Immigration after Brexit: Ironies and Challenges

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This contribution argues that Brexit could facilitate legal control over the entry and stay of EU citizens, but might paradoxically render control of immigration of third country nationals, including asylum seekers, more difficult compared to the status quo. The first section examines this irony with regard to third country nationals, the second section addresses the challenging question of the British-Irish border while the third and final section relates to the migration of EU citizens and UK nationals.

I. Introduction

Immigration was a hot topic throughout the Brexit debate. The prominent slogan of 'taking back control' aimed particularly at taking back control of immigration to the United Kingdom. Many readers will remember the 'breaking point' poster used by UKIP before the referendum with a picture of migrants and asylum seekers trotting across the Western Balkans. That poster seemed to capture (and foster) a certain perception that associated the EU with chaos and open borders – both for EU citizens and third country nationals. In her Lancaster speech of January 2017, Prime Minister Theresa May was adamant that control of immigration was a central objective of the ongoing Brexit negotiations: 'The message from the public before and during the referendum campaign was clear: Brexit must mean control of the number of people who come to Britain from Europe. And that is what we will deliver.'[1]

From a legal perspective, there is a certain irony in the 'breaking point' poster. Our argument will be that while Brexit could facilitate legal control over the entry and stay of EU citizens, it need not necessarily make it easier for the UK to control the immigration of third-country nationals, including asylum seekers. It might even, paradoxically, render control of immi-

1 T May, '*A Global Britain, Speech at Lancaster House*', 17 January 2017.

gration of non-Europeans more difficult to some extent. In our first section we'll try to explain this irony, before we move on, secondly, to the challenging question of the British-Irish border and, thirdly, to the migration of EU citizens and UK nationals. The paramount importance of these aspects is also demonstrated by the fact that the British-Irish border and the protection of citizens' rights formed already part of the first of the two phases of the negotiations.

II. Immigration of Third Country Nationals: Reversed Dynamics

In the field of third country immigration, Brexit might ironically lead to reversed dynamics compared to the status quo.

A. Status Quo: Extended Opt-out

From a legal perspective, the UK has always retained widespread control of its external borders insofar as the entry and stay of third-country nationals are concerned. A major reason for this lies in the fact that the UK rejected to participate in the border-free Schengen area. It did not sign up to the Schengen Implementing Convention of 1990 and it secured an opt-out when the letter was integrated into the framework of the European Union on the occasion of the Treaty of Amsterdam.[2]

Moreover, successive British Governments decided not to participate in most legislative initiatives on immigration, visas and border controls in the so-called area of freedom, security and justice,[3] which have been adopted during the past 15 years and which have substantially reshaped the immigration law systems of countries in continental Europe.[4] The UK does not participate, for instance, in the Family Reunion Directive, the Long-Term

2 See today's Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union ([2008] OJ C 115/290), which builds upon the original 1997 version attached to the Treaty of Amsterdam ([1997] OJ C 340/93).

3 The Schengen Protocol, ibid, is complemented by the Protocol (No 21) on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice ([2008] OJ C 115/295).

4 For a legal analysis of the UK's opt-out and corresponding institutional practice in recent years, see K Hailbronner and D Thym, 'Constitutional Framework and Principles for Interpretation' in ibid (eds), *EU Immigration and Asylum Law. Commentary,* 2nd edn (Munich, C.H. Beck/Hart, 2016) 1, 21–23.

Residents Directive, the Blue Card scheme for highly qualified migrants or any other instrument facilitating the entry or stay of third-country nationals. The UK can determine autonomously which third country nationals are subject to visa requirements, are allowed to take up employment or have to leave the UK. There is little primary or secondary law limiting UK sovereignty in this respect, with the notable exception of those third country nationals who are relatives of EU citizens and benefit from a derivative right of residence rooted in EU free movement law.[5]

