# The Legal Architecture of De-Europeanisation: Managing Border Conflicts after Brexit

**Abstract**

Scholarship on the Europeanisation of border conflicts explains how closer integration can transform them. This article addresses the reverse case. It examines how the EU and the UK have managed the de-Europeanisation of three border conflicts – Northern Ireland, Gibraltar and the UK Sovereign Base Areas in Cyprus – through the Withdrawal Agreement Protocols and the Agreement on Gibraltar. Three legal techniques recur: sovereignty disclaimers that quarantine the underlying territorial disputes; the extraterritorial application of EU law to keep contested borders functionally invisible; and bespoke governance mechanisms for institutional oversight and dispute resolution. Each is calibrated to the intensity of the underlying sovereignty dispute and the depth of integration required to prevent border hardening. The article enriches the literature on differentiated disintegration with an account of its territorial and conflict-related dimensions, and recasts the neo-functional peace as a method of conflict management capable of operating in either direction.

**Key words:** De-Europeanisation; Brexit; Border conflicts; Differentiated disintegration; Neo-functional Peace; Northern Ireland; Good Friday Agreement; Cyprus; Gibraltar; Withdrawal Agreement

## Introduction

The EU's historical success as a peacemaker between France and Germany has inspired a significant body of scholarship exploring whether integration may also bring peace to other conflict zones, especially in its immediate neighbourhood (Akçali, 2009; Féron and Güven Lisaniler, 2009). The Union itself presents conflict resolution as an 'essential aspect of the EU's external action' (European Commission, 2004, p. 3). The mechanism is association itself: Tocci (2008, p. 217) has argued that the EU's 'structural diplomacy' – the various forms of association and integration it offers – is well tailored to induce 'long-run structural change both within and between countries' while Coppieters et al. (2004, p. 2) linked the final outcome of a secessionist conflict to the degree of integration into European structures. On this rationale, the closer the form of association with the EU, the stronger its potential to 'catalyse' the respective conflict resolution goal ('catalytic effect' thesis).

Two contributions refined that account. Visoka and Doyle (2016, p. 873) identified the method. The EU deconstructs highly political issues into technical meanings in order to achieve mutually acceptable agreements. In that way, technical dialogue between conflicting sides in areas of 'low politics' can have a spillover effect, building confidence and eventually launching high-level political dialogue on sensitive sovereignty questions (p. 867). They called this 'neo-functional peace'. Diez, Stetter and Albert (2006) established the conditions: their comparative analysis highlighted that the EU's impact is strongest where there is a credible membership perspective (p. 587), weaker in situations of association (pp. 577-578), and may even be negative where a border conflict coincides with the outer borders of EU territories, as the enforcement of the *acquis communautaire* can further divide rather than integrate these border areas (p. 580). Both accounts, however, assumed a relationship between the EU

and the conflict parties that was either static or moving toward closer integration. The possibility that a Member State might withdraw was not considered at the time.

The UK's withdrawal from the single market and the customs union, however, created three new external borders of the European Union in places where the border is itself contested: the land border on the island of Ireland, the frontier between Gibraltar and Spain, and the boundary between the UK Sovereign Base Areas in Cyprus (SBAs) and the Republic of Cyprus (RoC). In each case, EU membership had rendered that border largely invisible. In each case, Brexit threatened to make it visible again and, in doing so, to unsettle a political settlement built on its frictionless nature.

This article examines how the EU and the UK have managed the de-Europeanisation of those three border disputes through the Withdrawal Agreement Protocols[1] including the Windsor Framework[2] and the Agreement on Gibraltar.[3] Building on the 'paradox of the Europeanisation of intrastate conflicts' (Skoutaris, 2016), it argues that just as the EU accommodates border conflicts within its legal order after accession, it has developed specific legal techniques to manage those same conflicts in the context of withdrawal. The institutional flexibility that enables accommodation during membership is, in other words, redeployed during withdrawal. The article identifies three such techniques: first, the relevant international agreements contain provisions that disclaim any implications for the sovereignty questions at the heart of each conflict; second, they provide for the extraterritorial application of EU law in order to maintain the invisibility of the borders in question; and third, they establish bespoke governance mechanisms for the ongoing management and dispute resolution of the arrangements.

Those three techniques emerge from the treaty texts themselves rather than from any pre-existing theoretical template. Read together, however, they cast a particular light back on Visoka and Doyle's 'neo-functional peace'. Where Visoka and Doyle theorised the progressive transformation of conflicts through the spillover effects of integration, the de-Europeanisation context reveals a structurally different dynamic. Those techniques do not transform the underlying conflicts. They rather accommodate them, deconstructing highly political questions into manageable technical arrangements – enabling mutually acceptable outcomes precisely by avoiding direct confrontation of the underlying sovereignty disputes. The neo-functional logic is preserved – technical cooperation substitutes for political resolution – but its direction is reversed: from transformation to accommodation. Neo-functional peace, on this evidence, is less a theory of conflict resolution than a method of conflict management, capable of operating in either direction.

Accommodation of this kind is not new. Even before the question of withdrawal arose, the empirical evidence had already challenged the linearity of the 'catalytic effect' thesis. RoC's accession failed to catalyse a settlement of the dispute while the minimum involvement of

[1] Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Protocol on Ireland/Northern Ireland, 2020 OJ L 29, 102.

[2] Available at: «https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement/windsor-framework_en».

[3] Agreement in Respect of Gibraltar between the United Kingdom of Great Britain and Northern Ireland, on the one part, and the European Union and the European Atomic Energy Community of the other Part. Available at: «https://www.gov.uk/government/publications/ukeu-and-eaec-agreement-in-respect-of-gibraltar-ms-no92026». The Agreement remains, at the time of writing, a draft text subject to ratification.

the Union in the settlement of other intrastate conflicts within its borders, such as those in the Basque Country, Catalonia and Northern Ireland, pointed to the limits of the theory. Rather than mobilising its resources to resolve such conflicts after accession, the Union has tended to accommodate them within its political and legal order (Skoutaris, 2016). This 'paradox of the Europeanisation of intrastate conflicts' results both from inherent limitations of the EU political and legal order that constrain the EU from becoming more active in intrastate conflicts (Skoutaris, 2016, pp. 240-250) and from its flexibility, which enables it to absorb the stresses created by unresolved conflicts rather than forcing their resolution (Skoutaris, 2016, pp. 234-240).

That flexibility sits within a broader scholarly debate about how differentiated integration has allowed the EU legal order to 'reconcile heterogeneity' within its borders (Stubb, 1996, p. 283). Differentiation 'has grown as the European integration project widened and deepened', becoming a structural characteristic of that order (De Witte, 2018, p. 228). Still, it remains a double-edged sword: it can strengthen cohesion by accommodating diversity, but equally risks fragmentation, legal indeterminacy and declining solidarity among Member States (Chopin and Lequesne, 2016, pp. 531-536). While the literature on differentiated integration has been extensive (Leuffen et al., 2012; Bellamy and Kröger, 2017; De Witte, 2018; Schimmelfennig and Winzen, 2020), disintegration was comparatively neglected until Brexit, 'a ground-breaking case of differentiated disintegration and […] a new form of flexible integration' (Leruth et al., 2019, p. 1015). This chimes with Vollaard (2014) who, drawing on Bartolini's (2005) framework of polity formation, conceptualised disintegration not simply as integration in reverse but as a process that includes partial exit options – an insight further developed by Schimmelfennig and Winzen (2020, pp. 137-155).

