

CERTAIN ISSUES OF THE WITHDRAWAL OF A MEMBER STATE – A PUBLIC LAW ASPECT¹

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Abstract: *The issue of the United Kingdom's exit from the European Union (the so-called Brexit) means a turning point both in the history of the European integration, and also of the United Kingdom. The 51% of the British electorate voted in favour of leaving the EU, which raised up uncountable legal, political and economic questions to be answered.*

The legal questions raised by the Brexit could be categorized into some groups. According to Takis Tridimas, there are open procedural, institutional and administrative issues of the withdrawal, which organize the 'know how' of the process; but we could talk about the future relationship forms between the United Kingdom and European Union; and the future of the European integration paradigm; or about the development and changes of the European Union's and United Kingdom's legal system due to the Brexit. In this paper – after presenting the historical background of a member states' withdrawal – I focus on the summary of the main public law questions opened to be answered by the Brexit.

Key words: *withdrawal from the EU; Article 50 TEU; Brexit; administrative issues of the withdrawal; European Public Administration Law*

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1. WITHDRAWAL FROM THE EU

The main objective of the European integration project was determined in the Treaty of Rome in 1957, the Treaty establishing the European Economic Community (hereinafter referred to as: EEC Treaty) as it is “*determined to lay the foundations of an ever closer union among the peoples of Europe*”². The EEC Treaty was an attempt to foster European integration, especially from the aspects of economics. Article 240 of the EEC Treaty declares that the Treaty is “*concluded for an unlimited period*”³ which means that the Treaty creates a permanent organization. In addition to this, the EEC Treaty places permanent limitations on the sovereign rights of the Member States whose limitations

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²Treaty establishing the European Economic Community (EEC Treaty) (1957), available: <http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:11957E/TXT&from=HU>, (Last consulted: 05.09.2017)

³EEC Treaty, *supra* note [1], Article 240

were interpreted in the C-6/64., *Costa v. ENEL* case⁴. In the *Costa v. ENEL* case the Court states, that “the EEC Treaty has created its own legal system which became an integral part of the legal systems of the member states and which their courts are bound to apply. By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the Community, the member states have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves.”⁵ As a consequence, the founding Treaties did not include any provisions on the withdrawal from the European Union (hereinafter referred to as EU) until the Lisbon Treaty came into force in 2009. In this sense, the provision on the unilateral exit of a member state could be evaluated as a step back in the integration project, while a step forward as a guarantee for the sovereignty of the member states.

The question of a Member State’s unilateral withdrawal was raised up several times during the history of the European Union, but no member state has withdrawn from the EU yet. (More precisely, Greenland consensually withdrew from the European Communities in 1985, but it was part of Denmark and not a member state by its own right, so it was a reduction of the territorial scope of the founding Treaties.) However, we could mention several threatened withdrawals during the integration’s history. For example, “in February and October 1974, the United Kingdom (hereinafter referred to as: UK) Labour Party issued Election Manifestos that mandated renegotiation of the terms of Britain's accession treaty with the EEC (1973) and a national referendum to determine Britain's continued membership. The EEC heads of state met in Dublin in March 1975, to conclude the negotiations, after which the British cabinet voted by a majority that the United Kingdom should remain in the EEC. By national referendum of June 5, 1975, a 67.2% British majority voted for the United Kingdom to remain in the EEC.” (Hill, 1982)

It is obvious, that the threatening of withdrawal was a tool in the hands of the states when it came to the negotiation of the conditions of the further cooperation among member states. In the 1980s, John A. Hill and Joseph H.H. Weiler (Weiler, 1985) among other authors (Plueneke, 1980) already foresaw the possibility of a British withdrawal from the EEC, mainly because of financial reasons (the estimated 1980 net contribution of Britain to the EC budget was \$2.7 billion, which was 60% of the total EC budget). In 1981, the Labour Party promised that upon election of a Labour government, Britain would withdraw from the EEC without even holding a national referendum. (Author, 1981) There were other – not British – examples for the threatened withdrawal, such as that occurred during the 1981 national election campaign in Greece. (Author, 1981) However, these declarations were only threats and never carried out.

