BREXIT - A NEW CHALLENGE FOR THE EUROPEAN UNION

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Abstract:
An absolutely new policy in the life of Europe, the Brexit will undoubtedly make many waves of ink flow in the contemporary press. This article want to describe in a few pages the main lines and directions in which the EU will be affected by the UK's outflow of this entity, and how England will have to make a series of commitments to keep major facilities in the relationship with EU. The way Britain's EU exit will be managed depends the future of this entity in the medium and long term.

Negotiations between EU and UK officials to sign the final treaty are being pursued with great interest by the governments of the EU member states who want for their citizens the best conditions in their future relationship with the UK. Also, UK citizens want their government to negotiate the best conditions for leaving the union.

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1. INTRODUCTION: THE PROBLEM OF THE WITHDRAWAL FROM THE EU NOWADAYS

Withdrawal is an act by which the Member State of an International organization terminates its membership in it. It’s the simple and straightforward message. States as sovereigns are free to choose their destiny and decide whether participate or not on the functioning of particular international organisation. However, when meeting the political reality of European integration today and considering the complexity of European project, the issue becomes challenging and rather open. Several years ago, it would have seemed untimely and rather scholastic to make an analysis of real case of withdrawal in relation to the European Union, given that it has never been applied (and for a long time even forecasted) and that, rather, the process of European integration, as developed in last 60 years, has been marked by successive and repeated enlargements (not exempt from criticism) that led the Member States from the original 6 to 28 of today. The European Union’s external borders, with periodic behaviour and seemingly inevitable, have been, in fact, gradually moved in the direction of all four cardinal points. The continuing exception of Switzerland and Norway does not diminish the impression of an unstoppable march that concerned, and that progressively involves the entire European continent. Geographical widening and material deepening of European integration over the last six decades has given rise to assumption of unstoppable and unlimited existence of the European bond. The lack of attention of the doctrine on the issue of termination of membership could be justified by this reason. The scholars predominantly focused on the theme of the accession of the applicant countries and the existing membership in the EC/EU (position of the states, relation between EU and national law etc.), rather than on the withdrawal of the Member States.

As is known, no cases of withdrawal have so far yet checked, both before and after the Lisbon Treaty and to the Community or the Union. However, the question has been the focus of some discussions for many years before the upcoming Brexit. In 1965 France, disagreeing with the Commission on how to finance the CAP, after the breakdown of negotiations, which took place during the Board of Ministers of the EEC (June 30/July 1), re-called his organisation’s delegates...
and refrained from participating in the Meeting of the Council of Ministers of 26 July 1965. “The French behaviour” of that time is known as the policy of the empty chair or chaise vide to the Council, which blocked de facto the institution. The United Kingdom too is not new to such situations. The Royame Uni entered the European Economic Community in January 1973, under the government of the Conservative Party (Tory). In 1974 the (most of the) Labour Party, just from the beginning opposite to the entrance of Britain in the EEC, printed several posters for the upcoming elections, in which he promised to ask for a renegotiation of the terms of accession of the UK and hold a consultative referendum (but strongly binding) with which the British people would have decided the country’s future in the Community. Histor-ical courses and resorts. The negotiation was signed in Dublin in March 1975 by representatives of the EEC and the British Cabinet, who voted 16-7 in favour of the United Kingdom stay in the EEC. The referendum also took place on June 5 1975, the result of which, perhaps influenced by the government’s vote, was a landslide victory for the YES - 67.2%—(the question put to voters was “Do you think the UK should stay in the European Community (Common Market)?”). The presence of representatives of the Community in the negotiations, and the absence of questions raised on the legality of the referendum demonstrated the will on the part of the EU not to create an unwelcome precedent, as suggests the idea that the Member States did not find illegal the British behaviour from the point of view of EU and international law (it should however be noted that the only request to renegotiate the treaties, under the threat of the withdrawal, could not possibly devote the existence of the right of withdrawal either in Community law or in the international one). It remained only a purpose, instead, the new electoral will of the Labour party to leave the EEC (1981): the party of the rose promised that, if victorious, would have withdrawn the country from the Community, this time even without going through a popular referendum, convinced that the confidence gained at the polls constituted sufficient mandate to complete the exit. Even then the reasons were, mostly, economic: the high contribution due to the coffers of the EEC, the revaluation of oil in the North Sea reserves, the decline of British industry. Another “accident” like the British occurred in Greece. During the election campaign for the 1981 national elections, PASOK (Panhellenic Socialist Movement) promised to hold, in case of victory, a national referendum to determine the permanence or the output of the Greek State by the EEC. Despite the victory of the Socialist Party, the referendum was never realised: this could have been requested only by the President of the Hellenic Republic, which was then Constantine Caramanlis, totally favourable to membership of his country to the European Community. At the end deserves special attention also the precedent of Greenland. However, even in this case, we are far from being able to talk about a case of withdrawal: in fact, although it is also spoken of withdrawal for this hypothesis, actually a change of the legal system was made to which the territory of the Greenland is subjected (with a strong autonomy from the Danish state as early as 1979 with the obtaining of the Home Rule), without which no evidence of its membership has come out with respect to the then European Economic Community. Belonging that was, and continues to, headed to Denmark. Since 1985, after a special referendum held on February 23, 1982, art. 182–187 of the Fourth Part of the EC Treaty “Association of Overseas Countries and Terri-tories”, are applied to Greenland, except the specific provisions as contained in Protocol annexed to the EC Treaty. It was, in fact, the Brussels Treaty (13 March 1984) to amend the Treaties establishing the European Community with regard to Greenland, declaring naught, from that date, the application of the Treaties them-selves, and by conferring the status of “associated territory”. The procedure for the change is that in art. 236 EEC: it was not, in fact, Greenland to require a direct way for the withdrawal, but Denmark for it, through a proposal for a redefinition of the application of the Treaties submitted to the Council, then transmitted to the Com-mission and Parliament for consultation. The case must therefore be classified in the same way for a revision of the Treaty, which established the quality of “Overseas Territory” for Greenland: there was no unilateral termination, as all Member States, also making
several changes to the initial proposals, agreed with the result achieved (Greenland gained a new status, designed to regulate fishing rights and to recognise the same right to the “free trade”).

