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The legal and constitutional implications of Britain's withdrawal from the EU

Prawne i konstytucyjne skutki wyjścia Wielkiej Brytanii z Unii Europejskiej

Abstract: As Britain has voiced her opinion on the continued membership in the European Union and expressed her wish to leave its structures, it seems essential to provide an understanding of the impact of its exit in the legal and constitutional context. The following paper aims at presenting the background to the 'in or out' referendum on the UK's membership in the Union, the complexity of the exiting route, the most immediate legal and constitutional consequences of the decision as well as the possible future implications in the internal UK's relationship between the devolved nations. The article bases on a body of papers and analyses provided by several British and foreign institutions and authors published both before the June (2016) referendum was held and afterwards and attempts to examine the kingdom's rights in revising its deal with the European Union, the outcome of the popular vote as well as its possible implications of the new situation.

Keywords: referendum, European Union, Brexit, legal and constitutional implications

Abstrakt: W sytuacji, gdy Wielka Brytania wyraziła swoją opinię odnośnie dalszego członkostwa w Unii Europejskiej i zdecydowała się na opuszczenie jej struktur, wydaje się niezbędne, aby wyjaśnić, jakie są konsekwencje tej decyzji w kontekście prawnym i konstytucyjnym. Niniejszy artykuł ma na

celu przedstawienie tła referendum w sprawie członkostwa Wielkiej Brytanii w Unii, złożoności procedury wyjścia, najbardziej widocznych konsekwencji prawnych i konstytucyjnych, jak również ewentualnych przyszłych implikacji tej decyzji w zdecentralizowanym królestwie. Artykuł bazuje na szeregu dokumentów i analiz autorstwa brytyjskich oraz zagranicznymi instytucji i autorów opublikowanych zarówno przed czerwcem (2016), kiedy odbyło się referendum, jak i po. Przedstawia przyczyny dokonania rewizji kontraktu z Unią Europejską, wynik powszechnego głosowania i możliwe konsekwencje nowej sytuacji.

Słowa kluczowe: referendum, Unia Europejska, Brexit, prawne i konstytucyjne konsekwencje

Britain voted to leave the European Union in the referendum held on June 23, 2016 due to David Cameron's unsound decision to resolve the political conflict at home. Although the 'leave' result was taken by a small but still substantial margin, it has already been confirmed as standing by the leading British politicians including the former Prime Minister, who stepped down as a consequence of the lost vote, and Theresa May, the newly elected Conservative leader. The picture that is emerging after the vote is that of a heavily polarised country, with Remain constituencies coming in more pro-European than expected, and Leave areas more determined to leave. Geographically speaking, the first are located in Scotland, London and other major British cities; the others representing every English and most Welsh regions. Further, beside this internal complexity, the more immediate consequences of the referendum outcome are the steps that have to be taken by the kingdom to secure its future position both in Europe and in the world.

Background to Britain's 2016 referendum on leaving the EU

The idea of holding a referendum on any political issue was practically unknown in Britain before the year 1975. It was the sovereign Parliament that was understood as "being exclusively representative" in the British democracy¹. As Bogdanor remarks, the British

¹ V. Bogdanor, *The New British Constitution*, Oxford and Portland 2009, p.173.

constitution “[knew] nothing of the people.”² Yet, Dicey, a well-known jurist and constitutional theorist, acknowledged British people's involvement in political matters already in the 19th century. In his opinion, they came to possess or, at least, share some of the political sovereignty in the state, leaving the legal sphere exclusively to Parliament³. What is more, in 1910, he declared that it was time to formally recognise the principle of a referendum, which in fact, if not in theory, formed part of constitutional morality.⁴

The unsolved position of electorate in the political arrangements of the Kingdom lay partly at the heart of the uncodified British constitution and the role it ascribed to the Crown – the source of sovereignty in ‘the people.’ Accordingly, the political culture of democratic Britain assigned to people the role of subjects, not of citizens. Such an arrangement was further reinforced by the relationship between electorate and the semi-public institutions, the product of the electoral system, in which people – the electors seceded their power to their representatives in Parliament, limiting even their own right to information.⁵ Having the above in mind, any referendum was to be treated as not legally binding, and easily ignored.

