EXITING THE EU: PRE - AND POST-LISBON[1]

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ABSTRACT: *Brexit highlights the significance of Article 50 TEU which regulates the unilateral withdrawal of a member state. This paper aims to analyze the issue of a member state's withdrawal of the European Union, having regard to the situation before the Lisbon Treaty when the Community law did not regulate this option, and after the introduction of the so-called withdrawal clause to European Union Law. This means that pre-Lisbon legal era did not contain any opportunities for a member state to decide about its exit. Thus international law could fill this gap. As article 50 TEU established the legal framework for the exit, the United Kingdom's withdrawal (the so-called Brexit) is going to proceed on the base of it. In this paper I compare the pre- and post-Lisbon way of the withdrawal using the example of Greenland as a previous solution, and the United Kingdom's case, as an ongoing one.*

KEYWORDS: *Brexit; withdrawal of a member state; article 50 TEU; Greenland's withdrawal of EC*
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1. INTRODUCTION TO THE SPECIAL MEMBERSHIP OF GREENLAND AND THE UNITED KINGDOM IN THE EUROPEAN INTEGRATION

In order to present the exit of a state from the European integration before and after the Lisbon Treaty, it is necessary to summarize Greenland's withdrawal, with its all specialties, then to present the current situation of the United Kingdom (from now on referred to as the UK). Both states joined to the European Communities (from now on referred to as EC) in 1973, but the first difference is that the United Kingdom acceded by its right, while Greenland acceded by its legal relationship to the Danish Crown. Both states had (and have) special membership in the integration.

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1.1. Greenland's membership in the EC

Greenland has never been a member of the European Communities (from now on referred to as EC) on its right. Greenland is politically linked to Denmark – but geographically it belongs to North America. The Danish Kingdom was acceded to the EC in 1973, after a national referendum on the membership. Greenland's population did not support the accession, 70,3 % of the Greenlanders voted against it. The country itself has specialties both geographically and sociologically which determined their position before and through their membership. The features: Greenland is the biggest island of the World, geographically belongs to the North American continent, while economically and politically has generally belonged to Denmark (earlier to the Danish Crown as a province, now as an autonomous co-state) from the 14th century. In addition to the specialties of Greenland: Eskimos give its population, its weather is arctic, so more than 80% of its territory is covered with ice. Thus, its economy is relying on hunting and fishing, and animal husbandry (sheep and reindeer breeding). Its infrastructure is unbuilt, people use sleds, ships or boats and rarely helicopter.

Due to the Home Rule Act of 1979, Greenland enjoys full internal autonomy within Denmark, which means that it can decide about its membership in international organizations (it is a High Contracting Party of the Northern Council). *The Treaty of Accession of Denmark declares some exceptions for Greenland, taking into account its special circumstances. Protocol no. 4 to the Treaty of Accession of Denmark authorizes Denmark to retain national provisions, whereby a six months period of residence in Greenland is required to obtain the license for engaging in certain commercial activities in Greenland. It also provides a basis for exceptions to the common organization of the market in fishery products about Greenland. Article 100-101 in the Act of Accession establishes a 12-mile exclusive fishing zone for Greenland fishers until*[2] *1 January 1983.* (HARHOFF, 1983)

The abovementioned exceptions gave an advantage to strengthen the intention to accede, especially in those people who voted against it: and the majority of the Greenlanders voted against it. Until 1982, Greenland has received *significant support from the Regional Fund and the European Agricultural Guarantee Fund (FEOGA) and the Social Fund. Moreover, Greenland received grants for special purposes within the field of localized energy sources (water-power, uranium, oil), and from the European Investment Bank, they got loans for a sheep-breeding programme, and for fisheries inspection.* (HARHOFF, 1983) All the Community strategies and legislation took into account the specialties of Greenland, eg. Council Directive no. 77/805 on VAT was not applicable in Greenland as they did not have this type of tax. Considering the abovementioned advantages, a question arises: why Greenland left the EC?