The renewed (it would be more sufficient to treat it as ‘firstborn’) interest on the topic of withdrawal is unquestionably connected with the process of ‘formal’ constitutionalisation of the EU. Primary, it was opened in connection to the negotiation and creation of the Treaty Establishing Constitution for Europe, which in its art. I-60 introduced for the very first time the explicit right of (voluntarily) withdrawal of Member State from the EU. Later, more deep evaluation of exit clause continued after adoption of Lisbon Treaty, which confirmed the right for withdrawal in art. 50 TEU, and discussion accelerated during the multi-crisis which EU have been facing during last periods. The ongoing economic and political crisis, the Brexit (with attached Grexit and Frexit hypothesis), and so long, have placed such a constitutional issue at the centre of political and scientific debate in Europe and beyond. Finally, the issue left the ‘black letter’ space of scholarly research and becomes the great topic of our time since June 2016 and March 2017 respectively, when UK people in referendum and the UK government by official notification started the most vivid and most important question of the history of European integration—the withdrawal of the United Kingdom from the European Union.

2. INTENSE NEGOTIATIONS BETWEEN THE PARTIES INVOLVED IN BREXIT

This text intends to give the overview of the ‘withdrawal question’ within the evolution of European integration and to analyse the nature of prescribed path of terminating the membership as it stands in EU law today. We must admit that analysis of such a proceeding and advancing topic brings the risk of being ‘passé’. On the other side, it’s the challenging and interesting adventure to be the part of this big story. From the legal point of view, art. 50 of the TEU (Treaty on European Union), even rightly criticised for the multitude of shortcomings and declared as being the vehicle, that was not intended to be driven, could be understood as archetypal constitutional provision. The general and short in its wording, giving the space for flexible interpretation and establishment of the constitutional practice. But politically this is not the case. Abstractness of the provision dealing with such a dramatic question complicates the process of withdrawal and gives rise to serious level of uncertainty. It is quite a risky business to enter the uncharted territory in the crucial question like this. The questions arise and solutions appear on the day to day basis. Art. 50 shall for sure obtain new legal quality once being used in the process of Brexit. But the end of story is not here now. People of Europe, politicians and institutions are facing the unprecedented (regrettable) situations. But the lawyers are looking for establishment of constitutional practice, so needed relative to the vague and abstract Treaty proviso.