The concept of de-Europeanisation adds a further layer. Outhwaite (2019, p. 17) distinguishes its soft form, a gradual divergence from European norms 'either through some agreed process of derogation […] or through the gradual […] abandonment of common European norms', from its hard form, a decision 'to withdraw entirely from the EU or to abandon the path of accession'. It is therefore not a uniform process – a point that proves particularly relevant to the three cases examined here, where withdrawal has been managed differently in each, reflecting the political salience and constitutional specificity of the territory concerned.

Taken together, these bodies of literature leave a clear gap. The scholarship on the Europeanisation of border conflicts has analysed how closer integration can transform conflicts but has not addressed the reverse scenario. The literature on differentiated integration and disintegration has mapped the mechanisms through which the EU accommodates diversity among current and withdrawing members, but not how those mechanisms operate where border conflicts are at stake. And the emerging literature on de-Europeanisation has focused primarily on the constitutional and sociological dimensions of the UK's departure but not the legal techniques through which the impact of withdrawal on contested territories has been managed. In identifying and analysing these three techniques comparatively across the three cases, the article enriches the scholarship on differentiated disintegration (Vollaard, 2014; Schimmelfennig, 2018; Leruth et al., 2019; Schimmelfennig and Winzen, 2020, pp. 137-155) with an account of its territorial and conflict-related dimensions and recasts the neo-functional peace as a method of conflict management that outlives the integration process that produced it.

## I. Sovereignty Disclaimers: Freezing the Contested Question

According to Diez, Stetter and Albert (2006, p. 565), a conflict occurs 'when an actor constructs his or her identity or interests in such a way that these cannot be made compatible with the identity or interests of another actor'. In that sense, at the heart of every border conflict there is a territorial border that is under dispute. In Northern Ireland, that is the Irish land border and the unresolved question of the unification of the island; in Gibraltar, it is Spain's longstanding claim to sovereignty over the peninsula; in the case of the UK SBAs, the RoC does not even recognise the existence of borders, preferring to speak about internal boundaries separating it from the Base Areas (Skoutaris, 2022, p. 682). All three cases are linked with notions of shared and sometimes even disputed sovereignty and interdependence.

EU membership had helped manage these sovereignty tensions by, in effect, rendering them less salient. It facilitated the peacebuilding process of the Belfast/Good Friday Agreement (GFA) (Meehan, 2000) and transformed the Irish border 'from a sharp dividing line between states into a meeting point between "friendly neighbours and partners in the European Union"' (Hayward, 2018, p. 239). At the same time, the GFA 'redefined relations across these islands in a way that has defused the border as a cause for political conflict and violence' (Hayward and Murphy, 2018, p. 276). Invisibility, on that account, is a symptom rather than the substance of what integration achieved. Similarly, EU membership enabled Gibraltar's border with Spain to function with relatively low friction (Miller, 2017, p. 8), while Protocol No 3 of the Act of Accession 2003 ensured that the boundary between the SBAs and the Republic remained seamless (Hadjigeorgiou and Skoutaris, 2019, pp. 7-12). Europeanisation, in other words, did not resolve these sovereignty disputes; it lowered their political temperature by making the contested borders functionally invisible.

De-Europeanisation threatened to reverse that process. The UK's decision to leave both the single market and the customs union meant that three new EU external borders would harden, potentially destabilising the fragile peace in each case. It is in this context that the first legal technique becomes significant: each of the relevant treaties contains a legal mechanism disclaiming any implications for the sovereignty questions at the heart of each conflict. These sovereignty disclaimers operate as a legal device that quarantines the underlying territorial dispute from the legal arrangements. Their architecture, however, varies considerably, and their sophistication correlates with the intensity of the underlying sovereignty dispute.

In Northern Ireland, the sovereignty disclaimer in the Protocol as amended by the Windsor Framework is inextricably linked to the GFA and the principle of consent that lies at its foundation. Article 1(1) provides that nothing in the Protocol shall prejudice 'the provisions of the 1998 Agreement in respect of the constitutional status of Northern Ireland', including 'the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people'. The provision must be understood against the background of a fierce domestic political debate. Critics of the post-Brexit differentiated arrangement argued that the Protocol threatened the 'constitutional integrity' of the United Kingdom (Skoutaris, 2020). The constitutional challenge in *Allister* brought these objections

before the UK Supreme Court, which ultimately dismissed the claims and confirmed the Protocol's constitutionality.[4]

Article 1 of the Protocol anchors the differentiated arrangement within the existing constitutional architecture of the GFA, which encompasses both dimensions of self-determination. Section 1 of the Northern Ireland Act 1998 is an expression of the external dimension of self-determination as it gives 'the people of Northern Ireland the right to determine whether to remain part of the United Kingdom or to become part of a united Ireland.'[5] At the same time, the internal dimension of self-determination is expressed through the power-sharing governance structures that require the participation and consent of both ethno-religious communities. This was reinforced through the mechanism of democratic consent and the introduction of the Stormont Brake. With regard to the former, Article 18 of the Protocol provides that four years after the end of the transition period, the members of the Northern Ireland Assembly vote whether the free movement of goods arrangement should continue to apply. If the vote achieves cross-community support, the arrangement continues for a further eight years; if it passes only by simple majority, it continues for four. On 10 December 2024, the Northern Ireland Assembly passed a motion for the first time affirming the application of the free movement of goods arrangement for another four years.[6] Concerning the latter, under the new Article 13(3a), a group of 30 members of the Northern Ireland Assembly (MLAs) from at least two parties may notify the UK Government that a new or amended EU measure 'significantly' differs from the act it replaces and generates a significant impact on everyday life in Northern Ireland. The UK Government then assesses the notification and, if the criteria are met, raises the matter in the Joint Committee. The Brake therefore triggers a process channelled through the intergovernmental machinery; it does not confer a unilateral DUP or even Assembly veto (Murray and Robb, 2023, p. 12). Indeed, in December 2024, thirty-five unionist MLAs notified the Speaker that EU Regulation 2024/2865[7] should not apply in Northern Ireland.[8] However, the UK Secretary of State declined to pull the Brake, accepting that the correct procedures had been followed but finding the substantive conditions unmet.[9]

In Gibraltar, the sovereignty disclaimer reaches its most elaborate form. Article 2 of the Agreement provides that it, together with all supplementing agreements, administrative arrangements, measures, instruments, and conduct, shall be 'without prejudice to, and shall not otherwise affect the respective legal positions' of the UK and Spain regarding sovereignty

[4] UK Supreme Court, *In the matter of an application by James Hugh Allister and others for Judicial Review (Appellants) (Northern Ireland)* [2023] UKSC 5.

[5] UK Supreme Court, *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)*, [2017] UKSC 5, at para 135.

[6] Northern Ireland Assembly Motion: Democratic Consent Resolution (10 December 2024).

[7] Regulation (EU) 2024/2865 of the European Parliament and of the Council of 23 October 2024 amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures OJ L, 2024/2865 [20.11.2024].

[8] Letter from the Speaker to the Secretary of State regarding Notification under Part 3 of Schedule 6B of the Northern Ireland Act 1998 ("Stormont Brake") and the Written Explanation (Annex 1). Available at: «https://www.niassembly.gov.uk/assembly-business/office-of-the-speaker/correspondence/letter-from-the-speaker-to-the-secretary-of-state-regarding-notification-under-part-3-of-schedule-6b-of-the-northern-ireland-act-1998-stormont-brake-and-the-written-explanation-annex-1/».