The European integration is based on the common democratic, constitutional and cultural traditions in which Greenland did and does not fit. Also, the economy of Greenland is based on fishing and hunting, which were and are restricted by quotas in the European Communities (and now in the EU). An exclusive fishing zone was ensured for Greenland from the accession until 1 January 1983 as I mentioned above, but after that

[2] The final deadline predetermines the reason for Greenland's withdrawal from the EC, as after this date the exceptional rules did not apply, therefore it did not worth for Greenland to remain in the EC anymore.

deadline, the quotas were intended to be applied to them, which would have affected their economy radically. It is obvious that the control and administration of the fisheries were intended to keep in the hands of the Greenlanders as the rest of them live from fishing or hunting. As their population is relatively small[3] and their territory is big[4], they never intended to use other state's waters.

The European Council adopted a declaration during the summit in The Hague on 3 November 1976 (The Hague Resolution[5]), in respect of problems of the common fisheries policy. It was declared in The Hague Resolution, among other things, that regions in the Community particularly dependent on their fishery should be given preferential treatment to exploit the available fish stocks within their adjacent waters, by their fishing capacity. In addition to that, the European Commission clearly stated that it would be contrary to the principle of a common fisheries territory in the Community to accord exclusive rights for Greenland's fishermen. The national body of Greenland, called *Landsstyre* declared that „*The Greenland community wishes to demonstrate its viability by developing its economy by locally generated values. Hence, it is imperative for the Home Rule to reserve all catch and processing of fish for local hands if a society with a viable economy is to become a reality.*" (HARHOFF, 1983)

Therefore, Greenland has asked for a withdrawal from the EC to obtain full control of its fisheries policy, besides the fact that Greenland does not fit well into the European integration which is based on the common cultural, constitutional and historical traditions of the European states and their citizens. The introduction of the Home Rule Act in 1979 „disrupted the standing water" as Greenland has seized powers which previously belonged to the EC's competence on the base of the Accession Treaty. The Home Rule Act, therefore, strengthened the autonomy of Greenland (within Denmark) and might have supported its decision to withdraw from the EC using its autonomy in foreign affairs. The Home Rule Act entered into force in 1981, and the new government of Greenland announced a referendum for 1982 to decide on the membership of Greenland in the European Communities. The 53,02% of the Greenlanders voted in favor of leaving the Communities, while 46,98% voted for remaining in. (KRÄMER, 1982)

1.2. The United Kingdom's membership and its specialities in the EU integration

The United Kingdom's membership in the European Communities started also in 1973. From that point, its relationship with the European Union is a *well-considered progress* which means that the UK thinks everything twice before it joins to a cooperation, and if it joins, it may give extra conditions or links *opt-outs* to it. This is valid for almost every policy and fields of cooperation. Everything may arise from the first years of the UK's relationship with the EU. The UK applied first to be a member state of the EC in 1962, but France denied its accession. Prime Minister *Harold Wilson* applied again on behalf of the UK in 1968, but the application was denied again. Both applications was vetoed by the French prime minister, *Charles de Gaulle*. After a change

[3] Greenland's population in 2013 was 56 483 inhabitants according to the Wikipedia: https://hu.wikipedia.org/wiki/Gr%C3%B6nland (07.04.2018.)
[4] Greenland's territory is 2 130 800 square kms.
[5] See: https://publications.europa.eu/en/publication-detail/-/publication/1fb60cad-f6f0-4d6f-8baa-f9ccd55e0334 (05.05.2018)

of government from Labour Party government to Conservative one, the new prime minister, *Edward Heath* intended to try the accession again in the beginning of the 1970s. *Charles de Gaulle* was the French prime minister until 1969, and due to the lucky fact – besides other international political circumstances – the United Kingdom could join to the EC on 1 January 1973. To sum up the facts: the British accession could became reality after 2 denial of accession, when the European integration started its 16th year of cooperation – thus the UK could join to a ready situation with already decided circumstances and attitudes. This strengthened the British '*special way*' attitude towards the integration.

