

BREXIT AND THE INTERNATIONAL LAW ON TREATY WITHDRAWAL

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Abstract

The 2016 unprecedented decision of the United Kingdom to leave the European Union has deep implications at many levels and raises several legal questions. These are to be analysed in the context of general rules on international treaty withdrawal established by the 1969 Vienna Convention on the Law of Treaties and the international customary law. At the same time, such an analysis should consider the specific features of the European Union as an international legal entity and the implications of the conditions set out in Article 50 of the Treaty on the European Union. The analysis presents theoretical and practical interest for many reasons, due to the unique character of this situation. This paper will not focus on political issues, it will engage in analysing the effects of the withdrawal notification in the context of the general rules of international law of treaties in this matter.

Keywords: withdrawal, agreement, negotiations, legal obligations

Introduction

Withdrawal from an international treaty constitutes a way of its termination (Aust, 2010, p. 95) and the ending of the treaty obligations incumbent to that Member State (Helfer, 2012, p. 634), depending on the unilateral act of a Member State. From the perspective of international law, treaty withdrawal must be seen as an exception, an *ultima ratio* in the life of an international treaty. However, States are, in a practical sense, always free to leave an international treaty (Meyer, 2010, p. 393).

According to the common rule in this matter represented by Article 42 (2) from the 1969 Vienna Convention on the law of Treaties: „The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty”.

On general terms, Article 54 of the 1969 Vienna Convention on the Law of Treaties states that termination of an international treaty by withdrawal may take place „(a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States.”

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The reason behind the existence of an express clause on treaty termination is related to the principle of *pacta sunt servanda* enshrined in Article 26 of the 1969 Vienna Convention on the Law of Treaties, according to which States are not allowed to be released from treaty obligations by their own will (Villiger, 2009, pp. 684-686) and constitutes an exception to this principle (Dörr et Schmalenbach, 2011, pp. 945-962). The principle of *pacta sunt servanda* applies to the entire existence of an international treaty beginning with its creation, continuing with its execution and eventually its termination (Helfer, 2010, p. 67).

In the case of United Kingdom leaving the European Union, the applicable rules on withdrawal are those enshrined by Article 50 of the Treaty of the European Union (TEU) which sets the rules and proceedings to be followed in case of a State's intention to exit the European Union.

The provisions of the Vienna Convention on the Law of Treaties are still relevant because they have a general character and the formal conditions set out in Article 50 TEU are not entirely clear and precise on the procedure to be followed and the competences of the European institutions during this process, thus leaving the question if the exit of the United Kingdom from the European Union should take place exclusively according to the European Union law or it may take into consideration the general framework of international treaty law on this matter.

The Treaties of the European Union are governed by the general rules on international treaty as stated in the 1969 Vienna Convention on the Law of Treaties or by the customary international law rules. The core relevant international law principles applicable in matters concerning the interpretation of international treaties are the following: the specific terms of a treaty prevail, as interpreted in accordance with that treaty and the Vienna Convention on the Law of Treaties; the terms of a treaty are interpreted 'in good faith in accordance with the ordinary meaning to be given to the treaty in their context and in light of its object and purpose'; State parties to a treaty are under an obligation to perform a treaty in good faith; this obligation continues to apply for so long as the treaty is in force, so it survives the notice of withdrawal and continues to apply until such time as the treaty is no longer in effect; there can be no justification under internal laws for a failure to perform obligations under the treaty; customary international law obligations on a State continue to apply even after withdrawal from a treaty; reciprocity of rights and obligations is normally provided for in a treaty (Villiger, 2009).

1. State practice concerning treaty withdrawal

There are few cases in the state practice on international treaty withdrawal. We will focus on few examples. In 1997 North Korea attempted to terminate its membership to the International Covenant on Civil and Political Rights which does not have any provision on the possibility of exit. In the same year, the United Nations Human Rights Committee issued the *General Comment No. 26* in which it concluded that the Covenant was not capable of denunciation or withdrawal (UNHRC, General Comment No. 26, 1997).

More recently, on 12 October 2017 the United States of America officially notified UNESCO (United Nations Educational, Scientific and Cultural Organization) of the intention to withdraw and establish a permanent observer mission to this Organization. Pursuant to Article II (6) of the UNESCO Constitution, the withdrawal will take effect on December 31, 2018 (United States Department of State, 2017). The United States also withdrew from the Rome Statute of the International Criminal Court in 2002 and from the Paris Agreement. The Russian Federation withdrew as well from the Rome Statute on International Criminal Court. We will not analyse the reasons and the effects of these particular cases, the aim for citing them is to show that as exceptional as it may be, withdrawing from international treaties happened before.