[9] Correspondence pursuant to Schedule 6B NI Act 1998. Available at: «https://www.niassembly.gov.uk/globalassets/documents/speaker/correspondence/sosni-to-speaker-poots---pursuant-to-schedule-6b-northern-ireland-act-1998.pdf».

and jurisdiction. Crucially, none shall constitute 'the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise' – a 'firewall' (Trinidad, 2026, p. 13) designed to prevent any legal arrangement from producing spillover effects into the sovereignty domain. Several features distinguish this clause. Its scope is comprehensive, covering every conceivable legal act. Its language operates symmetrically, preventing both assertions and denials of sovereignty – critical in a context where operational arrangements could be read as implying either UK sovereignty or Spanish authority. Most distinctively, the sovereignty protection extends into a triple-lock dispute settlement architecture: Article 301(2)(a) excludes Article 2 from the covered provisions; Article 301(6) creates a mandatory jurisdictional bar upon a sovereignty objection; and any decision rendered cannot produce legal effects on sovereignty positions. The firewall is further reinforced by the isthmus-specific disclaimer in the footnote to Article 271(d), addressing Spain's longstanding claim regarding the territory on which Gibraltar Airport is situated. Overall, Article 2 'serves as an unusually robust interpretive instruction: where provisions are capable of more than one meaning, the Agreement should be read in the manner least likely to affect the positions of the UK or Spain on sovereignty or jurisdiction.' (Trinidad, 2026, p. 16).

In the SBAs, by contrast, the sovereignty question was addressed by the 1960 Treaty of Establishment.[10] Article 1 of that Treaty provides that the territory of the RoC comprises the whole island with the exception of those two areas defined, which shall remain under the sovereignty of the United Kingdom. In *R (Bashir)*, the UK Supreme Court recognised that the two SBAs represent a direct continuation of the pre-1960 colonial legal regime.[11] This chimes with RoC's most recent position on them. The House of Representatives in 2007 and 2012 characterised them as a 'colonial remnant' and called for their eventual return.[12] Hadjigeorgiou (2022) has argued that the legality of the SBAs themselves should be assessed through the lens of decolonisation, drawing on the International Court of Justice's advisory opinion in *Chagos*[13] to suggest that the retention of the Bases at independence may not have reflected the genuinely free will of the Cypriot people.

In practice, the relationship between the RoC and the Areas is described in the UK Government's Declaration regarding the Administration of the SBAs.[14] Under Section 3(2), the laws applicable to the Cypriot population of the SBAs must be 'as far as possible the same as the laws of the Republic'. Under Section 3(4), the RoC is invited to provide a wide range of public services, and a complex system of delegated functions means that its officers effectively administer most civilian aspects of life in the SBAs. When Cyprus joined the EU, this reality was accommodated through Protocol No 3 of the Act of Accession 2003.[15] Although the EU Treaties did not apply to the SBAs pursuant to Article 355(5)(b) TFEU, the

[10] Available at: «https://peacemaker.un.org/en/node/9380».
[11] UK Supreme Court, *R (on the application of Tag Eldin Ramadan Bashir and others) (Respondents) v Secretary of State for the Home Department (Appellant)* [2018] UKSC 45.
[12] See RoC House of Representatives Resolution 150, 19 April 2007, preamble (in Greek) and RoC House of Representatives Resolution 174, 22 March 2012, at 4 (in Greek) respectively.
[13] International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965,* Advisory Opinion, 25 February 2019, ICJ Reports (2019) 95.
[14] Declaration by Her Majesty's Government Regarding the Administration of the Sovereign Base Areas, Appended to the Treaty of Establishment (Appendix O).
[15] Act of Accession 2003, Protocol No 3 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, 2003 OJ L 236, 940.

Protocol provided that the SBAs were included within the EU customs territory, and the customs and common commercial policy acts, together with the legislation on indirect taxation and agriculture, applied to them. In this way, the Protocol ensured continuity with the pre-existing arrangements: EU law reached into the SBAs to precisely the extent necessary to prevent the creation of a customs border between the Areas and the Republic. The SBA Protocol of the Withdrawal Agreement continues this logic: Article 2 provides that the SBAs remain in the EU customs territory.

Unlike Northern Ireland and Gibraltar, there is no standalone legally binding sovereignty disclaimer comparable to Article 1 of the Protocol on Ireland/Northern Ireland or Article 2 of the Gibraltar Agreement. The Preamble, however, explicitly refers to Articles 1 and 2 of the Treaty of Establishment which settled the sovereignty question. The SBA Protocol operates on the assumption that, because the arrangements it preserves pre-date Brexit and were designed precisely to keep the borders invisible, there is nothing in the withdrawal that needs to be quarantined from sovereignty implications. In a sense, the entire architecture of the SBA regime – from Appendix O of the Treaty of Establishment to Protocol No 3 of the Act of Accession to the Withdrawal Agreement Protocol – is itself one continuous sovereignty disclaimer, normalised through decades of practice. At the same time, this absence of a legally binding provision introduces an element of constructive ambiguity. Given that the Protocol does not refer to the issue of sovereignty, both the UK and the RoC may continue holding their contrasting views.

Viewed comparatively, the sophistication of the sovereignty disclaimers varies in direct proportion to the intensity of the underlying dispute. In the SBAs, where the debate on their sovereignty is rather muted, no legally binding disclaimer was considered necessary. In Northern Ireland, where the sovereignty question takes the form of an internal constitutional settlement, Article 1 anchors the arrangement within the GFA and the principle of consent. In Gibraltar, where sovereignty is actively contested between two states, the disclaimer reaches its most elaborate form through the triple-lock architecture. This graduated architecture is constitutive of the entire arrangement: without the disclaimers, the extraterritorial application of EU law that follows would be politically impossible.

### II. The Extraterritorial Application of EU Law: Making Borders Invisible

If the sovereignty disclaimers create the political space for integration, the extraterritorial application of EU law ensures that the territorial frontiers at the heart of each conflict remain as invisible as possible, even after the UK's departure from the single market and customs union. That said, the language of invisibility requires qualification. As Komarova and Hayward (2019, p. 541) argue, 'the most significant point about border regimes is not inclusion/exclusion across a state border but hierarchies of rights and treatment within a jurisdiction.' On that view, a border does not disappear when its infrastructure does; it is redistributed, surfacing in the differential entitlements of those living on either side. The arrangements examined here bear this out. Each keeps the contested border free of physical infrastructure by creating such hierarchies: Northern Ireland's dual regulatory position, the distinct status of Gibraltar's residents and cross-frontier workers, and the differentiated treatment of persons crossing the SBAs' external boundaries. What those techniques achieve is not the erasure of the border but its displacement from the territorial line into the legal status of persons and goods.