Withdrawal from the EU affects primarily the European Union law and national laws of the member states and secondarily the international law. European law did not include the member states’ right to withdraw until the Lisbon Treaty was signed. This – on the one hand – could be led back to the main objectives of the integration, which were to aim

⁴C-6/64., *Costa v. ENEL* case [1964], Court Report 1141, ECLI:EU:C:1964:66

⁵C-6/64., *Costa v. ENEL* case [1964], Court Report 1141, point 3, available at: <http://curia.europa.eu/juris/celex.jsf?celex=61964CJ0006&lang1=en&type=TEXT&ancre=18.09.2017> (Last consulted: 18.09.2017)

an ever closer Union. On the other hand, this was a legal gap – from the aspect of the Community law. Although the Community law did not regulate the issue of withdrawal, the international law did it, namely in the *Vienna Convention on the law of treaties* (1969). This Convention based the issue on the principle of *clausula rebus sic stantibus*. However, the relevance of the application of international law rules is questionable in the case of the European Communities, but it may serve as an option for the Member States (concerning the fact, that the international law has primacy and supremacy on the Community Law and now on the EU Law – according to the judicial practice of the ECJ). Apart from these facts, the applicability of the *clausula rebus sic stantibus* principle is very limited in the practice.

In order to fill this gap and serve the Member States' interest to their sovereignty, the Constitution for Europe included the right to voluntary withdrawal⁶ of a member state. However, the European Constitution never came into force as the *vox populi* of Netherlands and France rejected it. Thus, the Lisbon Treaty had to adopt its most relevant regulations, such as the right to withdraw. Until the acceptance of the Treaty of Lisbon, considering the limited applicability of international law rules, there was an uncertainty whether a member state had a right to withdraw or not, and if yes, under what circumstances.

The issue of a member state's exit from the EU became current again, due to the referendum of 23 June 2016 held in the United Kingdom on remaining in, or leaving the European Union. The result of the referendum was surprising for the European public opinion, because unlike the previous one held in 1975, the majority of the British electorate voted in favour of the UK leaving the EU. The turnout was 72.2% of eligible voters and 51.9% voted to leave the EU, while 48.1% voted to remain in. (Commission, 2016) However, the result of the *vox populi* is not binding the British Parliament, the British prime minister, *Theresa May* has triggered the Article 50 of the TEU by submitting the notification on leaving the EU on the 29 March 2017. Therefore, the European integration reached crossroads: integration or disintegration? According to *Takis Tridimas*, Brexit “*shatters the irreversibility outlook implicit in the integration paradigm of ever closer Union*” (Tridimas, 2016).

2. ARTICLE 50 TEU AND ITS FRAMEWORK

Article 50 of the Treaty on the European Union (hereinafter referred to as: TEU) governs the unilateral withdrawal of a member state. According to this article, “*any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements*”⁷. This open provision strengthens that “*the EU is a constitutional union of sovereign member states [...] and not a federal state, thus [...]*”

⁶Constitution for Europe, Article I-60, Voluntary withdrawal from the Union, see [2004] OJ C310/1, available at: https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_establishing_a_constitution_for_europe_en.pdf, (Last consulted: 15.09.2017)

⁷Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal C 326 , 26/10/2012, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>, (Last consulted: 17.09.2017)

