

# Part I: Introduction

## 1.1. The nature of the present project and proposals

The entry into force of the 2020 Trade and Cooperation Agreement (hereinafter “TCA”)<sup>1</sup> marked the end of another stage in the continuing evolution of relations between the European Union (hereinafter “EU”) and the United Kingdom (hereinafter “UK”) that had initially commenced with the vote in favour of British withdrawal from the Union in June 2016.

The Brexit phenomenon carries with it not only ideological and political baggage but also social and economic costs, inherent in a process that has sought to reverse the deepening integration into EU structures and networks that had been the hallmark of the UK’s membership of more than 45 years. Within the context of this present study on culture, education and research, in 2017, Simon Marginson, Professor of Higher Education at the University of Oxford, had drawn attention to the effects of UK withdrawal:<sup>2</sup>

In the Brexit vote outcome, higher education and research have become collateral damage of the larger issues contained in national identity and Brexit. No-one really targeted higher education or wanted it to be damaged, aside from the second-order hostility towards academic experts as part of the established elite. For most people voting in the referendum, they simply were not thinking about the effects on higher education and research. But damage will occur, nonetheless.

This is a common theme among the clear majority of academics who see, at first hand, the negative impact of Brexit on the higher education sector. Hunter and de Wit thus reflect on the international effects of the decision to leave in a 2016 article:<sup>3</sup>

There is a clear message in Brexit that no matter how international or European universities seek or claim to be, they operate in a national context that will define and, at times, constrain their mission, scope, and activities. This political outcome has the potential to impact negatively on internationalization for the universities, but, at the same time, it raises awareness of the importance in going beyond the rhetoric and purposefully reconnecting internationalization to academic values.

With that separation now definitively achieved but not universally accepted in the UK<sup>4</sup>, the minds of many in the EU and the UK are now turning to reflect on possible ways in which to lay sustainable foundations on which to base their future relations and to limit that damage to which Marginson, Hunter and de Wit have already referred.

In the present climate, characterised by the undoubted continuing volatility in relations between the two parties in such matters as the need for checks on goods “exported” across the Irish Sea from Great Britain to Northern Ireland, the licensing of French fishermen, as well as growing problems with the import from and export to the Union of goods, it does not, at first sight, appear to give much cause for hope in developing resilience and stability in their interactions in the short term. Nevertheless, opportunities do exist for particular Spanish initiatives and diplomacy aimed at “building bridges” with the post-Brexit UK, either as part of an underpinning of good bilateral relations<sup>5</sup> or as an essential component part of a broader EU engagement. These potential fields of cooperation are ones where trade is not the focus but rather where EU

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1 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 (provisional version, OJ L 444, 31.12.2020, p. 14; definitive version, OJ L 149, 30.4.2021, p. 10) (hereinafter “TCA”).

2 Simon Marginson, “Higher education and research are the ‘collateral damage’ of Brexit,” *Times Higher Education blog*, 13 September 2017, available at <https://www.timeshighereducation.com/blog/higher-education-and-research-are-collateral-damage-brexit> (accessed 8 February 2022).

3 Fiona Hunter & Hans de Wit, “Brexit and the European Shape of Things to Come” (2016) 87 *International Higher Education* 2-3, p.3.

4 YouGov/The Times, *Survey: Voting Intention Results, 1-2 February 2022*, 7 February 2022, p. 3, available at [https://docs.cdn.yougov.com/f6n8120lrt/TheTimes\\_VI\\_No10Parties\\_220202\\_W.pdf](https://docs.cdn.yougov.com/f6n8120lrt/TheTimes_VI_No10Parties_220202_W.pdf) (accessed 8 February 2022).

5 Foreign, Commonwealth and Development Office, “Foreign Secretary boosts ties with Spain”, *Press Release*, 15 December 2021, available at <https://www.gov.uk/government/news/foreign-secretary-boosts-ties-with-spain> (accessed 8 February 2022).

Member States still retain their powers to operate in policy areas with which they either share competence with the EU or the Union itself acts merely in support of its Member States' actions. Moreover, in choosing areas that are notably less contentious as the focus for further bilateral relations, tangible progress is likely to be achieved more quickly, thereby allowing for the cementing of the foundations of those "bridges".

The three fields of the present study – culture, education and research – fall into this category. By pursuing projects in these fields, Spain is allowed by EU rules to maintain a great degree of room for manoeuvre in its approach to deal with the problems as well as the opportunities thrown up by Brexit. The focus of this work then is to examine how Spain may be able to make use of this manoeuvrability in order to ensure that pre-existing relationships with the UK in the three fields – whether bilateral or under the EU umbrella – may be preserved and enhanced while, at the same time, new possibilities may be explored and considered.

