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Monitoring the implementation and resolving disputes under the Brexit Withdrawal Agreement[1]

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Abstract
The aim of this article is analysis of how the *Agreement on the withdrawal of the United Kingdom from the European Union* governs the mechanisms for monitoring its implementation and resolving disputes. All solutions are based on the international principle of good faith, which obliges the parties of the Agreement to apply it fully. Constant contact between them is ensured by the Joint Committee together with the Special Committees. Any dispute between the parties can only be solved based on the solutions contained in the Agreement, through international arbitration by an arbitration panel. Furthermore, of interest are the provisions governing the specific extension of the jurisdiction of the Court of Justice of the European Union and the practice of the parties to date. Two methods of legal analysis have been employed in this research: dogmatic (analysis of the provisions of the Agreement) and functional (an attempt to predict the consequences of their implementation).
Keywords: Brexit, Withdrawal Agreement, monitoring, disputes

Kontrolowanie stosowania i rozwiązywanie sporów z brexitowej umowy o wystąpieniu z UE

Streszczenie
Celem niniejszego artykułu jest analiza, w jaki sposób *Umowa o wystąpieniu Zjednoczonego Królestwa z Unii Europejskiej* reguluje mechanizmy kontroli jej stosowania i rozwiązywania sporów. Wszystkie rozwiązania opierają się o prawnomiędzynarodową zasadę dobrej wiary, która zobowiązuje strony

[1] This article was prepared based on the author's master thesis, entitled *Agreement on the withdrawal of the United Kingdom from the European Union and control of its implementation*, defended at the University of Lodz in July 2021 under the supervision of prof. dr hab. Anna Wyrozumska.

Umowy do jej pełnego stosowania. Stały kontakt między stronami zapewnia Wspólny Komitet wraz ze Specjalnymi Komitetami. Wszelkie spory mogą być rozwiązywane jedynie w oparciu o postanowienia zawarte w Umowie, w oparciu o arbitraż międzynarodowy przed panelem arbitrażowym. Interesujące są również postanowienia regulujące szczególne rozszerzenie jurysdykcji Trybunału Sprawiedliwości Unii Europejskiej oraz dotychczasowa praktyka stron. W badaniu zastosowano dwie metody analizy prawnej: dogmatyczną (analiza postanowień Umowy) oraz funkcjonalną (próba przewidywania skutków ich realizacji).
Słowa kluczowe: Brexit, Umowa o wystąpieniu z UE, kontrolowanie, spory

The withdrawal of the United Kingdom from the European Union was, of course, an unprecedented phenomenon. The normalised Brexit process was made possible by the conclusion of 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* of 24 January 2020 (see: Agreement 2020; Council Decision (EU) 2020/135), following the procedure referred to in Art. 50 TEU. It is an act of international law, to which the United Kingdom and the European Union are parties, not its Member States. The substance of the Agreement can be divided into two categories: the first one includes provisions setting out the conditions for withdrawal, and the second one provides for the means of the implementation of the Agreement and resolving disputes. As Lauterpacht (1946) wrote, international law should be directed towards ensuring peace between nations and protecting human rights. The international legal principle of good faith explicitly confirmed in Art. 5 of the Agreement, occupies a primary role here. It obliges the parties to implement the Agreement in a concerted manner, in which constant contact between the parties is essential. The Joint Committee with subordinate Special Committees were established for this purpose. However, if a conflict arises between the parties which cannot be resolved through negotiation, the Agreement provides for a dispute settlement mechanism based on international arbitration. Equally interesting are the provisions regulating the specific extension of the competencies of the Court of Justice of the European Union.

This article's aim is to analyse the mechanisms of monitoring the implementation of the Agreement together with the resolution of disputes, and to indicate the practice previously existing in this respect (see further: Van Nuffel 2021). Two methods of legal analysis have been employed in this regard: dogmatic (analysis of the provisions of the Agreement) and functional (an attempt to predict the consequences of their implementation).

Joint Committee and Special Committees

The Joint Committee is the only permanent body established under the Agreement. It provides a forum where its parties have regular contact and can exchange views, in particular on contentious situations. As it is not a separate entity in the relationship between the EU and the UK, therefore it cannot provide, for example, good offices to both parties to the Agreement.