Article 50 counterbalances the federal aspirations of the EU” (Tridimas, 2016). As being sovereign, a member state has the right to decide its own constitutional requirements, so thus the EU does not have to give its approval to the decision. Article 50 of TEU – besides serving the sovereignty of the member states – means uncertainty in a sense, as 28 member states have 28 different constitutional background, and means diverse, state-specific decisions on the other hand, when it comes to the withdrawal. So, Article 50 does not provide substantive conditions and terms for the exit procedure. It provides a frame for the process, in which the first step is that the “*Member State shall notify the European Council of its intention*”. Then, the European Council provides guidelines, and according to these documents “*the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union*”. Article 50 declares, that the abovementioned agreement “*shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament*”. The Article names the institutions taking part in the withdrawal process of a member state – on the side of the EU. The provision involves a two-year deadline in order to prevent the delayed and protracted procedures which would increase the uncertainty within the EU and in the withdrawing member state. The deadline is counted from “*the date of entry into force of the withdrawal agreement or, failing that, two years after the notification*”. The two-year period could be unanimously extended by the European Council in agreement with the exiting Member State. In case of the expiration of the two-year period without being extended, the member state automatically loses its EU membership, thus, the member state became *quasi* expelled. It is important to note, that the EU law does not ensure the right to expel. However, losing the EU membership automatically in the end of the two-year period without having an agreement between the EU and the member state, could be evaluated as an expulsion. (Herbst, 2005)

All in all, the role and possible interpretations of Article 50 are contradictory. It serves as a contractual guarantee for the member states and fills a legal gap in the European law which could be evaluated positively, while it lets open several legally and practically important issues which – until becoming answered and elaborated – increase the uncertainty and provide a field for political bargaining. Article 50 made the ground to the obvious change of the integration paradigm started by the failure of the European Constitution in 2004 and followed by the Brexit-referenda in 2016.

3. WITHDRAWAL UNDER THE LAW OF THE UK

In the case of the United Kingdom, the decision made on the basis of constitutional requirements could be interpreted very hard because we cannot talk about written constitution. There were different views on whether the Westminster Parliament or the British government is entitled to make the decision required by the Article 50. The majority of the British scholars agreed on that the Parliament is responsible to make the decision according to the constitutional traditions, then on 3 November 2016 the High Court strengthened this view in its judgement of *R (Miller) v Secretary of State for Exiting the European Union* case (Judgement of the High Court in *R (Miller) v Secretary of State for Exiting the European Union* case, 2016).

The second round of issues concentrated around the “*tensions between direct and indirect democracy*” (Tridimas, 2016). The outcome of the referendum – unlike e.g. in Hungary – is not binding for the Parliament under British law, but it represents the will of the majority of the British electorate. The result is perceived to be at odds with the views of the rest of the members of the Parliament. “*It thus leads to the paradox that a fundamental constitutional decision is taken despite the disagreement of the people’s elected representatives in a polity, where parliamentary sovereignty is the defining constitutional principle.*” (Tridimas, 2016) This tension results that the representatives in the Parliament may have voted in favour of the will of the electorate and not due to their sole discretion during the debates held about the European Union (Notification of Withdrawal) Act 2017 (hereinafter referred to as Brexit Bill)⁸. The Brexit Bill was introduced to the House of Commons on 26 January 2017, then on 8 February 2017 to the House of Lords. After the readings, debating and amending the Brexit Bill several times, on 16 March 2017 the Royal Assent was given to it.⁹ This entitled British Prime Minister, Theresa May to trigger the process of withdrawal by sending the notification to the European Council. Theresa May made the unilateral act on 29 March 2017.

After submitting the notification to withdraw, the question arises whether this declaration of intention is revocable or not under the national law of a member state (and under what circumstances does the EU law accept this revocation). According to Takis Tridimas (Tridimas, 2016), Nick Barber, Tom Hickman, Jeff King (Nick BARBER, Tom HICKMAN, Jeff KING, 2016) and Charles Streeten (Streeten, 2016) among other authors, the notification should be considered to be revocable, however Jake Rylatt represents an opposite (RYLATT, 2016) view. Revocability could be acceptable in my view – as the contractual grounds could provide a framework to this, e.g. by the application of the *clausula rebus sic stantibus* principle. Moreover, the Article 50 does not exclude the revocation, thus it could be applied in theory. However, the issue of revocability falls under the EU law, thus, only the European Court of Justice (hereinafter referred to as: ECJ) is entitled and empowered to interpret it. On the other hand, the right to the unilateral revocation of the notification would mean a great advantage for the exiting member state(s), giving the chance to change their mind any time within the two-year period, although this would mean uncertainty for the EU and its remaining member states. In the long run, having the possibility to unilateral and unconditional revocation could create the perfect environment for malicious games of politics, therefore I think revocation could be only conditional and consensual (as *clausula rebus sic stantibus* in the case of contracts).

