common divorce between husband and wife this divorce comes with the price of a financial settlement. The part V of the withdrawal agreement seeks the settlement of the financial obligations between the parties that rose while the UK was a member of the EU. The 29 April 2017 the European Council published some guidelines on the field, requesting a single financial settlement where the UK terminates the membership state from all bodies and institutions and the participation in some funds related to the Union policies.[33] The agreement's main objective was to find a methodology to find the amount of the financial obligation but not to define the amount itself, there are three principles underlying the methodology: The first is that no member state should pay more or receive less because of the withdrawal, the second was that UK should pay its share of the financial obligation rose during the membership, finally, the third is that UK should pay as if it had remained in the EU.[34] As for the relationship with the European Investment bank, the UK committed to guaranteeing the financing made by the EIB while it was a Member State. After the withdrawal, the UK ceased being a member of the EIB, and the liabilities should be maintained and decreased and the paid capital of the UK should be reimbursed. The provisions for the settlement with the European central bank were the same, namely, the ECB had to reimburse the paid-in capital of the UK. As for the European Development Fund, for which the UK was liable, it needed to continue contributing to all the payments related to all unclosed funds[35]. Finally, it's important to mention the schedule of payments for the UK needed to follow a schedule to mitigate the impact of the withdrawal to the rest of the member states except for the payments linked to the EDF, the EU trust funds, and the facility for refugees in Turkey for which more specific rules must have been applied[36].

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[33] European Council, (Art. 50) guidelines for Brexit negotiations Press release 29/04/2017 available at https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/ [Last accessed 10/07/2022]

[34] OWEN, J., Brexit deal: the financial settlement *Institute For Governament* (online) available at https://www.instituteforgovernment.org.uk/explainers/brexit-deal-financial-settlement [Last accessed 12/07/2022]

[35] MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT *European Regional Development Fund: full application* Published 19/09/2019 Last updated 20/12/2019 available at https://www.gov.uk/government/publications/european-regional-development-fund-full-application [Last accessed 14/07/2022]

[36] European commission *Position paper transmitted to the UK: essential principles on the financial settlement* Published on 12 June 2017

1.2.4 Part VI Governance structure

To ensure the proper implementation and application of the agreement within the Withdrawal agreement oversight bodies were established along with a dispute settlement mechanism that served the purpose defined above. As clarified by the explanation of the WA by the European Commission: *"In the event of a dispute on the interpretation of the Agreement, an initial political consultation would take place in a Joint Committee. If no solution is found, either party can refer the dispute to binding arbitration. The decision of the arbitration panel will be binding on the EU and the UK. In case of non-compliance, the arbitration panel may impose a payment to be paid to the aggrieved party. However, if there is a question of Union law, the panel is obliged to refer it to the CJEU."*[37] As showed in figure 3, if a dispute arises a party can consult the Joint Committee (JC), in the case that the two parties do not reach an agreement one of the two can request the establishment of the arbitration panel or request a referral to CJEU through the arbitration panel, if the issue is a question of union law, then the AP shall refer the question to CJEU that will solve the dispute, otherwise it will give a reasoned assessment, if one of the parties request a review depending on the applicability the AP will refer to CJEU or give a second assessment after that, the dispute is solved.[38]

[37] European commission 2020 *The EU-UK Withdrawal Agreement explained* pp. 39

[38] FELLA, S.,2021 Governing the new UK-EU relationship and resolving disputes *UK Parliament House of Commons Library* (Online) available at https://commonslibrary.parliament.uk/governing-the-new-uk-eu-relationship-and-resolving-disputes/ [Last accessed 25/09/2022]

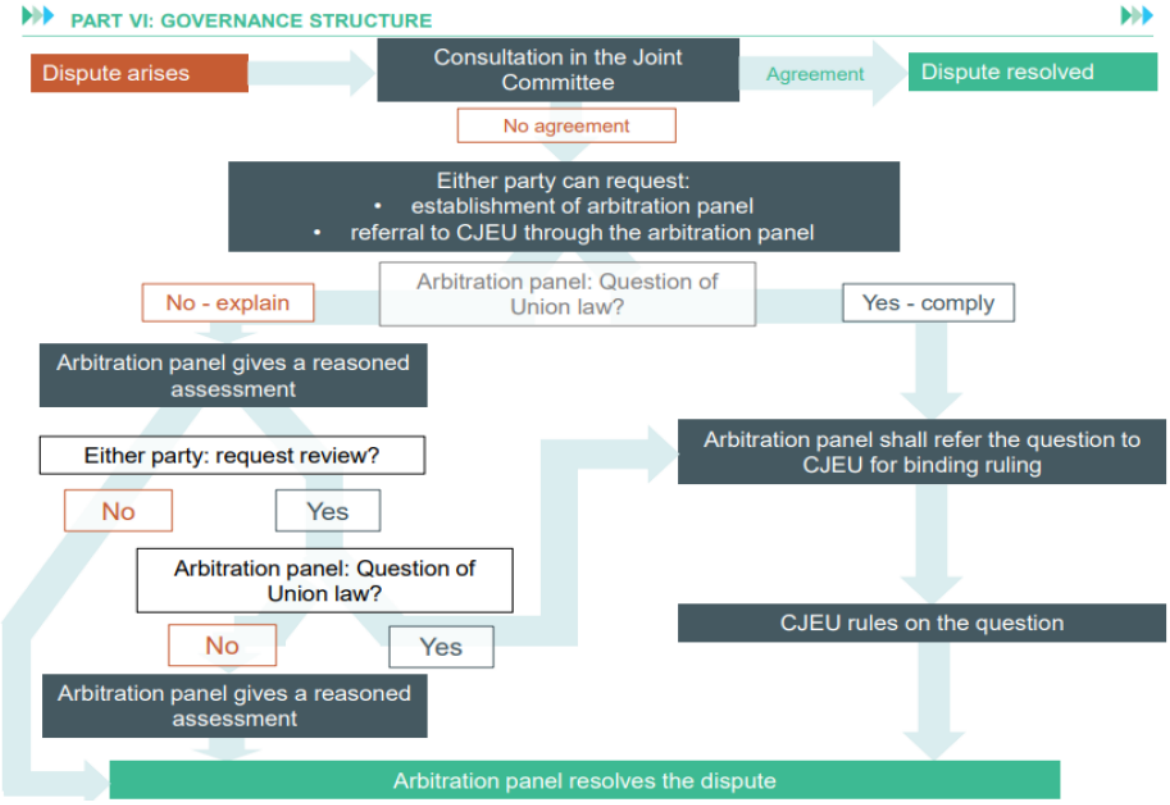

Figure 3 Source: The EU-UK Withdrawal Agreement explained page 40 06 July 2020, European Commission.

Another fundamental factor that was taken into consideration in part VI of the agreement is how to enforce it in case of an infringement, the guide of the European Commission gives us a brief explanation quoting: *"If compliance is still not restored, the Agreement allows parties to suspend proportionately the application of the Withdrawal Agreement itself, except for citizens' rights, or parts of other agreements between the Union and the UK. Such suspension is subject to review by the arbitration panel."* The process shown in figure 5 displays how if a panel finds infringement it will ask the infringing party to comply within a reasonable period,[39] which is settled by the panel itself, if the party is not compliant[40] the panel can impose a lump sum or a penalty payment if the infringing party still does not pay nor comply the other party can suspend any provision other than part II the proportion of the suspension shall be decided by the panel. So, the dispute is solved.[41]

[39] Pre-litigation phase following Article 258 of the TFEU
[40] Litigation Phase following Article 260 of the TFEU
[41] See Department for European Policies *What is an infringement procedure* available at https://www.politicheeuropee.gov.it/en/activity/infringement-procedures/what-is-a-infringement-procedures/ [Last accessed 28/10/2022]

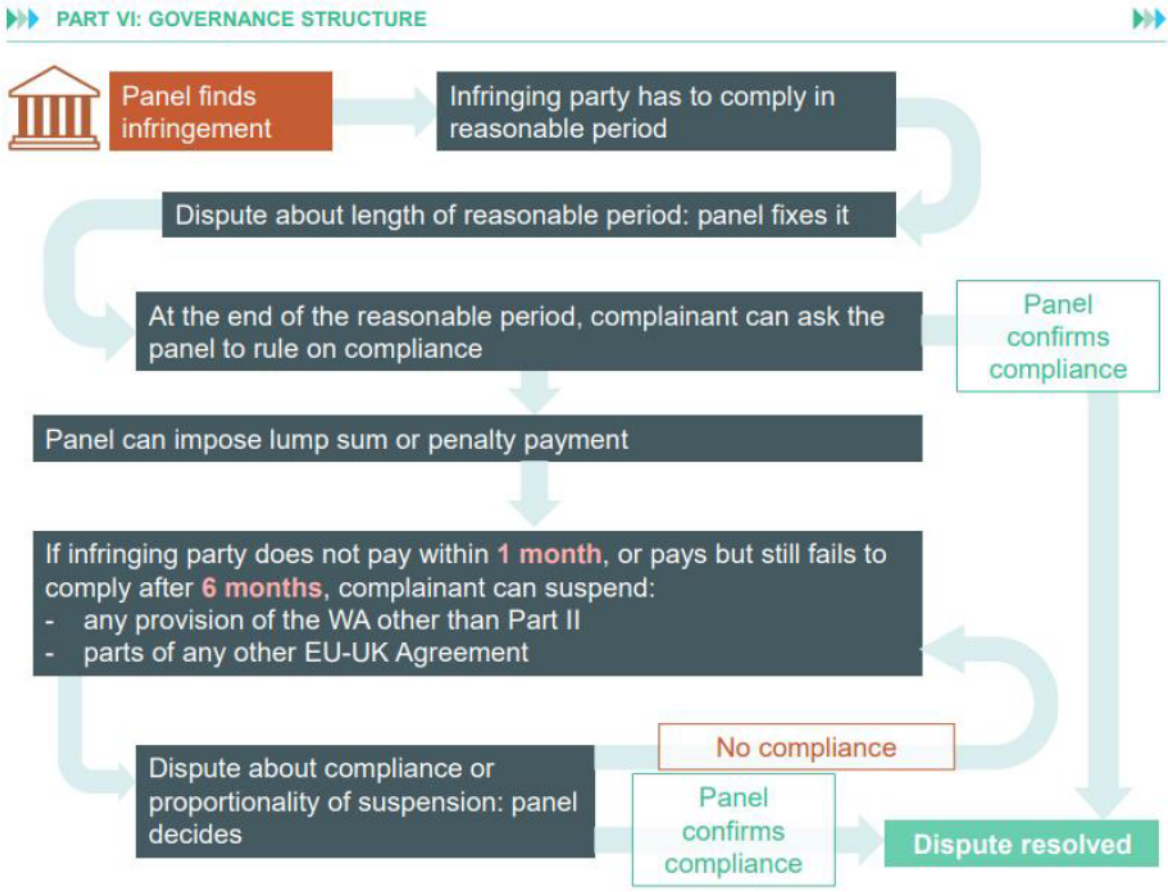

Figure 4 Source: The EU-UK Withdrawal Agreement explained on pages 40-41 06 July 2020, European Commission.

1.2.5 Protocols

The three protocols are settled in title IV of the withdrawal agreement and are essential to define situations which will be briefly described below:

Protocol on Ireland and Northern Ireland

The geopolitical situation in this area is peculiar because the northern Ireland is officially a territory of the UK, while the rest of the of Ireland is an independent republic and still a member of the EU, this translated in a border problem once the Brexit arose, the provisions foresaw had the scope of avoiding hard border on the island of Ireland and at the same time safeguard the integrity of the single market, to do so, Northern Ireland will remain aligned to a set of EU rules[42] (i.e. Legislation on VAT and excise, legislation on product requirements, sanitary rules "SPS rules", rules on agricultural production/marketing, state aid rules) the other objective was to protect the Good Friday agreement, this meant recognising that Northern Ireland is part of the custom territory of UK, through providing that it can be included in the territorial scope of UK's independent trade policy and that the UK can negotiate access to third country markets for northern Irish goods and finally, the last objective is to ensure that northern Ireland remains in the UK's custom territory, the process to achieve this objective can be synthesized by an example: if a good is sent from London to Belfast, it has to be subject to all the EU import formalities and eventually, EU tariffs if the good is at risk of entering the EU, if the contrary if a good is sent from Belfast to London, it has to be subject to EU export formalities and then it will be up to UK to determine the entry formalities. These regulatory provisions are subject to the consent of the Northern Ireland Assembly which can decide after 4 years of application whether to continue applying the rules or not, if it decides to stop applying there will be a cooling-off period of two years where the EU and UK will decide which alternative measure must be taken[43]. Other provisions are addressed in this protocol, such as the common travel area between Ireland and the UK furthermore UK's commitment to no diminution of rights safeguards and equality of opportunity, and north-south cooperation are of main relevance.

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[42] BERBERI, C. 2017, Northern Ireland: Is Brexit a Threat to the Peace Process and the Soft Irish Border? *Revue française de civilisation britannique. OpenEdition*

[43] TOBIN, J., 2020 Brexit: Protocol on Ireland/Northern Ireland Democratic Consent Regulations. *House of Lords Library UK Parliament* (Online) available at https://lordslibrary.parliament.uk/brexit-protocol-on-ireland-northern-ireland-democratic-consent-regulations/ [Last accessed 18/09/2022]

Protocol on the Sovereign Base Areas (SBAs) in Cyprus

This second protocol protects the interests of citizens of Cyprus who live in the SBA's areas after Brexit as suggested by the European Commission: "The Protocol aims to ensure that EU law, in the areas stipulated in Protocol 3 to Cyprus's Act of Accession to the Union, will continue to apply in the Sovereign Base Areas, with no disruption or loss of rights, especially for the thousands of Cypriot civilians living and working in the Sovereign Base Areas. This applies to several policy areas such as customs, taxation, goods, agriculture, fisheries, and veterinary and phytosanitary rules. The territory of the Sovereign Base Areas will continue to be part of the customs territory of the Union. Goods produced in the Sovereign Base Areas will be goods in free circulation in the EU. The Protocol confers responsibility on the Republic of Cyprus for the implementation and enforcement of Union law concerning most of the areas covered, except for aspects related to the application of the Green Line Regulation."[44]

Protocol on Gibraltar

This protocol is the result of a bilateral negotiation between Spain and the UK in respect of Gibraltar, the topics subject to negotiation were citizens' rights, tobacco, and other products, environment, police, customs, taxation, and protection of financial interests. [45]

[44] KENTAS, G., 2018, A Critical Assessment of the Cyprus Protocol Annexed to the UK's Withdrawal Agreement *The Cyprus Review pp. 317-345*

[45] ADAMS, C., 2021, The Withdrawal Agreement, Protocol on Gibraltar. *The UK-EU Withdrawal Agreement. Oxford University Press.*

1.3 Trade and Cooperation Agreement

From the 1st of January 2021, the UK left the single market and customs union thus losing all the rights and benefits proper of a member state such as the four freedoms this will affect all the stakeholders involved in cross-border affairs[46]. To reduce the impact of this big change in the system of the two-party a great effort was done on negotiating the "Trade and cooperation agreement" which will leave the two parties with new full authority over their regulations but at the same time even without scoring the same level of cooperation, will be a step ahead to more classic free trade agreements. The objective is to preserve close cooperation between the two parties, the agreement consists of four major pillars:

1.3.1 Free, fair, and sustainable trade

The agreement provides significant benefits compared to the WTO terms, giving priority to the protection of labour and social standard, fighting against climate change, and making use of tax transparency through common high standards that are associated with a dispute settlement mechanism that ensures fair competition between companies of the two different parties which have the right to take measures in case of unfair competition. [47]The trade is left at zero tariffs and to benefit from these preferences, businesses must fulfil the rules of origin[48], since the UK is no longer in the single market there is a provision on custom checks that will apply, also several facilitations for a low-risk product was agreed the EU-UK Agreement also provides for cooperation in many areas of mutual interest. The agreement will prevent unnecessary technical barriers to trade, e.g., by providing for self-declaration of regulatory compliance for low-risk products and facilitations for other specific products of mutual interest, such as automotive, wine, organics, pharmaceuticals, and chemicals. However, all UK goods entering the EU will still have to meet the EU's high regulatory standards, including food safety (e.g. sanitary and phytosanitary standards) and product safety; finally, the cooperation includes also the recovery of customs duties and VAT frauds. In the field of services also a new higher

[46] BARNARD, C., LEINARTE, E., 2022, Movement of Goods under the TCA. *Global Policy. Wiley.*
[47] World Trade Organization, *Principles of the trading system* available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm [Last Accessed 10/07/2022]
[48] See Chapter 3

degree of friction is in place such as with people that are facilitated to travel in short-term or in temporary secondments of highly skilled employees.[49]

1.3.2 Connectivity, fisheries, sustainability, and shared opportunities

The agreement provides for cooperation in areas of mutual interest, for example, transport is an essential driver of economic benefits in EU-UK relations. A high amount of goods and people are carried between the borders thus it's really important to maintain the connections. The EU-UK Agreement will ensure continued air, road, and maritime connectivity, supporting these flows through supporting safety security, and air traffic management. As for road transport, the agreement provides full transit rights. Over the years, EU and UK energy markets have become deeply interconnected. So that even if the UK is no anymore in the single market the agreement will facilitate the flow of energy with the cooperation of renewable energy sources. As for the fisheries, the EU vessels can access UK waters for 5.5 years more, afterwards, there will be an annual consultation to agree on fishing opportunities also in line with environmental sustainability.[50]

1.3.3 A framework for citizens' security

As for law enforcement and judicial cooperation in criminal matters, the two parties have agreed to establish a new framework that allows for strong cooperation between national police and judicial. The Agreement gives continuity to the commitment of the parties regarding fundamental rights following the European Convention on Human Rights (ECHR). In case the ECHR is not followed by the UK the counterparty will suspend cooperation on law enforcement and judicial matters. The Agreement also includes a commitment by the EU and UK to uphold high levels of data protection standards. Data sharing is a central factor in the fight against serious international crime. In this matter, the UK will no longer have direct access to sensitive EU as this is provided only to the Member States nonetheless, it includes ambitious arrangements for data including, strong cooperation of judicial authorities between, for example supporting the swift surrender of criminals. This level of cooperation is unprecedented for a non-Schengen third country

[49] EURATEX, 2020 Trade Policy review (Online) available at https://euratex.eu/news/euratex-for-free-fair-and-sustainable-trade/ [Last Accessed 10/07/2022]

[50] European Commission 2021, EU and UK reach agreement on fishing opportunities for 2022 *Directorate-General for Maritime Affairs and Fisheries* available at https://oceans-and-fisheries.ec.europa.eu/news/eu-and-uk-reach-agreement-fishing-opportunities-2022-2021-12-22_en [Last accessed 28/10/2022]

but leaves it unlikely to be a member state of the union in some specific cases where the parties can be independent. Lastly, the Agreement provides for cooperation in combating money laundering and the financing of terrorism.[51]

1.3.4 EU-UK governance framework for lasting cooperation

Since the agreement is complex and insists on many criticalities, governance for the agreement is needed that is to give applicability to the content of the document. This resulted in the establishment of a Partnership Council composed of members of both parties that will oversee the implementation of the agreement if a solution to a disagreement cannot be found that an independent tribunal will rule on the matter. As said before in the paper, without proper enforcement the ruling cannot be effective that's why is foreseen the possibility to suspend market access for example by reintroducing tariffs in the sector affected by the dispute, moreover for the so-called "essential elements" of the agreement such as climate change, fundamental rights, and so on any violation will be met by the suspension or termination of a part or the entire agreement, which is, of course, a drastic measure which takes place whenever a breach of what is considered hot topics is breached.[52]

[51]UK Department for Exiting the European Union, 2018, *Framework for the UK-EU Security Partnership*
[52] HENÖKL, T. 2018, How Brexit affects EU external action: The UK's legacy in European international cooperation. *Futures. Elsevier BV.*

CHAPTER 2

Development of the VAT regulations after Brexit

TABLE OF CONTENTS: 2.1 Introduction – **2.2** Importance of VAT in Europe – **2.3** VAT rules in Europe – **2.4** Taxable transactions – **2.4.1** a) The supply of goods – **2.4.2** b) Intra-community acquisition of goods – **2.4.2.1** Triangulation & VIES – **2.4.3** c) Supply of services – **2.4.4** d) Importation and Exportation of goods – **2.5** VAT in the UK – **2.6** VAT rates in the UK – **2.7** Import of goods in the UK – **2.7.1** Intrinsic value of the consignment is not more than 135£ – **2.7.2** Intrinsic value of the consignment is more than 135£ – **2.8** Import of services in the UK – **2.9** VAT Group – **2.10** The special Case of VAT in Northern Ireland

2.1 Introduction

In the following statement of Kathryn James (2011) shared through the research named Exploring the Origins and Global Rise of VAT it's possible to perceive the importance of such tax and its weight in the portfolios of sources of funding in the hands of the majority of the countries of the OECD[53] except for the US that agreed for a different tax the so-called "Sales Tax".: *"at the beginning of the 20th century, the Value Added Tax (VAT) has been adopted by more than 160 countries and accounts for approximately 20 percent of worldwide tax revenue"*. The origin of this tax is not so clear, it can be attributed to Wilhelm Von Siemens in 1918 or to Thomas S. Adams.[54] The definition of VAT can be found in many sources, for the sake of this paper Directive 2006/112 will be taken into consideration widely and it provides the following definition: *"it is a consumption tax on goods and services that is levied at each stage of the supply chain"* among the various definitions, analysing this directive is important because it plays a major role in the legislation of VAT in Europe and it's an important starting point to understand the UK legislation after Brexit, a more detailed description about what the directive requires and what are the changes for the UK after its withdrawal will follow.