## 1.2. How to manage fording the river in the current political climate

The challenges in building these bridges between Spain and the UK lies in part with the current ideological direction of the British Government, focused as it is on its "Global Britain" strategy, orienting the UK towards other continents and economies rather than those in the EU, a matter dealt with in more detail below in subsection 3.1.1. Interactions in the fields concerned are further complicated by their governance structures and Spain will need to remain alert to these issues, considering that culture, education and research fall within the competences devolved to the four nations of the UK.

Taking these matters into account, the approach assumed in the present study is accordingly one formed with a foreign relations (diplomatic) perspective in mind while also remaining aware of the political and legal limitations in the fields considered.

In this respect, Spain will need to continue to work sensitively within the present limitations and, at the same time, lay the foundations for a continuing and resilient relationship with the UK through official and semi-official channels, involving a range of stakeholders in the public and private sector, at national, regional and local levels, without necessarily depending on support (whether moral, political or financial) from Whitehall. This will also call on the expertise of the Spanish Ministry of Foreign Affairs, European Union and Cooperation (hereinafter "MoFA") in evolving a nuanced approach through its public diplomacy and using its already established know-how in the cultural, knowledge and science diplomacy sub-categories.

It is therefore necessary to look at the suggested options as a forming an integral part of a strategic policy of soft power diplomacy<sup>6</sup>, focusing on supporting or supplementing actions – whether bilateral or multilateral – that already exist between various stakeholders, evolving or extending them where necessary, and adding innovations in order to make full use of the opportunities presented.

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6 Joseph Nye, "Soft Power and Higher Education", *Forum Futures 2005*, Forum for the Future of Higher Education, MIT, Cambridge, Mass. (2005), available at <http://forum.mit.edu/articles/soft-power-and-higher-education/> (accessed 13 February 2022).

# Part II: Legal Framework for Culture, Research and Education (In the Union and Between the EU and the UK)

## 2.1. Current European Legal Framework

### 2.1.1. Competences in the EU

It is worth first drawing attention to the fact that all three fields of the present study are included in competences the exercise of which remain divided between the EU and its Member States. On the one hand, according to Article 6 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”), culture and education (together with vocational training) are areas in which the Union has a “supporting competence” to carry out actions to support, coordinate or supplement the actions of its Member States. On the other hand, according to Article 4(3) TFEU, the Union shares its competence with the Member States in the field of research. More precisely, the EU has competence to carry out activities, in particular to define and implement programmes, but the exercise of such competence does not prevent Member States from exercising theirs.

From this perspective, while the EU may assist the Member States in the realisation of certain programmes and their objectives, implementation of those programmes still resides mainly with the Member States themselves. This also means that the Council of Europe – to which all EU Member States as well as the UK belong - may now be called upon to play an increasingly important role in providing a multilateral umbrella under which cooperation in the fields of culture, education and research may continue to flourish in a post-Brexit scenario. However, the financial constraints on the organisation are likely to militate strongly against the Council of Europe replacing the EU in its role as the main regional donor, supporting projects designed to maintain strong and resilient links in these fields between the UK and Spain.

Turning now to the three fields under consideration in this study, the legal basis for each one will be considered in turn and will concentrate on those matters that will be discussed in further detail in Part Three.

### 2.1.2. Culture

Greater emphasis was put on culture with the coming into force of the Treaty of Lisbon in 2009. In the Preamble to the Treaty on European Union (hereinafter “TEU”),<sup>7</sup> express mention is made to the way in which the EU draws inspiration “from the cultural, religious and humanist inheritance of Europe”. In addition, in Article 3 TEU, one of the key aims of the Union is for it to “respect its rich cultural and linguistic diversity, and ... ensure that Europe’s cultural heritage is safeguarded and enhanced”.

Moreover, Article 167(1) TFEU, provides further requirements on EU action within the field of culture. Interestingly the EU is, according to that provision, under a duty “to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and bringing the common cultural heritage to the fore”. The EU’s actions, according to Article 167(2) TFEU are to be aimed at encouraging cooperation between the Member States and, where considered necessary, supporting and supplementing their action, e.g., in improving the knowledge and dissemination of the culture and history of European peoples; as well as fostering non-commercial cultural exchanges and artistic and literary creation. Of importance for the present study, Article 167(3) TFEU provides for the possibility of the EU and its Member States to foster cooperation with non-EU countries and international organisations. In fact, in Article 167(4), when the EU takes action under other TFEU provisions, it must take into account respect for and the promotion of the diversity of European cultures.

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7 Recital 2, Preamble, TEU.