The situation is different for the ECHR and corresponding limits to State discretion, on the basis of Articles 3 and 8 ECHR, on the expulsion of those staying illegally, including suspects of terrorism.[6] Both the human rights based principle of non-refoulement under Article 3 ECHR and the right to private and family life under Article 8 ECHR have limited the political room for manoeuvre of the national legislator considerably. That is why Theresa May apparently went as far as promoting a withdrawal from the ECHR or at least a repeal of the Human Rights Act when she was Home Secretary.[7] While leaving the ECHR or repealing the Human Rights Act might have indeed extended UK sovereignty over third-country nationals to a certain extent, it would have arguably been accompanied by a considerable constitutional price also for British citizens and a potential loss of international credibility. Such a step might even have struck a devastating blow to the already struggling system of human rights review in Strasbourg. Leaving the EU seems to appear even more costly at all levels, as the current implosion of the British political system tragically demonstrates. But it won't arguably change much regarding immigration control.

B. Brexit: Loss of the Opt-in Option

What is more, in a post-Brexit world the UK might even lose regulatory leverage insofar as immigration controls vis-à-vis third-country nationals are concerned. The underlying reason is simple: at the time of the Treaty of Amsterdam, the British Government of Tony Blair secured not only an

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5 For two classic examples, see ECJ, judgment of 11 July 2002, Case C-60/00, *Carpenter* and ECJ, judgment of 19 October 2004, Case C-200/02, *Zhu and Chen*.

6 For two prominent examples, see ECtHR, judgment of 17 January 2012, No. 8139/09, *Othman (Abu Qatada) v. the United Kingdom*; and ECtHR, judgment of 12 Jan 2010, No 47486/06, *A.W. Khan v. the United Kingdom*.

7 *Cf* A Asthana and R Mason, 'UK must leave European convention on human rights, says Theresa May', *Guardian.com* on 25 April 2016.

opt-out from the Schengen regime. It also won an opt-in option for all immigration, visa, asylum and border control measures, which are not inseparably linked to the abolition of border controls.[8] This opt-in option was reinforced by the Treaty of Lisbon which established a hitherto unprecedented possibility of 'cherry picking' in the field of justice and home affairs legislation.[9] The UK has used this opt-in option quite extensively – and selectively – over the years,[10] including during the time when Theresa May was Home Secretary.

This selective opt-in practice focused on those measures enhancing the control powers of States, such as the Schengen Information System (SIS), in which the UK participates although it never signed up to order-free travel.[11] The UK also subscribed to many EU measures against illegal immigration, while not being bound by the rules on legal migration.[12] Most importantly, the UK participates in the Dublin system without, however, contributing to the solidarity measures, such as the relocation decisions on resettling 160,000 asylum seekers from Greece and Italy to other Member States.[13] To be sure, the Dublin system was originally based upon a convention outside the EU framework, but it has always been doctrinally linked to EU law[14] and, moreover, it ceased to exist as an instrument of public international law when it was supplanted by EU legislation in which the UK participated.[15]

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8 See Article 4 of the Schengen Protocol No. 19 (note 2) and Article 3–4a Protocol No. 21 (note 3); and the analysis by Hailbronner and Thym (note 4), at 22–23.

9 See C Ladenburger, 'Police and Criminal Law in the Treaty of Lisbon'(2008) 4 *European Constitutional Law Review* 20, 28.

10 See House of Lords European Union Committee, The UK's opt-in Protocol: implications of the Government's approach, 9th Report of Session 2014–15, paras 31–37; and F Tekin, *Differentiated Integration at Work* (Baden-Baden, Nomos, 2012).

11 *Cf* Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis ([2000] OJ L 131/43).

12 See D Thym, 'Legal Framework for EU Immigration Policy' in ibid/Hailbronner (note 4) 271, 273–274.

13 *Cf* Council Decision (EU) 2015/1601 of 22 September 2015 ([2015] OJ L 248/80) and Council Decision (EU) 2015/1523 of 14 September 2015 ([2015] OJ L 239/146).

14 See Recital 3 and Article 21 of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990 ([1997] OJ C 254/1).

15 See Recital 19 and Article 24(1) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the

In short, as an EU Member State the UK participated in the field justice and home affairs in a highly selective and lopsided manner: it enhanced State control without promoting the rights of migrants and refugees. As a member of the EU, the UK could use the justice and home affairs Protocols to enhance control of its external borders towards other Member States through à la carte participation. The irony is that Brexit will likely reverse these dynamics.