[53] The Organisation for Economic Co-operation and Development is an intergovernmental organisation with 38 members, it was funded in 1961 with the purpose of stimulating the world trade and economic progress.

[54] See JAMES, K., 2012, The Rise of the Value-Added Tax *Cambridge University Press*

2.2 Importance of VAT in Europe

Before entering the field of VAT, it is worth having a look into the system of funding of the EU and describing why the fiscal matter is so important for the correct functioning of Europe.

Besides its importance for the tax policy, which will be addressed in the next paragraph, indirect taxes are two of the four main sources of funding for the EU: The national contribution being equal to 80% of the total stream of revenue of the Union is composed of 80% of Revenues coming from the Gross National Income GNI and the 20% around 17.000 million Euros coming from VAT the rest is coming from Traditional own resources which are custom duties and, finally, other revenues, namely, revenues from other EU institutions[55].

From 1 January 2021, for the EU budget 2021-2027 in line with the environmental sustainability objectives, a new source of revenue is implemented, namely, the contribution based on the non-recycled plastic packaging waste.[56] There are different rates of VAT depending on the type of good but also depending on the discretion of each member state to apply a different rate, with some limits: the general rate has to be at least 15% and there's the possibility of applying two reduced rates of at least 5% for specific goods. The national provisions on VAT are left unchanged for the UK, the only change that occurred after Brexit is that the UK no longer has to support EU accounts providing a percentage of VAT collected from the taxpayers[57], for the sake of completeness a paragraph will be dedicated on the description of the VAT regulation in the UK and deeper analysis will follow on the VAT system in Europe and what are the changes occurred after the withdrawal in terms of International transactions.

[55] European Commission *National contribution* available at https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/revenue/own-resources/national-contributions_en [Last Accessed 25/10/2022]

[56] European Commission *Own Resources* available at https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/revenue/own-resources_en [Last accessed 05/08/2022]

[57] HM Government The benefits of Brexit 2022 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexit.pdf [Last accessed 16/06/2022/]

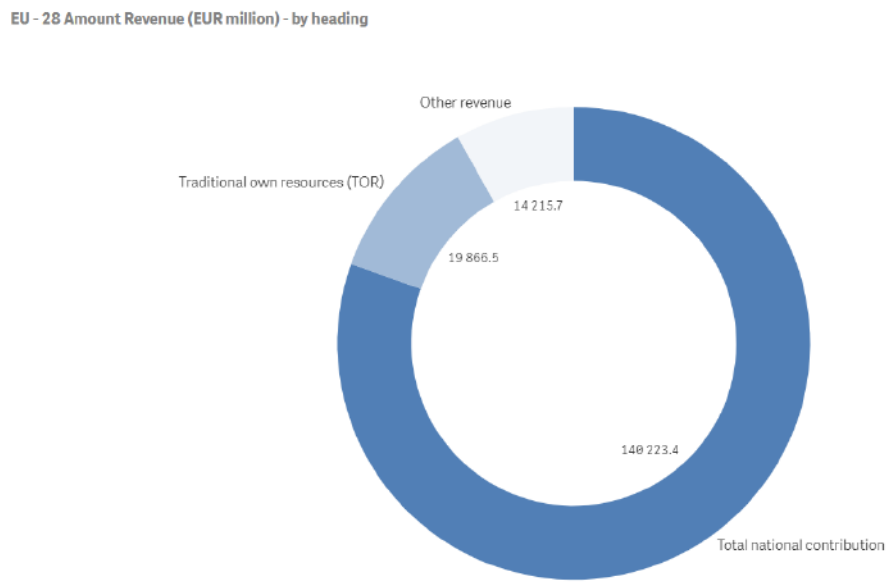

Figure 5 EU spending and revenue Interactive chart showing the EU spending and revenue for the 2014-2020 period by year and by country.

2.3 VAT rules in Europe

At the basis of the general tax policy there's the Treaty on the Functioning of the European Union (TFEU)[58] the Tax policy has two components: Direct taxation[59] that is not directly governed by EU rules, the power to tax is, in fact, in the hands of the member states, which are reluctant to give up their fiscal authority and autonomy, to overcome this potential friction several directives and the case law of the CJEU establish harmonised standards for taxation. Regarding harmonisation is important to dedicate some lines to address what are the main goals of the EU, in 1980, to achieve it an EEC Treaty listed the fundamental objectives, such: Establishment of a common market, which will enable the free movement of people, goods, services, and capital and the operation of free competition; Coordination of economic policies within member states; Institutions that will deal with common policies such as foreign trade, agriculture, transport, energy, regional policies, and environment; Funding in the form of contributions of the member states of the community will be

[58] ANGERER, J., 2022 General tax policy *European Parliament Fact Sheet on the European Union* available at https://www.europarl.europa.eu/factsheets/en/sheet/92/politica-fiscale-generale [Last accessed 21/10/2022]

[59] A direct tax is a tax that a person or organization pays directly to the entity that imposed it. Examples include income tax, real property tax, personal property tax, and taxes on assets, all of which are paid by an individual taxpayer directly to the government. (Source Investopedia)

replaced by the Community's sources The legal base upon which the Union is authorised to adopt directives on the approximation of laws is Article 115 with two specific objectives in mind, namely, the prevention of tax evasion and the elimination of double taxation with the task of avoiding distortion of competition under the single market. Indirect taxation[60] which is the other component of the Tax policy is coordinated and harmonised by the EU through laws on value-added tax (VAT) and excise duties. The EU also ensures that competition on the internal market is not distorted by variations in indirect taxation rates or other systems giving businesses in one country an unfair advantage over others.[61]. Throughout the chapter is going to be referred to a wide number of different pieces of legislation, some of which might seems relatively old if the velocity of the development of the market is taken into consideration, therefore it's worth precising that any directive such as the 2006/112/EC was updated many times, and also that many implementing regulations were added to provide a more practical direction to the stakeholders.

2.4 Taxable transactions

As underlined before it's important to focus on an overview of some parts of the directive on VAT which gives direction to the member states on the main transaction that are taxable for VAT purposes the article 1 of the VAT directive provides a punctual definition of its scope: *"establishes the common system of value added tax (VAT)."* that is crucial for reaching the goals highlighted in the previous paragraph; the VAT system is based on the paragraph 2 of the same article: *"The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged"* if the article would stop at this point al the transaction would be charged with VAT an so following the chain of production the same good would be charged many times, that why the article follows: *"On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components. The*

[60] An indirect tax is collected by one entity in the supply chain, such as a manufacturer or retailer, and paid to the government; however, the tax is passed onto the consumer by the manufacturer or retailer as part of the purchase price of a good or service. The consumer is ultimately paying the tax by paying more for the product. (Source Investopedia)

[61] EUR-LEX 2018available at https://eur-lex.europa.eu/content/summaries/summary-21-expanded-content.html?locale=en [Last accessed 23/10/2022]

common system of VAT shall be applied up to and including the retail trade stage." That is to say that the taxable person will be able to deduct the VAT paid, therefore only the final consumer will be subject to the tax. Following article 2 of the directive 2006/112/EC, it's possible to define all the transactions that shall be subject to VAT, namely:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such.

(b) the intra-Community acquisition of goods for consideration within the territory of a Member State

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such.

(d) the importation of goods.

2.4.1 a) The supply of goods

The supply of goods is the first chapter of taxable transactions which corresponds to title IV of the directive 2006/112/CE it begins with article 14 which in paragraph one provides the following definition: "*Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner*" as it will be disclosed for all the taxable transaction one important element to determine is the place where the transaction is considered to occur, or, in other words, the fiscal jurisdiction applicable to the transaction, namely, which state will benefit from the tax revenue and to the other side of the coin, where the taxable person shall pay the VAT.

In the case of the supply of goods, two situations are distinguished through articles 31 and 32.

The first is the supply of goods without transport: "*Where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when the supply takes place.*"

This situation is also the most intuitive, for example, if an Italian tourist, purchases a t-shirt in a shop in Greece, the Greek VAT arises in force of art.31 of the directive.

The second is the supply of goods with transport: "*Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins. However, if dispatch or transport of the goods begins in a third territory or third country, both the place of supply by the importer designated or recognised under Article 201 as liable for payment of VAT and the place of any subsequent supply shall be deemed to be within the Member State of importation of the goods.*"

When the transport arises within the same territorial jurisdiction, such as a supplier of gears from Padua that supply the products to a customer in Palermo, Italian VAT will be charged and the place of supply considered is Padua, if instead, the same supplier imports the gears from China and the supply it to a customer in Berlin, following the same article Italian VAT will be charged.

Article 33 notwithstanding the previous one, defines: "*the place of supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that in which dispatch or transport of the goods ends shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.*" To apply the derogation and consider the place of supply as the place

where the transport of the goods ends two conditions have to be met:
(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT under Article 3 (1) or for any other non-taxable person;
(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.
Finally, the last paragraph of the same article takes care of the situation when the goods supplied are imported from a third country, in this case for VAT purposes, they shall be regarded as having been dispatched or transported from the Member State of importation.
It's worth showing how under this article, problems of double taxation can arise, for example, in the case C-276/18 of the company KrakVet Marek Batkoo sp.k. v the Hungarian fiscal authority. KarkVet is a Polish company that sells products for animals in Hungary through e-commerce, moreover, it's clear that it does not have a permanent establishment in Hungary. The company offered to its customers the possibility to sign a contract with another company, owned by a relative of the owner of KrakVet, for the shipment of the products, or pick up the goods for the shop of the supplier, or even choose another company for the shipment, the point is that splitting the transaction in to two, namely, the transport and the supply of the goods, making both independent between each other, the supplier was is able to avoid article 33 of the directive and in particular taking advantage of the wording "*of goods dispatched or transported by or on behalf of the supplier"* so the point of the controversy was whether the goods where or not transported in behalf of KarkVet; the national judge interrogated the CJEU, asking whether the article 33 has to be interpreted in the sense that, when the goods are sold from a supplier established in a member state and the customers are from another state, and when those goods are shipped by a third company suggested by the supplier those goods have to be considered as shipped by the supplier; the CJEU, provided the following interpretation on the matter[62]:
The court recognized the absence of evidence of a fraudulent operation[63] and points out that the freedom of allocation of the activity of a taxable person in such a way to obtain a legal reduction of the tax burden, thus underlying the need of demonstrating the fraudulent construction in the relationship between the shipment company and the

[62] The judgment concerns also the cooperation between administrations of different states and the anti-tax avoidance cooperation between fiscal authorities, for further information go to: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0276
[63] Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, articles 88-89

supplier and not the mere link between the two persons[64] that in this case the goods cannot be considered as shipped by the supplier[65] Recognizing the national judge as the person appointed for establishing whether or not there's an effective link between the supplier and the carrier, the CJEU provides him some feedback on how to do so such as[66]: Contractual clauses between the two taxable persons[67], website structure[68], risk of transportation, and who is liable for an eventual compensation on damages of the goods[69], finally also check if the customer has entered into one or two distinct contracts one for the supply and one for the shipment.[70]It's important to underline that since 2006, the directive was subject to many modifications due to the changes in the market conditions such as the increase in popularity of e-commerce, in particular, it's interesting to take a closer look at the modifications given by the COUNCIL DIRECTIVE (EU) 2017/2455 of 5 December 2017 which following its article 2 are effective since 1 January 2021[71], the article 2 is also the one that implements the major changes interesting for the court case above, in particular, the article 14 of the directive 112/2006 was modified adding the fourth paragraph:" *For this Directive, the following definitions shall apply: (1) 'intra-Community distance sales of goods' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met: (a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;*

[64]Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, articles 93-95

[65] Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, article 54

[66] Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, article 64

[67]Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, articles 66-69

[68]Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, articles 70-75

[69]Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, article 77

[70]Judgment of the Court (Fifth Chamber) of 18 June 2020, KrakVet Marek Batko, Case C-276/18, EU:C:2020:485, articles 78

[71] Due to Covid 19 this date was postponed to the 1st June 2021

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;
(2) 'distance sales of goods imported from third territories or third countries' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:
(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;
(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.';"
it's important to stress how the first point now includes the wording "*including where the supplier intervenes indirectly in the transport or dispatch of the goods"* thus solving the problem that arose in the court case above.
To quote the explanatory notes on VAT e-commerce rules published in September 2020, to ensure effective collection of VAT, and, at the same time, reduce the general administrative burden[72]. the following Article is added*: 'Article 14a 1. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal, or similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, that taxable person shall be deemed to have received and supplied those goods himself. 2. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal, or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself.'* Meaning that the taxable persons who facilitate distance sales of goods through the use of an electronic interface will be involved in the collection of VAT on those sales.

[72] European Commission Directorate-General Taxation and Customs Union Explanatory Notes on VAT e-commerce rules Published September 2020

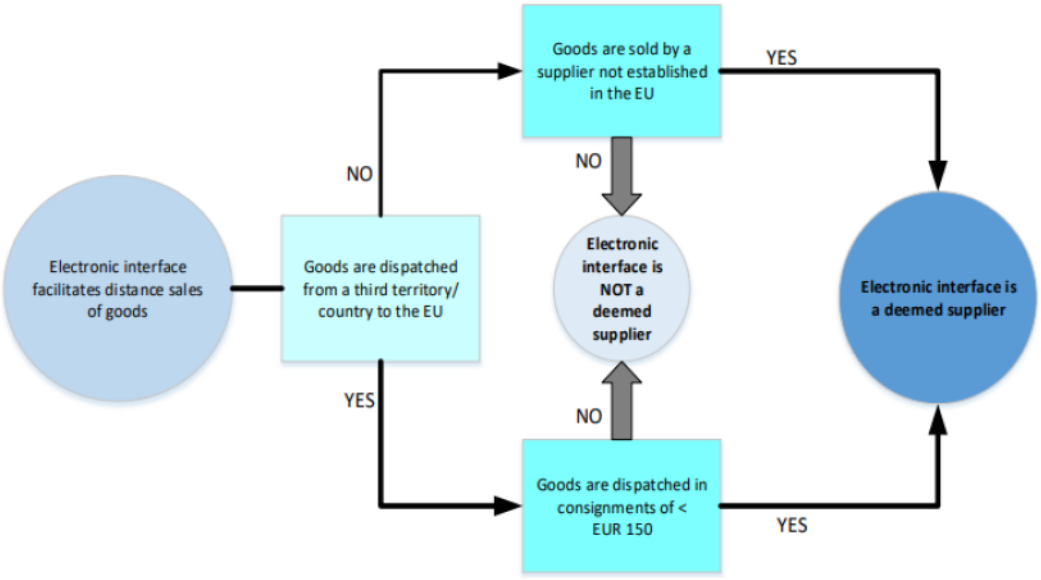

Figure 6 Supplies of goods covered by the deemed supplier provision

Whenever there's an importation of goods from a third country Article 14a will regulate the e-commerce for distance selling of goods that have an intrinsic value which is less than 150 € in this case the e-commerce is considered as a deemed supply thus as a taxable person two operations will be taken into consideration:[73]
First is the acquisition of the goods by a third-country supplier, to which no VAT liability will arise
Second is the supply of the goods to a customer, to which the VAT will be applied in the country of the customer. (see figures 6 and 7 for reference)

[73] For more information see Your Europe, E-commerce, distance, and off-premises selling Last Updated 23/06/2022 available at https://europa.eu/youreurope/business/selling-in-eu/selling-goods-services/ecommerce-distance-selling/index_en.htm [Last accessed 19/09/2022]

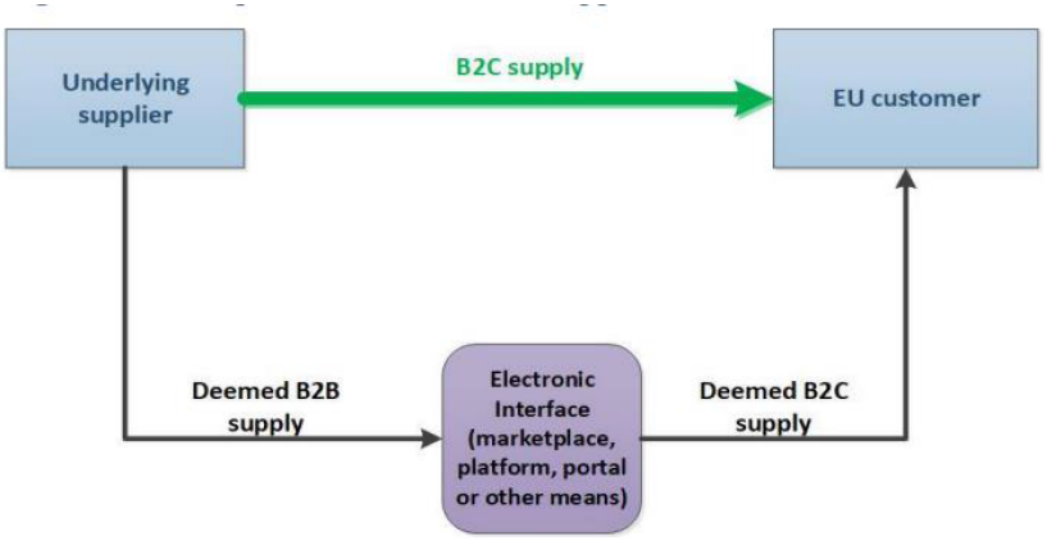

Figure 7 Consequences of the deemed supplier model

The new regulation as already said restyle also article 33, maintaining the idea of territoriality of the customer: "*By way of derogation from Article 32: (a) the place of supply of intra-Community distance sales of goods shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends; (b) the place of supply of distance sales of goods imported from third territories or third countries into a Member State other than that in which dispatch or transport of the goods to the customer ends, shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends; (c) the place of supply of distance sales of goods imported from third territories or third countries into the Member State in which dispatch or transport of the goods to the customer ends shall be deemed to be in that Member State, provided that VAT on those goods is to be declared under the special scheme of Section 4 of Chapter 6 of Title XII*[74]*. ';*

[74] *Chapter 6 of Title XII: "For the purposes of this Section, distance sales of goods imported from third territories, or third countries shall only cover goods, except products subject to excise duty, in consignments of an intrinsic value not exceeding EUR 150. For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply: (1) 'taxable person not established within the Community' means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there; (2) 'intermediary' means a person established in the Community appointed by the taxable person carrying out distance sales of goods imported from third territories or third countries as the person liable for payment of the VAT and to fulfil the obligations laid down in this special scheme in the name and on behalf of the taxable person; (3) 'Member State of identification' means the following: (a) where the taxable person is not established in the Community, the Member State in which he chooses to register; (b) where the taxable person has established his business outside the Community but has one or more fixed*

So for instance if a German customer buys a good on an E-Commerce registered in Italy the VAT applied will be the German one; this practice on one hand is fundamental to remove the advantage given to the country where the taxation is lower, but on the other hand overcomplicate the administration of the e-commerce that have to deal with many different countries for VAT purposes, for this a threshold for the application of the article 33 was implemented in the directive of 2006 through the article 34 and equal to 35 000€, with the implementation of the directive 2017/2455 This article was suppressed, and here there's the element of novelty, the function of this article was replaced by the article 59c:

1. Point (a) of Article 33 and Article 58 shall not apply, where the following conditions are met:

(a) the supplier is established or, in the absence of an establishment, has his permanent address or usually resides only in one Member State;

(b) services are supplied to non-taxable persons who are established, have their permanent address or usually reside in any Member State other than the Member State referred to in point (a) or goods are dispatched or transported to a Member State other than the Member State referred to in point (a); and

(c) the total value, exclusive of VAT, of the supplies referred to in point (b) does not in the current calendar year exceed EUR 10 000, or the equivalent in national currency, nor did it do so in the course of the preceding calendar year"

The threshold has now changed to 10 000€ if the condition above is respected, if the transactions have a higher value, point two of the article will apply: "*Where, during a calendar year, the threshold referred to in point (c) of paragraph 1 is exceeded, point (a) of Article 33 and Article 58 shall apply as of that time.".*

In case the threshold is not met, following point 3: *"The Member State within the territory of which the goods are located at the time when*

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establishments therein, the Member State with a fixed establishment where the taxable person indicates he will make use of this special scheme;
(c) where the taxable person has established his business in a Member State, that Member State;
(d) where the intermediary has established his business in a Member State, that Member State;
(e) where the intermediary has established his business outside the Community but has one or more fixed establishments therein, the Member State with a fixed establishment where the intermediary indicates he will make use of this special scheme. For the purposes of points (b) and (e), where the taxable person or the intermediary has more than one fixed establishment in the Community, he shall be bound by the decision to indicate the Member State of establishment for the calendar year concerned and the two calendar years following;
(4) 'Member State of consumption means the Member State where the dispatch or transport of the goods to the customer ends.

their dispatch or transport begins or where the taxable persons supplying telecommunications, radio and television broadcasting services and electronically supplied services are established shall grant taxable persons carrying out supplies eligible under paragraph 1 the right to opt for the place of supply to be determined in accordance with point (a) of Article 33 and Article 58, which shall in any event cover two calendar years". It is possible to opt for the application of Article 32 or 33

2.4.2 b) Intra-community acquisition of goods

This "Taxable Transaction" is regulated in chapter 2 of the directive 2006/112/EC, in particular, article 20 provides that: "*Intra-Community acquisition of goods' shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began*."
It is important to notice that in the wording of art.20 we find the term "person" which implies a B-to-B transaction.
This transaction can be identified as the other side of the coin of the previously described supply of goods. For the identification of the place of intra-Community acquisition of goods the directive considers that is deemed to be the place the transport of the goods ends, this definition is provided by article 40 of the directive: "*The place of an intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends."*
In other words, in this kind of transaction, the purchaser is required to self-account for the VAT as if she had made the supply herself.
This self-accounting is performed through the so-called "Reverse charge" system[75] in this way while the customer has to account for VAT on the purchase, therefore is liable for VAT in the VAT return with the rate that applies in its member state and at the same time she can reclaim the VAT payable on the acquisition in the same VAT return[76], the supplier that has to account for that is zero-rated supply.