It should thus come as no surprise that the first national referendum in Britain took place in 1975 and, in the light of the most conservative version of the doctrine of parliamentary sovereignty, was preceded by a debate whether it was at all ‘constitutional.’ As Bogdanor reports, it was allowed to go forward after it was finally agreed that Parliament could choose to ignore its outcome and treat it as merely advisory.⁶

The 1975 ‘in-out’ referendum was held to ascertain the rightness of Britain's 1972 decision to join the then European Community. It did not concern the principle of the entry alone, but its

² V. Bogdanor, *Power and the People*, London 1997, p. 15.

³ A.V. Dicey, *Law of the Constitution*, London 1885, pp.73-6.

⁴ A.V. Dicey, *The referendum and its Critics*, “Quarterly Review”, 1910, 212, pp. 538, 550.

⁵ C. Turpin and A. Tomkins, *British Government and the Constitution*, Cambridge 2007, pp.494-495.

⁶ V. Bogdanor, *The New British Constitution*, Oxford & Portland 2009, p. 173.

complex conditions. The Labour Party determined to resolve the controversy regarding the whole Common Market debate both between and within the political parties which centred around the question of the entry's terms. The outcome was a massive two-to-one vote in favour of remaining in the Community.⁷ Around 67,2% of electors, at a comparably high turnout, i.e. 64,5%, voted 'yes' to the question: "Do you think that the United Kingdom should stay in the Common Market?" Such a result seemed to cleanse the British politics of the longstanding debate on Europe in the isles for decades.⁸

However, coming to terms with the European question in the eighties appears to be no longer in effect presently. For long, Britain's membership in the European Community (presently the European Union) has remained a thorny point that transcended all major political parties threatening their split. Issues such as a derogation from one's own sovereignty or democratic deficit within the Union itself appeared damaging.⁹ What the British denounced most was the fact that the EU's legislature, which cannot initiate legislation, leaves this prerogative to the executive branch, in fact a group of unelected technocrats. Recent developments such as the migration issues, the rise of the UKIP or the dispute between Britain and the EU about the appointment of Jean-Claude Juncker as President of the European Commission again shifted the European issue from the margins of British politics to its mainstream.¹⁰

Being under an increasing pressure from its own backbenchers, David Cameron committed the Conservative party to holding a referendum on Britain's withdrawal from the EU or an attempted renegotiation of its status in his Bloomberg speech already in 2013. By doing this, he additionally strengthened his position in the 2015 parliamen-

⁷ L.J. Macfarlane, *Issues In British Politics Since 1945*, Harlow 1981, pp. 149-150.

⁸ V. Bogdanor, *The New British Constitution*, Oxford and Portland 2009, pp. 31-31, 176.

⁹ N. MacCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth*, Oxford 1999, pp. 79-95.

¹⁰ R. Flamini, *European Disunion: Cameron, the EU and the Scots*, "World Affairs", 2014 (9/10), pp. 8-15.

tary elections. The decision was sparked by the then recent survey findings showing that a majority of Britons wanted to leave the EU.¹¹ By raising stakes so high, Cameron wished to ascertain that the developments in the party would not lead to more infighting. At the same time, he intended to oppose to the UE's moves towards closer political union, as well as gain control over a largely unchecked euro-sceptic agenda at home.¹² Consequently, the in-out EU referendum on Britain's membership held on Jun. 23, 2016 appeared to be an indispensable act to solve the awkward Britain's relationship with the Union. As the former Conservative Prime Minister, Sir John Major, stated "[the relationship with Europe] has poisoned British politics for too long, distracted parliament from other issues and came close to destroying the Conservative party. It is time to resolve to the matter."¹³ However, the situation seemed extremely viable as it appeared practically impossible to weigh up all costs and benefits of leaving the EU. Besides, the referendum itself could not answer and resolve all the troublesome questions that underlied the UK-EU relationship.