Yet, these cases are different and describe a simpler procedure to be followed than the one discussed in this paper because the leaving clauses have a different content. Technically speaking, the United States were never a Member State to the Rome Statute of International Criminal Court, as they only signed this treaty on 31 December 2000 and did not ratify it (this was the form of expressing consent to be bound by the treaty and by which the treaty would have become mandatory for the United States) and the notification from 6 May 2002 expressed that „the United States does not intend to become a party to the treaty” (United Nations Treaty Collection, 2018) and thus it has no legal obligations in connection with its signature.

The same approach was adopted by the Russian Federation, which signed the Rome Statute on 13 September 2000 and informed the Secretary General about ‘the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court’ (United Nations Treaty Collection, 2018).

The United States became a party to the 2015 Paris Agreement which it signed on 22 April 2016 and expressed its content to be bound by acceptance on 3 September 2016 (United Nations Treaty Collection, 2018). On 4 August 2017, the United States notified its intention ‘to withdraw from the Paris Agreement as soon as it is eligible to do so’ (US Department of State, Communication Regarding Intent to Withdraw from Paris Agreement, 2017).

As concerns the European Union legal order, the only example related to this the case of Greenland, in 1982 – when a majority of 53% to 47% decided in a referendum to leave the European Communities. But this case is different from the case of the United Kingdom in many ways: Greenland as part of Denmark was not a European Union (European Communities) Member State *per se* and Denmark tried to obtain a modification in the territorial application of substantial parts of the EU Treaties by excluding Greenland from their application. This had as a result the conclusion of special agreements on trade and fisheries (Odermatt, 2017, p. 1054).

Unlike Greenland, the process of withdrawal of United Kingdom is more complex and difficult taking into consideration its legal status, the specific features of the European Union legal order and legal relationships between its Member States and the organization.

The European Union is a special international legal entity, a *sui generis* and supranational international organization (Adam *et al.*, 2015) and its functioning is



regulated by the Treaty on the Functioning of the European Union (TFEU) (OJ C326, 2012, pp. 47–390) and the Treaty on European Union (TEU) (OJ C 326, 26.10.2012, pp. 13-390).

A very important element that will have strong implications for the functioning of the Union after the exit of the United Kingdom is its supranational character which created a very strong link between Member States arising from the transfer of sovereign powers to the organization (Schermer and Blokker, 2011, p. 99).

The current legal debate on Brexit concerns especially the issues on the future relationships between the EU and United Kingdom during the negotiations period and after the conclusion of the leave agreement between the European Union and United Kingdom. In addition, the role and the status of European Union law that was implemented in the United Kingdom and rules applicable to commercial and private international law relations will change and at this moment it is not entirely clear in what manner.

This second issue concerns not only the relationship as legal entities but also the status of the European Union law in the United Kingdom and what measures (if any) might be taken in order to safeguard the rights and interests that the United Kingdom enjoys now.

2. The withdrawal clause – Article 50 TEU

On 29 March 2017, the United Kingdom notified the European Council of its intention to leave the European Union in accordance with Article 50 TEU. Taking into consideration that this is a formal and official notification of the intention of the United Kingdom to withdraw from the European Union and that the negotiation process between the European Union and the United Kingdom already began, the paper will not focus on constitutional issues concerning authorities and competences in triggering the exist process.

Yet it should be mentioned that the United Kingdom Supreme Court held in the *Miller v. Secretary of State for Exiting the European Union* (24 January 2017) „that an Act of Parliament is required to authorise ministers to give Notice of the decision of the UK to withdraw from the European Union.” (United Kingdom Supreme Court, 2017, Judgment, 24 January 2017, R (on the application of Miller and another) (Respondents) v. Secretary of State for Exiting the European Union (Appellant); Phillipson, 2017, pp. 46–93).

For the purposes of this paper, it should be noted that the possibility of a Member State to withdraw from the European Union was for the first time introduced by the Lisbon Treaty (OJ C 306/1, 2007) thus putting an end to legal debates and controversies in this regard (European Parliament, Briefing, 2016; Wessel, 2016).