The Joint Committee meets at least once a year and is co-chaired by a member of the European Commission and a representative of the British Government at the ministerial level or by senior officials nominated as their alternatives (Art. 164(2) of the Agreement). Meetings are confidential (Rule 10(1) of Annex VIII) and take place alternatively in Brussels and London (Rule 4 of Annex VIII). It may also be decided, which is of particular importance during the COVID-19 pandemic, the meeting will be held by video or teleconference. The Joint Committee aims to supervise (fr. *superviser*) the implementation of the Agreement, thereby supporting the parties to fulfil their obligation to apply the Agreement in good faith (Art. 5 of the Agreement). To this end, it may give binding decisions and appropriate recommendations (Art. 166 of the Agreement). Crucially, this prerogative is only exercised by mutual consent. The Joint Committee has limited legislative power to amend the Agreement on issues of both technical (Art. 164(4)(f) of the Agreement) and substantial nature (Art. 164(5)(d) of the Agreement, see also: Dashwood 2020: p. 183–192).

The Joint Committee is assisted by Special Committees: (1) on citizens' rights, (2) on the other separation provisions, (3) on issues related to the implementation of the Protocol on Ireland/Northern Ireland, (4) on issues related to the implementation of the Protocol relating to the Sovereign Base Areas in Cyprus, (5) on issues related to the implementation of the Protocol on Gibraltar, and (6) on the financial provisions (Art. 165(1) of the Agreement). The functioning of the Special Committees is similar to that of the Joint Committee, except that they may only draw up draft decisions and recommendations, which they must submit to the Joint Committee for adoption, as they do not possess such a competence (Art. 165(2) of the Agreement). In addition, neither the EU nor the UK is prevented to refer any matter directly to the Joint Committee for discussion (Art. 165(4) of the Agreement).

Arbitration panel

Relations between the parties are to be based on extensive cooperation. Nevertheless, it cannot be excluded that a dispute of law or fact will arise between them. Such a conflict can only be settled by peaceful means (Art. 167 of the Agreement) and by adhering to the procedures provided for in the Agreement (Art. 168 of the Agreement, see also: art. 344 TFEU and Judgment of the CJEU 2006) starting with consultations within the Joint Committee (Art. 169 of the Agreement). If no agreement is reached in this manner within 3 months, either party may request the establishment of an arbitration panel.

Proceedings before an arbitration panel

The arbitration panel (fr. *groupe spécial d'arbitrage* – special arbitration group) is not part of any existing international judicial body. It was created solely for the Agreement. Incidentally, it is worth recalling that arbitration proceedings and proceedings before a permanent international court are among the judicial methods of settling international disputes. The major difference is their composition: the arbitral tribunal is *ad hoc*, while,

generally, the permanent international court is composed independently of the will of the parties to the dispute (see: Crawford 2019: p. 693–694).

By the end of the transition period, the Joint Committee was required to establish a list of twenty five able and willing individuals to serve as a member of the arbitration panel. To this end, each party to the Agreement proposed ten individuals and both of them jointly – five individuals to "act as chairperson of the arbitration panel" (Art. 171(1) of the Agreement). The members of the arbitration panel are required to be unquestionably independent, to possess the necessary qualifications to occupy the highest judicial offices in their respective countries or to be lawyers of recognised competence, and to have specialised knowledge or experience in EU law and public international law. Members, officials or other servants of the institutions of the EU, the Government of its Member State or the Government of the UK could not be proposed (Art. 171(2) of the Agreement). Decision No 7/2020 proposed as arbitrators, among others, A. Nußberger, a former German judge and Vice-President of the European Court of Human Rights, and J. Klučka, a former judge of the Slovak Constitutional Court.

The arbitration panel for a specific dispute can be established by the parties based on an application by one of them. It must state the subject matter of the dispute to be considered and a summary of the legal arguments in support thereof. The request is to be transmitted in writing to the other party and to the International Bureau of the Permanent Court of Arbitration in The Hague (International Bureau), which provides secretarial and additional logistical support to the arbitration panel (see: Art. 170(1) of the Agreement, Point 20 of Annex IXA).