When the notification was submitted to the European Council, the formal part of the procedure began. The European Council gave a guidelines to the negotiations in April 2017 – as Article 50 regulates. The negotiations shall be conducted in good faith and under the duty of loyal cooperation provided by the Article 4 (3) of the TEU which are applicable to the exiting member state – as all of the acts of the EU – until the withdrawal process ends. The negotiations between the UK and the EU are accompanied by the

⁸ European Union (Notification of Withdrawal) Act 2017 ch. 9, available at: <http://www.legislation.gov.uk/ukpga/2017/9/contents/enacted/data.htm> , (Last consulted: 19.09.2017)

⁹For all the documents related to the parliamentary debates and proposed amendments of the Brexit Bill, see: <http://services.parliament.uk/bills/2016-17/europeanunionnotificationofwithdrawal/documents.html>, (Last consulted: 19.09.2017.)

negotiations of the remaining 27 member states. A draft deal is going to be submitted to the European Council, and it needs approval from at least 20 countries with 65% of the population of the European Union. As the rest of the member states regret the UK's leaving, there is a chance to veto the draft deal by some of the member states. Even if all the member states respect the British citizens' decision, the deal still requires the ratification of the European Parliament. Parallel to this, the UK introduces the "*Great Repeal Bill*" in order to revoke the *European Communities Act* of 1972¹⁰. The new act planned to come into force on March 29, 2019 in case the member states unanimously do not extend the period provided by Article 50. If the deadline is not extended, the acts of the European Union cease to apply for the United Kingdom, with or without having a withdrawal agreement. In this case, the *Great Repeal Bill* comes into force and effect in order to cover the legal gap arising from the "effect less European Law" in the British legal system. The Bill would give effect to EU laws until the British parliament decides on their future. Some of them may be wiped out, while many of them should remain in order to strengthen the acceptable European values – especially which were and are developing for the United Kingdom's economy and may facilitate the post-Brexit market access of the British companies and providers on the single market.

Thus, the Treaties cease to apply and the United Kingdom is not going to be bound by future legislation adopted by the EU. While those EU legal actions, which are implemented already into the national law of the withdrawing member state, still remain in force, until the Westminster decides otherwise. This is important to maintain stability and legal certainty. Once the withdrawal agreement is signed, it becomes the part of the primary law of the Union and it may not affect a later intention of a future accession, which is possible under 49 TEU¹¹. The intention of a future accession will not enjoy any discounts or extra requirements for an ex-member state, the UK will have the opportunity to accede as any other third country according to the current political declarations and to the Article 50 TEU¹². The analysis of the most important points of the future withdrawal agreement remains to another publication. In the following, I summarize the main effects of the withdrawal on European Public Administration Law.

4. GENERAL SUMMARY ON THE POSSIBLE IMPACTS OF WITHDRAWAL UPON THE EU PUBLIC LAW

According to *Takis Tridimas*, there are open procedural, institutional and administrative issues of the withdrawal, which organize the 'know how' of the process;

¹⁰ European Communities Act of 1972, <https://www.legislation.gov.uk/ukpga/1972/68/contents>

¹¹ Article 49 TEU: „Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements. The conditions of eligibility agreed upon by the European Council shall be taken into account.”