The accession meant the engagement to European values, which is a step forward from the isolated attitude of the British to open-minded European cooperation, taking into account the fact that the British hold a referendum before the accession and the supporters of the membership did not have great superiority. The oil crisis of the 1970s resulted in an economic downturn which strengthened the isolation against the integration. From 1974, Labour Party *Harold Wilson* became the prime minister again. The Manifesto of the Labour Party included a referendum on EU membership in case of winning the election, therefore in 1975, *the first Brexit-referendum* held. The result was the confirmation of the membership.[6] From that point, until 2015-2016, the questioning of the EU membership did not raise again. The special relationship between the UK and the EU could be presented from the legal aspect, too. From this perspective, the British attitude is very understandable. The common law system is different from the continental one which causes the different way of thinking and using the legal language. Different legal institutions and solutions may cause misunderstanding in cooperation and negotiations. On the other hand, some institutions have an impact to the EU's legal system – especially in the field of creating judgments and precedents in the European Court of Justice (from now on referred to as ECJ).

In the last decade, a euro-skeptic wave swept through Europe. This was encouraged by different internal problems and situations within the EU, and outside the EU. The migrant crisis of the recent years, the financial downturn, etc. all faced the Union to challenges. Due to these challenges, the euro-skeptic forces in the United Kingdom (and in other member states) grew fast. This – besides other social and economic aspects – led to a second *Brexit-case* referendum on 23 June 2016. The outcome was different from 1975 one, the majority of the British electorate voted in favor of leaving the EC. In the following, I compare the withdrawal process of Greenland under international law and the process under European Law.

2. WITHDRAWAL OF A MEMBER STATE FROM THE EC/EU

As the Treaty of Rome and the law of the European Communities did not regulate the issue of a member states' withdrawal, the international law could be used as a background rule in the case of the exit of Greenland. Withdrawal of a member state means a change in the attitude of that state towards the EU. The regulating of the question means the acknowledgment of the process by the organization, in this case, the EU. The lack of the

[6] The first Brexit-case referendum was hold on 5 June 1975. The participation was 64,62%, the 67,23% of the voters voted in favor of remaining in the EC.

regulation means that the integration paradigm was advanced and inclusive to an *ever-closer Union*. The introduction of the withdrawal clause (Article 50 TEU) by the Lisbon Treaty means a turning point – also in the European integration paradigm. In the following, I present the withdrawal of Greenland on the base of the international law as EC Law did not regulate the issue. Then, I present the process on the base of Art. 50 TEU.

2.1. Greenland's withdrawal from the EC – under international law

Harhoff (HARHOFF, 1983) declares "*Greenland holds a vital interest in preserving the existing terms of trade and commerce with the EC after withdrawal*". For that reason, joining to the OCT[7] region was essential to them – at least from an economic aspect. From integration law aspect, it is evident, that forcing Greenland to remain the member state of the EC would have reminded the 'colonial past' of that country – just when they reached their autonomy. Therefore, Denmark declared that regardless of the result of the referendum, they will respect it and accept it. To guarantee this, Denmark submitted a claim to the Council in 1983 to modify the treaties to facilitate the withdrawal of Greenland. The Commission and the European Parliament responded favorably to the Danish request, and the Commission delivered its opinion (Commission, 1983) in which it recommended that Greenland is offered OCT status together with specific additional arrangements. (TATHAM, 2012)

The European Parliament accepted the recommendation; then the Commission started to elaborate supplementary proposals to the fishery-related issues of Greenland to represent the Greenlandic interests adequately. This process resulted in the amendments of the Treaty under Article 236 of the EEC Treaty, according to which the unanimous consent of the Member States could alter or amend the existing Treaties, which took effect with the withdrawal of Greenland on 1 February 1985. (TATHAM, 2012)

Withdrawal from the EEC was not regulated at that time by the Law of the EEC. Therefore the withdrawal process was based on international law. Several questions come to mind when one thinks through the legal aspects of the exiting of an international organization without having an internal regulation or rule of that organization for a situation like that. What were the problems that Greenland's withdrawal created for the EC? Whether was Greenland legally entitled to withdraw?

The fact is that: nobody doubted that Greenland could withdraw. The Danish government draws the attention of the EEC institutions to Greenland's intention and the Commission had officially confirmed that Greenland is free to leave. Was that a legal base rearranged or derived?