The arbitration panel will be composed of five members (Art. 171(3) and (4) of the Agreement). Each party appoints two members from its list. They select by consensus the chairperson from the jointly designated candidates. In the absence of consensus, either party may request the Secretary General of the Permanent Court of Arbitration (PCA Secretary) to select a chairperson by lot (Art. 171(5) and (6) of the Agreement). The sole language of proceedings before the arbitration panel is English (Point 40 of Annex IXA).

Once the arbitration panel is established, its members enjoy immunity from legal proceedings in the EU and the UK (Art. 181(2) of the Agreement). The *Code of Conduct for Members of Arbitration Panels* requires, *inter alia*, that they must observe confidentiality and information obtained in the course of the proceedings (see: Point 9 of Annex IXB). By default, arbitration panel hearings take place in The Hague, at the seat of the Permanent Court of Arbitration (PCA) (see: Point 24 of Annex IXA).

The Agreement provides that proceedings before the arbitration panel should be concluded within 12 months of its establishment (Art. 173(1) of the Agreement). An expedited procedure was established in Art. 173(2) of the Agreement. Within 10 days from the date of establishment of the arbitration panel, either party may submit a reasoned request stating the matter is urgent. The arbitration panel rules on the urgency of the matter within 15 days and, where urgency is established, the panel must make every effort to notify its ruling within 6 months from the date of its establishment.

Technical assistance from the Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) has been given special powers to ensure the trouble-free functioning of the arbitration panel. The creation of the PCA, operating based on the Hague Convention, was the result of an attempt to institutionalise international arbitration that took place during the Hague Peace Conference in 1899 (Czapliński, Wyrozumska 2004: p. 828). It aimed at consolidating the system of international dispute resolution, especially because of the then-recent armed conflicts, such as the Second Boer War (1899–1902), the Russo-Japanese War (1904–1905) and the Russo-British incident on the Dogger Bank in 1904 (van den Hout 2008: p. 644; Rosenne 2001: p. XIX).

The International Bureau headed by the PCA Secretary, in addition to the Administrative Council, is the only permanent body of the PCA whose function is to act as a secretariat for the Court. Given the general idea behind the establishment of the PCA, i.e., the creation of a permanent forum ready for the settlement of international disputes, the Hague Convention provides that the International Bureau "is authorized to place its offices and staff at the disposal of the Contracting Powers for the operation of any special Board of Arbitration" (Art. 47 of the Hague Convention). On this basis, the International Bureau provides necessary assistance to other arbitral tribunals not operating under the PCA.

A well-known arbitral tribunal using PCA's premises is the Iran–United States Claims Tribunal. The PCA Secretary, as in the case of the Withdrawal Agreement, has the power to appoint its arbitrators (Iran–United States Claims Tribunal 1983: Art. 6, 7). Similarly, the International Bureau performed supporting functions for the *ad hoc* tribunal to hear the Malaysian–Singapore *Straits of Johor* dispute (van den Hout 2008: p. 653–654; Award of the PCA 2005). Even though only states are members of the PCA, the extensive practice does not preclude the International Bureau from providing support to an arbitral tribunal to which even a non-state international law entity may be a party, as it is a case in the Agreement. Thus, the solution in the Agreement is in line with existing international practice.

Lack of jurisdiction concerning EU law

As stipulated in the art. 174(1) of the Agreement, the arbitration panel may not rule, when the dispute referred to it for arbitration involves either a question of interpretation of a concept or provision of EU law, to which the Agreement refers (thus, still binding on the parties to the Agreement) or its object is to assess whether the UK has complied with its obligations under Art. 89(2) of the Agreement (whether it has complied with a judgment of the CJEU made against the UK). In such a case, a hearing of the parties takes place and the arbitration panel is obliged to request the CJEU to give judgement in this respect. This is the exclusive competence of the arbitration panel, which makes this decision alone. The parties to the proceedings may also make such a request to the arbitration panel and, in the event of a refusal, request its review (Art. 174(2) of the Agreement). In both cases, the CJEU's jurisdiction is based on Art. 272 TFEU. According to its wording, it has jurisdiction to give judgment under

any arbitration clause contained in a public or private law agreement concluded by or on behalf of the EU.