Furthermore, the aim of introducing a special clause on withdrawal in the Constitutional Treaty was to provide an express treaty based legal framework concerning the procedure, taking into consideration that in lack of this type of

clause, the issue of treaty termination by withdrawal would be discussed and argued on the field of customary international law.

Article 50 reads as follows:

„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.” (Consolidated Version of the Treaty on European Union, 2012).

3. What do we know until now? The implications of Article 50 TEU

One may easily observe that Article 50 TEU contains only procedural conditions and does not set down any substantive conditions for a Member State to be able to exercise its right to withdraw and constitutes *lex specialis* to the general rules of the 1969 Vienna Convention on the Law of Treaties (Waibel, 2017). It clearly provides that the withdrawal process begins with a formal notification from the Member State to the European Council declaring its intention and that there is maximum two years time-frame in which the negotiations of the withdrawal agreement should be concluded otherwise the state's membership ends automatically and the Treaties will cease to apply to the withdrawing Member State. The reason for establishing a period between the formal notification and the actual exit is to allow the organization and the leaving State to reorganize taking into consideration that structural changes will happen, including financial issues (Wessel, 2016).



However, Article 50 TEU provides the possibility to extend this period by joint decision of the European Council and the Member State without providing any elements or criteria for such a decision. As it appears, the role of the European Council is decisive in the withdrawal process as it provides the guidelines for the negotiations.

Although Article 50 TEU does not explicitly provide any competences for the European Commission in this process, according to Article 218 (3) TFEU, the European Commission would make recommendations to the Council to open negotiations with the withdrawing state.

As already discussed, there is no precedent for such an agreement and probably the entire negotiations process will take longer than two years due to the high level of complexity of issue to be established and reorganized between the former Member State and the European Union (Meyer, 2016).

From the reading of the text it is clear that the decision to leave the European Union is unilateral in nature (Piris, 2015) and it does not need a justification or motivation from the Member State nor the endorsement of formal agreement of the other Member States (Bowers *et al.*, 2016, p. 6).

However, it should be emphasised that technically and legally the withdrawal agreement is not a unilateral act of the Member State, but an agreement between it and the European Union, which sets out concrete details and conditions regarding the legal relationships between the European Union and the former Member State.

The main reason for the necessity of an agreement is represented by the complexity of legal relations in which the withdrawing State is a party as a result of its membership to the European Union.

As a European Union Member State, the United Kingdom benefits from more than 700 international agreements concluded by the European Union with third states or international organizations (Odermatt, 2016) which will have to be renegotiated due to the withdrawal process (Larik, 2017; Meyer, 2016).

At the end of the negotiation period, the Union negotiator will present an agreement proposal to the Council and the European Parliament, taking into account the framework of the future relationship of the United Kingdom with the EU. Whereupon the European Parliament must give its consent, by a vote of simple majority, including Members of the European Parliament from the United Kingdom. The authority to conclude the agreement belongs to the Council, by a vote of strong qualified majority. Following these procedures at the European Union level, the United Kingdom must also ratify the agreement according to its own constitutional arrangements (Article 50 (1)).

Unlike the accession of new Member States to the European Union, the withdrawal of a Member State does not require ratification by the remaining Member States but any Treaty changes or future international agreements (such as a free trade agreement) that might be necessary as a consequence of the withdrawal agreement would need to be ratified by the remaining Member States in accordance with Article 48 TEU. Also, the text of Article 52 TEU on the territorial scope of the Treaties, which lists the Member States, would need to be amended, and Protocols

concerning the withdrawing Member State revised or repealed (European Parliament, 2018).

During the negotiations, the United Kingdom is still a full Member of the European Union and should continue to participate in all areas of the European Union as usual, although it may be mentioned the example of the informal European Council meeting on Brexit on 29 June 2016 when David Cameron was excluded even if there was no formal notification on triggering Article 50 TEU by the United Kingdom (Bowers *et al.*, 2016, p. 7).

It is clear that the United Kingdom will no longer benefit from the international treaties that the European Union as an international actor concluded with other legal entities and should negotiate its accession to these treaties.

Another type of international treaties will keep their applicability and legal effects: it is the case of the so called *mixed treaties*, meaning those treaties in which the United Kingdom is a part alongside European Union and an international organization or another state or states (Odermatt, 2016).