[75] 2 October 2018 The European Council agrees on the reverse charge mechanism in derogation from normal VAT rules, in order to prevent VAT fraud, for more information on the history of this mechanism go to https://www.consilium.europa.eu/en/policies/vat-reverse-charge/

[76] Article 168 (c): *"In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay: the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i)"*

2.4.2.1 Triangulation & VIES

In the field of the intra-community transaction one of the most common frauds is the Missing Trader Intra-Community (MTIC) fraud which takes advantage of the triangulation principle; In a basic triangulation company (A) sells to a company (B) who re-sells to a company (C) but the goods are delivered from A to C directly even if the invoices are two A to B and B to, this process becomes less trivial when the parties resides in different Member States; in the basic structure of MITC fraud, a taxable person B based in Poland buys goods from A based in Italy, the reverse charge mechanism applies, company B sells the goods to another company C also established in Poland has to pay Polish VAT, so C sells back the goods to company A; at the end of this circle the following position with custom will arise:
A is VAT neutral
B owes VAT to Polish fiscal authorities
C can claim a credit on the zero-rated intra-community transaction
If B disappears and avoids paying the VAT, and C claim the VAT credit, the overall scheme is not neutral, C then shares the money collected with the people behind company A and B thus defrauding the fiscal authority, this example is the starting point because if this so-called carousel scheme would involve only 3 parties then it would be easy to find out, in reality, the criminals create many "buffer" company that makes difficult for the authorities to catch them. According to Europol, these kinds of MTIC frauds are costing to EU citizens around 60 billion euros annually in tax losses, VAT fraud issue has been one of the nine EMPACT[77] priorities for the agenda 2018-2021 and since is still a problem it's the core of the EMPACT 2022-2025 since the EU as specified in paragraph 2.3 one of the objectives of the single market is the removal of distortion of competition great effort is done by the EU policy maker to fight these threats; more information on the issue can be found in one of the publications of the European Commission[78] this research has been made wide use of one of the systems in place to have a smoother communication between the member states, namely the VIES which is a search engine (not a database) owned by the European Commission. The data is retrieved from national VAT databases when a search is made from the VIES tool. All the national fiscal authorities register in their out database the Intra-Community transactions, those are then reported to this VIES

[77] EMPACT stands for the European Multidisciplinary Platform Against Criminal Threats.
[78] Publication Office of the European Union "The concept of tax gaps" *MTIC fraud gap estimation methodologies* available at https://op.europa.eu/en/publication-detail/-/publicati/on/1cf7f819-e7c0-11e8-b690-01aa75ed71a1/language-en/format-PDF/source-83432664 [Last accessed 05/08/2022]

that links all the transactions to one another, if the amounts match up the VAT has been correctly settled among the member states; since the VIES links a huge amount of transactions each day some mismatches can occur, due to administrative errors, mistakes in the report or fraud in this way when a mismatch occurs the national fiscal authorities can cooperate to investigate on the mismatches, finally the VIES can be a tool to address the problem of tax Avoidance[79] in this field an application of the VIES is the Transaction Network Analysis (TNA)[80] which is widely used and it helps to early identification of VAT fraud.

2.4.3 c) Supply of services

The "Supply of services" is regulated by chapter 3 of directive 112/2006 which provides a complete definition of this taxable transaction, since 2006 the directive changed in many ways through other pieces of legislation such as directives (e.g., 2008/08/EC). The first and widest definition of the concept is given by the first paragraph of article 24: *"Supply of services' shall mean any transaction which does not constitute a supply of goods*". The following articles 25 and 26 provide a more specific list of which transaction might be considered a supply of service and that is *"the assignment of intangible property, whether or not the subject of a document establishing title;", "the obligation to refrain from an act, or to tolerate an act or situation;", "the performance of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law".*

As the technology evolves, such big and comprehensive regulations have to be amended to accommodate new market conditions, therefore also the service transaction has been

[79] Your Europe, Check a VAT number (VIES) Last updated 20/10/2022 available at https://europa.eu/youreurope/business/taxation/vat/check-vat-number-vies/index_en.htm [Last accessed 25/10/2022]

[80]Research from the Policy Department for Budgetary Affairs titled "Possible solutions for Missing Trader Intra-Community Fraud" provides a definition of TNA *"This tool was first piloted in 2014 by Belgium, alongside other Benelux countries, and was subsequently expanded to 10 Member States in 2016. Since May 2019, it is being used on a voluntary basis by most Member States as part of the activities of EUROFISC. TNA works by applying automated data mining of data provided by companies in their VAT returns. Using machine learning and big data, this tool can analyse transactional networks (using social network analysis) and detect fraudulent transactions as they emerge. The European Commission contributed to the development of TNA by conducting pilots, market scanning and by holding working groups to identify best practice for the implementation of the most suited methodology for the tool. In addition, beyond the transnational network analysis, TNA also provides a platform for the Member States' tax administrations to collaborate and to share best practices. TNA also complements national risk analysis systems. With the use of these tools EUROFISC is able to cross-check information against criminal records and databases held by Europol and OLAF."*

updated to regulate new services provided by economy 3.0 all this does not come without controversy, due to the complexity of the European Regulations that need to take care of numerous situations[81]. In this context, the implementation has an important role (see Council Implementing Regulation EU No. 282/2011 and its amendment 1042/2013) in this regard an interesting court case arose in the first tier tribunal of the UK, namely, the Fenix International Ltd v Her Majesty Revenue and Customs – C-695/20; a case that is still ongoing and that is also the last case in which the UKFTT asked for a preliminary ruling to the CJEU, the request concerned the validity of Article 9a of the CIR(EU) No. 282/2011[82] amended by Article 1 (1) (c).[83]

To have a clearer picture, Fenix, operates a social media platform called "OnlyFans", this platform has two categories of users, the creators, that upload content on their profiles such as photo or videos, and the fans, that have access to the content of the creators, through the payment of a fee that can be periodical or lump sum, the platform would retain an amount equal to 20% as commission, and transfer the rest to the creator, at the same time the platform charged VAT on the commission retained the HMRC challenged

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[81] OECD Forum on tax administration, 2020 Tax Administration 3.0: The Digital Transformation of Tax Administration available at https://www.oecd.org/tax/administration/tax-administration-3-0-the-digital-transformation-of-tax-administration.htm

[82] Council Implementing Regulation EU No. 282/2011 Article 9 *: "The sale of an option, where such a sale is a transaction falling within the scope of point (f) of Article 135(1) of Directive 2006/112/EC, shall be a supply of services within the meaning of Article 24(1) of that Directive. That supply of services shall be distinct from the underlying transactions to which the services relate."*

[83] Council Implementing Regulation EU No. 1042/2013 'Article 1 (1) c . "*For the application of Article 28 of Directive 2006/112/EC, where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties.*
In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions shall be met:
(a) the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof;
(b) the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof. For the purposes of this paragraph, a taxable person who, with regard to a supply of electronically supplied services, authorises the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply, shall not be permitted to explicitly indicate another person as the supplier of those services.
2. Paragraph 1 shall also apply where telephone services provided through the internet, including voice over internet Protocol (VoIP), are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications and are supplied under the same conditions as set out in that paragraph.
3. This Article shall not apply to a taxable person who only provides for processing of payments in respect of electronically supplied services or of telephone services provided through the internet, including voice over internet Protocol (VoIP), and who does not take part in the supply of those electronically supplied services or telephone services."

that Fenix was failing to apply VAT following art 9a therefore the company did not agree on the validity of the article 9, because, following Article 397 112/2006/EU[84], it goes beyond the application of article 28 112/2006/EU[85] while the CJEU has not yet expressed its ruling on the matter while the purpose of the paragraph is not finding a solution, it shows that the topic is very complex, it can be really interesting to see how the court case ends, in the meantime a small conclusion is provided by Giuseppe Guarente in "Rivista diritto tributario" "The author argues that both the legislative framework test and the purpose test are nor met by Article 9a IR[86]. The wording of the amendments introduced by Article 9a IR, which have been described by the First Tier judge Anne Scott as introducing a 'sea change" to Article 28 PVD[87] (see para.144 of Fenix), in conjunction with the fiscal policy purpose of Article 9a IR, seems to suggest that in passing this formally implementing measure the lawmaker has incurred in a manifest error, which could lead the CJEU to conclude that the provision is invalid[88].

The role of the CJEU and consequently of the UKFTT for the company it's really important given that research of vatupdate.com found out, from court documents, that the company could be obliged to pay £11,236,478[89].

Not only it is important to have a proper understanding of what has to be taxed and who is the taxable person subject to tax, but of the same importance is the "where", in other words, the place of supply which is also widely regulated, in particular, in the Principal VAT directive, namely the 112/2006/EC from now on (PVD) the place of supply of services is described by the Article 44[90] for what concerns the B-to-B transactions: *"The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where*

[84] 112/2006/EU Article 397 *"The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive."*

[85] 112/2006/EU Article 28 *"Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself."*

[86] I.E.: Implementing Regulation, referred to, Council Implementing Regulation EU No. 282/2011

[87] I.E.: Principal Vat Directive, referred to, 112/2006/EU

[88] GUARENTE, G., 2021 Request for a preliminary ruling on the validity of Article 9A of the council implementing regulation (EU) no.282/2011 available at https://www.rivistadirittotributario.it/2021/07/12/request-for-a-preliminary-ruling-on-the-validity-of-article-9a-of-council-implementing-regulation-eu-no-282-2011/

[89] VATupdate, 2020 ECJ: OnlyFans is fighting against a tax bill of more than £10m (validity presumption of article 9a) available at https://www.vatupdate.com/2020/12/17/ecj-onlyfans-is-fighting-against-a-tax-bill-of-more-than-10m-validity-presumption-of-article-9a/ [Last accessed 19/08/2022]

[90] This article was amended in the directive No. 2008/08/EC

he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. […]"

The place of supply of service for transactions between taxable persons is the place in which the service is delivered to the customer, the determination of such place is delegated to the Council IR EU No 282/2011, in particular, Article 10 (1) define the place as *"where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out."* To give another element of description the legislator in the second paragraph define what elements shall be taken into account for the determination of the place, namely, "*the place where essential decisions concerning the general management of the business are taken", and" the place where the registered office of the business is located" "the place where management meets.*" Sometimes, these three elements can be located in different places, or, in the complexity of a business, they might not guarantee a certain determination of the place of establishment, therefore the article continues as follows: *"Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence."* Another element of clarification for the applicability of the article 44 is in regards of the so-called fixed establishment, and it is provided by article 11 of the same Implementing Regulation: *"a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs."* As already underlined previously, the orientation of the legislator is: defining as the place of the supply of services, one of the customers.

For what concerns the B-to-C side, the regulations can be found in the wording of Article 45: *"The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located.[…]"*

This Article is structurally similar to the previous one, but is much different, because of the need for certainty of the residence the legislator determined as the place of supply the place where the taxable person which if anything is the easiest place to determine as in the previous article the lawmaker establishes in Article 11 (2) of the IR 282/2011 a

definition of Fixed establishment with a difference in the last part of the wording, in this case, the establishment has to be: *"characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to provide the services which it supplies"*

To give a definition that would cover all the possible situations for the definition of the place of supply, both for Article 44 and 45, thus covering B-to-B and B-to-C transactions, the last lines are dedicated to specifying that: *"In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides."* In this part of the articles two concepts might be subject to interpretation and therefore have been clarified in the IR 282/2011 through Articles 12 and 13 of the same IR and these is: "permanent address" is described by Article 12 as follows: *" the 'permanent address' of a natural person, whether or not a taxable person, shall be the address entered in the population or similar register, or the address indicated by that person to the relevant tax authorities unless there is evidence that this address does not reflect reality."* "usually resides" which instead is defined by Article 13: *"The place where a natural person 'usually resides', whether or not a taxable person [...] shall be the place where that natural person usually lives as a result of personal and occupational ties"* if the occupational and personal ties are not located in the same country, following the article 13, the place of residence is determined by the personal ties.

Being VAT on the supply of services one as the other taxable transactions very changeable the rules have to adapt to new situations, the evolution of the law on the subject tries to create legislation that is broad to avoid tax evasion and at the same time specific, to avoid double taxation, therefore in some situation, the various sources of law can give space to controversy as showed in the case, Fenix International Ltd v Her Majesty Revenue and Customs, the role of the CJEU is fundamental on giving the right interpretation to such developing topics.

As said before the increase of digital services has been accommodated by EU legislation such as the COUNCIL REGULATION (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services[91], broadcasting

[91] Article 24(2) of the VAT Directive provides that: *"Telecommunications services' shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of access to global information networks."*

services[92] or electronic services[93] (TBE) to non-taxable persons; also with an important scheme namely the Mini One Stop Shop (MOSS), which is an optional scheme that allows companies to account for VAT normally due in multiple countries, in just one this is useful for business providing services in many countries that would need to register for VAT in every country, there are two schemes:
The non-union scheme, which description will be covered in a further paragraph.
The union scheme, for a business established in the EU: One of the first elements that is important to underline is that this scheme does not concern the supply of goods, and the supply of services other than TBE but if the business is providing TBE services to customers that are not taxable persons and are located in another member state, and as las condition, the service is delivered from the business and not through a marketplace, then is possible to register for VAT in each member state in which the customer is located, very burdensome for the SME. or register for VAT MOSS in the member state of the supplier, practically speaking the MOSS is a digital system that allows business supplying TBE to the customer in other member states to account for VAT via a web-portal.
If an EU Business supplies a service to another Business (B-to-B) in another EU country the reverse charge mechanism is applied, if it's a (B-to-C) what is described below applies, if the consumer is based outside the EU export rules apply.

2.4.4 Importation and Exportation of goods

Before the definition of the last taxable transaction, it's important to clarify that Export is not a taxable transaction, but for the sake of completeness, it is included in this paragraph.
The last of the four taxable transactions is defined by chapter four of Article 30 of the VAT directive as follows: *"'Importation of goods' shall mean the entry into the Community of goods which are not in free circulation [...]".*
When a good is imported from a third country is important to define which country must be considered the place of importation. Chapter 4 of the VAT directive provides the first definition through Article 60; *"The place of importation of goods shall be the Member*

[92] Article 6b of the VAT Implementing Regulation 282/2011 provides that: *"broadcasting services shall include services consisting of audio and audio-visual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule"*

[93] Article 7 of the VAT Implementing Regulation 282/2011 provides that: *"electronically supplied services shall include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology."* The following part of the article are dedicated to provide a indefinite list of services that are covered

State within whose territory the goods are located when they enter the Community." And Article 70 *"The chargeable event shall occur, and VAT shall become chargeable when the goods are imported."*. At first glance, this article gives a definition that can be pretty straightforward, but strategies for reducing the VAT burden on imports could arise, for example, the good could be imported into a country with a low VAT rate and then shipped to the real country of destination reducing the rate by a percentage equal to the difference of the rates for the two countries; Article 61 remove this possibility derogating from Article 60 provide that: *"where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156*[94]*, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.[...]"* in the same manner the chargeability of the importation arises following Article 71 *"Where, on entry into the Community, goods are placed under one of the arrangements or situations referred to in Articles 156, 276*[95] *and 277*[96]*, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur, and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations."*, in other words, for the country of importation and is considered the place

[94] The Article 156 provides al list of transactions that might be exempted by the Member States:"
(a) the supply of goods which are intended to be presented to customs and, where applicable, placed in temporary storage;
(b) the supply of goods which are intended to be placed in a free zone or in a free warehouse;
(c) the supply of goods which are intended to be placed under customs warehousing arrangements or inward processing arrangements;
(d) the supply of goods which are intended to be admitted into territorial waters in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland;
(e) the supply of goods which are intended to be admitted into territorial waters for the fuelling and provisioning of drilling or production platforms".

[95] Article 276 "*Where dispatch or transport of the goods referred to in Article 274 ends at a place situated outside the Member State of their entry into the Community, they shall circulate in the Community under the internal Community transit procedure laid down by the Community customs provisions in force, in so far as they have been the subject of a declaration placing them under that procedure on their entry into the Community"*

[96] Article 277: "*Where, on their entry into the Community, the goods referred to in Article 274 are in one of the situations which would entitle them, if they were imported within the meaning of the first paragraph of Article 30, to be covered by one of the arrangements or situations referred to in Article 156, or by a temporary importation arrangement with full exemption from import duties, Member States shall take the measures necessary to ensure that the goods may remain in the Community under the same conditions as those laid down for the application of those arrangements or situations."*

where the goods are released for free circulation only at this moment the event becomes chargeable for VAT purposes.
What is the taxable amount is disciplined by Article 85 of the treaty and corresponds to the value for customs purposes. Some transactions following Article 143 are exempted by the member states; among all the situation described in this article, is worth mentioning the point 1 (d), which was subject to interpretation on a preliminary ruling (case No C-528/17), requested in the case Milan Božičevič Ježovnik v Republika Slovenija on 25 October 2018 by the Slovenian Supreme Court
The trial arose because Mr. Božičevič Ježovnik (from now on the importer) carried on a business as a trader, importing and distributing bananas. He imported bananas from a third country to Slovenia, these goods were placed under the "custom procedure 42"[97]
The importer sold all the bananas to customers established in Romania, and after the payment, he transferred the ownership rights of the shipment to the customers who were in charge of the transport to Romania it's important to underline that valid invoices were issued on the transaction and before it, the importer checked the Economic Operator Registration and Identification number (EORI number) along with the VAT identification numbers of the customers, after the transaction the customs office discovered that several Romanian customers had been registered for VAT shortly before the first delivery and removed from the VAT system on the same day, and also that some documents were incomplete. The custom office gathered information from the Romanian tax authorities which confirmed that some of the Romanian customers were "Missing Traders" in light of this information, the customs office concluded the importer had not demonstrated that the bananas had been delivered to the declared customers, the customs office, for this reason, ordered the importer to pay VAT for more than 200 000 € the importer filed a complaint against this order, which was rejected by the Slovenian Ministry of finance, also the Administrative Court of the Republic of Slovenia dismissed the following action against the Ministry of finance performed by the importer, with the motivation that failing to fulfil obligations related to Customs procedure 42, results in the post-clearance payment of VAT even if the taxable person acted in good faith. The last attempt for the importer was to submit an application for review to the Slovenian Supreme Court which

[97] Standing with the definition of the European Commission *"Customs procedure 42 is a mechanism an EU importer uses in order to obtain a VAT exemption. It is applied when goods imported from outside the EU into a Member State will be transported to another. In such cases, the VAT is due in the latter - the Member State of destination. There is a risk that imports may remain in the Member State of importation without payment of VAT. Imports may be also consumed in the Member State of destination without VAT being collected there.".*

was unsure as to the condition under which an importer may be required to pay VAT in circumstances such as those in the main proceedings, there for the supreme court asked for a preliminary ruling the three-point addressed were: is the importer, requesting exemption from payment of VAT through the procedure 42, liable for payment on the VAT in the same way he is liable for payment of the customs debt? If the answer is no, is the liability of the importer equal to a taxable person pursuing Article 138(1) of the VAT directive?
The third question is a little bit more complex; therefore is going to be cited entirely: *"In the latter case, must the subjective element showing that the importer (declarant) intended to abuse the VAT scheme be assessed differently from a case of the supply of goods within the [European Union] referred to in Article 138(1) of the VAT Directive? Must that assessment be less strict, in the light of the fact that, in procedure 42, exemption from payment of VAT must be authorised in advance by the customs authority? Or must it be stricter, inasmuch as the transactions concerned are connected with the first entry into the European Union internal market of goods originating from third countries?"*
With this question the court asks *"whether article 143(1)(d) of the VAT directive must be interpreted to the effect: that, in circumstances where the taxable importer and supplier benefitted from an exemption from import VAT on the basis of an authorisation issued after a prior examination by the competent customs authorities in the light of the evidence provided by that taxable person, the latter is nevertheless required to pay the VAT after the event where it is revealed, during a subsequent examination, that the substantive conditions for the exemption had not been met."*.
For the considerations on the questions, refer to the case C-528/17 of 25 October 2018, here is going to be reported the ruling of the CJEU consequent to the above cited considerations: "*Article 143(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, must be interpreted to the effect that, in circumstances where the taxable importer and supplier benefitted from an exemption from import value added tax on the basis of an authorisation issued after a prior examination by the competent customs authorities in the light of the evidence provided by that taxable person, the latter is not required to pay value added tax after the event where it is revealed, during a subsequent examination, that the substantive conditions for the exemption had not been met, except where it is established, in the light of objective evidence, that that taxable person knew, or should have known, that the supplies subsequent to the imports at issue were involved in fraud committed by the customer and that he did not take all reasonable*

steps in his power to avoid that fraud, which is a matter for the referring court to determine."[98] With this ruling, the result is that good faith matters, namely, if the importer act in good faith and acts diligently to avoid fraud the exemption on importation must be granted, in contrast, if the Tax authority can prove that the importer failed to take every step to avoid participation in tax evasion, It can deny the Exemption and asses import VAT.