Pending the judgement of the CJEU, the time limits for the proceedings before the arbitration panel are suspended. The UK side is entitled to participate actively in the proceedings before the CJEU, i.e., as if it were still the Member State of the EU. The arbitration panel gives its ruling no later than 60 days after the conclusion of the proceedings before the CJEU (Art. 174(3) and (4) of the Agreement).

The mechanism described is the counterpart of the power of a court of the Member State to refer a question for a preliminary ruling under Art. 267 TFEU. It preserves the role of the CJEU as the only body empowered to interpret EU law (first subparagraph of Art. 19(1) TEU; Judgement of the CJEU 2021: par. 107). In addition, according to the *Salonia* judgement (see: Judgement of the CJEU 1981), only the referring court (here: the arbitration panel) has the power to decide whether request the CJEU to give a ruling thereon. The requests of the parties to the proceedings in this respect are not binding on the arbitration panel. In addition, it is reasonable to assume that the CILFIT doctrine comprising the doctrines of *acte claire* and *acte* éclairé (see: Judgement of the CJEU 1982) also applies to the proceedings before the arbitration panel.

Decisions and rulings of the arbitration panel

The primary method of decision-making by the arbitration panel is by consensus. If it cannot be reached, the matter is decided by a majority vote, but dissenting opinions are not published (Art. 180(1) of the Agreement). All decisions must be made in English (Point 40 of Annex IXA). According to Art. 175 of the Agreement, reproduced in Art. 180(2), they are binding in their entirety on the parties, which should take all measures necessary to implement them in good faith and within a reasonable time.

In case of a ruling in favour of the complainant, the respondent, no later than 30 days later, notifies the complainant of the time limit it considers necessary to comply with it (Art. 176(1) of the Agreement). This is called as "reasonable period of time for compliance". If the parties to the Agreement have not reached an agreement on this point, the complainant requests in writing the original arbitration panel to determine the length of the reasonable period. At least one month before the expiry of the reasonable period, the respondent informs the complainant in writing of the progress made in implementing the ruling. A reasonable period may be extended by mutual agreement.

The execution of the Agreement in good faith constitutes the implementation of the arbitration panel ruling. Nevertheless, the possibility cannot be excluded that the parties fail to reach an agreement on whether a ruling of the arbitration panel has been implemented. The Agreement provides for two possible measures of enforcement.

The first way requires the involvement of the arbitration panel. If, after the expiry of this period, the complainant believes the respondent has not complied with the ruling, it may submit a written request to the original arbitration panel to rule on the matter. If the arbitration panel determines the respondent has not complied with the ruling, it may, at the request of the complainant, impose a lump sum or periodic penalty payment, which

will be paid to the complainant. In delivering its ruling, the arbitration panel takes into account the seriousness and duration of the non-performance and the related breach of obligation (Art. 178(1) of the Agreement). If the respondent fails to pay the penalty imposed on it in due time, the complainant receives extraordinary power to enforce the respondent's lawful conduct. In this case, under Art. 178(2) of the Agreement, it enjoys the right to suspend its obligations under any provision of the Agreement beyond Part Two (entitled *Citizens' Rights*) or any part of any other agreement between the EU and the UK under the conditions set out therein. The exercise of this power is subject to three conditions (Art.178(2) of the Agreement):

- the respondent must be informed of the suspension, which may not be applied earlier than 10 days after that date;
- the complainant must consider whether the suspension of the provisions of the Agreement is not more appropriate than the suspension of the provisions of another agreement between the parties;
- the suspension must be proportionate to the breach of the obligation and take into account the seriousness of the breach and the rights affected, whether a periodic penalty payment was imposed on the defendant, and whether the respondent has paid it or is still paying it.