Article 50 is silent as well as regards the issue of ‘acquired rights’, meaning those individual rights created by the European Union legal order for the British citizens and businesses in the European Union or for the citizens of other Member States and businesses in United Kingdom and their automatic continuation after leaving the European Union. To be more precise, the European Union Treaties are also silent about this possibility and thus the solution to this matter may be found in the general principles of international law on the law of treaties provided by the 1969 Vienna Convention on the Law of Treaties and/or by the customary international law (Bowers *et al.*, 2016, p. 4).

From the perspective of individual rights created in the legal order of Member States by the EU law, leaving the European Union is different from leaving any other international organization or withdrawal from an international treaty that establishes rights and obligations between Member States (Wessel, 2016).

4. The current state of the negotiations process – ‘nothing is agreed until everything is agreed’

Following the formal notification on Article 50 TEU, on 2 February 2017 the United Kingdom published a *White Paper* on its position and provided a set of principles that will guide the process and established priorities for the Government (such as ‘taking control of our own laws’ or ‘providing certainty and clarity’) (Odermatt, 2016, p. 1052). The aim of the United Kingdom as stated in the letter addressed to the President of the European Council was to reach a comprehensive agreement on economic and security issues within the two-year time frame.

Following the triggering of the leaving clause of Article 50 TEU, a series of meetings took place concerning different issues on United Kingdom exit from the European Union, the most recent document from 23 March 2018. Before this moment, according to the European Council guidelines of 29 April 2017 (Council of the European Union, 2017), the *Draft Guidelines* for negotiation from 31 March



2017 (Council of the European Union, 2017) and the Council negotiating directives of 22 May 2017 (Council of the European Union, 2017), the first phase of the negotiations focused on the rights of citizens, the financial settlement, the issues relating to the island of Ireland, other separation issues, and the governance of the Withdrawal Agreement (Council of the European Union, 2017).

The 31 March 2017 Guidelines set out the core principles for negotiations, which include the idea of a phased approach to negotiations.

Beginning in June 2017, the withdrawal negotiations have focused on three key priority issues – citizens’ rights, the financial settlement and the situation of Northern Ireland – alongside other ‘separation’ provisions (e.g. ongoing EU judicial and administrative procedures, Euratom related issues, data protection etc.)

The European Commission organized a *Taskforce on Article 50 negotiations with the United Kingdom* having as competences preparing and conducting the negotiations with the UK, taking into account the framework of its future relationship with the European Union (European Commission, 2018).

The act adopted by the European Council on 23 March 2018 contains the Guidelines in this matter (European Council, 23 March 2018). The document firstly mentions the result of negotiations so far, mainly the agreement reached on parts of the legal text of the *Withdrawal Agreement* concerning citizens’ rights, the financial settlement, a number of other withdrawal issues and the transition (European Council, 23 March 2018, para. 1). It also notes that the progress may be achieved by intensifying efforts on remaining withdrawal issues including those referring to territorial application especially as regards Gibraltar (European Council, 23 March 2018, para. 1). At the same time, it should be noted that the introductory part of the Guidelines expressly states that the agreement should be reached on every issue, using the terms – ‘nothing is agreed until everything is agreed’.

In this context and regarding the *Draft Agreement* on the withdrawal after the negotiations round of 16-19 March 2018 (European Commission, *Draft Agreement*, 2018) and the number of issues that need to be established by March negotiations, the two years’ time frame appears insufficient to solve all the matters related to the United Kingdom-European Union future relationship. Taking into consideration the complexity of all these issues and the sensitive character of some of them the automatic ending of the United Kingdom’s membership for failure to observe the two-year time term seems highly unlikely.

Negotiations rounds took place between 16-19 April 2018 on remaining issues (European Commission, 2018), on June (European Commission, 2018, 19 June), July and recently in August 2018.

The topics for discussions at the forthcoming meetings between the European Union and the United Kingdom, agreed during the negotiations round of 2-4 May 2018 as a way to structure include issues on co-operation (structure, governance, dispute settlement, participation and cooperation with European Union bodies), economic partnership (aims, goods, agricultural, food and fisheries products, customs, financial services, services and investments, transport, energy), security (law enforcement and criminal justice, foreign, security and defense),



cross-cutting cooperation (data protection, science and innovation) (European Commission, 2018).