To do that, in each case, the EU and the UK have crafted bespoke arrangements that apply different segments of the EU *acquis* to different territories, producing a landscape of what might be called differentiated disintegration – a mirror image of the differentiated integration that characterised many of these territories' relationships with the EU during membership (Schimmelfennig, 2018). What is particularly striking about this technique is its selectivity. The negotiators have disaggregated the *acquis* and applied only those elements considered necessary to keep the relevant border functionally open. This selectivity is also a matter of political choice: the scope and depth of the extraterritorial application vary across the three cases in ways that reflect not only the technical requirements of border management but also the political sensitivities at play. The depth of application – from the narrow continuity of the SBAs to the deeper-than-membership integration of Gibraltar – reflects the gap between the pre-Brexit *status quo* and the minimum level of integration necessary to prevent border hardening. And the mechanisms for dynamic alignment – from the automaticity of the SBA regime to the formally discretionary model of the Gibraltar Agreement's Article 19 – reflect not only the degree of regulatory autonomy the parties were willing to preserve but also, and more revealingly, the consequences they attached to its exercise.

The Northern Ireland Protocol as amended by the Windsor Framework represents the most politically contested and technically complex of the three regimes. Its core mechanism uses a sleight of hand. Article 4 recognises that Northern Ireland remains *de jure* within the UK customs union – a provision considered necessary not least because section 55 of the Taxation (Cross-Border Trade) Act 2018 specified that Northern Ireland should not be in a separate customs territory. Notwithstanding, EU customs law and a substantial body of single market legislation continue to apply to Northern Ireland after the end of the transition period,[16] ensuring that no customs or regulatory border materialises on the island of Ireland. Articles 30 and 110 TFEU[17] – prohibiting customs duties and discriminatory internal taxation – remain applicable, together with a significant part of the EU *acquis* on free movement of goods,[18] VAT, and excise.[19] And yet the Protocol is characterised by selectivity (Weatherill, 2020, pp. 226-229): it does not include free movement of services and recognises the pre-existing Common Travel Area.[20] In that sense, the Protocol does not aim to replicate the full experience of EU membership in Northern Ireland; it aims at preventing 'the need for physical infrastructure at the border between Ireland and Northern Ireland' (Weatherill, 2020, p. 224). This selectivity demonstrates what Weatherill (p. 229) terms the 'negotiable character' of internal market integrity: the scope of the *acquis* considered essential is itself a product of political negotiation.

This hybrid regime meant that after the end of the transition period, trade between the two shores of the Irish Sea would not be frictionless. Goods taken out of Northern Ireland and sent to Great Britain would have to be covered by a pre-departure declaration pursuant to Article 263 of the Union Customs Code.[21] Trade flows in the opposite direction would be significantly more complicated: apart from complying with EU import formalities, including entry summary declarations and customs declarations, traders would face tariffs if the relevant goods were

[16] Withdrawal Agreement, Protocol on Ireland/Northern Ireland, Art 5(3).
[17] *Ibid.*, Art 5(5).
[18] *Ibid.*, Art 5(4).
[19] *Ibid.*, Art 8.
[20] *Ibid.*, Art 3.
[21] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, 2013 OJ L 269, 1.

not wholly obtained in the United Kingdom. More importantly, systematic sanitary and phytosanitary checks would be required for live animals, animal products and plants to secure the integrity of the Union's single market.

Initially, those unavoidable frictions were largely addressed by allowing for grace periods. With the Windsor Framework, these gave way to a more durable architecture. This 'permits the partial disapplication of EU rules for goods provided their final destination is in Northern Ireland' (Murray and Robb, 2023, p. 6). The amended Article 6(2) creates a 'green lane' through which goods coming to Northern Ireland from the rest of the UK are moved with greater ease than those which are at risk of moving to the EU.[22] 'The latter transit the Irish Sea on the basis of "red lane" arrangements, to be applied at the Irish Sea border as if the goods were entering the Single Market from' a third country (Murray and Robb, 2023, p. 6).

Crucially, this regulatory alignment is dynamic, not frozen at the point of withdrawal. Article 13(3) of the Protocol provides that where there is a 'reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced' unless otherwise provided. So, new EU single market rules automatically apply to Northern Ireland without the need for fresh agreement. That automaticity extends only to acts amending or replacing those already listed. Where the Union adopts a genuinely new act within the Protocol's scope, Article 13(4) requires the Joint Committee to decide whether to add it to the relevant Annex; if no agreement is reached and the Committee fails to decide within a reasonable time, the Union may take 'appropriate remedial measures', which cannot take effect earlier than six months after notification. Automatic alignment for amendments is thus coupled with a negotiated procedure for novelty, and failure attracts a graduated and proportionate sanction rather than the collapse of the instrument. Furthermore, the Windsor Framework introduced the aforementioned Stormont Brake as a counterweight to this automaticity. The Brake applies only to measures covered by parts of Annex 2 relating to the single market in goods. What makes the arrangement uniquely complex is that the dynamics of regulatory change are not limited to EU law evolution and policy change from the institutions of Northern Ireland. McCormick (2023, p. 2) identifies a third driver: Great Britain's own divergence from EU standards in reserved and devolved areas. Northern Ireland thus finds itself at the intersection of three regulatory trajectories – 'a place in between' (Phinnemore, 2020). The extraterritorial application is therefore not static but subject to multiple and potentially divergent pressures that will test the arrangement's adaptability over time.

The Gibraltar Agreement presents a paradox that illustrates the creative potential of this technique. According to Article 355(3) TFEU, the Treaty applies to 'the European territories for whose external relations a Member State is responsible'. In practice, Gibraltar was the only territory covered by this clause. However, by virtue of Article 28 of the UK Accession Treaty, Gibraltar was outside the Customs Union and VAT Area and excluded from the Common Agricultural Policy. The Agreement negotiated in the context of Brexit creates a regime arguably deeper in its integration than anything Gibraltar experienced during membership (Brandtjen, 2025, p. 12) – precisely because the pre-Brexit status quo would have been insufficient to prevent border hardening.

The depth of this integration is apparent across two principal domains: the circulation of persons and the movement of goods. 'Article 7 sets out the general principle that all physical barriers between Spain and Gibraltar will be removed, based on an implementation plan'

[22] Joint Committee Decision 1/2023, Art 7.

(Fella, 2026, p. 5). In the first domain, Articles 28-33 establish a Schengen-like regime in which all physical barriers to the circulation of persons between Gibraltar and the Schengen area are removed. The Agreement achieves this through a dual border control mechanism: Schengen crossing points are established at Gibraltar's airport and seaport, where both Gibraltar immigration checks and Schengen Borders Code checks take place sequentially.[23] Spain, as the neighbouring Schengen state, exercises the Schengen border functions – including, under Article 33(3), border surveillance within Gibraltarian territory. The customs dimension is addressed through Articles 240-250. Article 240 establishes a customs union between the Union and the UK in respect of Gibraltar, abolishing customs duties on goods moving between them.

Most dramatically, Articles 271-275 provide for flights between Gibraltar Airport and EU destinations for the first time. During EU membership, Spain's claim that the airport stands on territory not covered by the Treaty of Utrecht – the isthmus – led it to veto Gibraltar's inclusion in any EU aviation instrument, including the European Single Sky. The Agreement overcomes this impasse through the Article 2 sovereignty firewall and the additional isthmus-specific disclaimer in the footnote to Article 271(d), enabling the establishment of an Airport Joint Venture. In that sense, de-Europeanisation has enabled integration in domains where Europeanisation was politically blocked. During membership, Gibraltar's exclusions from the Customs Union, VAT, and the Common Agricultural Policy were deliberate carve-outs under Article 28 of the UK Accession Treaty, not intrinsic limitations of the EU framework. What membership could not overcome, however, were the problems created by the then bilateral political dynamics between Spain and the UK. The bespoke architecture – sovereignty disclaimer, extraterritorial application, and governance mechanism working together – created the space for the necessary cooperation between all actors in the conflict that would allow the border to be open even after Brexit.