C. The Future: Reversed Dynamics

In the post-Brexit legal environment, the UK will not be able any longer to decide unilaterally whether or not to participate in Dublin and the SIS by means of a simple declaration notifying the Council that it wants to exercise the opt-in option. Instead, the UK will have to negotiate with the EU post-Brexit whether it will be allowed to participate – and these negotiations will be defined, like any negotiation, by a *quid pro quo*, by reciprocal give-and-take.[16]

Thus, the UK will likely have to pay a price for being allowed to participate in the future Dublin IV Regulation or the Schengen Information System- something it got for free in the past. The EU could demand, for instance, that the UK contributes to the relocation of asylum seekers from Greece or Italy. If that happened, Brexit would entail into the opposite of what Brexiteers had promised to the British when putting up the 'breaking point' poster.

That need not happen, of course.The UK could decide, alternatively, to stay out of Dublin or it could negotiate a cross-sectoral package deal. The price the EU may wish to extract from the UK for continued Dublin participation may relate to any other policy field.

One thing, however, seems certain: the UK will not get Dublin for free any longer – like Switzerland, which was allowed to join Dublin under the condition that it subscribed to border free travel within the Schengen area

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Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ([2003] OJ L 50/1).

16 It is assumed that the UK has a genuine interest in keeping Dublin, since it tends to be a beneficiary of the Dublin rules due to its geographic location; even if the numbers of those moving to the UK are relatively low at present, they might rise in the future, i.e., Dublin is a safety net in case of any future increase in the number of arrivals.

at the same time.[17] Ever since, border controls have been abolished between Germany and Switzerland. That, to us, is the irony of Brexit for immigration law sensu stricto: it might become more difficult for the UK to control the entry and stay of third-country nationals.

III. British-Irish Border: The Search For Pragmatic Solutions

To retain an open border between the Republic of Ireland and the UK is a political objective shared by the EU and the UK. Already the European Council's guidelines and the White Paper of the British Government were clear that they want to retain the Common Travel Area (CTA).[18] And in the Protocol on Ireland/Northern Ireland which forms an integral part of the not (yet, if ever) ratified withdrawal agreement,[19] the EU and the May government agreed on the goal of preventing a hard border after the transition period, i.e., the period of around two years following the UK's withdrawal from the EU.[20]

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17 In the framework of the so-called 'bilateral II' agreements, the entry into force of the Schengen and the Dublin association agreement are linked, *cf* Article 14 Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland of 26 October 2004 ([2008] OJ L 53/5), which entered into force on 1 March 2008 ([2008] OJ L 53/18).

18 See European Council, 29 April 2017, Guidelines Following the United Kingdom's Notification Under Article 50 TEU, Doc. EUCO XT 20004/17, para 11 as well as the Department for Exiting the European Union: White Paper. The United Kingdom's exit from and new partnership with the European Union, February 2017, pp 21–23.

19 Draft Agreement on the withdrawal of the UK from the EU of 14 November 2018.

20 Initially the transition period should have started after the UK's withdrawal on 29 March 2019 and last until December 2020. Currently, however, it remains unclear when (if at all) a withdrawal will take place and trigger the transition period. During the transition period (see Articles 126 et seq of the draft agreement), the UK would be, in principle, treated like an EU Member State with the notable exception of participation in the institutions and governance structures of the EU.

A. Immigration and Border Controls

The CTA is a set of reciprocal legal rules and administrative practices which have secured the absence of border (and immigration) controls between the Republic and Northern Ireland ever since Irish home rule.[21]

In this respect, the European Council called for 'flexible and imaginative solutions'[22] regarding the British-Irish border. Such flexibility might be necessary, indeed, for a number of economic and trade issues. From a purely *legal-technical* perspective things appear to be less problematic insofar as immigration and border controls are concerned. The reason for this lies in the fact that the status quo facilitates the search for legal solutions in three inter-related ways.