¹² Article 50 TEU declares: “If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.”

but we could talk about the future relationship forms between the United Kingdom and European Union; and the future of the European integration paradigm; or about the development and changes of the European Union's and United Kingdom's legal system due to the Brexit. In this article, I summarize the main public law issues affected by the withdrawal of a member state – from the perspective of the European Union. All of the questions could be categorized into the abovementioned three fields of public law, and that three categories into the wide field of the European Public Administration Law. This contains all of the institutional, procedural, structural and personal issues, such as the future of the public service servants working at EU institutions, the questions of the European citizenship and its conditions (also the questions of the permanent residency), the future methods and procedures of the primary and secondary EU Law legislation, the future perspectives on the European integration (or maybe disintegration). Furthermore, indirectly, the exiting of the largest non-euro-zone member state may turn upside-down the political balance kept between the Euro-zone and out of zone member states. According to *Takis Tridimas*, the United Kingdom has a significant role in the maintaining of the continental balance in some other fields as well, such as the field of Environmental Law, internal market, freedom of security and justice, etc. The characteristics of the European politics developed the European model of “checks and balances”, which maintained the continental political balance in Europe for decades. Now, many changes may be expected due to the withdrawal of the United Kingdom.

*Michael Dougan*¹³ Professor categorized (Dougan, 2017) the impact of withdrawal upon the EU Legal Order into some groups. The Reform of the EU becomes necessary due to the exiting of a member state. Many institutional and contractual-structural issues may lead to the reform of the whole EU, regarding the social dimension of Europe, or the economic and monetary Union, etc. Adjustments to European Law are necessary both in primary and secondary legislation – formal changes, as deleting the United Kingdom's name from EU documents, decreasing the territorial effect of EU law – and substantive changes as restructuring the whole integration framework. The European Commission issued the White Paper on the Future of the EU¹⁴ on 1 March, 2017 which includes five different scenarios for the future of the integration and for the forms of cooperation – among the remaining 27. The scenarios are starting from “*Carrying on*”, through “*Nothing but the Single Market*” and “*Those Who Want More Do More*” and to “*Doing Less More Efficiently*”, until the “*Doing Much More Together*”. In my view the first three scenarios have the possibility to become applicable in practice, as the current system is working, not perfectly, as the changes of the integration paradigm shows and as the Brexit proves its deficiency. So the “*Carrying On*” solution seems a compromising one and it could work with some changes in the system. In this case the withdrawal of the UK would not be highlighted as a failure for the integration.

The second alternative also seems applicable as the main attraction of the whole integration is the single market itself. In this case the integration would mean only a cooperation to uphold the single market. This solution could serve the national

¹³Michael Dougan, Professor of European Law and Jean Monnet Chair in EU Law, at the University of Liverpool.

¹⁴ European Commission: White Paper on the Future of Europe: Reflections and Scenarios for the EU27 by 2025, COM(2017) 2025.

sovereignty requirements and the new cooperation form may reduce political conflicts as well, however, on the other hand, that would be a great step back in the integration process and would need to restructure all the mechanisms already elaborated in the Union.

The third scenario is the most contested among all, as it would mean the so-called multi-speed Europe. *"Multi-speed Europe is the term used to describe the idea of a method of differentiated integration whereby common objectives are pursued by a group of EU countries both able and willing to advance, it being implied that the others will follow later."*¹⁵ The later acceded post-socialist member states from Middle-and Eastern Europe protest against this scenario, because they are afraid of strengthening the current economic differences among the elder member states and the newer ones. According to the White Paper, the group which is not included in some policies of cooperation will have the opportunity to join the cooperating member states, when the member state in question finds itself to be ready to do. But, the influence of the later acceding member state may become less, than that of those who formed a certain objective of policies from the very beginning, thus some of the member states are protesting against this idea.