On dynamic alignment, the mechanism by which EU legal standards are maintained going forward reveals a paradox. Formally, Article 19 preserves a measure of discretion that neither of the other two regimes affords. Where a covered EU act is amended, replaced, supplemented or superseded, the Union must immediately notify the UK, which then has thirty days to notify its decision whether to accept the content of the subsequent act and implement it in domestic law. Article 19 accordingly sets out 'a framework less constitutionally intrusive than Gibraltar's participation in the EU' (Trinidad, 2026, p. 8). Substantively, however, the price of exercising that discretion is severe. Under Article 19(5), '[t]he consequence of non-acceptance (or non-notification / non-implementation) by the UK is termination of the Agreement, unless the Cooperation Council decides otherwise' (Trinidad, 2026, p. 9) – a decision it must take within ninety days, with termination taking effect three months thereafter. Read against the other two regimes, this inverts the relationship between autonomy and constraint. In the SBAs, pursuant to Article 1(4) of the respective Protocol, alignment is wholly automatic as any reference to a Union act is to be read as referring to that act as amended or replaced. In Northern Ireland, Article 13(3) of the Protocol achieves the same automaticity for amending acts, tempered by the Stormont Brake, while Article 13(4) subjects genuinely new acts to Joint Committee agreement backed by proportionate remedial measures. In Gibraltar alone does the UK enjoy a formal choice over every subsequent act and in Gibraltar alone is the consequence of exercising it the termination of the entire Agreement. On this reading, the Gibraltar regime is the most demanding of the three. Its

[23] Gibraltar Agreement, Art 29.

discretion is real in form, but close to unusable in practice, since exercising it would collapse the architecture on which the fluidity of the border depends.

Where Gibraltar's extraterritorial regime goes beyond what membership provided, the SBA regime is designed to preserve exactly what already existed. The declared goal is continuity: ensuring that the withdrawal of the UK from the EU does not disturb the unique arrangement under which parts of EU law were already applying into the Bases per Protocol No 3 of the Act of Accession 2003. Article 2 of the SBA Protocol provides that the SBAs remain within the EU customs territory. The SBAs thus join the small list of third-country territories that are or have been part of the EU customs territory.[24] 'All customs formalities, customs controls and collection of import duties' related to goods intended for use or export from the SBAs 'are carried out by the authorities of the Republic of Cyprus'.[25] EU legislation on agriculture, fisheries, and indirect taxation also continues to apply.[26] In each case, it is the RoC – not the UK – that is responsible for implementing these provisions on the ground.[27]

The scope of extraterritorial application of EU law is somewhat narrow in the case of the SBAs. The Protocol provides for the free movement of goods but it neither allows for free movement of services nor does it establish a Schengen-like regime. Its ambition is limited to those elements necessary to prevent the creation of a customs border between the Areas and the Republic. This narrower scope is a direct reflection of the pre-existing legal architecture. The Treaty of Establishment already ensured, through the elaborate provisions of Appendix O, that daily life in the SBAs was functionally equivalent to life in the RoC: residents pay taxes to the RoC, receive its social welfare benefits, and access its public services. Protocol No 3 of the Act of Accession 2003 layered EU customs and agricultural law on top of this bilateral framework. The SBA Protocol preserves that layer intact. In a sense, the extraterritoriality here is not new: it is a continuation of a pre-existing extraterritorial application of EU law that was itself a continuation of the bilateral arrangements that predated Cyprus's EU membership.

What is new, however, is the institutional context. Before Brexit, the UK was a Member State, and the implementation of EU customs law in the SBAs occurred within the framework of EU membership. After Brexit, the UK is a third country implementing EU legislation.[28] This is particularly acute in relation to the UK's role in checking persons crossing the external borders of the SBAs – the sea boundaries, airports, and, critically, the boundary between the Eastern SBA and the internationally unrecognised Turkish Republic of Northern Cyprus. The Green Line Regulation – one of the most important EU legislative instruments governing movement across the line that divides the island – continues to apply.[29] The Republic reportedly raised the possibility of sharing person-checking functions at these crossing points, but the UK rejected this option (Hadjigeorgiou and Skoutaris, 2019). The result is that a third country implements EU border legislation at one of the most politically sensitive boundaries in Europe – a state of affairs that the close cooperation between UK and Cypriot authorities is designed

[24] *See e.g.* Regulation (EEC) of the Council of 27 September 1968 on the definition of the customs territory of the Community 1968 OJ L 238, 1, Art 1 and Council Regulation (EEC) no. 2913/92 of 12 October 1992 establishing the Community Customs Code 1992 OJ L 302, 1, Art 3.
[25] UK Withdrawal Agreement, Protocol on SBAs, Art 2(3) and (4).
[26] UK Withdrawal Agreement, Protocol on SBAs, Arts 3 and 6.
[27] *Ibid.*
[28] UK Withdrawal Agreement, Protocol on SBAs, Art 2(9).
[29] UK Withdrawal Agreement, Protocol on SBAs, Art 7.

to manage, but that nonetheless represents a significant departure from the normal institutional logic of the EU legal order.

The common logic across all three cases is that the EU and UK have identified, in each instance, the specific elements of the *acquis* necessary to keep the contested border invisible. The selectivity reflects the specific character of each border: the Irish land border requires the goods dimension; Gibraltar-Spain requires the circulation of persons and goods; the SBA-Republic boundary requires free movement of goods and agriculture. In each case, the Protocol or Agreement does not aim to replicate the full experience of EU membership; it aims to prevent border infrastructure. In Northern Ireland, the arrangement exhibits the 'negotiable character' of internal market integrity (Weatherill, 2020, p. 229): the scope of the *acquis* considered essential is itself a product of political negotiation. In Gibraltar, extraterritorial application surpasses the pre-Brexit *status quo*, deepening integration beyond what membership permitted – the aviation provisions being the most dramatic illustration. In the SBAs, continuity suffices but creates the institutional paradox of third-country implementation of EU border legislation. A further axis of variation cuts across this picture. The three regimes differ not only in how much of the *acquis* they apply but in how they secure its continued application over time. Depth of integration does not predict the severity of the alignment obligation: the narrowest regime (SBAs) is the most automatic, while the deepest (Gibraltar) is the one whose alignment mechanism carries the harshest sanction. The selectivity and calibration – the disaggregation of political questions into manageable legal components – is precisely the neo-functional dynamic at work (Visoka and Doyle, 2016). The result is three markedly different regimes of extraterritorial EU law application, each calibrated to the specific characteristics of the border conflict it addresses.

### III. Bespoke Governance Mechanisms: Overseeing Differentiated Disintegration

The sovereignty disclaimers freeze the contested question while the extraterritorial application of EU law keeps the borders functionally invisible. But neither technique can sustain itself without institutional machinery to oversee the arrangements, adapt them to changing circumstances, and resolve the disputes that inevitably arise. The third technique – bespoke governance mechanisms – provides this institutional infrastructure. In each of the three cases, the EU and the UK have established governance structures that are tailored to the specific requirements of the extraterritorial regime they administer. These structures vary considerably in their complexity, their institutional ambition, and the degree to which they preserve elements of supranational governance within what is formally an intergovernmental relationship.