Firstly, Protocol No. 20 attached to the Treaty of Lisbon states explicitly that the UK and Ireland 'may continue to make arrangements between themselves relating to the [CTA]' and that 'nothing in [the EU Treaties] or in any measures adopted under them shall affect any such arrangements.'[23] The European Council is adamant that the Protocol will continue to apply post-Brexit, and indeed, it is difficult to argue that it will lose its relevance. Thus, the CTA can be maintained as a matter of principle on the basis of Protocol No. 20, which, moreover, is quite clear that it allows for the arrangements to be modified and developed further if necessary.

Secondly, not much would have to change in terms of policy substance. Already at present, the British-Irish border is an external border of the Schengen area, although we do not have physical border controls between the Republic and Northern Ireland. There may be the need for continued practical and legislative coordination, both at present and in the future, also taking into account the legal and practical consequences of Brexit. But this coordination can be agreed upon in the framework of the CTA or, if necessary, in the Brexit agreement.

A legal side aspect is whether the UK and Ireland could agree on a bilateral mechanism on asylum jurisdiction, a sort of 'Mini-Dublin'. It seems to us that the legal answer is not crystal clear: While one can argue, on the one hand, that Protocol No. 20 allows for such bilateral mechanism to be

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21 See B Ryan, 'Irish Aspects, Brexit briefing', https://www.freemovement.org.uk on 18 May 2016.

22 European Council (note 18), para 11.

23 Article 2 of Protocol (No. 20) on the Application of Certain Aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland ([2008] OJ C 115/293).

established in the future,[24] one may maintain, on the other hand, that the EU has acquired an exclusive, ERTA-style competence for cooperation with third States on asylum jurisdiction,[25] mirroring the agreement with Switzerland.

Thirdly, we have to distinguish between border controls for immigration purposes and customs controls for economic issues. While Brexit has little impact on the former (border controls), the latter (customs control) are a different matter.

B. Customs Controls and the so-called "Backstop"

At present, customs controls do not exist at the British-Irish border, since both the UK and Ireland are a member of the single market and the customs union. If the UK left the single market, as advocated by May and a considerable part of the Tories, such controls might have to be introduced in the future. Under that premise, 'flexible and innovative solutions' would indeed be required, so as to minimise the negative impact on cross-border exchanges across the British-Irish border.

In the Protocol on Ireland/Northern Ireland the EU and the British Government negotiated, in essence, a three-step approach in order to prevent a hard border after the transition period. The first step or priority, enshrined in Article 2 of the Protocol, is to reach an agreement on the future relationship that would per definition eliminate the need for a hard border. The second step, laid down in Article 3 of the Protocol, would be to extend the transition period in order to reach such an agreement. The third step is a fall-back position, the so-called "back stop solution". Its core provision is Article 6 § 1 of the draft agreement, according to which a single customs territory between the EU and the UK shall be established until the future relationship becomes applicable. That this temporary solution might, in the absence of an agreement on the future relationship, become a permanent one, is one of the core arguments for a majority of MPs in the British House of Commons to refuse- three times already – to ratify "May's deal". At the moment, it is not at all clear how this problem might be

24 This argument could be maintained in particular, if there was already a bilateral asylum seekers transfer agreement between the UK and Ireland before the entry into force of the Dublin Convention; if that was not the case, it would be difficult to maintain that the introduction of such an agreement concerns the 'continu[ation]' of arrangements' on the free movement of persons on the island.

25 *Cf* Article 3(2) TFEU and corresponding case law.

solved in the future. It is not excluded, however, that a cross-party alliance between Tory and Labour MPs might reach an agreement on a future relationship that would, as a permanent solution, include a customs union between the EU and the UK.

From a personal experience it seems that it should be even possible to find a pragmatic solution in case a customs union would not be a permanent solution. The University of Konstanz is situated geographically on the Swiss border, that is an internal Schengen border (mirroring the CTA), but an external border of the customs union (as might be the case with the Irish-British border post-Brexit). One of us, Daniel Thym, crosses that border up to four times a week. On normal occasions, traffic is hardly interrupted at all – and the flow would be even smoother, if the customs formalities took place beyond the official border-crossing points that still exist between Germany and Switzerland. It should be possible, therefore, to maintain a 'green border' on the 'Emerald Isle' post-Brexit.

IV. EU Citizenship and Free Movement Of Persons

As regards the rights linked to EU citizenship and the right to free movement in particular, Brexit raised at least two core challenges.