In reality, the abovementioned process was a result of negotiations which reached a consensus of the withdrawal (and a change of quasi-member state status to an OCT status) rather than '*divorce*'. Anyway, the process required a legal base, which was consensually the international law. The EEC/EU law and the general rules of international law are like *lex specialis – lex generali*. However, when there is no special rule for the issue (just as in the case of Greenland's withdrawal when the EEC Law did not regulate the unilateral withdrawal of a member state), the international law functions as a background rule.

[7] Overseas Countries and Territories (OCT)

What are the questions come to mind related to the legal (procedural and material) aspects of the exit? First, the 'background rule' was the 1969 Vienna Convention on the Law of the Treaties, which declares norms based on the principle *clausula rebus sic stantibus.* The universal rules of the treaties also apply, thus, e.g., the principle of *pacta sunt servanda* prohibits the prohibition of the unilateral dismission of treaties. The Law of the Treaties of 1969 regulates the termination of treaties besides the issue of the withdrawal of an international treaty or organization.[8]

The Vienna Convention declares that it could be only applied when the treaty – in this case the Treaty of Rome – did not contain requisite provision. About Greenland's case, the Convention appears to contain three regulations:

- Article 54 has incorporated the self-evident rule that a party may withdraw with the consent of all implied parties. The Danish Government, the EU institutions, and Greenland had a consent that Greenland was free to leave the EEC.
- Article 56 regulates the cases when there is the consent – mentioned in Article 54 – cannot be reached. In this case, the 'nature/spirit of the treaties' entitle the party to withdraw unilaterally. The Convention here had entitled the party (Denmark) to denounce Greenland's EC membership if the consent could not be reached. This principle gives the opportunity to exit from the international organization also in that case when the 'spirit' of the treaty does not involve that opportunity. The spirit of the Treaty of Rome includes the value of the integration, the *ever closer Union.* On the other hand, Greenland was never really part of the integration. It had always been an overseas country, moreover a former colony of a member state, which is a developing area. (HARHOFF, 1983)
- Article 62 declares universal rules such as the abovementioned *clausula rebus sic stantibus.* According to that, a party may withdraw from a treaty in case of a fundamental change of the circumstances, when these circumstances constituted an essential basis of the consent of the other parties, and if the change of these circumstances may radically transform the extent of the withdrawing party's obligations under the treaty. The circumstances changed a lot from the (not supported) accession, as the introduction of the Home Rule Act gave more autonomy to Greenland. However, the Home Rule Act could be evaluated as a '*wrongful conduct*' of a state which is going to disorder international relationships. Thus, this principle could not be used in the case of Greenland, even if its theoretical opportunity was present. (HARHOFF, 1983)

Therefore, Greenland's withdrawal was managed according to Article 54, via negotiations, by consent. Greenland had a strong economic interest to leave the EC as the fishing quotas violated their interests in the long run. Due to the economic impact of Greenland to the EC, the effect of its quasi-withdrawal was significant neither. Compared to the withdrawal of the UK, it is obvious that the impacts of the process were much less for the whole Community as it could be expected now.

In the following, I draft the withdrawal process of the UK according to the Article 50 TEU.

[8] Vienna Convention of 1969 on the Law of the Treaties, Part V., Article 42.

2.2. Withdrawal of the United Kingdom from the EU: under EU Law

Article 50 TEU introduces the unilateral right for a member state to withdraw from the EU. Accordingly, EU law regulates the issue of the exit from the Union. Therefore the process cannot be based on international law anymore.

In practice, the negotiated withdrawal seems more likely to happen than the unilateral one. Unilateralism in this sense means the voluntary decision on exiting, made solely by the exiting state, and not means the unilateralism of the whole process. As accession needs active behavior from both the EU and the acceding member state, withdrawal also requires action from the EU as well – at least the silent acknowledgment of the decision of the member state made on the ground of its constitutional requirements. After the member state has made its decision and notified the EU about this, the process becomes bilateral (*i.e.,* bilateral between the member state and the EU). Thus, only the decision of leaving the integration is made unilaterally; the following process is necessarily two-sided in practice.

Article 50 TEU regulates as follow:

"1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, 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. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. 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."