2.5 VAT in the UK

Until now the chapter has been focused on the directives that are ongoing in all of the EU, before Brexit the UK was subjected to this structure, after the transition period ended on the 31st December 2020, the UK doesn't have to follow the EU rules, therefore can use specific legislation that in principle does not change the VAT mechanism, more than anything the dynamics for taxing the taxable transaction are different in respect to the one regulated by the directive 112/2006, this part of the paragraph is dedicated to understanding what are the new VAT rules in the UK after Brexit

2.6 VAT Rates in the UK

This paragraph refers widely to the VAT Notice 700, that is, the main reference guide to VAT in the UK, VAT law in the UK is governed by the Value Added Tax Act of 1994. The governance department that applies and enforces the act is Her Majesty's Customs and Excise (HMRC)[99] there are four different types of rates the standard rate was introduced in 1973 with a rate of 10% and it's currently 20% on all goods and services is applied this rate with many exceptions defined by the law the following rates are applied only to specific sectors; the reduced rate that was introduced in 1994 and it is now corresponding at a rate of 5% to give an idea of which supplies are taxed at a reduced rate a non-exhaustive list will be presented:

- Residential fuel or power
- Installation of energy-saving materials
- Grant-funded installation of security goods, gas supplies, and heating equipment*

[98] Case law C 528/17 Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 143(1)(d) — Exemption from import VAT — Importation followed by an intra-Community supply — Risk of tax evasion — Good faith of the taxable importer and supplier — Assessment — Duty of care of the taxable importer and supplier

[99] HM Revenue & Customs, VAT guide (VAT Notice 700) Published 17 December 2014 (Last updated 5 May 2022) available at https://www.gov.uk/guidance/vat-guide-notice-700

- Residential renovations and alterations
- Residential conversions
- Women's sanitary products[100]

It's worth noting that during pandemics the VAT on some Supplies such as accommodation, takeaway food, etc. that normally are taxed with a standard rate had benefited from a temporary shift to the reduced rate, from 1 October until 31 March 2022 the rate has increased to 12.5%, after this period the rate returned to its Standard amount. The other two applicable rates are: the zero rate and the exemption rate, the difference between them, is that if the former is applied, the taxable person will not be charged any VAT and the supplier can still credit the VAT paid on the input purchased, this rate aims to lower the tax burden on low-income households by zero-rating essential goods, such as:[101]

- Food (excluding catering)
- Sewerage services and water
- Books, including e-books
- Talking books for the blind and disabled, and wireless sets for the blind
- Construction of buildings
- Protected buildings
- Transport
- Drugs, medicines, aids for the disabled*
- Imports, exports

In the exemption, instead, the government doesn't tax the sale of the goods, but the seller cannot credit the VAT paid on the input purchased, this sometimes results in increasing the price of certain goods or services, and this is usually applied on value-added that is hard to define such as[102]

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[100]HM Revenue & Customs VAT rates on different goods and services Published 4 February 2014 (Last updated 11 July 2022) available at https://www.gov.uk/guidance/rates-of-vat-on-different-goods-and-services [Last accessed 24/09/2022]

[101] GALE, WILLIAM G. 2020. *"Raising Revenue with a Progressive Value-Added Tax." In* Tackling the Tax Code: Efficient and Equitable Ways to Raise Revenue*, 43 – 88. Washington, DC: Brookings Hamilton Project.*

[102]University of Sussex VAT rates available at https://www.sussex.ac.uk/finance/how/taxation/vat/vatoverview/rates#:~:text=VAT%20is%20collected%20on%20business,Reduced%20Rate%205%25 [Last accessed 24/09/2022]

- Land
- Education
- Health and welfare
- Subscriptions to trade unions, professional and other interest bodies
- Sport, sports competitions, and physical education
- Insurance and financial services
- Cultural services

Until 1979 another rate was standing, that is, the Higher rate

2.7 Import of goods in the UK

After the 31st December 2020, all the intra-community transactions cease to exist in the options of the UK, since the country is no longer in the EU, the same transactions are now considered imports and exports. At the same time not being subject to directives, let the UK have autonomy in the determination of a new VAT regime that would take care of all the transactions coming from every country that is now considered only as Import. The new regime provides different rules for the transactions that are above o below a certain threshold equal to 135£[103]:

2.7.1 Intrinsic value of the consignment is not more than £135

Whenever in a business-to-business transaction the customer receiving the goods is VAT registered in the UK and provides the registration number to the seller, the VAT can be charged through the Reverse charge Mechanism[104] So whenever this VAT number is provided the responsibility to account for VAT will move to the business customer, in this case, the seller won't be liable for accounting for VAT but he will need to add a note to the invoices issued clarifying that the customer needs to account for VAT[105], a typical wording is "reverse charge".
The customer will be able to recover the VAT as input tax subject to normal VAT recovery rules. In the case that a UK VAT number is not provided to the seller, the transaction will be considered business to consumer therefore, the reverse charge won't apply, and the seller must register for VAT purposes, having to apply the right rate on each good. If a seller makes changes to the value of the consignment so that its total value goes above 135£, they may be liable for import VAT and Customs Duty, and have to adjust the VAT already accounted for at the point of sale

[103] Standing on a Policy paper of HMRC named "Changes to VAT treatment of overseas goods sold to customers from 1 January 2021": *"the value should be based on the 'intrinsic value' of the goods, which equates to the price at which the goods are sold, excluding:*
transport and insurance costs, unless they are included in the price and not separately indicated on the invoice any other taxes and charges identifiable by the customs authorities from any relevant documents the £135 threshold applies to the value of the consignment, not to each individual item within the consignment."
[104] Value Added Tax Act (VATA) 1994 Article 7AA
[105] Value Added Tax Act (VATA) 1994 Article 8

2.7.2 Intrinsic value of the consignment is more than £135

Above the threshold of 135£, the import is treated with the normal rules namely the goods are charged at the same rate as if they had been supplied in the UK. VAT-registered businesses can account for import VAT on their VAT Return by using postponed VAT accounting. Which, in a nutshell, consists in Accounting for VAT on the VAT Return so that the business declares import VAT and reclaims it as input tax on the same VAT Return. Alternatively, a business can choose to pay import VAT on importation and reclaim the VAT incurred on the imported goods as input tax subject to the normal rules. To do so the business need to provide the import VAT statement as evidence.[106] The UK traders which are not registered for UK VAT, still have to pay the import VAT, and will not be able to reclaim it but for them, there's the possibility of arranging for an agent in the UK to import and supply goods on their behalf. The agent will be able to recover the import VAT as input tax if they are an agent acting as a principal under Section 47 of the VAT Act. Whenever the goods are imported temporarily, thus, re-exported within 2 years their temporary importation can be asked, obtaining total or partial relief from import duties. If for whatever reason these goods are then put into free circulation in the UK, the importer will have to pay the duty, import VAT, and compensatory interest. If a regular importer has to make a large payment, it's possible to arrange a deferred payment of import duty and VAT by setting up an account with HMRC. For an exporter that reimport the goods, is possible to claim back the VAT paid upon importation if the goods were originally sent out of the UK temporarily, for example for exhibition, there is no UK VAT due on import. Otherwise, it's possible to obtain Returned Goods Relief. To qualify for Returned Goods Relief, the goods must have been exported and must then have been imported back into (and gone into free circulation in) the UK. [107]

[106] HM Revenue & Customs, Paying VAT on imports from outside the UK to Great Britain and from outside the EU to Northern Ireland Published 1 July 2014 (Last updated 31 December 2020) available at https://www.gov.uk/guidance/vat-imports-acquisitions-and-purchases-from-abroad?step-by-step-nav=849f71d1-f290-4a8e-9458-add936efefc5

[107] HM Revenue & Customs EU business: EU Returned Goods Relief Published 19 May 2021 available at https://www.gov.uk/guidance/eu-business-eu-returned-goods-relief

2.8 Import of services in the UK

Before 1 01 2021 UK in line with Art. 20, Dir. 112/2006 when a transaction satisfied the three requirements of supply of goods, B2B transactions, transportation of the goods from one Member State to the Member State of the Business entity purchasing the goods, the UK company was subject to the reverse charge was in place; After 1 01 2021 the reverse charge is applied only for the supply of services the rule, in this case, apply as follow: first, the conditions of applicability are that:

- The place of supply is the UK
- The supplies do not belong to the UK
- The supplied business is VAT registered in the UK and belongs to the UK territory
- The supplied service is not exempt

In this case, the UK business in its VAT account will credit an amount of output tax calculated on the value of the service received and will debit on the same account the input tax to which the business is entitled so the two entries will offset and the business will have a neutral position on this account; if the business does not have input tax due because, for example, it provides exempt supplies it will end up having only the service credit received and it will end up paying the VAT at UK rate. It's worth noting that this mechanism cannot be applied to services that are ruled under the exemption. Another important piece of information is about the so-called B2B general rule service: when supplies are made from a supplier that is not from the UK the reverse charge applies and the supply is considered to be made where the customer belongs, if the customer is not registered namely is unable to provide VAT number nor can provide clear evidence of business activity the supply should be treated as a B2C transaction, the rules that apply for this kind of transaction will be described later, whereas if it can be proven, then the transaction will be considered as a B2B with the same rules for reverse charge and the number of supplies must be added to the number of taxable supplies determining whether the business should be registered for UK VAT, the threshold corresponds to 85000£[108]. There are some exemptions to this principle for the services listed below:

- Passenger transportation
- Services relating to land and property

[108] HM Revenue & Customs Notice VAT Notice 700/1: supplement Updated 9 June 2021CPT 2.2

- Restaurant and catering services
- Services that are treated as supplied in the UK as a result of the use and enjoyment provisions[109]

In this case, the supplied business in the UK must provide the UK VAT registration number, otherwise, the foreign supplier is liable to account for any UK VAT due.[110] In the "family" of services it's worth to touch the topic of digital services, for a UK business when supplying digital services to consumers in the EU there are two options; the first is to register for VAT in each member state where the supply takes place, and the second is to apply for the Non-Union VAT MOSS scheme

2.9 VAT group

The regulation provides a specific treatment when dealing with VAT groups. These entities are a group of eligible persons that may apply to be treated as single taxable persons for VAT purposes. A representative member will be responsible for completing the VAT return on behalf of the group, this does not exclude all the parties to be liable for any debt. The VAT account on supplies between group members offset each other and therefore are usually disregarded. Nevertheless, when general rule services are purchased by an overseas member of a UK VAT group the representative person has to account for an intra-group reverse charge[111] this provision following the section 43 (2A) of the VAT Act of 1994 was introduced to fight cases of VAT avoidance and to ensure that services are correctly taxed into the UK, this is translated into the normal rules for the VAT where the group has to account for an input tax which can be recovered simultaneously[112]. Describing the agreements between UK and EU after Brexit it was made clear the peculiar situation with Northern Ireland, when dealing with VAT groups when the members come from Northern Ireland the transaction is disregarded for tax purposes. The atypical situation arises when a transaction is made between two members which are established one in Great Britain and one in Northern Ireland, whenever they make a transaction, it will be considered in the same way as the two members were doing an overseas parties' transaction, so it follows the normal rules. Let's take a closer look on the functioning of the VAT groups rules, through the Example of the Skandia Judgment: Skandia America Corporation was a company incorporated in the US with a branch in Sweden which

[109] Place of supply of services (VAT Notice 741A) Last updated 31 December 2020 CPT 5.9
[110] Place of supply of services (VAT Notice 741A) Last updated 31 December 2020 CPT 5.10
[111] Place of supply of services (VAT Notice 741A) Last updated 31 December 2020 CPT 5.8
[112] Group and divisional registration (VAT Notice 700/2)

entered into a Swedish VAT group, the services provided by the Corporation to the branch where viewed from the Swedish tax authority as taxable transaction, whereas Skandia disagreed considering those as intra-company transactions, so not subject to VAT; the controversy went to CJEU which stated that only the branch that was physically located in Sweden could belong to a Swedish VAT group, not the entire corporation, so the services provided were considered as a supply between two separate taxable persons thus liable to VAT, reverse charge had to be applied, differently in Great Britain, if a UK branch of a corporation enters into a UK VAT group the whole corporation becomes part of the VAT group, and therefore the transaction between corporate from overseas and the UK establishment will not be liable for VAT, namely no reverse charge has to be applied.
After the ruling of CJEU, if an overseas establishment of a UK-established entity operates in a member state that operates with a similar provision as the Swedish ones, the transaction is considered as between two different taxable persons and therefore taxed accordingly, in this case, the reverse charge is applied.[113]
If the overseas establishment is part of a VAT group in an EU member state and that member state's VAT grouping rules include only the local establishment in their VAT group reverse charge may arise for a UK establishment.
Following the Skandia decision UK expects member states of the EU to operate accordingly to the table below:

[113] HM Revenue & Customs, Policy paper Revenue and Customs Brief 2 (2015): VAT grouping rules and the Skandia judgment Published 10 February 2015

Member state	Latest position
Cyprus, Finland, Germany, the Netherlands	At the time of publication, the intention of these member states is uncertain
Austria, Ireland, UK	HMRC does not expect these member states to apply 'establishment only' VAT grouping to create intra-establishment supplies
Italy, Romania, Spain (basic method)	Italian, Romanian, and basic Spanish 'VAT grouping' is purely administrative, treating each member as a separate taxable person and just amalgamating their VAT figures on a single return. Such 'grouping' does not trigger the UK VAT changes above
Belgium, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Slovakia, Spain (advanced method), Sweden	HMRC expects these member states to apply 'establishment only' VAT grouping to create intra-establishment supplies
Bulgaria, Croatia, France, Greece, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovenia	HMRC understands these member states do not have VAT grouping

Figure 7: HM Revenue & Customs Policy paper Revenue and Customs Brief 18 (2015): VAT grouping rules and the Skandia judgment Published 30 October 2015

Figure 7 is provided by HMRC as a guide, the notice on the website clarifies that: "This information is provided as a guide only. It is the responsibility of individual businesses to check with the relevant member state tax authority to confirm the situation and agree on how it applies to their circumstances."

2.9 The special case of VAT in Northern Ireland

This issue is acknowledged in the Withdrawal Agreement: *"for an orderly withdrawal of the United Kingdom from the Union, it is also necessary to establish, in separate protocols to this Agreement, durable arrangements addressing the very specific situations relating to Ireland/ Northern Ireland"*. The Ireland case is particular, because although the northern part is politically part of the UK, geographically is on the same Island as the Republic of Ireland independent from the UK, this leads to problems at borders as already discussed in the previous chapters that are the reason why a specific protocol has been arranged.

This situation affects the collection of VAT collection therefore the protocol takes into consideration also this specific issue. Article 8 of the NI protocol regulates: *"The provisions of Union law listed in Annex 3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland."*. This means that in respect of goods the regulation that must apply is the one present in annex 3. Being the NI part of the UK, the article follows *"In respect of Northern Ireland, the authorities of the United Kingdom shall be responsible for the application and the implementation of the provisions listed in Annex 3 to this Protocol, including the collection of VAT and excise duties. Under the conditions set out in those provisions, revenues resulting from transactions taxable in Northern Ireland shall not be remitted to the Union."* It's important now to define what is the content of annex 3: at the first raw the principal legislation namely *"Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax"*, that is, the EU VAT directive, therefore, only for the goods, the European legislation will apply under the responsibility of the UK authorities.

Under the UK national provision for VAT, the VATA 1994 at section 40A is titled Northern Ireland Protocol and regulates what are the contents of the various schedules named from 9ZA to 9ZF each one having a different focus on the different taxable transactions and how are dealt for Northern Ireland.
Schedule 9ZA is titled VAT on acquisition in Northern Ireland from the Member States: *"(a)makes provision about a charge to VAT on acquisitions of goods in Northern Ireland from a member State, and*
(b)contains modifications of the other provisions of this Act in connection with the a movement of goods between Northern Ireland and member States." An acquisition in Northern Ireland (NI) occurs when there's a movement of goods from a Member State to

NI, and there's a B-to-B transaction.[114] If three conditions are met a supply of NI to a customer in the EU is liable to the zero rates, namely, is a B-to-B transaction, the customer is in VAT registered in an EU member state, the goods are transported in an EU member state and a list called EC sales list; if this requirement is not met then the appropriate UK tax rate must be applied.[115]

The schedule 9ZB is titled "*Goods removed to or from Northern Ireland and supply rules"* The focus of this schedule as regulated by section 40A of the VATA 1993 is on three main points:

"a) makes provisions on VAT charged on good imported into the UK as result of their entry into NI"

"b)makes provision about the treatment, for the purposes of VAT, of goods that are removed from Northern Ireland to Great Britain and goods that are removed from Great Britain to Northern Ireland[116]",

"(c)contains other provision relevant to the application of this Act in Northern Ireland."