The second method to compel the respondent to comply with the arbitration panel ruling also arises from Art. 178(2) of the Agreement. The complainant may exercise the right to suspend the provisions of the Agreement or any other agreement between the parties as soon as the respondent has failed to comply with the first ruling of the arbitration panel in the case within six months. Importantly, the grounds for exercising this right are identical to those described above. The present procedure cannot be regarded as an accelerated version of the previous mechanism, as more than 6 months elapse between the first ruling in the case and the suspension of obligations, whereas the standard procedure takes, without interference, just over 4 months.

In both cases, the respondent has the right to judicial review of the measure taken if it considers it to be disproportionate. The request is submitted in writing to the original arbitration panel within the 10-day deadline following the notification by the complainant. Until the arbitration panel notifies the parties of its ruling, obligations must not be suspended and any suspension that has already occurred should be consistent with the ruling of the arbitration panel. This means the submission of the respondent to the arbitration panel, in principle, suspends the possibility of further suspension of obligations under any agreement between the parties (Art. 178(3) of the Agreement).

Once a measure to compel compliance with the Agreement has been imposed (recourse to payments or suspension of obligations), the respondent must notify the complainant of any measure it has taken to comply with the arbitration panel ruling (Art. 179(1) of the Agreement).

If both parties fail to agree on whether the measure adopted by the respondent restores legal compliance, either of them has the right to seek recourse to the original arbitration panel for a ruling on the matter. If the arbitration panel rules that the respondent

has brought the matter into conformity, or if the complainant fails to request a ruling within 45 days, the suspension of obligations is terminated 15 days after either the date of the arbitration panel ruling or the expiry of the 45 days. The application of periodic penalty payments ceases on the day following the date of either the arbitration panel ruling or the expiry of the 45 days (Art. 179(2) of the Agreement). If an issue of EU law arises in the course of a dispute, the procedure for applying the CJEU (Art. 179(3) and (4) of the Agreement) applies *mutatis mutandis*.

Jurisdiction of the Court of Justice of the European Union

During the transition period (1.02.2020–31.12.2020), the UK was treated similarly to an EU Member State, i.e., it was subject to all EU law and the full jurisdiction of the CJEU. After the end of the transition period, as a non-member state of the EU, the UK is subject to neither EU law nor the jurisdiction of the CJEU. This general international legal status of the UK is broken by specific provisions in the Agreement which provide that the UK is further bound by EU law in specific areas. Although the arbitration panel remains the only body with binding authority to resolve disputes arising from the application of the Agreement, the Agreement states that, concerning the UK's continuing obligations as to certain acts of EU law, the Court of Justice will retain jurisdiction over the UK in strictly defined four cases. On each occasion, the basis of jurisdiction is Art. 272 TFEU which empowers the CJEU to rule under an arbitration clause contained in an EU international agreement. In all proceedings, the UK has powers to appear before the CJEU identical to those of the EU Member States (e.g. Articles 90, 91, 161(2) and (3) of the Agreement). Decisions of the CJEU are binding on the UK (e.g. Articles 89, 158(2), 160 of the Agreement).

Firstly, under Art. 174 of the Agreement, the CJEU decides issues arising during the proceedings before the arbitration panel relating to the interpretation of EU law to which the UK remains bound (indicated in the Agreement) or to the UK's enforcement of a CJEU judgement against it. The arbitration panel cannot rule on this matter and must seek a judgement from the CJEU. The power under Art. 174 of the Agreement is indefinite and attempts to ensure a consistent interpretation of EU law to which the Agreement refers. Although according to the literal wording of this provision that a judgement of the CJEU is binding only on the arbitration panel, the parties to the Agreement will equally be bound by it – the EU (and its Member States), because the CJEU is an organ of that organisation and, according to Art. 216(2) TFEU and the case law of the CJEU (Judgement of the CJEU 1974: summary par. 1; Judgement of the CJEU 1976: par. 16), the Agreement is an integral part of EU law – the UK, as this stems from the principle of good faith indicated in Art. 5 of the Agreement.