2.2.1. The unilaterally made decision

Article 50 paragraph 1 declares that "*Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*" This means 28 different ways of withdrawal in theory, as every member state has its constitutional requirements. This undermines the process in a sense. From the perspective of European Union law, it does not matter what the constitutional requirements of the exiting member state are. This presumes that the EU is going to accept the decision, without examining the base and conditions under which the national decision was taken. Hypothetically, this means that the European Union trusts that the decision about EU membership is made by

democratically accepted constitutional requirements, and therefore there is no reason to question them.

2.2.2. The procedure

Article 50 paragraph 2 contains procedural provisions. This Section starts with the following: *"A Member State which decides to withdraw shall notify the European Council of its intention."*

The member state – in this case, the United Kingdom – shall notify the EU institutions, namely, the European Council of its intention. More precisely, it is not the intention anymore that is notified, but the decision on the withdrawal. The notification – after internal debates in the UK about who is entitled to submit, the Prime Minister or the Parliament, alone or after the approval of the Westminster[9] – was submitted on 29 March 2017.

Firstly, there is no explicit time limit for taking the action of notification. The referendum resulting in Brexit was held on 23 June 2016, and the notification was submitted nine months later. The British could wait even longer, as EU law does not regulate this issue in detail. Leaving the door open between when the withdrawal decision is made in a member state by constitutional requirements and the notification of the decision is submitted to the EU raises practical problems, such as uncertainty. What if the member state decides to withdraw, but does not take the notification at all?

According to *Steve Peers* and *Darren Harvey*, "*the member states are under the duty to respect the values of the Union as enshrined in Article 2 TEU as well as to abide by the principle of sincere cooperation in Article 4 (3)TEU."* (PEERS & HARVEY, 2017) This necessarily implies that the "*discretion of the UK vis-á-vis the timing for providing Article 50 TEU notification should not be limitless.*" (HILLION, 2015) Thus – according to the spirit of EU law – wasting time and holding the other member states in uncertainty is not compatible with the Union law. That is why the deadline should be counted from the date when the decision is made under the national law. The content that is missing from Article 50 is on the one hand understandable as it only provides a framework, which was probably not intended to be applied. Thus, Article 50 is much more like a European constitutional guarantee for member states to keep their sovereignty tangible than a real, nuanced procedure under EU Law.

Secondly, using the word '*intention*' suggests, that even if the decision is made on the basis of internal law, it is still just an *intention* (and not a fully declared decision) until it is going to be successfully delivered to the European Council. Using the word "*intention*" is controversial to paragraph 1, as that gives the right to the member state to decide on the withdrawal based on its constitutional requirements. Thus paragraph 2 should use the word "*decision*" instead.

Article 50, paragraph 2 continues: *"In the light of the guidelines provided by the European Council, 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. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union."*

[9] This debate was finally decide upon the *Miller* case (*R Miller v Secretary of State for Exiting the EU* [2017]), where the Supreme Court stated that under the British law, the approval of the Parliament is needed before the Prime Minister submits the notification.

This defines the first obligation of the European Union, as the European Council has to provide guidelines for the withdrawal negotiations. This sentence also lacks a deadline because there is no obligation to issue the guidelines in time. The timing of the issue of the guidelines should be counted from the submission date of the notification by the member state. The timeline is also an uncertain factor in the process. The guidelines – in the current case – were issued in April 2017, a month after the UK sent the notification to the Council.

The second part of the sentence obliges the Union to negotiate the withdrawal of the member state. It is not clear whether the provision obliges the EU only to negotiate or that the duty extends to concluding an agreement as well. Subsequent parts of Article 50, however, establish the opportunity of withdrawal without having an agreement, consequently only the negotiation is compulsory which is – taking into account the principle of the loyal cooperation – obvious.

The negotiations and the possible agreement should involve the arrangements for the withdrawal taking into account the future relationship of the member state and the EU. The guidelines of the Council declared that a parallel negotiation process of the withdrawal and future relationship is not possible, only after the first chapter of withdrawal had been finished could the new stage of the future cooperation start. Therefore, it is hard to understand what the *"taking account of the framework for its future relationship with the Union"* means. On the one hand, it is logical to close a process and then start a new one. However, when Brexit happens, the UK becomes a third country from EU law perspective, and this time it can start to negotiate its new relationship with the EU as a whole or with different states via bilateral agreements, the result cannot be seen at this moment. The negotiations necessarily take years, which – without having a transitional period maintaining the current system – is simply uncertain. Moreover, it is unclear what it means to conclude an agreement setting out the arrangements for the withdrawal. Who is entitled to draw the conditions of the withdrawal agreement? Is it an obligation? What if the UK and the EU cannot agree or only in minimum questions due to the time pressure and economic interests?