What is distinctive about these governance mechanisms, viewed comparatively, is that they manage a tension that does not arise in ordinary treaty governance. The arrangements they oversee are not conventional free trade agreements. They are instruments designed to manage the de-Europeanisation of border conflicts – arrangements in which EU law continues to apply extraterritorially, sovereignty claims must be quarantined from operational functions, and the stability of fragile political settlements depends on the effective and faithful implementation of rules that one party has left the institutional framework to enforce. The governance mechanisms must therefore provide the institutional conditions under which the sovereignty disclaimers and the extraterritorial application of EU law can coexist over time. In that sense, even disintegration is managed 'through law' (Larik, 2021, p. 18).

The governance architecture for Northern Ireland is of remarkable density, reflecting the political weight of the Irish border question. The Protocol is not a standalone agreement but an integral part of the Withdrawal Agreement, which is itself embedded within a broader network of post-Brexit legal instruments including the Trade and Cooperation Agreement (TCA).[30] This is why its governance mechanisms operate across multiple institutional levels and navigate the relationship between intergovernmental decision-making and the continued presence of supranational EU institutions.

The intergovernmental dimension is provided by the institutional framework of the Withdrawal Agreement. A Joint Committee, comprised of representatives of the EU and UK, is responsible for the implementation and application of the Agreement as a whole, including the Protocol.[31] Its decisions are binding upon the parties and have the same legal effect as the Agreement itself.[32] Crucially, under the Protocol it has additional responsibilities, including establishing the criteria for determining whether goods brought into Northern Ireland from outside the Union are 'at risk' of subsequently being moved into the EU[33] – the foundational distinction upon which the green lane and red lane arrangements rest. Beneath the Joint Committee sits a Specialised Committee, which may draw up draft decisions and recommendations.[34]

The supranational dimension is secured by the continued role of EU institutions in what is formally a third-country relationship. In relation to the Protocol's provisions on Northern Ireland's position in the EU's single market for goods, the institutions, bodies, offices, and agencies of the Union have the powers conferred upon them by Union law.[35] This includes the continued supervisory powers of the European Commission and the jurisdiction of the CJEU – despite removing CJEU jurisdiction being a central UK negotiating objective (Larik, 2021, p. 4). The dispute settlement mechanisms are multi-layered. The Protocol's own provisions under Article 12 provide for CJEU jurisdiction in the areas of free movement of goods, VAT and excise, the single electricity market and state aid. Separately, the Withdrawal Agreement's Part Six establishes an arbitration procedure. The major difference from standard international arbitration is the continued involvement of the CJEU: whenever a dispute raises questions about EU law, including 'concepts' of EU law, the arbitration panel must request a ruling from the CJEU and that ruling is binding.[36] The enforcement architecture extends further: under Article 178(2), a successful complainant may suspend not only obligations under the Agreement but also parts of any other agreement between the EU and UK – including the TCA – thereby transforming Protocol disputes into broader trade conflicts.

A distinctive feature of the Northern Ireland governance framework is the escape clause in Article 16, which allows either party to unilaterally apply safeguard measures where the Protocol leads to serious economic, societal, or environmental difficulties, or to diversion of trade. As Melo Araujo (2022, p. 533) has demonstrated, the provision's design is problematic:

[30] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part 2021 OJ L 149, 10.
[31] Withdrawal Agreement, Art 164.
[32] Withdrawal Agreement, Art 166.
[33] Withdrawal Agreement, Protocol on Ireland/Northern Ireland, Art 5(2).
[34] Withdrawal Agreement, Article 165; Withdrawal Agreement, Protocol on Ireland/Northern Ireland, Art 14.
[35] Withdrawal Agreement, Protocol on Ireland/Northern Ireland, Art 12(4).
[36] Withdrawal Agreement, Art 174.

'the wide scope and broadly phrased conditions for the invocation of' Article 16 creates the risk that parties may 'exercise their discretion abusively.' This concern is exacerbated by the Protocol's unique nature as a trading arrangement driven by peace and security rather than economic welfare, raising the question whether parties to such an agreement should 'be given the right to escape, even temporarily, from their obligations' (Melo Araujo, 2022, p. 540).

Overall, the combination of the intergovernmental and supranational dimensions in the design of the governance mechanisms together with the aforementioned democratic consent mechanism and the Stormont Brake, produce a governance architecture of remarkable density. It exhibits a peculiar mix of intergovernmental approaches relying on mutual consent and arbitration on the one hand, and 'a considerable amount of supranational governance through the continued application' of evolving EU law and the continued roles of the EU's institutions on the other (Larik, 2021, p. 20).

The Gibraltar Agreement is a bilateral treaty – not a Protocol attached to the Withdrawal Agreement – and its governance framework reflects this different legal character. The primary governance institution is the Cooperation Council, which oversees the implementation of the Agreement and serves as the principal forum for political consultation.[37] Beneath it, specialised committees address specific areas of the Agreement's operation.[38] The institutional structure follows the general model established by the TCA rather than the Withdrawal Agreement, reflecting the fact that the Gibraltar Agreement is a new instrument negotiated in its own right.

Of particular significance is the relationship between the dispute settlement mechanism and the sovereignty disclaimer. As mentioned, Article 301(2)(a) excludes Article 2 from the provisions that are subject to dispute settlement, while Article 301(6) prevents the arbitration tribunal from adjudicating any sovereignty or jurisdiction question. This triple-lock mechanism ensures that sovereignty-touching disputes are categorically excluded from adjudication. The governance mechanism, in other words, is calibrated to reinforce rather than undermine the sovereignty disclaimer. This is architecturally distinct from the Northern Ireland model in a fundamental respect: it does not provide for the continued jurisdiction of the CJEU in the same direct manner. Yet the CJEU is not entirely absent; its influence permeates the Agreement through the dispute settlement mechanism, creating a hybrid governance model that represents a different point on the intergovernmental-supranational spectrum. Article 20 requires that UK courts and authorities, in respect of Gibraltar, interpret and apply the rules covered by the Agreement in conformity with the case law of the CJEU. This is a requirement of consistent interpretation, not a grant of jurisdiction. At the same time, where a dispute arises before an arbitration tribunal and raises a question of EU law, Article 312 provides that the tribunal must request a ruling from the CJEU, and that ruling is binding.

Overall, the Agreement contains a carefully constructed architecture of checks and safeguards. This includes the power to terminate the Agreement under Article 334, which ensures that both Parties retain ultimate control over the extent of their engagement (Pannick, 2026, p. 17). Together with the aforementioned Article 19 which allows the UK to object to the application of new or updated pieces of EU law in Gibraltar, the Agreement is

[37] Gibraltar Agreement, Art 22.
[38] *Ibid.*, Art 23.

designed to be robust enough to manage deep integration while remaining provisional. In addition, Article 66 provides for the possible termination of Part Two on the circulation of persons following the completion of an evaluation of the application of this Part. Notably, if Spain requests the termination of Part Two, the EU is obliged to terminate it. All those mechanisms underscore that the viability of the agreement is subject to the continuing consent of the parties.