The last two scenarios are not applicable in my view. The fourth would mean a step back in the integration process, and it may show the weakening of the EU to other global players. The last alternative isn't also applicable as the negative changes of the integration paradigm in the last 20-23 years (starting from the non-agreement on the European Constitution in 2004) led to the Brexit, and the heritage of the Brexit may be the ignorance of a closer cooperation than we have now. It would mean so much tension, so much political debate and finally, it could not work in practice within the current frame of cooperation. Although the European Commission's intention – according to *Jean-Claude Juncker's "State of the Union" speech*¹⁶ of 13 September 2017 – is to foster the integration after the Brexit. According to the president of the European Commission, the strengthening of the integration would mean a solution for Europe. *Juncker said, "Now, is the time to build a more united, stronger and more democratic Europe for 2025."* The speech reveals the intention of the Commission, which takes the emphasis on the *"Doing Much More Together"* alternative provided in the White Paper. In my view, member states do not have the stable and certain circumstances and common understanding on different policies, which should be treated unanimously in order to be able to foster the integration. The Union faces more challenges parallel, one of them is the migration crises, and another is the Brexit. Moreover, there are other foreign affairs which make more difficult to have the consent, such as the crisis in Ukraine. All of them divide Europe, accompanied by strengthening euro-sceptic views.

Finally, Professor *Michael Dougan* named the impact on EU institutions and policies as the last group. Firstly, the institutional implications could be realized already, as the UK Commissioner resigned shortly after the referendum. The UK Commissioner was replaced in September 2016, but the fact that the previous Commissioner resigned signals the impact of the Brexit on the European institutions. Other personal-institutional aspect is that during the negotiations on the withdrawal agreement, the withdrawing state's

¹⁵ Definition of the Multi-speed Europe provided by the Eur-lex, available: http://eur-lex.europa.eu/summary/glossary/multispeed_europe.html (Last consulted: 19.09.2017)

¹⁶ Jean-Claude Juncker's *State of the Union* speech hold in the European Parliament in Strasbourg, on 13 September 2017, available at: https://ec.europa.eu/commission/state-union-2017_en#watch-the-speech (19.09.2017.)

representative in the Council and in the European Council shall not participate in discussions of these institutions concerning the UK. How does the informal influence of the UK could be avoided during the withdrawal negotiations if the representatives are in the institutions? According to the Professor, some institutions after the withdrawal became more affected, while others less affected. Less affected institutions are the Commission, the Court, the European Central Bank and the Court of Auditors, while more affected are the Council and the European Council. We have to take into account that the representatives of the EU institutions are European representatives and not national ones. There are other implications on public law, such as on policies which the UK has exercised significant influence before the Brexit. There were the single market, the external trade and e.g. the common foreign and security policies. The latter was generated by a great British influence through the Europol, Eurojust and intelligence agencies.

On the fields of primary legislation, the legally problematic point is the requirement of unanimity for the Treaty revisions in the case of ordinary or special revision procedure, and other clauses. In addition to this, the UK accepted the European Union Act 2011, which introduced the so-called "referendum-locks" which means, that every Treaty-amendment should be voted before the British government accepts it. This raises the question of how the UK may affect the EU reform agenda? Is that an advantage for the EU if the UK has any influence on its reform while it is "divorcing" the integration?

In the following, I summarize the further implications of the withdrawal, regarding the single market and other economic important issues.

5. SOME FURTHER IMPLICATIONS OF THE WITHDRAWAL

Regarding the future relationship forms between the United Kingdom and European Union, we cannot state anything surely. The EU and the UK have several options besides the abovementioned scenarios collected in the White Paper. For example, the *Norway Model*, the *Swiss Model*, the *Turkish Model*, the *Canada model* are all applied solutions for economic cooperation. The question is whether the EU and the UK are able to build in their agreement the best applicable parts of the current solutions, in order to personalize their agreement. Because, the need of an agreement between the United Kingdom and the EU is necessary, both the Union and the UK need each other as a partner. The British economy needs the single market, and the EU cannot lose the UK in foreign relations.