A. Securing Citizens' Rights

The first challenge was how to secure the legal situation of EU-27 citizens residing in the UK and of UK citizens living in the EU-27 before and after Brexit. This aspect was the top priority in the first phase of the negotiation process. According to the Council's negotiation directives, "[s]afeguarding the status and rights of the EU-27 citizens and their families in the [UK] and of the citizens of the [UK] and their families in the EU-27 Member States is the first priority for the negotiations because of the number of people directly affected and of the seriousness of the consequences of the withdrawal for them".[26]

26 Council of the European Union, 22 May 2017, Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union -Annex to the Council Decision authorising the Commission to open negotiations on an agreement with the United Kingdom setting out the arrangements for its withdrawal from the European Union, doc. 21009/17 BXT 16 ADD 1, para 11.

The actual number of citizens affected varies considerably, depending on the method of calculation. The most common set of numbers – often quoted in the media and reflected also by the work of the institutions – suggests that apparently 1.2 mio UK citizens live in the EU-27, while up to 3.2 mio EU-27 citizens in turn reside in the UK.[27] These numbers are essentially based on calculations by the UK (ONS)[28] and the United Nations. But, as pointed out in the literature, in particular the UN statistics do not sufficiently distinguish between country of birth and nationality[29] which is why the numbers could also be lower, with around 700.000 UK nationals living abroad in the EU-27 and 2.9 mio EU-27 nationals living in the UK. But also these numbers are quite significant and demonstrate the importance to come to terms.

In legal terms, the challenge is how to secure rights acquired and derived from EU citizenship before the end of the transition period. This starts with the definition of the personal scope of application. In this respect, the EU wanted to follow as closely as possible the existing acquis. According to the Council's negotiation directives, the personal scope should be equated with that of the directive 2004/38 on free movement, covering both economically active persons and economically inactive citizens, i.e., workers and self-employed, as well as students or pensioners.[30] Furthermore, the EU aimed at including family members who accompany or join mobile EU citizens as well as individuals covered by the Regulation 883/2004 on the coordination of social security systems irrespective of their place of residence.[31] In this respect, the EU was successful in the negotiations, as demonstrated by Article 10 and Article 30 of the draft agreement which widely correspond to the EU's negotiating goals.

The EU was also quite successful regarding the scope of rights that shall be guaranteed to UK nationals who live in the EU-27 or EU-27 nationals who reside in the UK before the end of the transition period and keep doing so afterwards. Also in this respect, the EU managed to achieve a close

27 See, amongst others, European Commission, document TF50 (2019) 59, p 14.
28 UK Office for national statistics.
29 S Carrera, E Guild and N C Luk, 'What does Brexit mean for the EU's Area of Freedom, Security and Justice', *CEPS Commentary* 2016, at https://www.ceps.eu/system/files/What%20does%20BREXIT%20mean%20for%20the%20EU.pdf (accessed 30 March 2019) 4 et seq.
30 Council of the European Union, negotiation directives (note 26), para 21 lit. a).
31 Ibid.

approximation to the existing *acquis*.[32] The same applies for frontier workers and family members.

Technically such an approximation is far from being trivial, however. Part II of the draft agreement – related to citizens' rights -bears witness as to the complexity of the issue. A core provision is Article 13 § 1, according to which EU citizens and UK nationals who lived in the host State before the end of the transition period and keep living there afterwards shall have the right to reside in the host State under the limitations and conditions as set out in Articles 21, 45 or 49 TFEU and in the relevant provisions of Directive 2004/38. Article 13 § 2 and 3 grants rights of residence to family members (EU citizens, UK or third country nationals), while Article 13 § 4 bars the host State to impose any limitations or conditions for obtaining, retaining or losing residence rights of these groups of persons, other than those provided for in the agreement. The provision also stipulates that there "shall be no discretion in applying the limitations and conditions" other than in favour of the person concerned. Such specifications were considered to be necessary, given that EU law ceases to apply in the UK once the withdrawal takes effect.