The UK and EU have reached a political agreement on how to settle their financial commitments to one another after Brexit. Broadly speaking, the obligations arose largely as a consequence of the UK participating in the EU Budget, and also commitments related to broader aspects of the UK’s membership of the EU. The media have labelled this as an ‘exit bill’ or ‘divorce bill’, the EU see it as a matter of ‘settling the accounts’. The issue was discussed in the first phase of Brexit negotiations under the title of the ‘single financial settlement’ (the settlement). The first phase also included other ‘separation issues’ such as citizens’ rights and the Irish border.

The agreement on the settlement formed part of a joint report agreed by the Commission and the UK on progress during the first phase on negotiations. The joint report will not be legally binding until it enters into a final Withdrawal Agreement. The UK Government estimates that the settlement – which includes payments made to the EU Budget during the transition period – will cost around £35 billion-£39 billion. However, it is very difficult to put definitive figures to the settlement as the actual payment will be based on outturns – rather than current estimates – which depend on future events. For instance, the settlement is exposed to changes in the exchange rates as payments will be calculated and paid in euros.
The agreement reached on the settlement means that the UK will: contribute to and participate in the 2019 and 2020 EU budgets, as part of the transition (or implementation) period; continue to receive EU funding from EU programmes that are part of the EU’s 2014–2020 budget plan; contribute towards the EU’s outstanding budget commitments at 31 December 2020 (these are budget commitments that have been made, but not yet paid); contribute towards some of the EU’s liabilities – obligations to pay for certain items incurred before 31 December 2020. EU staff pensions are the main source of such liabilities; remain liable for the EU’s contingent liabilities – potential liabilities that may occur depending on the outcome of an uncertain event – which relate mainly to financial guarantees given and to legal risks; receive back the €3.5 billion of capital it has paid into the European Investment Bank in 12 instalments from 2019, and receive back the relatively small amount of capital it paid into the ECB on withdrawal; continue to participate in some of EU’s overseas programmes, such as the European Development Fund, until the current round ends.

The UK and EU agreed some principles for the settlement: no EU Member State should pay more or receive less because of the UK’s withdrawal from the EU; the UK should pay its share of the commitments taken during its membership; and the UK should neither pay more nor earlier than if it had remained a Member State. This implies in particular that the United Kingdom should pay based on the actual outcome of the budget.

When the UK leaves the EU it is expected to make a contribution towards the EU’s outstanding financial commitments. These are spending commitments that were agreed by Member States including the UK. The media have labelled the issue as an ‘exit bill’ or ‘divorce bill’, the EU see it as a matter of ‘settling the accounts’.

The payment was discussed in the first phase of Brexit negotiations under the heading of the ‘single financial settlement’ (the settlement), along with other separation issues such as citizens’ rights and the Irish border.

During the first phase of negotiations the UK and EU aimed to establish what the settlement includes and how the UK’s share should be calculated. Actual financial figures were not being agreed, but the methodology for calculating them was.

An agreement in principle was reached, alongside the other separation issues, and published in a joint report on 8 December 2017. UK and EU negotiators have made significant progress in turning the political agreement reached on the settlement, in the joint report, into legal text. Negotiators have published a draft Withdrawal Agreement that includes articles on the financial settlement, which aren’t expected to change significantly before the final WA is published.

On 8 December 2017, the European Commission (the Commission) and the UK Government published an agreed methodology for calculating the settlement. The agreement reached on the settlement was published in a joint report agreed by the Commission and the UK on progress during the first phase on negotiations.

The joint report – which also covers other ‘separation issues’ such as citizens’ rights and the Irish Border – allowed the Commission to recommend to the European Council – the leaders of EU Member States – that sufficient progress has been made in the first phase of negotiations. In its 14/15 December 2017 meeting the European Council agreed that ‘sufficient progress’ has been made and that negotiations should move onto transitional arrangements and the future EU-UK relationship.

The joint report is an “agreement in principle” on the package as a whole as opposed to individual elements. The agreement is made under the caveat that nothing is agreed until everything is agreed, which means that the issues addressed won’t become enforceable until they enter into the final Withdrawal Agreement. It has been described as a political agreement at this stage.