Part 1 of schedule 9ZB is dedicated to fulfil the letter "a" and is titled "Importations" and in its first subparagraph rules as follows: *"The importation of Union goods into the United Kingdom as a result of their entry into Northern Ireland is not an importation for the purposes of value added tax"* this means that whenever a good comes from EU differently from what happens when it enters into the UK, it will be considered as an Intracommunity transaction[117]. At the same time, any import into the UK from NI will be charged with VAT.[118][119] Part 2 which regulates the movements of goods between NI and GB is provided as regulated by letter "b" above, sub-paragraph 1 of this part regulates what happens for a supply of goods: *"A supply of goods that involves the removal of goods from Northern Ireland to Great Britain or vice versa is zero-rated (see section 30(1))*[120]

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[114] VATA 1994 Schedule 9ZA Part 1 Scope of NI acquisition VAT

[115] HMCR VAT Notice 725 [Last updated 07/09/2021]

[116] VATA 1994 Section 40A (2)(a,b)

[117] VATA 1994 Schedule 9ZA Part 1 Importation (2): "*Accordingly, no charge to VAT occurs on the importation of Union goods into the United Kingdom as a result of their entry into Northern Ireland (but see paragraph 1 of Schedule 9ZA, which imposes a charge to VAT on the acquisition of goods in Northern Ireland from a member State).*"

[118] VATA 1994 Schedule 9ZA Part 1 Importation (3):*" VAT on the importation of any other goods imported into the United Kingdom as a result of their entry into Northern Ireland is to be charged and payable as if it were relevant NI import duty.*"

[119] VATA 1994 Schedule 9ZA Part 1 Movements between NI and GN: *"Where goods are removed from Northern Ireland to Great Britain, VAT is charged on the entry of those goods into Great Britain as if those goods had been imported into the United Kingdom."*

[120] VATA 1994 Section 30(1): *"Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section—*
(a)no VAT shall be charged on the supply; but

if such other conditions, if any, as may be specified in regulations or imposed by the Commissioners are fulfilled." So, on one hand, the supply of goods is a zero-rated taxable transaction, and on the other, the transaction is charged as importation, subparagraph 2 of part 2 regulates these aspects: *"Where goods are removed from Northern Ireland to Great Britain, VAT is charged on the entry of those goods into Great Britain as if those goods had been imported into the United Kingdom"* the schedule 2ZB takes in consideration many aspects of the transactions between NI and GB, a detailed exposition of all the regulations is beyond the scope of this paper, therefore the reader is reminded to this schedule for an in-depth analysis together with the other provisions; it is important to underlying that the aim of the protocol is solving the problem of introducing a hard border that divides NI and the Republic of Ireland. Another important issue is dealt with through the schedule 9ZB which takes care of a hot topic already discussed in other situations above, namely, the *"Online sales by overseas persons"* particular schedule 40A of the VATA reads like this: "*Schedule 9ZC makes provision, as a result of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, about the application of this Act in cases involving*
(a)supplies of goods by persons established outside the United Kingdom that are facilitated by online marketplaces
(b)the importation of goods of a low value.". The schedule 9ZC is intended to be added to the section 5A which is the section related to the *"supplies of goods facilitated by online marketplaces"* whenever a person makes a taxable supply of goods to another person through an online marketplace some situation can occur, there can be a "special scheme condition" that is met when the customer is a non-taxable person and belongs to NI, and the supplier comes from a third country following the qualifying supply of goods of Schedule 9ZE[121], namely, the supplier and the goods are not coming from the UK and

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(b)it shall in all other respects be treated as a taxable supply; and accordingly the rate at which VAT is treated as charged on the supply shall be nil."
Schedule 9ZE: "2(1)For the purposes of this Schedule, a supply of goods is a "qualifying supply of goods" if—
(a)the supply is a distance sale of goods imported from third territories or third countries for the purposes of the second paragraph of Article 14(4) of the VAT Directive (as modified by sub-paragraph (2)),
(b)the intrinsic value of the consignment of which the goods are part is not more than £135, and
(c)the consignment of which the goods are part does not contain goods of a class or description subject to any duty of excise, whether or not those goods are in fact chargeable with that duty, and whether or not that duty has been paid on those goods.
(2)For the purposes of sub-paragraph (1)(a), the second paragraph of Article 14(4) of the VAT Directive is to be read as if after "Member State" there were inserted " or Northern Ireland "."

the "Union goods condition" that is met when the goods a supplier is a taxable person established in the UK and the customer is a non-taxable person from NI or a member state than for the section 5A *"For the purposes of this Act*
(a)P is to be treated as having supplied the goods to the operator of the online marketplace,
(b)the operator is to be treated as having supplied the goods to R in the course or furtherance of a business carried on by the operator."
Schedule 9ZD (a) establishes a special accounting scheme ("the OSS scheme") for use by persons making intra-Community distance sales of goods from Northern Ireland to member States,
(b)makes provision about corresponding schemes in member States.
al the Taxable persons that want to apply for this scheme have to register, the existence of a register and the requirement for registering is regulated by part 2 of the schedule 9ZD in particular, a person can register under the "OSS" scheme if it does have a business established, or a fixed establishment in NI or intends to make a scheme supplies from NI to a member state in which he does not have a fixed establishment, then Part 3 (5): *"If the supply is treated as made in a member State, the amount is the amount of VAT charged on the supply in accordance with the law of that member State."*.
With similar requirements another EU scheme is applicable, that is, Import One Stop Shop IOSS as seen until now the protocol of NI applies for goods, namely when transactions concerning goods are made, NI is considered as a member state for VAT purposes; in the next paragraph there will be a more detailed clarification on the various schemes, namely, MOSS IOSS and OSS, in the meantime, it's worth considering that VAT on the supply of services does not take part of the NI protocol, therefore it follows the normal UK VAT rules discussed in paragraph 2.8.

2.9.1 Effects of the Northern Ireland Protocol

As discussed until now shows how the protocol puts NI in the situation of remaining part of EU's single markets thus avoiding the problem of hard borders with the Republic Of Ireland, but at the same time preventing business in Great Britain from using NI as a way to have access to the single market the protocol sets up barriers between NI and GB this translates in last year in more than 200 British companies stopping to send products in NI[122]; Eurostat also shows that in 2020 food retail prices in the Republic of Ireland were on an average of 34% higher than UK [123]which translates in higher prices for NI if considering the two factors together. Research of the Economics observatory shows how the Ireland protocol is costing the British government, around 250 million pounds per year[124], at some point, according to this research, the UK government is likely to decrease this spending with the result of shifting the burden on the regional government of NI. Another research (Duparc-Portier and Figus, 2021) shows that even with the benefit of access to the single market, the cost of the protocol will be equivalent to 2-3% of the GDP of the NI economy; an attempt of a solution can be found in the safeguard clause at article 16 of the NI protocol which provides: *"If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol."*. The protocol provides gives to the NI the unique position of having access to the UK's internal market and the EU's single market for goods which can be considered an incentive for a direct investment project in manufacturing to go to NI. Finally, it's far away that a trade war between the UK and the EU would start over this protocol given the current situation in Ukraine, and more serious developments will be seen in the future.

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[122] Written evidence submitted by the Consumer Council RESEARCH BRIEFING - THE NORTHERN IRELAND CONSUMER EXPERIENCE OF EU EXIT

[123] EUROSTAT Price level indices for food, beverages and tobacco, 2020 available at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Price_level_indices_for_food,_beverages_and_tobacco,_2020_(EU%3D100)_update_December.png [Last accessed 09/04/2022]

[124] Secretary of State for Northern Ireland, 2021 *Northern Ireland Protocol: the way Forward* available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible__1_.pdf

An Insight on MOSS, OSS, and IOSS

As already defined throughout the chapter reforming the VAT rules accommodating the rise of E-Commerce was a physiologic task for the European Union on 1st of January 2015, the EU implemented new rules to accommodate businesses operating in the fields of TBE[125] services, this kind of transactions have to be taxed in the country where the customer belongs, this to harmonize the taxation of services that should be taxed in the EU Member States in which they are consumed. To facilitate this process the first system creates was the Mini One-Stop-Shop (MOSS) scheme which was already addressed in the sub-paragraph 2.4.3, from the first of July 2021, MOSS has been substituted by the One-Stop-Shop (OSS) scheme which applies not only on TBE but on every transaction; the principle is the same, through OSS a business that makes many transactions in different member states can simplify its tax compliance. Like the old MOSS the OSS is of two types:
The union OSS is for suppliers and customers based in the EU or for a supplier based outside the EU who ships goods within the EU
The non-union OSS is applied by the non-EU supplier on the supply of services to EU customers.[126]
For the import of goods, the last of the three schemes are applied, namely the Import One-Stop-Shop is applied, it is valid for import into the EU of goods with a value which is less the 150€ it can be used by EU and non-EU sellers but the last must appoint for an intermediary[127]. UK being outside the EU can now apply for the non-union OSS scheme but also for the IOSS scheme, whereas NI is considered a member state in the application of this scheme.

[125] See sub-paragraph 2.4.3
[126] Agenzia delle Entrate, 2022, One Stop Shop (OSS) available at https://www.agenziaentrate.gov.it/portale/web/english/one-stop-shop-oss [Last accessed 27/09/2022]
[127] Agenzia delle Entrate, 2022, Che cos'è – Regime opzionale IOSS (Import One Stop Shop) available at https://www.agenziaentrate.gov.it/portale/web/guest/regime-opzionale-ioss/infogen-regime-opzionale-ioss [Last accessed 27/09/2022]

CHAPTER 3

Brexit effects on UK customs

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3.1 Introduction: The Custom Union

Throughout this document, it has been clarified how Brexit, is a simple concept in theory, but that, in practice, has a huge impact on the everyday life of many citizens and also a complex bureaucratic machine that has to be activated to, for example, find the right equilibrium in the VAT field, but VAT is not the only European mechanism that has been involved in the Brexit, as we have seen in the first chapter all the agreements regarding the permanence of the UK in the EU after the application of article 50 had to be rearranged besides the fact that the UK is no longer part of the single market[128] with Brexit it has been deprived of the membership inside the EU customs union. At this point is important to give a definition of the two concepts and to underline what are the differences between the single market and the customs union; to cite Investopedia *"The European Single Market is an entity created by a trade agreement among participating nations, including all of the members of the European Union (EU) and four non-EU countries that are members of the European Free Trade Association (EFTA)."* The result is the creation of a unified trading territory that does not have borders and tariffs, allowing the free movement of goods services capital, and people.[129] The EU Customs Union (CU) stands to the statement of its official website *"Makes it easier for EU companies to trade, harmonises customs duties on goods from outside the EU and helps to protect Europe's citizens, animals and the environment. In practice, the Customs Union means that the customs authorities of all EU countries work together as if they were one. They apply the same tariffs to goods imported into their territory from the rest of the world and apply no*

[128] The European Single Market, originally known as the Common Market, has its foundations in the former European Economic Community (EEC) established by the Treaty of Rome in 1957. The first significant change to the original treaty was made in 1986 with the Single European Act (SEA). In 1992, the European Union was formed, encompassing the former EEC.

[129] AUDARD, C., 2021, March. European "Freedoms": A Critical Analysis. *Ratio Juris. Wiley*. pp.29-44

tariffs internally." The EU Custom union has therefore two sides one is internal, and one is external with common tariffs in third countries[130]. The declaration of the EU about its custom strategy attributes a fundamental role to the CU for the functioning of the single market. The legislative starting point when dealing with the EU is often as in this case the TFEU, which Article 26.2 provides: *"The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties."* This article, together with the 28 on the Free movement of goods that provides: *"The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."* closes the reasoning behind the EU internal and external side that is about no custom duties when importing goods between borders of the EU member states but the single market can function properly only with the application of common rules at its external border, the role of customs is not only collecting duties, but also to guarantee that the products that enter in EU follow health and environmental standards;[131] At Article 32 of the TFEU is explicated the direction that the EC have to follow when dealing with CU namely: "*In carrying out the tasks entrusted to it under this Chapter the Commission shall be guided by: (a) the need to promote trade between Member States and third countries; (b) developments in conditions of competition within the Union in so far as they lead to an improvement in the competitive capacity of undertakings; (c) the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods; (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union*." A more precise definition of the role of the CU is given by the Union Customs Code [132] (UCC), which is the most important piece of legislation concerning custom duties in the EU, "*Entered into force on 1 May 2016 and work on upgrading and developing electronic systems designed to make the Customs Union a modern, interconnected and fully paperless environment should be completed across the EU before end 2025 at the*

[130] POGGIOLI, M., 2021, Positive Integration. Custom duties: ordinary and special procedures Module 3 EU Tax Law *Advanced International Taxation Law Università degli studi di Padova*

[131] European Commission, 2020 Customs Action Plan: Frequently asked questions available at https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1710 [Last accessed 16/10/2022]

[132] The Union Custom Code corresponds to the regulation Number: 952/2013 "

latest"[133], the EC has created and submitted to the European Parliament a Plan for Action named *"Taking the Customs Union to the Next Level: a Plan for Action"* in its introduction the EC underlined how, despite the various updates of the regulation, many challenges are present and are faced through this plan. For example:
The smuggling of illicit goods
Imbalances in the custom control of different member states[134]
Acceleration of digital transformation (e-commerce)[135]
The departure of the UK from the EU Custom Union
COVID-19;

In this sense, the President of the EC Ursula von der Leyen stated that the EC would propose *"An integrated European approach to reinforce customs risk management and support effective controls by the Member States."* The objective following the same plan is to develop a modern CU, which will be paperless before 2025. The main actions are detailed in part IV of the plan, while for the detailed description of these, the reader is remanded to the official paper, there will be reported a list of the actions which are intended to be implemented until 2025[136]:

[133] European commission, EU Customs strategy available at https://taxation-customs.ec.europa.eu/customs-4/eu-customs-strategy_en [Last accessed 15/09/2022]
[134] The goods are diverted toward the weakest entry and exit point to reduce the probability of detection of illicit goods
[135] SĂVULESCU, C., ANTONOVICI, C. G. 2021 Fostering Digital Transformation in the European Union in Digital Times. STRATEGICA, 761.
[136] European Commission, 2021 Multi-annual Strategic Plan for electronic Customs available at https://taxation-customs.ec.europa.eu/customs-4/electronic-customs_en [Last accessed 24/10/2022]

a) More effective customs risk management to allow more effective controls

1)EU Joint Analytics Capabilities (JAC)

2) Revised risk management strategy

b) Managing E-Commerce

3) Using VAT data for customs purposes

4) Revisit role and obligations of e-commerce actors notably platforms

c) Strengthening and facilitating compliance

5) Stepping up the AEO programme

6) Develop and deploy the EU Single Window environment for Customs

7) Union Customs Code evaluation

8) Common system of customs sanctions

9) Legal framework to combat customs fraud

10) Involvement of customs in protecting the single market against the import of non-compliant and unsafe products

11) Monitor the functioning of preferential trade arrangements

12) Analyse and, where appropriate, enhance the Union's international systems of cooperation in customs matters with important trade partners, in particular China

d) Customs working as one

13) Enhance cooperation between customs and security and border management authorities and synergies between their information systems

14) Customs Union Performance

15) Better equip Member States with modern and reliable customs control equipment

16) Deploy and deepen cooperation mechanisms under the Customs programme (MFF 2021-2027)

17) Smarter management of the customs union

Finally, the Commission also launched an exercise to help policymakers to ensure that EU customs remain effective for the long term. This project is called "The Future of Customs in the EU 2040"[137] and worked to create a shared understanding among key stakeholders of ways to deal with current and future challenges for customs and to generate a vision for how EU customs should look in 2040.

[137]GHIRAN, A., HAKAMI, A., BONTOUX, L. AND SCAPOLO, F., 2020 The Future of Customs in the EU 2040, *Publications Office of the European Union*

The updates that the UCC has been subject to have been through regulation 2016/2239 of 14 December 2016, regulation 2019/474 of 19 March 2019, and finally regulation 2019/632 of 17 April 2019. As said this code concerns all the member states and it's fundamental to have an effective CU. The withdrawal of the UK from the EU means also an exit from the CU, therefore, the UCC no longer applies to the UK which as already mentioned widely is now considered a third country. The new custom relationship between the UK and the EU is not trivial therefore next paragraphs will focus on the topic.

3.2 UK rules at the time of the transition period

As of 31st December 2020,[138] the UK does not benefit from the privilege of the CU, this means that what was discussed in the previous chapter does not apply anymore for the UK as underlined in chapter 1 the process that delivered Brexit was long and provided a period of transition to let the parties agree to a new relationship, ensuring that all the stakeholders would only need to adapt to the new rules, the TP has been agreed in part four of the WA in particular Article 127 (1): *"[...] Union law shall be applicable to and in the United Kingdom during the transition period."* And the same article paragraph 3: *"[...] the Union law [applicable pursuant to paragraph] 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union."* This means that during the TP in the UK, the EU law still applied therefore also the UCC is crucial, because it means that the free movement of goods was still ongoing, between the two parties. The WA also provides at Article 41 (1) a specification for the *"Continued circulation of goods placed on the market"*. During the TP: *"Any good that was lawfully placed on the market in the Union or the United Kingdom [...] may: be further made available on the market of the Union or of the United Kingdom and circulate between these two markets until it reaches its end-user; where provided in the applicable provisions of Union law, be put into service in the Union or in the United Kingdom."* Furthermore, paragraph 2 of the same Article specifies that on these goods Articles 34[139] and 35[140] of TFEU apply, namely the prohibition of quantitative restriction on the import

[138] Article 126 Withdrawal agreement: *"There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020"*

[139] Article 34 TFEU *"Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States."*

[140] Article 35 TFEU *"Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States."*

and export of goods. The Title 2 of the WA instead takes care of the "Ongoing customs procedures", so to the extent that a good starts its movement during the transition period and arrives when the TP is finished. In this case following Article 47 (1) the goods shall be treated as Union Goods[141] the following paragraph provides that *"The movement referred to in paragraph 1 started before the end of the transition period, shall need to be proven for every movement by the person concerned by any of the means"*. For the goods that were in temporary storage[142] at the end of the transition period in the UK, Article 49 of the WA provides that UCC applies. Finally, in Article 50 of the WA, the two parties agree on the access to the EU databases for the sake of compliance with what was agreed in title 2, the general rule on the access to the information is provided by Article 8[143], the Article 50 makes a derogation only for the ongoing custom procedures for which *"the United Kingdom shall have access, to the extent strictly necessary to comply with its obligations under this Title, to the networks, information systems and databases"* this will be added to the number of costs incurred to the UK because it *"shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating that access"* of an amount equal to *"the amount of those costs by 31 March of each year until the end of the period"*. During the TP the various agreements that were discussed until now, gave the possibility to both parties to arrange a new agreement which will be analysed in the next paragraph, in the meantime the business could operate practically as per usual. The possibility of an option for the UK to extend the TP was not exercised, since the new agreement with the EU was defined.

[141] Article 5 (23) Regulation 952/2013 *"Union goods" means goods which fall into any of the following categories: (a) goods wholly obtained in the customs territory of the Union and not incorporating goods imported from countries or territories outside the customs territory of the Union; (b) goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation; (c) goods obtained or produced in the customs territory of the Union, either solely from goods referred to in point (b) or from goods referred to in points (a) and (b);"*

[142] Article 5 (17) Regulation 952/2013 *"'temporary storage' means the situation of non-Union goods temporarily stored under customs supervision in the period between their presentation to customs and their placing under a customs procedure or re-export"*

[143] Article 8 WA: "*Unless otherwise provided in this Agreement, at the end of the transition period the United Kingdom shall cease to be entitled to access any network, any information system and any database established on the basis of Union law. The United Kingdom shall take appropriate measures to ensure that it does not access a network, information system or database which it is no longer entitled to access."*

3.3 UK rules after the withdrawal from Customs Union

From 1st January 2021, the UK is no longer part of the Customs Union. In the dynamics of Brexit, this has been a crucial date because the TP is no longer in force. The new rules entered into force, between the parties come from the Trade and Cooperation Agreement which is 1256 pages long; it's really broad and covers many issues from the trade in goods and services which will be analysed in this chapter, to travel, transport social security coordination, and so on. Despite its length, following the TCA only creates a shallow trading relationship between the two parties[144], implementing new border rules results in a higher cost for the Public Administration and also for businesses that now have to deal with more requirement from the customs authority.[145] The end of the transition period from an operative perspective didn't mean that all of a sudden, the businesses that imported or exported had to deal with new, overcomplicated, Custom Rules. In other to guarantee a smooth change in the border rules UK prepared the so-called 2025 UK Boarder Strategy[146] which, standing at what was declared by the UK government On its website, sets out its vision for the border to be the most effective in the world, through a system of six proposes which are:

1. Develop a coordinated user-centric government approach to border design and delivery, which works in partnership with industry and enables border innovation.

2. Bring together government's collection, assurance and use of border data to provide a comprehensive and holistic view of data at the border.

3. Establish resilient 'ports of the future' at border crossing points to make the experience smoother and more secure for passengers and traders, while better protecting the public and environment.

4. Use upstream compliance to move processes away from the actual frontier where appropriate, both for passengers and traders.

5. Build the capability of staff and the border industry responsible for delivering border processes, particularly in an environment of greater automation; and simplify communication with border users to improve their experience.