Even more important, Article 39 of the draft agreement makes clear that the individuals concerned shall enjoy the rights provided for in Part II "for their lifetime, unless they cease to meet the conditions set out" there. Hence, the draft agreement would provide for continuity and legal certainty far beyond the transition period as long as the respective legal status would have been gained before the end of that period and the conditions would still be met.

The migration regime which is intended to substitute the current acquis for rights and legal status acquired until the end of the transition period is spelled out in detail in Articles 14 to 29 of the draft agreement. These stipulations pay attention to specific transitional problems, like the calculation of periods, relevant i.a. for the right to permanent residence, or status changes, for example between student, worker, self-employed person and economically inactive person.

The status quo is not only widely perpetuated with regard to residence rights, but also with regard to equal treatment and access to social security. § 23 of the draft agreement replicates Article 24 of Directive 2004/38, including the exceptions according to which Member States can refuse to grant social assistance. Finally, Articles 30 et seq. contains a specific regime

32 Ibid, para 21 lit. b).

on the coordination of social security systems, essentially substituting regulation 883/2004.

To conclude, the EU has managed to widely perpetuate the current acquis on the free movement of persons for EU citizens, UK nationals and their relatives who reside in the host State before the end of the transition period and keep doing so after its expiry. However, this achievement depends on entering into force of the agreement – an instance which may never happen when taking into consideration that ratification has been rejected three times already in the House of Commons.

B. Intra-European Mobility and Immigration After Brexit

How could the design of the future relationship between the EU-27 and the UK with respect to intra-European mobility and immigration look like? Will there be a future regime of free movement between the EU and the UK? Unfortunately, things have not become clearer in this respect, although almost three years have passed since the memorable referendum of 23 June 2016.

The uncertainty starts with the question whether or not Brexit will happen at all, given that a unilateral withdrawal of the declaration under Article 50 TEU is, in principle, possible at any time.[33] The European Court of Justice has, in the context of the Dublin-III-regulation, also implicitly denied a preventive or pre-effect of Brexit before the withdrawal is actually put into effect.[34] As of today, the status quo still applies and the UK even participates in the European elections in May 2019.

The uncertainty is particularly apparent when it comes to concrete plans on the future regime of mobility and immigration between the EU-27 and the UK. The House of Commons, for instance, has made much more articulate what it does not want than what it actually favours. Against the backdrop of the political Brexit chaos in early 2019 it is almost impossible to give any meaningful estimation as to what is going to happen. In the light of the fruitless votes in the House of Commons and the political battles be-

33 See ECJ, judgment of 10 December, case C-621/18 – *Wightman*.

34 ECJ, judgment of 13 January 2019, case C-661/17 – *M.A. et al*, para 54 with reference to Wightman and with regard to the discretionary clause under the Dublin-III-regulation. On the discretionary clause in the context of the migration crisis see in more detail M Wendel, 'The Refugee Crisis and the Executive: On the Limits of Administrative Discretion in the Common European Asylum System' (2016) 17 *German Law Journal* 1005.

tween and within the major political parties in the UK, it appears to be rather unlikely that the UK will, in the future, opt for a full participation in the internal market, because this would – as the EU negotiators have repeatedly stressed – necessarily include the free movement of persons.

Against this background, it also seems unlikely that the future relationship between the EU and the UK could be aligned to the model of the European Economic Area which would lead to a *de facto* full integration in the internal market without major exceptions – and without participation. It could very well be that the future relationship will, in the end be based at least on a customs union with some additional elements. For the free movement of persons between the UK and the EU-27 this would certainly mean a major step backwards.

V. Conclusion

The analysis of the law of immigration after Brexit is situated in a volatile context which makes it difficult to give any substantial assessment at the moment. As far as immigration of third country nationals is concerned, there lies a certain irony in the fact that Brexit will likely produce results that openly run counter to the Brexiteers' promise of taking back control. When it comes to the delicate question of the British/Irish Border, much will depend on the reasonableness of political actors, given that the legal dimension does not pose a major challenge. Finally, in the field of intra-European migration, it currently seems unlikely that the future relationship between the EU and the UK will be based on the continuity of the internal market and the free movement of persons once the transition period is over. It is here that Brexit could lead to a major rupture with the status quo in the future.