If no EU-UK agreement is concluded, they will simply have to rely on World Trade Organization (WTO) rules to manage trade. WTO rules set limits on the maximum tariffs that countries can apply to trade in goods. WTO became an official international organisation in 1995.
and had evolved from the General Agreement on Tariffs and Trade (GATT), which was signed in 1947. GATT is based on three principles: reciprocity, prohibition on trade restrictions other than tariffs, non-discrimination. However, the latter has two main exceptions: developing countries; free trade areas and customs unions. One of the non-discrimination principles is called the Most Favoured Nation (MFN). According to it, if a GATT country grants a trade concession to another GATT country, this concession automatically applies to all other GATT countries as well. Therefore, in most cases (except a few exceptions) countries cannot unilaterally set different import tariffs for each country. However, the EU falls into the category of exceptions: If two or more countries decide to form a free trade area or a customs union, such as the countries of the European Union (EU), discrimination treatment is allowed, essentially because it is viewed as a move in the right direction of free trade. This exception allows the EU to manage free trade in the SEM and to set a common external tariff for all the countries.

As a result of this, if EU-UK economic relations are governed by WTO rules, the UK face the EU Common External Tariff as EU exporters would face the tariffs adopted by the UK. This would be a definitive break from the EU as under WTO rules neither the UK nor the EU could offer each other better market access than that offered to all other WTO members. The EU Common External Tariffs will affect the UK exporters if the Government does not reach any trade agreement with the EU—WTO based economic cooperation is the only Brexit option that do not require any agreement. Accordingly, WTO rules would bind from the very first day of formal Brexit (unless there would be a transitional period) and the UK would be treated as one of the EU third countries, like China, Russia, etc. The UK would have to re-establish customs controls at borders with EU member-states. This would include establishing a border with the Republic of Ireland, unless the EU and the UK managed to conclude a special agreement on that issue before the date of the UK’s withdrawal. This would have a serious political issue as citizens of North-ern Ireland and the Republic of Ireland would face border control procedures for the first time since 1920s. Starting in that decade, the countries have operated a Common Travel Area, which allows for nationals of both countries to travel and live in each country without immigration controls. There are no guarantees that it would not lead to the referenda in Northern Ireland, protests, riots or any other political tension that would certainly have further unpredictable economic impact.

As far as tariffs are concerned, it is clear that if reciprocal tariffs were introduced on imports from the EU, these goods would become more expensive for the customers in the UK. Therefore, an inflation in the UK would soar if the WTO-only model is applied. The other thing for the UK would be the issue of how to determine a single, universal set of tariff rates with the countries outside the EU as the UK would no longer trade with under the EU common external tariff. New tariffs would be required to be submitted to the WTO. Consequently, this would be a complex exercise involving a review of every tariff line – over 5,000 – to determine what rate the UK would wish to apply.

Moreover, many industries rely on tariff-free imports of components from the Single Market to support complex supply chains. The individual price calculations behind these would change if tariffs were reintroduced. This would have considerable implications for the competitiveness of UK businesses. For instance, according to the HM Government (2016) WTO model could be very stressful for UK’s car industry as components sourced from the EU would become more expensive for UK vehicle manufacturers. As over 40% of components purchased by these manufacturers come from the EU, this could place such exporters at further disadvantage. As components become more expensive, the expenses required to make a product are also higher. Consequently, the production becomes less competitive as manufacturers must raise prices. On the other hand, given that the EU is locked in to zero tariff treatment for so many non-agricultural products, many manufacturers in a country that exited the EU could face no change in tariff treatment in their exports to the European Union.
CONCLUSIONS:

The negotiating teams aim to finalise the entire Withdrawal Agreement by November 2018. However, no significant changes are expected to the article which relate to the financial settlement: all areas of the financial settlement have been agreed by negotiators, and will only be subject to technical legal revisions.

The process of leaving the EU by UK is a tricky process, with each indicator being intensely negotiated, the two parties are trying to get the greatest advantage when signing the Withdrawal Agreement.

Politically, the damage done by Brexit to the EU could be considerable. As already mentioned, the forces that led to Brexit are present in most Member States. They could drive forward the populist revolt against the status quo destabilising European politics. Those forces could drive a wedge between Member States bringing forward ancient tensions, and dragging the European project backwards.

BIBLIOGRAPHY