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[144] see FUSACCHIA, I., SALVATICI, L., WINTERS, L.A., 2022, The consequences of the Trade and Cooperation Agreement for the UK's international trade *Oxford Review of Economic Policy*, pp. 27–49

[145] HAYWARD, K., 2020 What Brexit means for Britain's borders *UK in a changing Europe* available at https://ukandeu.ac.uk/what-brexit-means-for-britains-borders/

[146] Cabinet Office, 2025 UK Border Strategy Published 17 December 2020 available at https://www.gov.uk/government/publications/2025-uk-border-strategy

6. Shape the future development of borders worldwide, to promote the UK's interests and facilitate end-to-end trade and trave

More detailed operational arrangements can be found in the Boarder Operating Model (BOM) which reflects, following the website of the UK government, the revised timetable for the introduction of the next stage of UK import and export requirements, as well as additional detail on policies and processes. This means that the BOM provides detailed instructions of what are the new processes that must be applied for cross-border trade between the UK and the EU

3.3.1 Border operating model

In the UK strategy is remarked, as underlined in the previous paragraph, the implementation of the so-called Border Operating Model, to guarantee certainty of the process and guidelines useful for the operators. This document gives an overview of custom rules, and also a precise description of the procedures for importing and exporting from the Custom standpoint. The other important function of this model is to provide the operators with a staged approach which is divided into three phases:

3.3.1.1 1st Phase from January 2021

Traders established in GB need a GB EORI[147] number to move goods to or from the UK And an EU EORI[148] if undertaking any EU customs processes. Trades must also decide how to complete customs formalities. Most businesses use an intermediary when dealing with customs requirements. Businesses can either hire an agent or may want to recruit or train someone in the business to deal with customs for the company. There will be implemented also the Duty Deferment Account[149] (DDA) which allows holders to delay customs duty, excise duty, and import VAT, to be paid once a month rather than on individual consignments. There are several facilitations, including the Common Transit Convention (CTC), to help import and export goods. Most importantly in this first stage

[147] An Economic Operators Registration and Identification (EORI) number is a unique identification number assigned by HMRC to an economic operator or to another person in order to track and register customs information in the UK. A business needs an EORI number whenever it is importing or exporting goods. In particular a GB EORI is needed to move goods in or out Great Britain (For more informations see gov.uk "Get an EORI number)

[148] The EU EORI is issued by each member state, depending on the country of establishment of the operator the first two digit can vary, also in this case it is needed for custom purposes whenever a good moves in or out the EU custom union

[149] *Traders who import goods regularly may benefit from having a duty deferment account (DDA). This enables customs charges including customs duty, excise duty, and import VAT to be paid once a month through Direct Debit instead of being paid on individual consignments*

traders importing non-controlled goods[150], had the opportunity to delay the custom declaration up to 175 days after the date of import. Full customs declarations instead are needed since the first phase for controlled goods[151] listed in annex C of the BOM. In general, after the TP the UK government is bringing control on goods imported and exported to be treated as goods coming from the Rest of the World. To begin with, the importers and the exporters will have as previously said fill out the Customs Declaration and pay customs duties on import. To face the Importing issue, the BOM implemented a Core Model, which in principle can also apply to export; The core model for import consists of different processes:

- Import preparations, which consist in having a GB EORI number, a commodity code[152] for custom declaration and to calculate duties, the value of the goods, whether or not the importer is eligible for any benefit or facilitation, and finally, how to make the custom declaration
- Custom Declarations, as said previously, in this time frame goods were treated differently depending on their presence in Annex C of the BOM, if they are in it, then a customs declaration either simplified or not must be submitted, if they are not, then will be considered non-controlled goods and therefore the trader could use delayed declarations[153] instead of the full one[154].
- Duties and Import VAT, are topics partially covered in the previous chapter, nevertheless, for sake of completeness will be presented a brief description of the processes included in the BOM; the model categorises the traders into two groups:

[150] Are considered non-controlled goods all the goods that are not included in the Annex C of the BOM
[151] The following list refers to Annex C of the MOB and is reported to give an idea or what are the main types of goods listed, and it is not by any means exhaustive. *Excise goods; Controlled drugs; Drug Precursor Chemicals; Toxic Chemicals; Endangered species (CITES listed endangered animals and plants or their products); Fishery products; Marketing standards – fertilisers; Anti-personnel mines; Explosives; Firearms; Pyrotechnic Articles, including Fireworks; Military goods; Nuclear materials; Offensive weapons; Rough diamonds; Realistic imitation firearms; Torture equipment; Ozone depleting substances and hydrofluorocarbons; Anti-dumping duty and countervailing duties; Sanction goods and weapons of mass destruction-related goods.* From this list is easy to understand that the goods being controlled are the ones which can have a detrimental impact on the economy or the security of GB
[152] The commodity codes classify goods for import and export. Knowing the correct commodity code for goods is required for filling in declarations and other paperwork.
[153] The delayed declarations were in place until 31 December 2021 and gave the option to businessis that were importing into GB to submit a supplementary declaration to HMCR within 175 days after the entrance of the goods, the importer needed to be established in UK or in alternative it could hire an intermediary established in UK, in order to complete this declaration the operator need to be authorised for a Simplified Custom Declaration Process and have DDA (see note 90)
[154] The full customs declarations is instead the normal procedure for import, due to its complexity is normally submitted by intermediaries to the so called CHIEF e Customs Handling of Import and Export Freight or to the CDS Customs Declaration Service

the ones that use Delayed Declarations, which if UK VAT registered must use postponed VAT accounting if Non-VAT registered must pay any import vat due on the DDA, and the ones that do not use Delayed Declarations, which is UK VAT registered importing non-controlled goods using the Simplified Customs Declaration process they must use postponed VAT accounting otherwise they can but are not obliged to use PVA on their import goods, finally for non-VAT registered traders who are not using delated declarations its possible to pat import VAT through the customs process or DDA.

- UK Tariffs changed since the country is no longer in the Customs union, therefore the tariffs applicable are now independent, the new rule is the UKGT or UK Global tariff, which applies to all goods imported into the UK, there are some exceptions e.g., trade agreements, tariff suspension, generalised scheme of preferences, some products are even covered by the tariff-rate quota, which let the trader import a limited amount at a reduced or zero rate. Between the UK and the EU there's an agreement that allow certain goods to be imported free of charge, while the rules of this agreement will be explored in a future paragraph, it worth mentioning in this lines what are the tariff which are currently imposed to Russia and Belarus as effect of the war in Ukraine, in particular, three rounds of "sanctions" has been imposed with the aim as the ex-Chancellor of the Exchequer of UK Rishi Sunak said: *"Our new tariffs will further isolate the Russian economy from global trade, ensuring it does not benefit from the rules-based international system it does not respect."* and also *"These tariffs build on the UK's existing work to starve Russia's access to international finance, sanction Putin's cronies and exert maximum economic pressure on his regime"*.in the first round of sanctions the 25 November 2022 the UK to denied Russia and Belarus access to Most Favoured Nation tariff for hundreds of their exports, and as for the import side publishes a list of goods worth £900 million which besides the normal tariff are now facing an additional 35%.[155] The 1 June 2022, additional goods were included in the list of the ones subject to the additional tariff of 35% which are estimated to be worth another 130 million pounds,[156] lastly the 20 July 2022 the UK increased the volume of trades sanctioned which is worth another £1.7 billion

[155] UK Department for International Trade, 2022, *UK announces new economic sanctions against Russia* available at https://www.gov.uk/government/news/uk-announces-new-economic-sanctions-against-russia
[156] UK Department for International Trade, *2022, Additional duties on goods originating in Russia and Belarus* available at https://www.gov.uk/guidance/additional-duties-on-goods-originating-in-russia-and-belarus

for a total of around £4 billion worth of goods sanctioned, a 35% additional tariff; [157]if goods left Belarus of Russia before this dates the sanctions were not applied. All these regulations mean that the importation from these countries is economically unsustainable, therefore reducing the outflow of money from the UK to Russia but also a generalised rise of the price since the supply of goods is reduced. At the same time, the UK announced trade measures as a way to support the UK, thus introducing an FTA between UK and Ukraine, together with a billion £ loan guarantee to economically support the country during the war.[158]

- Import facilitations are in place since 01 January 2021 to reduce the impact of the import process, in particular, those reported In the BOM are not the only facilitation available but the most common. The first under description is the Transit, it is worth mentioning that the UK agreed to the so-called Common Transit Convention[159] (CTC), together with many other countries including all the EU member states, following the digitalisation process the UK government, besides the Transit Accompanying Document (TAD) is also allowing the digitalisation of the process through the Goods Vehicle Movement Services (GVMS)[160] in which carriers have to submit the Transit Movement Reference Number (MRN) and the vehicle registration before the departure, the MRN derives from the TAD which must also travel with the good, the end of the transit correspond to the moment in which the goods are released for free circulation after being subjected to import custom declaration. Another facilitation is the Simplified Custom Declaration (SCD), which allows traders to submit a simplified declaration when de goods enter into GB under the condition that later they must produce a supplementary declaration, to be authorised businesses must have a DDA. There are two possibilities for SCD,

[157] UK Department for International Trade, 2022, *UK punishes Putin with new round of sanctions on £1.7 billion of goods* available at https://www.gov.uk/government/news/uk-punishes-putin-with-new-round-of-sanctions-on-17-billion-of-goods

[158]UK Department for International Trade, 2022, *UK announces new trade measures to support Ukraine* https://www.gov.uk/government/news/uk-announces-new-trade-measures-to-support-ukraine

[159] The convention on a common transit procedure gives the best definition of itself thorough its general procedures, in particular, in the general provisions at Article.1 (1): *"This Convention lays down measures for the carriage of goods in transit between the Community and the EFTA countries as well as between the common transit countries themselves, including, where applicable, goods transhipped, reconsigned or warehoused, by introducing a common transit procedure regardless of the kind and origin of the goods".*

[160] It is a UK Government IT platform which is used for moving goods In or Out NI and GB, it is used for pre lodged or pre-arrival declarations, reducing the intervention in the points of entrance.

namely Entry in Declarant's Records (EIDR)[161] and Simplified Declarations Procedure (SDP) which imply ease on the information requested upon importation but, on the other hand, additional customs information is requested in the supplementary declaration.

In some cases there's the need for businesses to suspend or postpone the payment of customs duties under specific conditions, in these cases, the UK government provided the so-called Custom Special Procedures (CSP) which are: Customs warehousing that allows the suspension of duties when the goods are stored in a Customs Warehouse; Inward processing, duties are suspended while the goods are processed in the UK and Outward processing when there's a temporary export only for processing the goods and then re-importing it; Temporary admission the import of goods that might be used temporarily in the GB and then re-exported (e.g. during fairs or roadshows).

There are also other import facilitations available such as the DDA or the Authorised Economic Operator (AEO), returned goods[162]

- Non-Freight Imports are the last category in the core model of importing goods, this particular category regulates procedures for a small number of goods, for example, commercial goods carried in small vehicles that have a value of less than 1500£ or weigh less than 1000 kg must take an online declaration or even an oral declaration at the point of entrance, if the amount is higher than this threshold event when carried in small vehicles goods must be travel under the full custom declaration; declaration has to be made also when dealing with a determined amount of money which is above the threshold of 10 000£ either online or via paper. Specific regulations are provided also for mail if sent through the Royal Mail Group, goods with a value not exceeding 900£ will need a so-called CN22 customs form[163], for any other value or mail sent through unauthorised operators, full custom declarations will be needed.

The model which was discussed until now is valid for goods that are imported into the UK from the EU, nevertheless, even the GB businesses that want to export goods are subject to requirements when goods are crossing the borders, therefore the core model is

[161] The EIDR is used in GB as much as it is used in the CU, it is composed by two parts which are not divisible, sometimes the supplementary declaration may be waived.

[162] Traders can apply for AEO status for moving goods between the UK and the EU. AEO status is an internationally recognised quality mark that shows a business's role in the international supply chain is secure and has customs control procedures that meet UK and EU standards.

[163] The CN22 form is needed whenever items are imported into the UK, this form is used as confirmation with custom official that goods entering the country are not restricted or banned.

applied also for exporting goods, the requirement which are dealt in the core model for export will be now analysed in detail:

- For export preparations, the traders that want to export goods must have a GB EORI number as well as an EU EORI S&S GB system, and a CHIEF badge in many cases the intermediary will take care of all these requirements.
- The UK Customs Declarations, is the principal document needed to export goods, besides the requirements described in the preparation phase, more requirements are, the commodity code of the goods, the value of the goods, and if needed the license for exporting as well as the characteristics of the goods and their origin, these declarations are usually submitted by an intermediary, but they can also be uploaded in the NES National Export System, simplified declaration procedures are available while exporting, to increase the efficiency at the boarders, with an upfront simplified custom declaration followed by a supplementary one up to four weeks later. Goods moving through specific paths will be able to export through a so-called arrived declaration, after which the trader will receive the so-called Permission to Progress (P2P)[164] if the goods pass the eventual checks when arrived at the point of departure the P2P will be checked, and the goods will be allowed to progress, if this process is not used, a pre-lodged export declaration will be due.
- Safety and security declarations are the primary points of asymmetry between the Import and Export side, if the import new rules should have been as we will see introduced in the 3rd phase, for the export side the situation is different since the EU has suffered a lower impact from Brexit. In particular most export requires S&S, carrier s have the legal responsibility that the customs authorities are provided with the pre-departure information, these requirements can be fulfilled through custom declaration, the data required in this declaration includes the consignor, consignee a description of the goods, routing, location of the goods at the departure, it goes without saying that the UK government reserves the right to conduct checks for restricted goods at the point of departure, as will be seen in the paragraph reserved to the rules of origin. The declaration must be provided within a few hours before the departure, and the information can be changed until the

[164] Permission to Progress means that the export entry has been cleared and the goods may now be loaded for transport. A P2P message is sent electronically to the person making the export declaration. This is known as positive clearance. It means that CHIEF/HMRC has given specific notification that the goods are cleared for exportation.

point of clearance, following the requirement of a more Informatised system all the processes can be made through the UK S&S system.

- EU Tariffs are the same as the ones for imports due to the free trade agreement between the two parties and are exposed in the next paragraph.
- Export facilitations are also similar to the ones already exposed for the import, such as the transit which follows the same CTC therefore a transit accompanying document need to travel along with the goods as well as an export declaration and this is true also if the transit starts in GB, in any case, an S&S is also needed. The transit declaration needs to contain the office of departure as well as the office of destination in the country of destination, but not only, all the offices at the border that are expected to be crossed must be declared, consequently, all the duties and VAT due in each custom must be covered by a guarantee from a financial institution. To submit a transit declaration the exporters must access the New Computerised Transit System (NCTS),[165] also the export declarations can be submitted in the NES or National Export System; in some points located in an airport or port traders can clear their goods before the removal to the point of departure, this happens under Customs Supervised Exports (CSE) and Designated Export Places (DEP) and it's fundamental to facilitate the process in places where typically there's a high volume of movements.
- For other exports such as commercial goods in accompanied baggage or small vehicles, the principle is the same as for the import but with the same thresholds and documentation.

[165] The New Computerised Transit System (NCTS) has replaced the paper-based procedure with an exchange of electronic messages, the external Union transit since the UK is no longer part of the European Union and Customs Union, this procedure is particularly relevant for UK traders as it applies mainly to the movement of non-Union goods.

3.3.1.2 2nd Phase from January 2022

From January 2022 the 2nd phase of the BOM took place which resulted in more requirements for the economic operators, from this date traders must make full custom declarations, even when moving non-controlled goods therefore the opportunity of delay is removed, and they have the possibility under an authorisation to apply for the delay declarations. The border controls can be time-consuming and if the amount of goods entering the GB daily is taken into consideration it can be really difficult to have proper control and at the same time maintain the flow of goods, for this reason, the BOM foresees two main custom process when importing goods namely: the pre-lodgement model and the temporary storage model, under the former model, traders will be required to submit a customs declaration prior the boarding of the goods, so the carrier will be required to make sure that the goods meet the requirement in advance. The checks are composed of 4 steps: Step 1, the trader submits the custom declaration in advance, through the HMRC IT system GVMS already discussed in the previous paragraph; Step 2, the carrier makes sure that the goods have all the documentation in order before boarding; Step 3, the frontier will approve the import; Step 4, if goods are selected for checks, they will be subject to customs controls at the border, once cleared they are released.[166] In this way, checks are carried out only if needed thus improving efficiency at the borders for those goods arriving at the border without a temporary storage approval the board is denied without a valid pre-lodged declaration. The other option is that before the release for free circulation an operator can store the goods temporarily in storage under customs control, in this way the trader can defer the customs duties for up to 90 days from de date of the storage, to apply for this model an authorisation is required this is provided by the UK custom authority after a series of requirement and controls are met, such as the storage facility must be within or near an airport or a seaport, must meet storing condition requirements and security requirements, the facility, and the goods, the requirement can be inspected prior but also after the authorisation has been granted, following the approval the trader need to demonstrate a commercial need for temporary storage, otherwise the approval can be reviewed.[167] in this sense, as explicated by the BOM *" Goods without*

[166] HM Revenue & Customs 2021 *Reasonable steps for frontier operators using the pre-lodgement model to control goods from the EU into Great Britain* Policy paper available at https://www.gov.uk/government/publications/the-pre-lodgement-model-for-controlling-goods-from-the-eu-into-great-britain/reasonable-steps-for-frontier-operators-using-the-pre-lodgement-model-to-control-goods-from-the-eu-into-great-britain

[167] HM Revenue & Customs *Apply to operate a temporary storage facility* Published 3 August 2012 (Last Updated 1 October 2022) available at https://www.gov.uk/guidance/temporary-storage

pre-lodged declarations enter a Temporary Storage approved area on arrival in the port (with a valid Temporary Storage authorisation and inventory linking in place).” Another important change that has been made since the beginning of 2022 is that businesses are no longer required to provide intrastate declarations of goods coming from the EU. An update has been made also for the so-called Simplified Custom Declarations which were described in the previous paragraph, while the process was not subject to any changes if traders want to use this declaration must be authorised or have an authorised intermediary before the import is made. For the export side, updates were done following 2022, for example, all the goods exported via all borders locations will be subject to customs control, many updates regard the implementation of electronic systems such as the implementation of the GVSM also for export custom declarations to be linked with the GMR or Good Movement Reference; for transit purposes in the GVSM besides the MRN traders will need to enter their TAD as well as an Exit Summary declaration. The last major changes in the second phase regarding export are about commercial goods carried in accompanied baggage or small vehicles’ in particular when submitting a full export customs declaration into CHIEF, the goods will now be marked as arrived at the exit port, therefore there’s no need to present the goods to a Border Force officer if the goods are non-controlled ones, no further documents is needed whereas if travellers are carrying controller goods they must submit in advance the so-called C1602 form[168]. As for the Custom reporting procedures Clearance outwards is needed for commercial ships or aircrafts leaving GB to the EU.

3.3.1.3 3rd Phase from July 2022

This Phase has been postponed, since the current political situation is not promising, with British citizens being hit by rising costs caused by the War in Ukraine, and the rise of the cost of energy the UK government decided to postpone the new imposition that should have been applied since 1st July 2022 saving, standing to the BOM, 1 billion in annual costs to British businesses. The Government following what was stated in the BOM is instead accelerating the process of digitalisation of the British borders to reduce costs for businesses and consumers. Currently, there are no updates on new rules which will be disclosed in the next month and will be introduced by the end of 2023 trying to implement into the operative side rules in line with the 2025 Boarders Strategy. The controls that

[168] HM Revenue & Customs, *Report exports that arrived or left a UK port that were not declared in CHIEF* Published 19 August 2021 available at https://www.gov.uk/guidance/report-exports-that-arrived-or-left-a-uk-port-that-were-not-declared-in-chief

should have been introduced from July of this here but won't be introduced can be found in the BOM and are[169]:

- *A requirement for further Sanitary and Phytosanitary (SPS) checks on EU imports currently at destination to be moved to Border Control Post (BCP).*
- *A requirement for safety and security declarations on EU imports.*
- *A requirement for further health certification and SPS checks for EU imports.*
- *Prohibitions and restrictions on the import of chilled meats from the EU.*

3.3.1.4 Additional requirement of the Border Operating Model

Besides the requirements provided in the core model describes in the previous chapter, it's worth pausing the description of all those goods that needs additional processes when they are imported or exported, the reason for such discrimination lay in the sensible nature of those goods, which, as will be discussed can have a great impact on the stability of the economy and the security of a country:
The first categories discussed are those who are grouped in the goods covered by international conventions; the first to be discussed is the CITES or better the species covered by the Convention for the International Trade in Endangered Species of Wild Fauna and Flora, such species are listed and their regulations vary, depending on the characteristic of each species and their need of protection, for this kind of import besides the standard documentation the CITES permit and further control on the welfare of the animal is required, trading such species without a permit is considered a criminal offense and could result in high fines and also a prison.
Other categories of sensible products are hydrofluorocarbons or HFCs and Ozone-Depleting Substances (ODS) each category has its regulation to import these substances, the businesses are provided with a quota authorised to be imported annually, being provided with a quota is possible through online system, at the point of import the goods will be checked with the registration and all the requirements. If the importer does not have a valid license or sufficient authorized quota, the importation will be considered illegal thus the goods will be seized. The third category is included in the so-called Kimberley Process[170] and regards rough diamonds, UK has independent participation in

[169] Cabinet Office, *Border Operating Model* Published 13 July 2020 (Last updated 16 June 2022) available at https://www.gov.uk/government/publications/the-border-operating-model

[170] The Kimberley Process Certification Scheme (KPCS) is the process established in 2003 to prevent "conflict diamonds" from entering the mainstream rough diamond market by United Nations General Assembly Resolution 55/56 following recommendations in the Fowler Report. The process was set up "to ensure that diamond purchases were not financing violence by rebel movements and their allies seeking to undermine legitimate governments.