Even if the intent and the pending negotiations are for the purpose of the United Kingdom exiting the structure of the European Union, it is expected that United Kingdom will want to maintain its collaboration with the Union in certain areas in order to have access to the single market such as remaining in the European Economic Area and joining European Free Trade Association. Another way might be represented by conclusion of bilateral agreements with the European Union (following the Swiss model) (Bowers *et al.*, 2016, p. 4-5).

The United Kingdom is set to leave the European Union on 29 March 2019. According to the Articles 121-126 of the Draft Agreement, there shall be a transition or implementation period starting on the date of the entry into force of the agreement until 31 December 2020.

During this period, European Union law shall apply in the United Kingdom except the situations provided by the rest of the Article 121. This is also applicable to the jurisdiction of the Court of Justice on the United Kingdom.

5. The withdrawal agreement – the legal nature

The agreement mentioned by Article 50 TEU that will be concluded between the United Kingdom and the European Union will certainly represent an international treaty in the sense of the definition given to the term ‘treaty’ by Article 2 (a) of the 1969 Vienna Convention on the Law of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. In the hierarchy of the legal sources of the European Union such an agreement will not be part of primary law as it is not concluded between the United Kingdom and the other Member States and thus it might be subject to the control of the Court of Justice of the European Union who will be able to analyse its legality and compatibility with the European Union law according to Article 218 (11) TFEU (European Parliament, 2016). One possibility could be challenging the Council’s decision to conclude the agreement through an action for annulment according to Article 263 TFEU.

The legal consequence of the withdrawal agreement will be termination of the Treaties for the leaving state which is released from any obligation to perform the treaty (Helfer, 2012, p. 640). However, it must be acknowledged that any national acts adopted in implementation or transposition of European Union law in the United Kingdom would remain valid until the national authorities decide to amend or repeal them (European Parliament, 2016).

Regarding the relation between the international treaties (or agreements) and the municipal law, the legal system of the United Kingdom is a dualist one, meaning that any international agreement ratified by the United Kingdom will not be directly applicable in the national legal system (will not be a part of the domestic legal system). Following the concluding of the agreement in order for it to be applicable and create legal consequences, it should be implemented in the United Kingdom’s national legal system. In other words, the terms of the



agreement concluded between the European Union and the United Kingdom will need approval from the Parliament (Bowers *et al.*, 2016, p. 9; Caird, 2018) expressed in an Implementation Bill, yet the Parliament does not have a legal obligation in this regard.

The European Union Treaties were implemented pursuant to the 1972 *European Communities Act* and after the entering into force of the Withdrawal Agreement the United Kingdom will have to reshape its domestic legal order according to its new legal status of a former member of the European Union.

6. Are there individual acquired rights?

One of the most sensitive issues to be established is that of citizen's rights acquired under the European Union law (the so called „acquired rights doctrine” that does not have a conventional definition nor is generally accepted) which refers to rights of United Kingdom nationals in the other Member States and vice versa. This topic is particularly important as a number of around 3.5 million EU nationals (excluding Irish) were estimated to reside in United Kingdom from January 2017 to December 2017 and around 0.8 million United Kingdom citizens were resident in other European Union States (excluding the Republic of Ireland) on 1 January 2017 (Department for exiting the European Union, 2018).

For the nationals of a Member State the European citizenship has a special value and legal consequences such as free movement, residence rights, free movement of workers, freedom of establishment, free movement of goods and services and is linked to the territoriality principle (Kochenov, 2016, p. 11-13). Articles 9 TEU and 20 para 1 TFEU state that Union citizenship is additional to and does not replace national citizenship.

The Treaties on the European Union are silent on the possibility of their continuation for the citizens of the United Kingdom after leaving the European Union and as already underlined, Article 50 TEU contains mainly procedural aspects.

In this context, one may analyse if the provisions of the Vienna Convention on the Law of Treaties may be useful. Article 70 („Consequences of the Termination of a Treaty”) of the Vienna Convention states that:

„1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

- (a) Releases the parties from any obligation further to perform the treaty;
- (b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.”

The provisions of Article 70 predate the Vienna Convention and codify customary international law (Helfer, 2010). Although the text is very clear we must

underline that it directly concerns relations and secures legal effects between States not for individuals. On the other hand, in a more extensive view one could interpret the provisions of Article 70 para 1 (b) in the sense that the United Kingdom nationals will keep their rights derived from their European citizenship after the United Kingdom is a third State for the European Union considering that this legal status was created through the execution of the treaties governing the European Union.