As the minimum content of the withdrawal agreement – the so-called arrangements – are not listed in Article 50, nor in other parts of EU law, and as paragraph 3 lets the withdrawal happen without having an agreement, this section is also very controversial.

The end of paragraph 2 provides clear procedural regulations declaring that *"agreement shall be negotiated in accordance with Article 218(3) TFEU"* and that the 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."* Thus, this admits the liable body to proceed the withdrawal on the side of the EU, entitling the Council, but requiring a qualified majority on the one hand, and the consent of the Parliament on the other. A complex question also arises from paragraph 2 of Article 50, namely the revocability of the notification. More precisely: can a member state change its mind? Whether the notification under the EU Law is revocable or not? Who is entitled to decide on this?

I address the question from another perspective: assuming that the notification is not an intention, but a decision which was declared by the decision maker in the direction of the addressee, the question is not the revocability of that procedural action of sending this message to the addressee, but the decision itself. And the question is more likely whether

the decision could be revoked unilaterally and unconditionally, or not? If the decision is changeable, then it is just a technical issue whether the notification is replaceable and under what circumstances. The Brexit-literature is quite divided on this topic. Before I summarize the concurring opinions, the first point is that this question – as it is related to EU law – should be interpreted by the European Court of Justice via preliminary ruling procedure, as that is the only body who is entitled to give the missing authentic interpretation.

Firstly, there is a political and a legal side to this question. Politically, deciding to leave integration and then withdraw the withdrawal process seems irrational and not permissible. This would easily lead to political games of the double mill. Nevertheless, other member states may follow the British example, which is – from the integrationist perspective –not reasonable. Logically, the previous argument is false from a practical point of view. Every member state has advantages of the membership, hypothetically saying, it is not plausible that a member state is going to follow the British example just because they seemingly gained a 'plus' via Brexit. Thus, the precedent impact of the Brexit is full of doubts.

Legally, there is no prohibition in Article 50 related to the reversibility of the process. Thus, as it is not forbidden, it is legally – theoretically – possible, until the European Court of Justice interprets the question differently. The question – as I mentioned above – is whether it is revocable unilaterally, unconditionally and at any time? As *Hillion* argued related to the timing of the notification itself, it cannot be limitless in time. The same has to be true in this case as well. Therefore, firstly, EU law does not prohibit it, so it is theoretically possible. Secondly, revocability arises from the ancient legal values formed in principles of law – such as the '*clausula rebus sic stantibus*'. If we consider the two-year time that Article 50 provides for the process and if there is no mutually agreed extension, within this time-frame, the notification should be revocable. Thirdly, the last paragraph of Article 50 declares that a member state who has withdrawn may apply to be a member of the EU later − treating it as a third country – using Article 49 as a basis. Therefore, if the TEU keeps the door open for the future, strengthening the integrationist perspective of "*establishing an ever-closer Union*", why would the EU close the road '*halfway*' if a member state could change its mind before leaving integration? Some of the commentators (TRIDIMAS, 2016) (CRAIG, 2016) (THIELE, 2016) (EECKHOUT & FRANTZIOU, 2016) agree on that the notification is revocable, but nor unconditionally and neither limitless. In addition to that, *Craig* highlights "*the nature of electoral politics in democratic societies dictates that there may well be a change of government from time to time. It would, therefore, seem absurd to hold as a matter of law that the notification to leave the EU rendered by a previous government was binding upon the incumbent government despite them assuming office on an electoral pledge to reverse the withdrawal process.*" (PEERS & HARVEY, 2017)

All in all, from a legal point of view, there is no reasonable obstacle in the way of revoking the notification made on the base of Article 50. However, politics could undermine the legal interpretation, and until the only authentic interpreter of the EU law – namely the European Court of Justice – is not addressed with this question via preliminary ruling procedure, the commentators can only argue.