The SBA governance framework is the most streamlined, reflecting both the narrower scope of extraterritorial application and the settled character of the underlying sovereignty arrangement. The primary institution is the Specialised Committee.[39] It is the Specialised Committee that recommends to the Joint Committee how to amend provisions on crossing points – a significant power given the sensitivity of the Eastern SBA boundary.[40] Unlike the Northern Ireland arrangement where the supranational dimension is embedded within a dense multi-layered governance architecture, the SBA Protocol preserves CJEU jurisdiction and Commission enforcement powers under Article 12. It locates them, however, within a far lighter institutional framework – no Joint Consultative Working Group, no democratic consent mechanism, no safeguard clause. At the same time, similarly to Gibraltar's arrangement, Article 1(2) requires the interpretation of the EU law concepts in conformity with CJEU case law. This mechanism coexists with a framework where day-to-day implementation is effectively bilateral and shared between the Republic of Cyprus and the UK.[41]

Viewed comparatively, the governance mechanisms reveal a spectrum of institutional ambition mirroring the extraterritorial regimes they oversee. A cross-cutting observation concerns the varied and differentiated withdrawal of the CJEU that reflects the different political dynamics and institutional context within which it operates. In Northern Ireland, direct jurisdiction is embedded in dense governance while in the SBAs this is set within a rather minimalist institutional setting. At the same time, the Gibraltar Agreement has opted for indirect presence through the dispute settlement mechanism. This tracks not only the scope of EU law application but also the political sensitivity of EU institutional presence in each context. Similarly, the democratic accountability mechanisms vary: the democratic consent mechanism and Stormont Brake in Northern Ireland; the Article 334 termination power in Gibraltar; the essentially bilateral character of the SBA framework. Article 19 of the Gibraltar Agreement sits awkwardly in that list. It is formally a mechanism of national control, but its operation is so severe that it functions less as a usable safety valve than as a guarantee of alignment – the autonomy it confers is meaningful only to a party willing to contemplate the termination of the Agreement. Overall, the awareness of the political sensitivities is reflected in the dense institutional architecture that provides multiple levers in Northern Ireland, and in the preservation of regulatory autonomy and termination power in the Gibraltar framework. Whether those two architectures can sustain themselves through political pressures remains the central question.

## Conclusion

By analysing the post-Brexit arrangements for Northern Ireland, Gibraltar, and the UK SBAs in Cyprus, this article has sought to demonstrate how the de-Europeanisation of three border

[39] Withdrawal Agreement, Article 165; Withdrawal Agreement, Protocol on SBAs, Art 9.
[40] Withdrawal Agreement, Protocol on SBAs, Art 7(6).
[41] Withdrawal Agreement, Protocol on SBAs, Art 13.

conflicts has been managed through a coherent, if calibrated, legal toolkit. Three techniques, working in combination, constitute that toolkit. First, sovereignty disclaimers quarantine the underlying territorial dispute from the legal arrangements designed to manage withdrawal. Their architecture varies in sophistication with the intensity of the underlying claim: from the contextual anchoring of Article 1 of the Windsor Framework in the GFA, to the comprehensive 'firewall' and triple-lock established in the Gibraltar Agreement, to the non-legally binding disclaimer in the Preamble of the SBA Protocol. Second, the extraterritorial application of EU law ensures that the contested borders remain functionally invisible. Here, too, the calibration is graduated: from the continuity of the SBAs, through the customs-and-goods-centred regime of Northern Ireland, to the deeper-than-membership integration of Gibraltar in the domains of persons, customs, and aviation. Third, bespoke governance mechanisms provide the institutional infrastructure necessary to sustain these arrangements over time, ranging from the dense supranational-intergovernmental hybrid of Northern Ireland, to the more conventional treaty governance of the Gibraltar Agreement, to the framework of the SBAs that combines cooperation between the two States under the supervision of the EU institutions.

Just as the flexibility of the EU legal order enabled it to absorb the stresses of unresolved border conflicts within its borders rather than forcing their resolution (Skoutaris, 2016), the same flexibility – redeployed in the form of the three techniques identified here – has permitted the Union and its former Member State to absorb the stresses of withdrawal without precipitating the very crises that hard borders would have generated. Much like in the case of membership, the EU's ambition remains modest during withdrawal: not to resolve the underlying disputes, but to preserve the conditions under which they can remain stable. The neo-functional peace that Visoka and Doyle (2016) identified within the EU's approach to conflict resolution proves detachable from the integrative context in which it was conceived. The sovereignty disclaimers, the selective application of EU law, and the governance mechanisms all represent the deconstruction of highly political questions into manageable technical arrangements – enabling mutually acceptable outcomes precisely by avoiding direct confrontation of the underlying sovereignty disputes. The neo-functional logic persists, but its ambition is recalibrated from resolution to management.

The analysis also enriches the literature on differentiated (dis)integration (Leruth et al., 2019; Schimmelfennig and Winzen, 2020, pp. 137-155). If differentiation has long served as a reconciliation of heterogeneity within the Union, the Brexit Protocols and the Gibraltar Agreement demonstrate that it can also serve as a reconciliation of heterogeneity at the moment of exit. The territorially differentiated character of Brexit – manifest in the distinct regimes carved out for Northern Ireland, Gibraltar and the SBAs – mirrors, in its complexity and site-specificity, the differentiated integration that preceded it. De-Europeanisation, like Europeanisation, turns out to be neither uniform nor linear. It is a managed process whose contours are shaped by the political salience and constitutional specificity of each contested territory, and whose stability depends on the continued willingness of the parties to operate within the legal architecture they have constructed.

Three caveats are in order. First, the durability of these arrangements remains untested. The democratic consent mechanism, the Stormont Brake, the Article 19 dynamic alignment provisions in the Gibraltar Agreement, and the termination clauses written into each instrument all introduce points at which the equilibrium could be disturbed – most acutely in Gibraltar, where a single refusal to implement a subsequent EU act sets the Agreement on a

path to termination unless the Cooperation Council intervenes. There is a deeper point here. The flexibility that this article has identified as the enabling condition of accommodation is also a source of ambiguity. Absent a stable EU-UK relationship, ambiguity shades into precariousness (Hayward and Komarova, 2022). The very quality that allows these arrangements to absorb the stresses of withdrawal is the same that leaves them exposed to political weather. Second, the techniques analysed here are not a panacea: they presuppose a degree of mutual good faith between the EU and the UK that may not always be forthcoming, and they impose institutional and economic costs whose distribution is itself politically contested. Third, the techniques are intelligible only against the backdrop of the *acquis* and the institutional sophistication of the EU legal order; their portability to other contexts of disintegration – should such contexts arise – cannot be assumed.

Subject to those caveats, the article suggests that the EU's distinctive contribution to the management of border conflicts is not exhausted at the period of membership. Even as a State leaves, the legal technologies developed within the Union continue to shape the terms on which contested territories are governed. Whether one regards that as a vindication of the EU's role as a peace-builder *sui generis* or as a more sobering acknowledgement of the limits of conflict resolution through integration, it confirms that, for the foreseeable future, the borders of Northern Ireland, Gibraltar and the SBAs will continue to be shaped by Brussels – even from the outside.

**References**


Akçali, E. (2009) 'The European Union's Competency in Conflict Resolution: The Cases of Bosnia, Macedonia and Cyprus'. In Diez, T. and Tocci, N. (eds), *Cyprus: A Conflict at the Crossroads* (Manchester: Manchester University Press).