Before the *Draft Agreement* was made public, the Directorate General of the European Parliament published in 2017 a detailed study on the acquired rights issue from the perspective of public international law and the consequences that Brexit will produce on the legal status of United Kingdom citizens, noting that general international law does not provide protection of the subjective rights of individuals that may continue in the case of withdrawal from the treaty that created them by the national state and that there are no acquired rights but the situation may be different in the case of an withdrawal agreement under Article 50 TEU (European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2017).

As it appears, The European Court of Justice may analyse this issue and establish the legal consequences for the individual rights as a court from Netherlands had the intention in February 2018 to address the European Court of Justice the question if British nationals will automatically lose their European citizenship as a consequence of Brexit (Teffer, 2018). The case is not at this moment registered to the European Court of Justice, yet the questions to be addressed appear to be the following:

“1. Does the withdrawal of the United Kingdom from the EU lead to the automatic loss of EU-citizenship of the British nationals, thus resulting in the loss of the rights and freedoms deriving from EU citizenship, if and in so far as the European Council and the United Kingdom do not agree otherwise in the negotiations?

2. If the answer to the first question is in the negative, should conditions or restrictions be imposed on the retention of the rights and freedoms derived from EU citizenship?” (District Court of Amsterdam, Case number/session number: C/13/640244/KG ZA 17-1327 FB/AA, 7 February 2018).

At a first look the answer to the first question may be in the affirmative, as the European citizenship constitutes a consequence of having the nationality of a Member State which means that after Brexit, the British nationals will no longer enjoy the legal status of the European citizenship.

However, this quick conclusion is difficult to accommodate with the interpretation of the European Court of Justice in the *Van Gend & Loos Case* (ECJ-Case C-26/62, *van Gend & Loos*, 1963) which stated that EU law confers rights on the nationals of the Member States that become part of their „legal heritage” without any other clarifications.



It should be nevertheless noted that the *Draft Agreement* contains provisions on citizens' rights, in Part II entitled „Citizen's rights” which is structured in Title I – „General provisions”, Title II – „Rights and Obligations”, Title III – „Coordination of social security systems”, Title IV – „Other provisions”, having 27 articles.

In Article 8 of the *Draft Agreement* we find some useful definitions of terms: „host State”, „family members” and „frontier workers”, „State of work”, and „rights of custody”, all having as a common feature that they consider the achievement of a legal status before the end of the transition period and continue to do so thereafter. The aspects of different types of legal status are quite detailed. For example, the conditions and restrictions that may be applied to rights related to residence are detailed in a number of 10 consistent articles.

Taking into consideration that the provisions on citizens' rights refer to „Union citizens” and „United Kingdom nationals” the solution to the legal dilemma on losing the European citizenship by the latter category is obvious. Yet many of the rights related to the European citizenship will continue if they were acquired before the transition period and with respect to the conditions set in the *Agreement*.

However, it is very important to note that all these conditions shaping the new relations between the European Union and the United Kingdom will apply if the terms contained by the *Draft Agreement* will become part of a binding legal instrument accepted both by the Union and by the United Kingdom. In the unlikely case of leaving without the conclusion of an agreement, the dilemma will continue to exist and will be solved by the European Court of Justice.

Conclusions

Although the *Withdrawal Agreement* is not entirely negotiated, there is a certainty: leaving the European Union will have great significance for the United Kingdom and for the European Union both at the international and at the national level.

Both parties will need to reorganize their structure and the applicability of the legal order. The United Kingdom will have to reactivate all the dimensions of its statehood and renegotiate a large number of international agreements from which it benefited as a Member State or perhaps withdraw from others and at the same time reset the internal domains in which the European Union law was applicable. It is difficult to predict the length of this entire Brexit and post-Brexit process, yet the two years-time frame provided by Article 50 TEU will surely not be enough. More likely a period of 10 to 15 years may be sufficient for the completion of the entire exit process.

Despite the technical details and the negative effects of the United Kingdom leaving the European Union the role and the influence of the British judges and advocates general in the shaping and development of the European Union legal order and the activity and case law of the courts of the European Union cannot be challenged and will remain forever in the history of the European Union as particularly important and infallible.

Even if the negotiation process started and the parties drew up the *Draft Agreement*, there is no impediment for the United Kingdom to rejoin the European Union (as the United States after it left the International Labour Organization in 1977).

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