Article 50 defines the parties to the negotiations which on the EU side is the European Council. Paragraph 2 refers to the Article 218 (3) of the Treaty on the Functioning of the European Union (TFEU).

Article 218 (3) declares that "*The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.*"

This focuses on the roles of different EU institutions in the withdrawal progress. These are purely procedural issues. The first duty of the Council under Article 50 is to provide guidelines to provide a framework for the negotiations. Then, it has to cooperate with the European Commission according to TFEU Article 218 (3). Article 50 does not expect consent from the member states related to the withdrawal agreement. An agreement may be concluded after a qualified majority vote in the Council, then after getting the consent of the European Parliament. Thus, the member states hold no formal veto over the process of negotiation and conclusion of a withdrawal agreement. (PEERS & HARVEY, 2017)

Paragraph (4) declares that the representatives of the exiting member state cannot participate and vote in the EU decisions concerning the withdrawal of that state. On the other hand, the Article does not define the obligations of the exiting member state. It neither obliges it to time limits concerning the submission of the notification, not defines the constitutional standards the decision has to meet, etc. Why the TEU lacks these obligations, while it declares the duties of EU institutions related to the withdrawal process? What are the obligations of the exiting member state, besides those defined in the principles – such as loyal cooperation?

2.2.3. The cease of the state's EU membership

Article 50 (3) provides that: "*The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."*

Thus, the membership of the exiting member state ceases after the two-year period counted from the submission of the notification – in case this period is not extended by the EU and the UK, or unless the withdrawal treaty defines otherwise. This means – in my view – that if there is no extension or other action, on 29 March 2019 at midnight, the Treaties shall cease to apply to the UK. Thus the UK *de iure* loses its membership.

This point clarifies that the withdrawal agreement is just one option, without an agreement the UK's membership can be lost just because of the time. The same happens if only one party intends to extend the period.

Firstly, regarding the 'time,' it is more or less obvious that two years are not enough for this process. In the case of Greenland in 1985, the quasi-exit took more than three years – where the cooperation was not even at the same level as it is now.

Secondly, the exit cannot happen without a transitional period. When a member state accedes to the EU, there is a time frame for '*Europeanisation*,' this means among others: harmonization, closing up economically, implementing certain institutions, etc. Therefore, when a state withdraws, the transition is necessary for the '*de-Europeanisation*' as well. This period is very important, not just from the perspective of the withdrawing state – as it

has to deal with financial, economic, administrative, labor and legal issues – but from the aspect of the citizens as well, especially those EU citizens who are currently living in the UK. Their situation and future is also a very important question that could be the subject of another research paper.

2.2.4. The opportunity for future accession under the withdrawal clause

Article 50 (5) declares that "*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".* This means that after the UK withdraws, there is no condition which could impede their future application to the EU. The door is open, which could mean that the most important guiding principle is the ethos of '*the ever-closer Union*'. The negotiations about the future relationship of the EU and the UK may start only after the withdrawal is done, which assumes a transitional period for negotiations and leading out the United Kingdom from the EU legal system. In any case, this paragraph handles the withdrawing state as a third country with no benefit or advantage in the case of a re-accession. It is important that the Article does not link any extra obligation or "disadvantage" as a consequence if a state which had previously left the EU changes its mind in the future.

3. CONCLUSION

The withdrawal of a member state from the EU reconciles the exit of Greenland and provides the opportunity of comparison. Greenland withdrew by a friendly way, via negotiations, which resulted in a consensual break, followed by a change in status related to the European integration. Ensuring the OCT status to Greenland, the EEC had a guarantee that – besides Greenland remained the co-state of Denmark – it will probably not belong to the United States of America or Canada in an economic aspect. The integration did not lose so much economically by letting Greenland leave. However, they won a country to be treated much more as it needs to be handled –just as other overseas territories (e.g., Anguilla, Bermuda, British Virgin Islands, Cayman Islands, French Polynesia).