the KP, and those countries that do not participate in the KP are not allowed to import such goods, to be imported the goods must be accompanied with the KP certificate and pass a physical inspection in compliance with the KP otherwise the goods have seized Another category under the international convention is the of all the goods under the so-called ATA carnets, which is a document that allows private but also businesses to transport non-perishable goods such as publicity materials, equipment needed for work, education sport, etc. in 70 different countries without the payment of customs charges, and only for temporary moving. Another important group is formed by all those goods that must be subject to Sanitary and Phytosanitary controls, the further requirements that will be described are fundamental for certain goods to protect the population and ensure that the goods are safe for consumers, but also to prevent any disease coming from plants and animals which can modify the natural equilibrium of a country; the higher controls corresponds to an import pre-notification which is submitted by the importer in advance and provides a series of detail on the goods that has being imported, an health certificate is then needed which provides all the information needed to make sure that the consignments meets all the health requirement, after that a physical inspection will be done in the country of destination anyway the type of control will be different depending on the category of import first category in this group is composed by animal products, since January 2021 new measures were introduces, 2 in particular: the ABP or Animal By-Products and the Products of Animal Origin (POAO) ; the so called ABP are divided in 3 categories depending on the degree of process that the raw material has been subject to; nevertheless the importer has to submit a notification before the arrival through the IPAFFS or import of products, animals, food and feed system, after that the goods imported must be accompanied by the ABP commercial documentation. For the POAO products, the process is similar, those products must be accompanied by a health certificate issued by a competent authority, notified in advance through IPAFFS finally the importer must provide the unique notification number which will be added to the documentation, emergency safeguards might be implied in other to restrict the importations from countries subject to outbreaking diseases. The second category in this group corresponds to fishery products and live bivalve molluscs which in some cases namely for those who are intended for human consumption and thus treated as goods and not as live animals need a POAO pre-notification submitted through the IPAFFS other (the majority) of marine-caught fish will need different documentation in respect to the previous category, which corresponds to a validate Catch; additional requirements will be needed for endangered species such as caviar from the sturgeon family; the

requirements for this products, are health certificate, catch certificate, and another IUU document as well as physical check at the border. The next category is composed of HRFNAO which is an acronym for High-Risk Food and Feed Not of Animal Origin the additional requirement is excluded if the goods originate from the EU whereas if the same goods are imported in the EU and then exported in the UK they are subject to extra requirements such entering only through designated BCP, after a communication by the importer with the IPAFFS and after being subject to a physical check, the authorisation that must travel with the goods are the same, so heal certificate and so on. In the same category live Animals and Germinal products need the pre-notification and the health certificate besides this depending on the animal more requirements might be needed such as those requirements typical for endangered species or the need to enter with an appropriate BCP and pass physical inspections; for example in this category are included Live aquatic animals for aquaculture and ornamental purposes which only needs the regular additional requirements different story is for equines, which are subject to, besides the already widely cited requirements, also blood testing[171]and residency and isolation if are not registered, otherwise they follow the standard procedure; also for plants and plants products which are included in the last category of this group the requirements are somewhat peculiar. To begin with, some of those are not considered a risk for the biosecurity of the UK, are included in a list, and are exempt from import controls, other items are instead subject to import controls, those besides needs for more requirements such as the phytosanitary certificate, and can be subject inspections from the Plant Health and Seed Inspectors (PHSI) or the Animal and Plant Health Agency (APHA) as well as the Forestry Commission (FC). The third group of goods corresponds to the excise goods, the declaration needed for this group can be either for or simplified, and all the duties are collected through CHIEF, a characteristic of these goods is that their movement is managed through the Excise Movement and Control System, which applies for Intra UK movements and Import from the rest of the world, specific requirements are needed for parcels, tobacco and alcohol products; lastly, there's the possibility to defer the payment of excise duty on importation, applying for a Deferment Account Number, all those businesses that have a good financial history can access to this ease without a guarantee. The last group involves all those goods that were not categorised elsewhere; which are: Bottled water, which does not need specific requirements, some checks might be done to

[171] Unregistered equines must be tested for: equine infectious anaemia - within 30 days before travel equine viral arteritis - within 21 days of travel for uncastrated male equines older than 180 days, unless they meet vaccination requirements

ensure that the goods follow the appropriate standards. Chemicals requirements depend on the type of chemical imported, requirements may include informing the national authority, UK REACH authorisations, and labelling, chemicals such as mercury has been banned Pesticides need to be authorised in advance by the HSE; Drug precursor chemicals are licensed by the Home Office; can be imported only by domestic registered businesses this licenses are valid for one year, also, the importer must register for a National Drugs Control System and get an import licences valid for 3 months Explosive precursors which might be used for the illicit manufacture of explosives needs to be licensed to be imported the so-called EPP issued by the home office Firearms need also a licences issued by the Department for International Trade, this is also true for firearms parts and ammunition for commercial import a registration on Import Case Management System is needed, for non-commercial imports a British Visitor's Passport must be provided by UK police, finally, in both cases, a valid UK certificate must be provided to the border force officer if required. Veterinary medicines that are authorised and imported from the EU do not need additional requirements, controlled veterinary drugs must be physically presented at the point of entry, and failing to do so may result in a criminal offence. For Waste shipment for the EU cannot export waste for disposal, but only waste of certain categories, which need to be preceded by the submission of a waste notification and waste movement form, which must be held by the authorised carriers and provided to the customs officers, the waste can move only through a designated point of exit and of entry, and follow the pre-agreed route during the whole process the importer will need to provide to the inspector all the required documentation needed for this kind of products. For tinder, the importer must provide documentation to prove that those products have not been harvested illegally

Last but not least category groups all the goods required by the hospitals: Medicines for human use which need a licenses, such as the relevant Manufacturer's Licence (MIA) or the Wholesale Dealer Authorisation (WDA); for medical radioisotopes to avoid delays the custom authorities provides 2 hours custom clearance since these goods being radioactive might be dangerous or urgent to be delivered; controlled drugs must be physically presented at the border, else the importer can be charged with a criminal offense; last products are the substances of human origin, e.g. blood, organs, etc. these goods for the evident importance have priority and benefit for a by conduct custom declaration when: needed for emergency transplant, grafting or transfusion, in secure

packaging and clearly labelled, eligible for relief from import duty.
For the export side, the opposite is true, this means that the additional regulation now described can be applied also to export from the UK to the EU. The only element of novelty is the introduction of the group of other goods of three new categories which will be briefly described:
The first category corresponds to Cultural goods which from the UK perspective need additional requirements to be exported, the reason for this choice is to avoid all the cultural goods of national importance could be exported, all the goods with certain importance, need to obtain an individual license to be exported whereas for EU export of such goods do not require a license; those licences in the UK are issued by the Arts Council England and have to be attached to the CHIEF;
The second category of additional requirements concerns the so-called Strategic Export Controls, which corresponds to military goods, before 2021 those goods could travel licence-free, now are required a Standard Individual Export Licence or an Open Individual Export Licence, not having a licence can result in the seizure of the goods. The last provision regarding export is not applied always it is more a safeguard measure, and take in consideration the temporary export restrictions that deal with shortages of supply, in some occasion might happen that there's a shortage of certain goods, in this case additional requirement might be introduced temporarily to reduce the amount of export of such goods.

3.3.2 Rules of origin

After the TP as widely underlined, the UK exited the Customs union which means more custom formalities for businesses, at the same time the TCA between the UK and EU guaranteed a set of relief from custom tariffs to the economic operators involved in trades between the two parties in order to reduce the economic impact of this change[172] Article 21 of the TCA states: *"Except as otherwise provided for in this Agreement, customs duties on all goods originating in the other Party shall be prohibited."*, the immediate consequence of this article is that no duties must be levied from trades between the two parties, this relief comes with a condition, namely it specifies goods originating, this implies the so called Rules of Origin, which are needed to identify the goods that can benefit from this reliefs, in particular, the chapter 2 of this agreement provides the details on the requirements in order to obtain this reliefs, as stated in Article 37 of the agreement *"The objective of this Chapter is to lay down the provisions determining the origin of goods for the purpose of application of preferential tariff treatment under this Agreement, and setting out related origin procedures."* A good is considered to originate in one of the two parties if:
The product is wholly obtained by that party
The product is produced in that party exclusively from originating materials in that party
The product is produced in that party and incorporates non-originating materials under some conditions.[173]
For the wholly obtained products, Article 41[174] of the TCA provides a list of all the

[172] See BARNARD C., & LEINARTE E., 2021, Movement of Goods Under the TCA, *University of Cambridge Faculty of Law Research Paper*, pp.6

[173] These conditions are reported in the Annex 3 of the TCA which provides an exhaustive list of all the products and the percentages of non-originating products that can be used in a production process for the good to be considered originating.

[174] Article 41 TCA: The following products shall be considered as wholly obtained in a Party*: "(a) mineral products extracted or taken from its soil or from its seabed; (b) plants and vegetable products grown or harvested there; (c) live animals born and raised there; (d) products obtained from live animals raised there; (e) products obtained from slaughtered animals born and raised there; (f) products obtained by hunting or fishing conducted there; (g) products obtained from aquaculture there if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock such as eggs, roes, fry, fingerlings, larvae, parr, smolts or other immature fish at a post-larval stage by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;87 30.4.2021 EN Official Journal of th European Unio L 149/65 (h) products of sea fishing and other products taken from the sea outside any territorial sea by a vessel of a Party; (i) products made aboard of a factory ship of a Party exclusively from products referred to in point (h); (j) products extracted from the seabed or subsoil outside any territorial sea provided that they have rights to exploit or work such seabed or subsoil; (k) waste and scrap resulting from production operations conducted there; (l) waste and scrap derived from used products collected there, provided that those products are fit only for the recovery of raw materials […]"*

products that can be considered in this category therefore that can benefit from the preferential tariff treatment, if the production requires non-originating materials a product can still be considered as originating in one of the two parties, when the conditions of Article 42 are met, namely: "*(a) the total weight of non-originating materials used in the production of products classified under Chapters 2 and 4 to 24 of the Harmonised System*[175]*, other than processed fishery products classified under Chapter 16*[176]*, does not exceed 15 % of the weight of the product;*
(b) the total value of non-originating materials for all other products, except for products classified under Chapters 50 to 63 of the Harmonised System[177]*, does not exceed 10 % of the ex-works price of the product;*
(c) for a product classified under Chapters 50 to 63 of the Harmonised System, the tolerances set out in Notes 7 and 8 of Annex 2 apply[178]*"* if the condition set by this paragraph are not met, then the goods cannot be considered as originated in one of the parties. There are some cases of insufficient production in which the product cannot be considered as originating in a party, these cases are listed in article 43[179] if the non-

[175] The Harmonized System (HS) is commonly used throughout the import and export of goods; It is a standardized numerical method of classifying traded products used by customs to identify products when assessing duties and taxes. The HS is not only valid for the sake of the TCA but its administrated by the World Customs Organization (WCO) and is updated every five years. It is composed by six-digit codes for varying classifications and commodities. Countries are allowed to add longer codes to the first six digits for further classification. In particular: Chapter 2 and 4 to 24 includes the section I which provide a list of live animals and animal products, in this particular case chapter 1 (live animals) and chapter 3 (fish and crustaceans, molluscs and other aquatic invertebrates.) are excluded, and section II regarding gettable products section III regarding *"animal, vegetable or microbial fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes"* and finally Section IV *"Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes; products, whether or not containing nicotine, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body"*

[176] The chapter 16 includes the following products: *"Preparations of meat, of fish, of crustaceans, molluscs or other aquatic invertebrates, or of insects."*

[177] This range of chapters are all included in the section XI and represent the category of "*textiles and textile articles"*

[178] Note 7 of the annex 2 to provides all the *"Tolerances applicable to products containing two or more basic textile material"* in addition, note 8 of the same annex provides "*Other tolerances applicable to certain textile products"*

[179] The list in Article 43 (1) of TCA includes: *"(a) preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the products remain in good condition during transport and storage;1 (b) breaking-up or assembly of packages; (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings; (d) ironing or pressing of textiles and textile articles; (e) simple painting and polishing operations; (f) husking and partial or total milling of rice; polishing and glazing of cereals and rice; bleaching of rice; (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form; (h) peeling, stoning and shelling, of fruits, nuts and vegetables; (i) sharpening, simple grinding or simple cutting; (j) sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles; (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple*

originating goods enter one or more productive processes explicated in this article they maintain the status of non-originating goods; packaging materials and containers either for retail sale[180] or for shipment[181] are not considered when determining the rule of origin, only for retail sale those are considered for calculating the value of non-originating materials to determine the threshold. Accessories which are delivered with the goods are regulated by Article 47 which considered as on product with the principal good, if they are in type and quantity customary for the product and are not invoiced separately from it, moreover the paragraph 2 of the same article states *"Accessories, spare parts, tools and instructional or other information materials [...] 1 shall be disregarded in determining the origin of the product except for the purposes of calculating the value of non-originating materials if a product is subject to a maximum value of non-originating materials [...]"* for sets, the article 48 provides that if all the parts are originating components, the whole set has to be considered as originating in a party, otherwise if the non-originating components exceed the 15% the whole set will be considered as non-originating; in the production of some goods there are elements used in the production process that are not considered for the determination of the origin e.g. PPE, fuel, devices, and all the material which are not incorporated in the product.[182] In the situation in which a good is exported in a third country when reimported, it will be considered a non-originating product unless the operator can demonstrate that the returning product was not subject to changes during the time it was in that third country[183]. Besides the rules to determine the origin of a product, the chapter 2 of the TCA also agrees on the procedures that must be implemented where the importing party, shall provide preferential tariff

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packaging operations; (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging; (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material; (n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration or denaturation of products; (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts; (p) slaughter of animals."

[180] Article 46 of the TCA: *"Packaging materials and containers in which the product is packaged for retail sale, if classified with the product, shall be disregarded in determining the origin of the product [...]"*

[181] Article 45 of the TCA: *"Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining whether a product is originating."*

[182] A comprehensive list is provided in Article 49 of the TCA: *"(a) fuel, energy, catalysts and solvents; (b) plant, equipment, spare parts and materials used in the maintenance of equipment and buildings; (c) machines, tools, dies and moulds; (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; (e) gloves, glasses, footwear, clothing, safety equipment and supplies; (f) equipment, devices and supplies used for testing or inspecting the product; and (g) other materials used in the production which are not incorporated into the product nor intended to be incorporated into the final composition of the product."*

[183] See article 51 of the TCA on "Returned products"

treatment on the basis of a claim done by the importer, which has the responsibility for the compliance of the requirements; the claim for preferential tariff treatment says the Article 54 (2) shall be based on: *"(a) a statement on origin that the product is originating made out by the exporter*[184]*; or (b) the importer's knowledge that the product is originating*[185]" the claim must be included in the custom import declaration, if for some reasons the importer does not include the claim standing to Article 55 (2) *"the importing party shall grant the preferential tariff treatment and repay any excess custom duty paid"* only if the claim for the preferential treatment is formulate in the three years after the date of importation, and of course there are the basis for the import to be considered originating, this claim must be kept for a minimum of three years after the date of importation of the product[186]. A derogation of articles to 54 to 58 has been made for the category of goods corresponding to small consignments, which corresponds to products sent in small packages between two private persons, products that are part of traveller's personal luggage, and other consignments with a low value, for this products' the preferential tariff has to be granted if they do not exceed certain thresholds in value corresponding to € 500 for products sent in small packages and €1 200 for traveller's personal luggage, this goods have to be declared anyway but the record-keeping requirement does not apply[187], the custom authority can always verify that the import respects all the regulations agreed between the parties as provided by Article 61, and not only, in fact the parties agreed to cooperate through those authorities in the verification process through an administrative system that allows for request of information to each other[188], which must be maintained under a confidentiality agreement as explicated in the article 64; if the requirement of the chapter to are not met, and following the condition of Article 63 *"the customs authority of the importing Party may deny preferential tariff*

[184] Article 56 (1) of TCA gives information on how the statement of origin has to be formulated, specifying that: "*A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including, information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided"* this statement is valid for 12 month from the date it was made, and can apply for single shipment or multiple shipment of identical products for a period of not more than 12 month. If the statant of origin reports minor errors, the custom authorities standing to article 57 *"shall not reject a claim for preferential tariff treatment"*

[185] Article 58 (1) of the TCA *"For the purposes of a claim for preferential tariff treatment that is made under point (b) of Article 54(2), the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements"*

[186]See Article 59 of the TCA on "Record-keeping requirements"

[187]See Article 60 of the TCA on "Small consignments"

[188]See Article 62 of the TCA on "Administrative cooperation"

treatment" finally, *"Each Party shall ensure the effective enforcement of the second chapter. Each Party shall ensure that the competent authorities are able to impose administrative measures, and, where appropriate, sanctions, in accordance with its laws and regulations to ensure"* as agreed in article 65 which is fundamental

3.4 The protocol of Northern Ireland

In the UK border strategy mentioned at the beginning of this chapter, the Northern Ireland protocol was not left unmentioned, recognising the peculiar situation of NI the 2025 border Strategy guarantees operational support to the protocol through the implementation, for example, of new technologies to enable the movement of goods. The strategy involving the Protocol will largely depend on the will of Northern Ireland's citizens[189]. The creation of the protocol has in it a triple objective which is not having a border between north and south Ireland, no checks at the UK NI border, and the exclusion of the UK from the customs union, honestly not an easy task to meet all the three requirements, resulting the third more problematic given the achievement of the other two, the second point is achieved through the Common Travel Area (CTA)[190] which foresees the free movement of individuals between the UK and Ireland meaning that currently, the UK does not run immigration controls on journeys from within the CTA, on the land border between Ireland and the UK the difficulty is found in the fact that if as said there are no borders, then the goods can travel through NI thus de facto

[189] Article 18 of the NI protocol titled Democratic consent in Northern Ireland provides that "*[..] the United Kingdom shall provide the opportunity for democratic consent in Northern Ireland to the continued application of Articles 5 to 10." 2. […]. A decision expressing democratic consent shall be reached strictly in accordance with the unilateral declaration concerning the operation of the 'Democratic consent in Northern Ireland' provision of the Protocol on Ireland/Northern Ireland made by the United Kingdom on 17 October 2019, […]. 4. Where […] a decision has been reached in accordance with paragraph 2, […] then […] the Joint Committee shall address recommendations to the Union and to the United Kingdom on the necessary measures, taking into account the obligations of the parties to the 1998 Agreement. Before doing so, the Joint Committee may seek an opinion from institutions created by the 1998 Agreement. 5. For the purposes of this Article, the initial period is the period ending 4 years after the end of the transition period. Where the decision reached in a given period was on the basis of a majority of Members of the Northern Ireland Assembly, present and voting, the subsequent period is the 4-year period following that period, for as long as Articles 5 to 10 continue to apply. Where the decision reached in a given period had cross-community support, the subsequent period is the 8-year period following that period, for as long as Articles 5 to 10 continue to apply.*

[190] Article 3 (1,2) Common Travel Area. *"The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law. 2. The United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality."*

maintain a channel for the single market[191]. Article 5 of the NI protocol can be considered the starting point in the discussion of what are the custom regulation in this specific area, in line with the principle of the CTA, the first paragraph of the article unless the goods being moved into NI are at risk of being exported into EU[192] no custom duties shall be applied if the goods are brought by direct transport from another part of the UK and also if those goods are personal items of a resident of UK, for import from countries other than EU and UK the duties to be applied are the UK ones if the item is not at risk of being exported to EU[193] this issue is crucial in the daily economic life of both GB and NI citizens, standing on this article some types of meats had to comply with SPS rules, therefore the joint committee[194] which as remined is the institution that oversee the implementation and application of the protocol has issued a declaration that could if the goods are not exported outside NI are exempted from such requirement[195], this results in a easier trade, and therefore an increase of product sold; standing at the position of the UK government the Protocol is not working well, the consequent solution provided by the EU council after an extensive discussion are to create a more flexible system. Many operative aspects are present in the BOM, regarding the differentiation of treatment provided to the NI the first point of differentiation is already present in the determination of the EORI number which for northern Ireland starts with the prefix XI to be able to trade between NI and the UK the

[191] See BARNARD C., & LEINARTE E., 2021, Movement of Goods Under the TCA, *University of Cambridge*

[192] Article 5 (2) of the NI protocol provides that*: "A good brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union unless it is established that that good: (a) will not be subject to commercial processing in Northern Ireland; and (b) fulfils the criteria established by the Joint Committee in accordance with the fourth subparagraph of this paragraph"* where "processing" means *"any alteration of goods, any transformation of goods in any way, or any subjecting of goods to operations other than for the purpose of preserving them in good condition or for adding or affixing marks, labels, seals or any other documentation to ensure compliance with any specific requirements."* And for the criteria established by the joint committee: "*the Joint Committee shall by decision establish the criteria for considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union. The Joint Committee shall take into consideration, inter alia: (a) the final destination and use of the good; (b) the nature and value of the good; (c) the nature of the movement; and (d) the incentive for undeclared onward movement into the Union, in particular incentives resulting from the duties"*

[193] HMRC Declaring goods you bring into Northern Ireland 'not at risk' of moving to the EU Last updated 1 November 2021 available at https://www.gov.uk/guidance/check-if-you-can-declare-goods-you-bring-into-northern-ireland-not-at-risk-of-moving-to-the-eu

[194] See MCCRUDDEN C. (Ed.), 2022, The Law and Practice of the Ireland-Northern Ireland

[195] See BARNARD C., & LEINARTE E., 2021, Movement of Goods Under the TCA, *University of Cambridge*

GB an XI EORI[196] number are needed, to provide a more comprehensive view of what are the types of possible transaction a table will be presented below.