Secondly, the CJEU remains competent to give preliminary rulings on matters brought by UK courts made before the end of the transition period and in any proceedings brought by or against the UK before the end of the transition period. That jurisdiction is retained in respect of all stages of the proceedings, including appeals before the Court

of Justice and proceedings before the General Court if the case has been referred back to the General Court. The date on which proceedings are brought is deemed to be the date of entry in the register by the Registry of the Court of Justice or the General Court (Art. 86 of the Agreement).

Thirdly, the CJEU has the power to rule on complaints by the European Commission against the United Kingdom:

- for failure to fulfil its obligations under the Treaties or the fourth part of the Agreement (entitled *Transition*) during the transition period (Art. 87(1) of the Agreement). The Commission's action may be based on Art. 258 TFEU (failure of a Member State to fulfil its obligations under the Treaties) or on the second subparagraph of Art. 108(2) TFEU (concerning State aid). The period within which the Commission may exercise this power is four years after the end of the transition period, i.e., until 31 December 2024;
- for failure to enforce a decision addressed to a natural or legal person, taken during or after the transition period (Art.87(2) of the Agreement). The complaint may concern a decision adopted by EU authorities before the end of the transition period or in the course of administrative proceedings instituted before the end of the transition period (Art. 95(1) of the Agreement). As in the previous case, the Commission's action may be based only on Art. 258 TFEU or the second subparagraph of Art. 108(2) TFEU, and may be brought before the CJEU before the expiry of the four years following the end of the transition period;
- for failure to comply with accepted financial obligations (Art.160 of the Agreement). This action may be based on Art. 258 TFEU or Art. 260 TFEU (concerning the imposition of a lump sum or penalty payment by the CJEU for failure to comply with a previous judgement). This power is not subject to a time frame, so the Commission can bring actions before the CJEU against the UK without any time limit.

Finally, the CJEU has the power to deal with requests for preliminary rulings from UK courts concerning specific areas of EU law contained in the Agreement. The first category (Art. 158 of the Agreement) concerns the interpretation of acts of EU law that continue to bind the UK based on Part Two of the Agreement (entitled *Citizens' Rights*). The courts of the United Kingdom may make such a request, in principle, only in cases commenced at first instance within eight years of the end of the transition period. The second category (Art. 160 of the Agreement) comprises acts of EU law, comprising provisions applicable to the United Kingdom after the end of the transition period (after 31 December 2020) in respect of own resources of the EU as defined in the financial years until 2020 (Art. 136 of the Agreement) and the participation of the UK in the implementation of EU programmes and actions committed under the 2014–2020 Multiannual Financial Framework or the previous financial perspectives (Art. 138(1) and (2) of the Agreement). This right is not limited in time.

Noteworthy, the European Commission may submit written observations and, with the permission of the court in question, also orally, to the courts of the United Kingdom relating to cases pending there that concern the interpretation of the Agreement (Art. 162

of the Agreement). In addition, to facilitate a coherent interpretation of the Agreement, the CJEU and the UK Supreme Court should engage in constant dialogue, and similar to that held by the CJEU with the Supreme Courts of the Member States (Art. 163 of the Agreement) (see also: Claes, de Visser 2012: p. 100; Safjan 2014).

Implementation of the Agreement by the parties

Although the Agreement entered into force about two years ago (as of January 2022), the practice of its application can already be analysed. The Joint Committee has met several times to date, and some decisions have been taken during this time, such as:

- Decision No 7/2020 establishing the potential members of the arbitration panel, mentioned above;
- Decision No 1/2020 adjusting the Agreement, as a result of its later-than-expected entry into force, adding provisions concerning the Research Fund for Coal and Steel grants, and incorporating into one of the annexes the content of two new decisions of the Administrative Commission for the Coordination of Social Security Systems;
- Decision No 3/2020 deleting two acts of EU law on CO_2 emissions from Annex 2 to the Protocol on Ireland/Northern Ireland.

At the end of the transition period, 24 questions for a preliminary ruling from British courts awaited a reply from the CJEU. The answer to one of them is the judgment in *Tesco Stores* (Judgement of the CJEU 2021). It should be recalled that under Art. 86 Agreements, the judgments of the CJEU in such cases are fully binding on the United Kingdom.