Bartolini, S. (2005) *Restructuring Europe: Centre Formation, System Building and Political Structuring between the Nation-State and the European Union* (Oxford: Oxford University Press).

Bellamy, R. and Kröger, S. (2017) 'A Demoicratic Justification of Differentiated Integration in a Heterogeneous EU', *Journal of European Integration*, Vol. 39, No.5, pp. 625-639.

Brandtjen, R. (2025) 'Gibraltar: The new EU territory? – Analysing the historic 2025 agreement', *IU Discussion Papers – Business & Management*, No. 12, IU Internationale Hochschule, Erfurt.

Chopin, T. and Lequesne, C. (2016) 'Differentiation as a Double-Edged Sword: Member States' Practices and Brexit', *International Affairs*, Vol. 92, No. 3, pp. 531-545.

Coppieters, B., Emerson, M., Huysseune, M., Kozviridze, T. and Noutcheva, G. (eds) (2004) *Europeanization and Conflict Resolution: Case Studies from the European Periphery* (Gent: Academia Press).

De Witte, B. (2018) 'An Undivided Union? Differentiated Integration in post-Brexit Times', *Common Market Law Review*, Vol. 55(SI), pp. 227-250.

Diez, T., Stetter, S. and Albert, M. (2006) 'The European Union and Border Conflicts: The Transformative Power of Integration', *International Organisation*, Vol. 60, No. 3, pp. 563-593.

European Commission (2004) European Neighbourhood Policy Strategy Paper, COM(2004)373 final, 12 May 2004.

Fella, S. (2026) 'UK-EU Agreement on Gibraltar: Draft Text and Next Steps', House of Commons Library Research Briefing 10572.

Féron, E. and Güven Lisaniler, F. (2009) 'The Cyprus Conflict in a Comparative Perspective: Assessing the Impact of European Integration'. In Diez, T. and Tocci, N. (eds), *Cyprus: A Conflict at the Crossroads* (Manchester: Manchester University Press).

Hadjigeorgiou, N. (2022) 'Decolonizing Cyprus 60 Years after Independence: An Assessment of the Legality of the Sovereign Base Areas', *European Journal of International Law*, Vol. 33, No. 4, pp. 1125-1152.

Hadjigeorgiou, N. and Skoutaris, N. (2019) 'The Status of the Sovereign Base Areas in Cyprus Following Brexit', PRIO Occasional Paper Series 3.

Hayward, K. (2018) 'The pivotal position of the Irish border in the UK's withdrawal from the European Union', *Space and Polity*, Vol. 22, No. 2, pp. 238-254.

Hayward, K. and Komarova, M. (2022) 'The Protocol on Ireland/Northern Ireland: Past, Present, and Future Precariousness', *Global Policy*, Vol. 13, Suppl. 2, pp. 128-137.

Hayward, K. and Murphy, M. C. (2018) 'The EU's Influence on the Peace Process and Agreement in Northern Ireland in Light of Brexit', *Ethnopolitics*, Vol. 17, No. 3, pp. 276-291.

Komarova, M. and Hayward, K. (2019) 'The Irish Border as a European Union Frontier: The Implications for Managing Mobility and Conflict', *Geopolitics*, Vol. 24, No. 3, pp. 541-564.

Larik, J. (2021) 'Governance and Dispute Settlement in the Ireland/Northern Ireland Protocol', DCU Brexit Institute Working Paper N. 16-2021.

Leruth, B., Gänzle, S. and Trondal, J. (2019) 'Exploring Differentiated Disintegration in a Post-Brexit European Union', *JCMS*, Vol. 57, No. 5, pp. 1013-1030.

Leuffen, D., Rittberger, B. and Schimmelfennig, F. (2012) *Differentiated Integration: Explaining Variation in the European Union* (Basingstoke : Palgrave Macmillan).

McCormick, C. (2023) 'What The Windsor Framework/Protocol will mean in practice for the Institutions of Government in Northern Ireland', *Northern Ireland Legal Quarterly*, Centre for Cross-Border Studies.

Meehan, E. (2000) 'Britain's Irish Question: Britain's European Question? British-Irish Relations in the Context of European Union and the Belfast Agreement', *Review of International Studies*, Vol. 26, No. 2, pp. 83-97.

Melo Araujo, B. (2022) 'A Contextual Analysis of Article 16 of the Ireland/Northern Ireland Protocol', *International and Comparative Law Quarterly*, Vol. 71, No. 3, pp. 531-562.

Miller, V. (2017) 'Brexit and Gibraltar', House of Commons Library Briefing Paper 7963.

Murray, C.R.G. and Robb, N. (2023) 'From the Protocol to the Windsor Framework', *Northern Ireland Legal Quarterly*, Vol. 74, No. AD1, pp. 1-21.

Outhwaite, W. (2019) 'De-Europeanisation after Brexit: Narrowing and Shallowing', *Global Discourse*, Vol. 9, No. 1, pp. 15-30.

Pannick, D. (2026) 'Opinion'. Available at: «https://www.parliament.gi/uploads/contents/papers_laid/2026/legal_opinion_from_lord_pannick.pdf».

Phinnemore, D. (2020) 'Northern Ireland: A "Place In Between" in UK-EU Relations?', *European Foreign Affairs Review*, Vol. 25, No. 4, pp. 631-649.

Schimmelfennig, F. (2018) 'Brexit: differentiated disintegration in the European Union', *Journal of European Public Policy*, Vol. 25, No. 8, pp. 1154-1173.

Schimmelfennig, F. and Winzen, T. (2020), *Ever Looser Union? Differentiated European Integration* (Oxford: Oxford University Press).

Skoutaris, N. (2016) 'The Paradox of the Europeanisation of Intra-State Conflicts', *German Yearbook of International Law*, Vol. 59, pp. 223-253.

Skoutaris, N. (2020) 'What's in an Irish Border? Brexit, the Backstop(s) and the Constitutional Integrity of the UK', DCU Brexit Institute Working Paper N. 02.2020.

Skoutaris, N. (2022) 'Border Conflicts and Territorial Differentiation after Brexit: The cases of Northern Ireland, Gibraltar and the UK Sovereign Base Areas in Cyprus'. In Leruth, B., Gänzle, S. and Trondal, J. (eds), *The Routledge Handbook of Differentiation in the European Union* (London: Routledge).

Stubb, A. (1996) 'A Categorisation of Differentiated Integration', *JCMS*, Vol. 34, No. 2, pp. 283-295.

Tocci, N. (2008) 'Comparing the EU's Role in Neighbourhood Conflicts'. In Cremona, M. (ed), *Developments in EU External Relations Law* (Oxford: Oxford University Press).

Trinidad, J. (2026) 'Legal Opinion on the EU-UK Agreement in Respect of Gibraltar'. Available at: https://www.parliament.gi/uploads/contents/papers_laid/2026/legal_opinion_from_jamie_trinidad_kc.pdf.

Visoka, G. and Doyle, J. (2016) 'Neo-Functional Peace: The European Union Way of Resolving Conflicts', *JCMS*, Vol. 54, No. 4, pp. 862-877.

Vollaard, H. (2014) 'Explaining European Disintegration', *JCMS*, Vol. 52, No. 5, pp. 1142-1159.

Weatherill, S. (2020) 'The Protocol on Ireland/Northern Ireland: Protecting the EU's Internal Market at the Expense of the UK's', *European Law Review*, Vol. 45, No. 2, pp. 222-236.