Another provision presented in the BOM for NI concerns the Clearance outwards which as underlined previously is needed to be sought for aircraft moving from Great Britain to EU countries and for journeys from Northern Ireland to EU countries. Collection of Intrastat Data Following 01 January 2022 is no longer necessary for GB businesses that import from the European Union (EU). Different regulation applies for businesses that move goods between Northern Ireland and the EU in fact if those goods exceed the exemption thresholds in 2022 should continue to submit Intrastat declarations for those movements. The transportation of goods from the island of Ireland to Great Britain are currently dealt and since 01 January 2022 so that immediately before importation the trader can apply for delayed declarations, for those goods that need the pre-lodged declaration the requirements do not ask for the use of GMVS, but traders have until the next day after the goods landed in GB to notify the arrival; for the controlled goods instead, the process is to fill the full custom declaration or (under authorisation) the simplified one. Shifting the focus on additional requirements, the situation between NI and GB is less stringent, concerning sanitary and phytosanitary arrangements, there are no requirements for prenotification for example in the field of POAO for human consumption or ABP, fishery, and HRFNAO as well as regulated plant or plant product. The restrictions are additional requirements that are valid for, cultural goods which were removed from the country in which they were created or discovered in breach of the laws and regulations of that country, which is always valid.

[196] See SANTACROCE B., 2021, Brexit, spazio al codice "XI" per le cessioni con l'Irlanda del Nord, *Il Sole 24 Ore*

CONCLUSIONS

Brexit the unquestionable choice of Great Britain citizens, as widely analysed in the first paragraph of this document is the result of many factors, including historical, the relationship between the UK and the rest of the EU as always been somewhat peculiar, given the national sentiment of the country, sentiment that has been used as leverage by the political parties in order to exercise Article 50 of the TEU, the results of this choice are several and are in part exposed in this paper, in particular the focus has been limited on the effect that the decision of separation has meant in the field of VAT and Customs Duties, which represent two major point of interest in the economic panorama of a country; as seen the Withdrawal Process has been complex and long and resulted in 2 major agreements, with the aim of providing to the parties the smoothest separation possible the Withdrawal Agreement was signed and for the creation of a new relationship between the two parties the Trade Cooperation Agreement was settled, nevertheless after the Transition Period, in which the parties had the time to finalize their new relationship, the UK has been considered in all its forms a third country in respect to EU; this meant that for VAT the GB-EU traders could no longer count on the simplification provided by the permanence of the single market, which in practical terms means that for them the 2006 VAT directive no longer applies which means that UK businesses cannot enjoy of the benefits foreseen for intracommunity transactions, the element of complexity which has been reported hits in a particular manner the trade of goods, which now are considered import and export; as a reminder, for intra-group acquisition of goods for B-to-B the EU traders the reverse charge mechanism applies which allows the buyer to charge and deduct VAT. For B-to-C intra-community transactions, the EU through the 2006 VAT directive allows the seller, to be charged for VAT in the country of the supplier and not in the one of the customers, this distance selling provision is really helpful for businesses that sell goods in different countries because allow them under a certain threshold fixed by the Member state of the buyers to avoid the registration for VAT purposes in all the different countries from which the customer is located thus reducing the amount of bureaucracy under which the supplier would be subject. Now that trades with UK are no longer considered intra-community transactions, the amount of formalities is much higher as high is the cash outflow that an importer has to pay on VAT upon importation as effect of the removal of the reverse charge mechanism, this mechanism is now valid only for goods with a value lower than 135£, for goods with an higher value, a different kind of relief has been settled by UK namely the postponed VAT accounting which is an optional scheme that as reverse charge allows companies involved in B-to-B transaction and

registered for VAT purposes to record the import VAT on their VAT return instead of paying it immediately, and then reclaiming it in the same VAT return bringing the cash flows to zero, the other possibility is to pay upfront the VAT right before the release for free circulation in UK; a different story is, whenever UK business export goods from UK to EU, the UK being treated as a third country is now subject to the same roles as the rest of the world, this means that VAT is due upon importation, namely the possibility of benefit of reverse charge or postponed VAT accounting schemes is not possible anymore; For import in EU the Article 70 of the VAT directive seal the chargeability of the import when the good is imported, this results in the payment of the tax upon importation as well as a registration in the country where the goods are imported which means for a UK business that if it imports in different countries it has to register in all those countries thing that did not happen when the UK was still part of the EU. The second pillar that was analysed in this paper is the change of regulation in terms of customs also in this case the agreement seems to be lopsided reporting a disadvantage for the UK businesses in particular the two major element of analysis are the Border Operating Model, that has been produced by the UK government giving all the details of what are the processes implemented by the UK and the Trade and Cooperation Agreement which is the document that takes care of the new trade relationship between the two parties, the point of disparity, is given by the timeframe in which the new rules have been implemented, the board operating model punctually describe 3 different phases in which the implementation of the TCA takes place, the beginning of this process started as agreed in the WA after the transition period, namely the 1st January 2021, after that between the EU and the UK control of borders has been implemented this resulted for imports into the EU that the goods must meet all the obligations already in place for third country imports, namely, the full custom declaration, sanitary checks and so on whereas UK chose a gradual tightening of the requirement in the first year after the TP the UK import rules where less stringent than the ones for EU imports, thus giving to UK importers; July 2022 was the date in which the strategy of gradually shrinking the requirement for importing goods from EU should have been completed, but this is not the case, in fact all the requirements regarding the sanitary checks, the safety declarations, and health certification are still not required because of the complicated situation arose in the international panorama the implementation of the last phase was evaluated by the UK authorities as an expense for importing business equal to 1 billion pounds, therefore, to avoid the imposition of new burdens on UK importers this third phase has still not been implemented another element of complication is given as said by the content of the Trade and Cooperation Agreement,

in particular has been mentioned how the implementation of an exemption regime for trades between the two parties although useful for both economies finds in the rules of origin, elements of complexity and uncertainty; a trader in order to benefit of the preferential treatment when importing must prove that the goods originates in the other party, the requirement for a good to be considered as originating in one country are reported in the second chapter of the TCA, while for goods wholly produced in one country the rules are pretty straightforward, the complexity arises when determining the origin of all those goods that are the result of a productive process in which non-originating goods are used, in the current global market may productions tend to have some phases in which non-originating goods are implied for the realisation of the end product, therefore this products are a sort of hybrid that needs to be categorised in order to asses if or not when imported are beneficial of the preferential tariff treatment, in this situation the challenge for the economic operator arises, the criteria to be met in order to obtain the status of originating product are reported in chapter two of the TCA this are product oriented[197] and operation oriented[198], even with the TCA working as cushion to safeguard the EU-UK trades if compared with the trades within the single market its safe to say that the fist relationship is much more complex and expensive from the point of view of the traders which have to comply with many more requirement in order to have access to preferential tariffs; On top of this, a further element of complication has been portrayed, namely, the Norther Ireland situation; after the negotiation of the protocol NI has found itself in a unique position being still part of the UK but at the same time staying connected to the EU through the Republic of Ireland as consequence of avoiding hard border, this situation resulted in the rise of many problems, due to the fact that the achievement of the protocol, namely, no hard border between north and south of Ireland, no checks at the border between GB and NI, and Protection of custom union the so called Brexit trilemma has been left unsolved[199]. This led to many reactions from both parties, the first being the so-called Northern Ireland protocol bill which allows goods to be transported across the Irish land border without need for checks, this comes as an attempt to allow the flow of goods the ones that need to be consumed in NI consequences of the problem of trades between how will it work? The British government wants to create two lanes for import from Britain to NI namely the green and red (express) lane, the green one

[197] See Article 41 of the TCA

[198] See Article 43 of the TCA

[199] BARNARD, C., LEINARTE, E. 2022 Movement of Goods under the TCA. *Global Policy. Wiley*. Global Policy p. 106-118 available at https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.13074 [Last accessed 30/11/2022]

would be used for goods that are destined only for NI consumption and therefore not checked whereas the red one would be used for goods that are destinated to arrive into the Republic of Ireland and EU which would be subject to customs[200], this would completely change the provision agreed with the NI protocol which requires that goods are checked at ports in NI on arrival and then can either be moved in EU or stay in NI, this solution has some problems embedded in it, on the operational side it would be complicated to understand which goods are destinated only for the NI market and which are not as well as the making sure that the goods that would benefit from the Green lane would stay in NI and would not be sent in the Republic of Ireland afterwards, for those traders that are trusted a system could be implemented for example to clear supermarket deliveries, but the problem will be standing for those products which are processed in NI and then sent into the EU, other previsions which are under discussion with this bill such as the Dual regulatory regimes which gives to NI companies the freedom to make their goods on accordance with EU or UK[201]; other factors complicating the panorama are the modification on VAT treatment, which as said in the chapter two following the protocol, the NI have to comply with the EU laws on this field, the UK government wants to remove the limits imposed by EU in the VAT field; more changes regards the State aid, currently NI follows the EU limits on the State aids[202], which UK wants to remove; last but not list, UK wants to unilaterally review the role of the European Court of Justice in the controversies that arise in the application of the protocol creatin an independent body for solving this matters. This bill have caused a firm response from the EU since if implemented would have effect which differ radically from the Protocol, the former prime minister Liz Truss has promised to implement the bill, in addition she was planning to trigger Article 16 of the protocol[203] to negotiate a settlement between the UK and the EU on the matter, while as of today 25 October 2022 the prime minister of the UK changed in favour of the former Chancelor of the Exchequer Rishi Sunak[204], the reaction of the EU after this bill is still in place; the first legal action, as a matter of fact, has been issued the 15th of March 2021 following the stated intention of the UK government to unilaterally

[200] EU takes new legal action against UK over post-Brexit deal changes BBC News (Online) available at https://www.bbc.com/news/uk-politics-61809459 [Last accessed 24/10/2022]

[201] BENN, H., 2022 How to fix the Northern Ireland protocol *Centre for European reform* available at https://www.cer.eu/sites/default/files/pbrief_nireland_protocol_8.9.22.pdf

[202] See article 10 of the NI protocol

[203] The Application of Article 16 considering the current situation as leading "*to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade"* also due to the position of the UK on the possibility of the protocol of jeopardising the stability of the Belfast Good Friday Agreement

[204] Rishi Sunak is the new leader of the Tory Party and new prime minister of the United Kingdom

delay the full application of the Protocol the 3rd March 2021, the infringement procedure was then paused[205], following the 15th of June the European Commission as reaction to the UK bill has decided to take its second stem on the legal actions of November [206], in addition to that, the European commission has decided to issue two new infringement proceedings one for failing to carry SPS obligations and the second for failing to provide trades statistics data regarding NI also, in the same notice the commission acknowledging the practical difficulties related to the implementation of the Protocol, provided some possible solutions to facilitate this process within the respect of the Protocol itself, this are reported in the notice, to cite some: reduction of SPS by 80%, reduction of Customs checks by 50%, simplified customs procedures etc.[207]the EU position on this matter is clear UK have to deliver control post at the NI borders in order to protect the single market failing thus allowing the UK's bill to enter into force will not be tolerated by the EU. If the dialogue does not open up the consequences for Ireland can be bad, if the EU would declare NI as a third country because the two parties do not find an agreement[208], the NI businesses would find themselves in a really difficult situation, also the Republic of Ireland's might be subject to a new challenge, the introduction of physical borders between south and north of Ireland. All the factors highlighted until now seem to have affected the economy of Great Britain, as we all know Covid-19 have caused a deceleration in the global economy sanding to a research from Statista, the world GDP during 2020 dropped of around 3.4% resulting in a loss of economic output of around 3 trillion dollars on top of that also the new tragedy of Ukrainian war, set aside for the huge

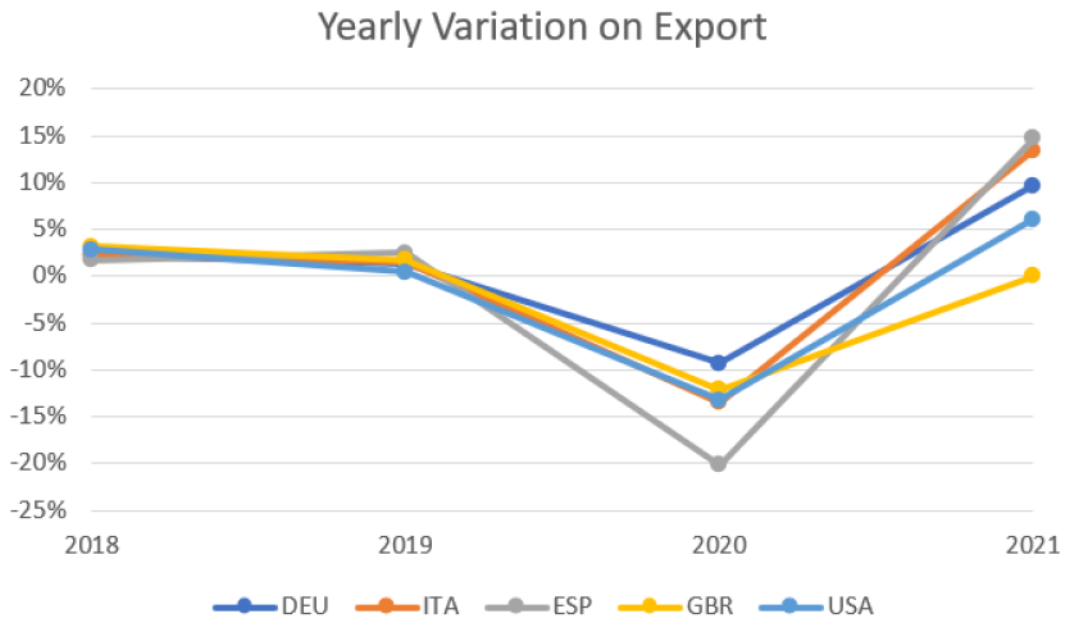
[205] In September 2021, the Commission decided to put on hold the ongoing legal action launched against the UK in March 2021 in a spirit of constructive cooperation to create the space to look for joint solutions, whilst reserving its rights if the discussions were no longer constructive.

[206] Under Article 12(4) of the Protocol, the Court of Justice of the European Union has full powers provided for under the Treaties, including the possibility to impose a lump sum or penalty payment.

[207] European Commission, Factsheet - Easing the movement of goods between Great Britain and Northern Ireland available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3676 [Last accessed 30/10/2022]

[208] A press declaration of the European Commission answered to the question "*Why won't you renegotiate the Protocol?"* With*: "Renegotiating the Protocol is unrealistic. No workable alternative solution has been found to this delicate, long-negotiated balance. Any renegotiation would simply bring further legal uncertainty for people and businesses in Northern Ireland. For these reasons, the European Union will not renegotiate the Protocol and is united in this position. The Protocol was agreed jointly and ratified by both the EU and the UK to address the challenges Brexit - and the UK's chosen form of Brexit - created for the island of Ireland and to protect the hard-earned gains of the peace process. It is the solution that the UK government proposed to meet these aims. The EU has shown that solutions for practical difficulties to implement the Protocol can be found within the framework of the Protocol. For example, a solution was found - and now is implemented - to ensure that the same medicines continue to be available in Northern Ireland at the same time as in the rest of the UK. Today's papers further highlight the potential of solutions within the Protocol."*

loss of civils to whose families goes all my condolences, resulted in a deceleration of the post-pandemics economic recovery[209][210], someone may say that was not the right moment for UK for a withdrawal from the EU, the climate of uncertainty due to all the new regulation in addition to all the global challenges resulted in a underperformance for the UK, shifting on trades for example it's possible to understand from figure n that while other European countries after the negative variation on the amount of export in dollars happened during 2020 have responded with an increase on the amount of export in 2021 of which goes from 5 to 15% the level of export in great Britain still didn't start its recovery after pandemics.

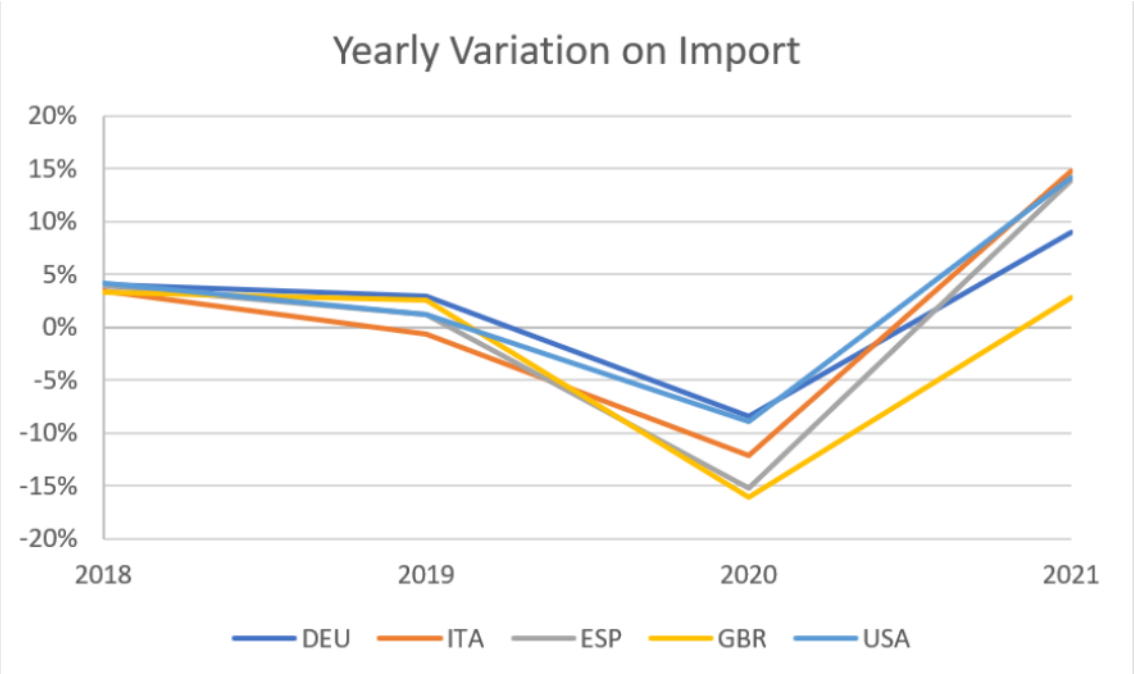


Source: Personal elaboration of OECD data, available at https://data.oecd.org/trade/trade-in-goods-and-services.htm

The same goes for imports, which are recovering slightly faster than the export, but always more timidly than the other countries taken as a point of reference, this slight improvement in Import, could be justified by the fact that as was underlined previously the control on import have been implemented gradually.

[209] Impact of the coronavirus pandemic on the global economy - Statistics & Facts, *Statista Research Department,* available at https://www.statista.com/topics/6139/covid-19-impact-on-the-global-economy/#topicHeader__wrapper [Last accessed 30/10/2022]

[210] Economic impact of the Russia-Ukraine war *Statista DossierPlus* available at https://www.statista.com/study/110003/economic-impact-of-the-russia-ukraine-war/ [Last accessed 30/10/2022]



Source: Personal elaboration of OECD data, available at https://data.oecd.org/trade/trade-in-goods-and-services.htm

The political situation of UK has suffered many turbulences, the father of Brexit Boris Johnson has left his position as prime minister following a mixture of scandals and criticism on the management of pandemic and war crisis[211], his successor Liz Truss gave up is position as prime minister after 45 days of, a as part of the public opinion says: "disputable mandate"[212] to make space for Sunak, which now have to carry the burden of all the situation[213], this political uncertainty in addition to the economic one, is not giving up on UK and while professional traders targes UK through financial speculation worsening up the situation, somebody is even thinking about the reintegration of the country in EU through a process of reverse Brexit[214], the dream sold to Britain voters is taking shape of a nightmare; a survey made by YouGov in 2022 on around 1800 Britain's has revealed that more then half of them thinks that decision of leaving EU was wrong against 40% of them convinced of the contrary; a reverse Brexit in the short term seem to be unlikely given the current political and economic situation, my personal opinion is that the right move could be to solve the current issue with EU on the TCA and NI protocol,

[211] OWEN, A., 2022 Boris Johnson resigns: Five things that led to the PM's downfall, *BBC News* (Online) available at https://www.bbc.com/news/uk-politics-62070422 [Last accessed 31/10/2022]
[212] SERHAN, Y., 2022 Liz Truss Has Resigned. Here's How She Lost Control Time (Online) available at https://time.com/6223365/why-liz-truss-resigned/ [Last accessed 31/10/2022]
[213] MCCORMACK, J., 2022 Rishi Sunak: Northern Ireland issues to test new PM, *BBC News* (Online) available at https://www.bbc.com/news/uk-northern-ireland-63371828 [Last accessed 31/10/2022]
[214] BLICK, A., 2022 Getting Brexit Undone *Federal Trust Report* available at https://fedtrust.co.uk/wp-content/uploads/2022/07/Getting-Brexit-Undone-Andrew-Blick.pdf [Last accessed 31/10/2022]

before thinking to make a step back on Brexit which would need a change of public opinion and government leadership which can only happen in the long run.

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