In my opinion, the way of the "divorce" would define the frames of the further cooperative solutions. Now, two main directions dominate: the hard and the soft Brexit. In case of hard Brexit the future cooperation could confine the parties into the minimum and could push the UK towards a tight relationship with the USA and the scenarios of the *Korean Model*, the *US Model* may become applicable. However, the analysis of the scenarios is not the subject of this article, thus I leave the question open by now.

There is a two-year period determined in the Article 50 TEU to finish the negotiations and agree on the withdrawal, which period was opened by *Theresa May's* notification. This time-frame is obviously not enough to build out a long-term solution for the cooperation of the exiting member state, and the remaining member states. That is now a fact, that the future relationship of the UK and EU could be only elaborated after the withdrawal agreement is signed – or the two-years period is over without having an

agreement. The two agreements (withdrawal and future relationship) cannot be negotiated parallel.

Economic disadvantage of the Brexit, that it “*means that unless the member states decide otherwise, at the end of the two years all rights and duties arising out of EU law for UK nationals and companies will be extinguished. [...] Merely the passage of time the UK will lose access to the single market. Its products would thus begin to be subject to the common external tariff.*” (Pavlos Eleftheriadis, John Armour, Luca Enriques, Rebecca Mooney, Rebecca Williams, Alison Young, 2016) This could easily lead to economic hardship for both of the costumers and the companies established in the United Kingdom. The step-out from the single market is the most significant economic issue that is arising from the Brexit. The free movements of goods, services, people, employment and capital are the generator of the European market which serves around 500 million costumers and gives work to different companies all over Europe. Without the single market, the United Kingdom may not able to provide such favourable – tax, discounts, working environment, etc. – offers to companies in the long-run, which may lead to the movement of companies from the UK to EU member states. The UK has little chance to become a “tax heaven” within this short period of time. (Enriques, 2016) An EFTA-type solution could serve as a solution, but maybe the negotiations can elaborate a much more advantageous way of cooperation.

One main consequence is financial, connected with the Bank sector. There is an economic need to preserve the operation of financial services sector. The UK Banks now has a passport to establish corporations in the EU. The loss of this passport may reduce the willingness of third country partners to establish their companies in the UK. The EU membership with all its circumstances served as a guarantee for third countries. (Armour, 2016) The financial damage would be a disaster for the UK in case of the financial firms would be closed out from the single market.

All of the legal and non-legal (cultural, economic, security, political, etc.) consequences of the Brexit cannot be foreseen now, but the main issues affected were summarized above.

6. CLOSING REMARKS

As the consequences of the member state’s withdrawal are uncountable, there is time for taking into account the alternatives the UK faces. Parallel with the negotiations, the public law issues arising from the Brexit should be elaborated well – at least in the withdrawal agreement. After forming and signing the agreement, the negotiations about the future relationship of the UK and the EU may be started (Craig, 2016) (due to the Council guidelines).

What is put into the withdrawal agreement and what remains for later treaties is also important. As this question was left open by the Article 50 TEU – as it only provides the framework of the withdrawal – a good frame for the exit should be elaborated without detailed points on all affected public law issues. The subtopics may be declared later, in protocols to the withdrawal agreement. This could let space to control upon the frames, and would provide a flexible (amendable) platform for the affected issues (citizenship, institutional and public service problems or financial aspects, etc.). Article 50 leaves almost everything open, which, on the one hand causes legal gaps, but on the other hand

gives opportunity to share ideas between legal experts, students, and politicians. As the TEU left open-questions, the withdrawal agreement also should, it is not necessary to fix all the affected points in advance. The market and the practice may work out their own solutions, applicable by both the UK and its contracting parties. For now, the most urgent is to decide on European citizenship in order not to keep either European citizens in the UK or British citizens in the EU in uncertainty. The interpretation of the Article 50 TEU, the filling-out of all legal gaps may require the contribution of the European Court of Justice, as the only interpreter of the Union Law.

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