To date, no dispute has been submitted to an arbitration panel. Nevertheless, the relationship between the EU and the UK regarding the application of the Agreement is genuinely tense, primarily concerning Northern Ireland. As an example, there was a proposal by the UK Government to amend the Internal Market Act, which, as the Secretary of State for Northern Ireland himself pointed out, was intended to "violate international law [Withdrawal Agreement – author's note] in a very specific and limited way" (*Northern Ireland Secretary* 2020; see Armstrong 2020). On the EU side, there was the unfortunate proposal to restrict the free movement of vaccines between Ireland and Northern Ireland (European Commission 2021a,b; see also: *Brexit Bulletin* 2021; Gapsa 2022).

Conclusions

The provisions governing the methods of monitoring the implementation of the Agreement and the mechanisms for resolving disputes arising from its application have been regulated in remarkable detail. The cooperation between the parties and consultations aimed at reaching a compromise represents the fundamental rule. To this end, the Joint Committee was established, which acts as a stable forum for contact between the EU and the UK and supervises the application of the Agreement. It is assisted by six Special Committees.

When disputes arise from the application of the Agreement, the parties may only adhere to the procedures provided for in the Agreement. The sole authority empowered to settle all disputes, except those involving EU law further binding on the United Kingdom, is a special arbitration panel, whose rulings are final and binding. In principle, the CJEU's exceptional jurisdiction is limited to EU law, which continues to bind the UK. It is based on the provisions of the Agreement which constitute the arbitration clauses referred to in Art. 272 TFEU. It is worth mentioning the modalities of monitoring the implementation and the dispute settlement mechanisms have undergone significant modifications concerning the three Protocols attached to the Agreement.

It can be presumed the European Union was aware future relations with the United Kingdom could be difficult and that the rules, by which any disagreements would be resolved, should be carefully established. Any case where the CJEU enjoys the right to decide on acts of EU law referred to in the Agreement relates solely to their interpretation and not to their validity. Equally, the measures to enforce the arbitration panel ruling in the form of penalties and suspension of the provisions of the Withdrawal Agreement (apart from Part Two on citizens' rights) or any other agreement between the parties are worth mentioning as significant backstops.

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References:

AGREEMENT (2020) on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (consolidated text), OJ L 029, 31.01.2020.

ANNEX VIII (2020), *Rules of Procedure of the Joint Committee and Specialised Committees*, attached to 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, OJ L 029, 31.01.2020.

ANNEX IX (IXA) Part A (2020), *Rules of Procedure for Dispute Settlement*, attached to 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, OJ L 029, 31.01.2020.

ANNEX IX (IXB) Part B (2020), *Code of Conduct for Members of Arbitration Panels*, attached to 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, OJ L 029, 31.01.2020.

ARMSTRONG Kenneth (2020), *Governing With or Without Consent – The United Kingdom Internal Market Act 2020*, UK Constitutional Law Association, https://ukconstitutionallaw.org/2020/12/18/kenneth-armstrong-governing-with-or-without-consent-the-united-kingdom-internal-market-act-2020/ (18.12.2020).

AWARD OF THE PCA (2005) of 1 September 2005, *Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, Case no. 2004-05.

BREXIT BULLETIN (2021), *EU backtracks on invoking Article 16 of the Northern Ireland Protocol as part of coronavirus (COVID-19) vaccine export authorisation scheme*, https://www.fiettalaw.com/wp-content/uploads/2021/02/Brexit-BulletinEU-backtracks-on-invoking-Article-16-of-the-Northern-Ireland-Protocol-as-part-of-coronavirus-COVID-19-vaccine-export-authorisation--scheme.pdf (01.02.2021).

COUNCIL DECISION (EU) 2020/135 of 30 January 2020 on the conclusion of 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 (Text with EEA relevance), OJ L 029, 31.01.2020.

CLAES Monica, DE VISSER Maartje (2012), *Are You Networked Yet? On Dialogues in European Judicial Networks*, "Utrecht Law Review", vol. 8, no. 2.

EUROPEAN COMMISSION (2021a), *Commission puts in place transparency and authorisation mechanism for exports of COVID-19 vaccines*, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_307 (29.01.2021).