The current regulation – under Article 50 TEU (CIRCOLO, et al., 2018) – provides a net which is similar to the values of international law. International law also gives frames and based on strong principles elaborated by the wisdom of the centuries.

The membership is generally a long-term, organic relationship between an organization and a state; thus over time, the circumstances may change. New circumstances may bring new interests, which serve as a base for changing the organic relationship between the member state and the organization. This fills with life the ancient principles of law, such as *pacta sunt servanda*, *clausula rebus sic stantibus*, etc. European Union law also respects these principles – which literally cannot be found in the text of Article 50, but the spirit and values are involved in the European Law as well.

The unilateral withdrawal became included into EU Law by the Lisbon Treaty, which declares that the legislator keeps in mind the possibility of the changes in the circumstances, and respects the fact that a relationship can change less advantageously. In this case, there must be an opportunity provided by the law to change the circumstances or the relationship itself. This is the pure acknowledgment of the abovementioned principles even if it is not specified literally in the text.

The international and the EU legal framework is similar to each other in the unilateral way of deciding on withdrawal. Both ensure the member state to make the autonomous decision of leaving the organization. The way of making the decision, the form of the decision is also in the hands of the member state. By notifying the organization about the unilaterally made decision, the process becomes bilateral, and the official part of the procedure starts. The official procedure involves the negotiations which may result in consent, called withdrawal agreement. Both international law and EU law includes the opportunity of having no consent, in that case international law ensures the application of *pacta sunt servanda* and *clausula rebus sic stantibus*, while the Article 50 TEU declares that after the 2-year-frame of the process is over, the Treaties shall cease to apply to the member state in question. This means the *ipso iure* way of leaving the integration without any agreement about the exit, its conditions or the future cooperation, or at least about the transitional period. This seems impossible in reality, especially in the case of the UK as there are several very important questions which need to be settled before the withdrawal. The transitional period – which may start after 29 March 2019 if the withdrawal happens then and the time frame will not be extended by the mutual consent of the parties – is required to handle all other questions which are not involved in the agreement. The withdrawal contract needs to have rules at least for the EU citizens, the financial issues and especially in the case of the UK: on the border between Ireland and Nothern-Ireland. The regulated divorce is the interest of both parties, the EU and the UK as well, so it is more reasonable than any other way.

In addition to that, the agreement shall determine the legal nature of the transitional period, as it is necessary because the withdrawal agreement cannot decide on the future relationship of the parties according to the Council guidelines. However, the requirement of legal certainty demands that.

All in all, several aspects of the Article 50 roots in the international law heritage and the common values of the legal community. The unilateral decision is the guarantee of the sovereignty of a state; the negotiation is the proof of the equality of parties, the opportunity of having a consent and an agreement makes possible to have a good future relationship, maybe cooperation, that could also be found within the frames of international law.

Article 50 TEU contains the concept of Article 54 and 56 of the 1969 Vienna Convention. Article 54 declares that the parties may agree on that one may leave the cooperation. Then the parties shall negotiate and arrange the agreement. Article 56 declares the right of a unilateral cancellation/denunciation of cooperation for a party.

Article 50 TEU section (1) determines that a member state may decide that it leaves the EU. That is not a denunciation or a unilateral cancellation; it is a unilaterally made decision of a state about its future membership. But the process still needs negotiation. Article 62 of the Vienna Convention was not applicable in the case of Greenland as the introduction of the Home Rule Act – as a new condition which makes unable the membership – cannot be interpreted as a new circumstance. In the current case, it is also not possible to acknowledge the Brexit-referendum as a new circumstance. On the other hand, the concept of the principle could be found behind Article 50 by accepting the fact that a member state is entitled to decide to leave the EU. By the right, the EU acknowledges that circumstances are changing and there is a democratic right for a state to determine its exit.

Conceptually, the TEU does not leave behind the values of international law, but it created a simple framework, which has to be filled with precise content in the future. As a frame, the text is very open; some issues might have to be interpreted by the Court of Justice to keep legal certainty.

To sum up, the exit of Greenland could serve as a base for the know-how of the procedure, even if it was less complex than the UK's one now. The pure principles and legal values do not change so fast, that these are applicable and could be used as a guide when there is a lack.

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