EUROPEAN COMMISSION (2021b), *Commission statement on the vaccine export authorisation scheme*, https://ec.europa.eu/commission/presscorner/detail/en/statement_21_314 (29.01.2021).

CRAWFORD James (2019), *Brownlie's Principles of Public International Law (9th Edition)*, Oxford. DOI: 10.1093/he/9780198737445.001.0001

CZAPLIŃSKI Władysław, WYROZUMSKA Anna (2004), *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, Warszawa.

DASHWOOD Alan (2020), *The Withdrawal Agreement: Common Provisions, Governance and Dispute Settlement*, "European Law Review", vol. 45, no. 2.

DECISION No 1/2020 of the Joint Committee established by 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 of 12 June 2020 amending 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, OJ L 225, 14.07.2020.

DECISION No 3/2020 of the Joint Committee established by 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 of 17 December 2020 amending the Protocol on Ireland and Northern Ireland to 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, OJ L 443, 30.12.2020.

DECISION No 7/2020 of the Joint Committee established by 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 of 22 December 2020 establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement, OJ L 443, 30.12.2020.

GAPSA Miłosz (2022), *Renegocjacja albo jednostronne środki ochronne, czyli brytyjskie stanowisko wobec protokołu irlandzkiego*, "Europejski Przegląd Sądowy", no. 3/2022.

HAGUE CONVENTION (1907) for the Pacific Settlement of International Disputes of 1907, done in the Hague on 18.10.1907, entered into force on 26.01.1910.

IRAN—UNITED STATES CLAIMS TRIBUNAL (1983), *Tribunal Rules of Procedure*, 3 May 1983.

JUDGMENT OF THE CJEU (1974) of 30 April 1974, *R. & V. Haegeman v Belgian State*, Case 181-73.

JUDGMENT OF THE CJEU (1976) of 5 February 1976, *Conceria Daniele Bresciani v Amministrazione Italiana delle Finanze*, Case 87-75.

JUDGMENT OF THE CJEU (1981) of 16 June 1981, *Maria Salonia v Giorgio Poidomani and Franca Baglieri, née Giglio*, Case 126/80.

JUDGMENT OF THE CJEU (1982) of 6 October 1982, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, Case 283/81.

JUDGMENT OF THE CJEU (2006) of 30 May 2006, *Commission of the European Communities v Ireland*, Case C-459/03.

JUDGMENT OF THE CJEU (2021) of 2 March 2021, *A.B. and Others v Krajowa Rada Sądownictwa and Others*, Case C-824/18.

JUDGMENT OF THE CJEU (2021) of 3 June 2021, *K and Others v Tesco Stores Ltd*, Case C-624/19.

LAUTERPACHT Hersch (1946), *The Grotian Tradition in International Law*, "British Yearbook of International Law", vol. 23(1).

NORTHERN IRELAND SECRETARY admits new bill will 'break international law' (2020), BBC, https://www.bbc.com/news/uk-politics-54073836 (08.09.2020).

ROSENNE Shabtai (ed.) (2001), *The Hague Peace Conferences of 1899 and 1907 and International Arbitration: Reports and Documents*, The Hague.

SAFJAN Marek (2014), *Dlaczego dialog pomiędzy sądami bywa trudny? O barierach pytań prejudycjalnych*, „Prawo w działaniu", vol. 20/2014.

TEU, Treaty on European Union, OJ C 326, 26.10.2012.

TFEU, Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

VAN DEN HOUT Tjaco T. (2008), *Resolution of International Disputes: The Role of the Permanent Court of Arbitration — Reflections on the Centenary of the 1907 Convention for the Pacific Settlement of International Disputes*, "Leiden Journal of International Law", vol. 21, issue 3. DOI: 10.1017/S0922156508005220

VAN NUFFEL Pieter (2021), *The Withdrawal Agreement, Part Six: Institutional and Final Provisions*, in: M. Kellerbauer, E. Dumitriu-Segnana, T. Liefländer (eds), *The UK-EU Withdrawal Agreement: A Commentary*, Oxford 2021.

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