There were four demands forwarded by Britain before the referendum which would satisfy euro-sceptics and keep Britain inside the Union. The first concerned the economic governance of the EU. Britain sought reassurances that any further plans of euro zone integration would not undermine non-euro member states. Secondly, it expected limiting the EU regulation and pursuing free trade deals. Thirdly, it wanted its exemptions from the plans of ever-closer union favouring national parliaments' sovereignty. Finally, Britain demanded some measures that would restrict the free movement principle. While most of these, except the migration issue, seemed achievable, the situation in Britain before the referendum was held was far more different than the one Harold Wilson experienced in 1975, when he secured the country's stay after short negotiations and some minor concessions. This time, the well-organised Leave campaign, high

¹¹ J. Springford and S. Tilford, *The Great British Trade-off. The Impact of leaving the EU on the UK's Trade and Investment*, London 2014, p. 1.

¹² T. Olivier, *Europe without Britain*, Berlin 2013, p. 8.

¹³ J. Major, *The Referendum on Europe. Opportunity or Threat*. London, Feb. 14, 2013. <https://www.chathamhouse.org/events/view/189227>

expectations of new concessions and hostile public opinion towards the EU policies raised stakes much higher.¹⁴

Furthermore, despite some concessions made by European states to satisfy the ‘four baskets’ of demands and Mr Cameron’s urging the country to remain, the result of the referendum confirmed the Britons’ wish to leave (with 52% in favour of the move with a referendum turnout 71,8%).¹⁵ Accordingly, the Prime Minister’s battle over Britain’s EU membership was called a phoney war and, for political commentators, it seemed to be more like a self-inflicted wound, an unfortunate attempt to ‘renegotiate’ its own place within it.¹⁶

However, the most striking outcome of the vote seems to be the institution of a referendum itself and its present-day constitutional status. According to the constitutional law, it is not binding as long as the British Government officially triggers the whole exiting procedure and Parliament approves of it. It remains unclear what role public opinion would play in the present mechanism of constitutional adjudication. As *The Mirror* survey indicated on June 21, 2016, most of the British Parliament members were against their country leaving the EU structures. These included 186 Conservative members, 216 Labour, all 54 MPs representing SNP, pro-EU Lib-Dems, the Welsh Plaid Cymru as well as several Northern Ireland’s representatives.¹⁷ If the 2016 referendum’s result is treated as merely advisory, it might cause much discontent and political destabilization. Taken seriously, it will undermine the traditional rule claiming that it is not the people who are sovereign in the British constitution. It remains to be seen what the pro-Union Parliament decides – whether it holds a new election, acknowledges people’s will or takes its own decision. If it decides on its own, then what will it be? Will it follow

¹⁴ Cameron’s call to arms, “The Economist”, Dec, 12, 2015, p. 30.

¹⁵ BBC News. *The UK’s EU referendum: All you need to know*, <http://www.bbc.com/news/uk-politics-32810887>

¹⁶ *Battling with Britain*, “The Economist”, Dec, 12, 2015, p. 28.

¹⁷ D. Bloom, *How will my MP vote in the EU’s referendum?* “The Mirror”, June 21, 2016, <http://www.mirror.co.uk/news/uk-news/how-mp-vote-eu-referendum-8035476>

people's wish and establish a constitutional precedence or act against it?

These are just a few questions that will weigh heavily on Britain's nearest future. There are more to appear, not necessarily less complex ones, including how to strike preferential trade agreements or restrict the free movement of people.

Exiting the EU: the route

The idea that a member state may voluntarily leave the EU was introduced in *The Treaty on European Union* (2009), commonly referred to as the European Constitution, and it guaranteed the terms of legal right to withdraw.¹⁸ Formerly, any member state could practically secede if it wished so. In fact, some 'precedents' were set in 1962, when Algeria, the former French colony, left the then European Economic Community upon regaining its independence, and in 1985, when Greenland, part of the Danish Kingdom, voted to leave the EU. Legally, however, these withdrawals should rather be seen as "reductions of territorial jurisdiction of the Treaties through a Treaty change" ratified by all member states.¹⁹ Further, as a part of a member state, Greenland gained independence and left the Union automatically. What was also significant was that it was a unitary institutional entity, which is not the case with the United Kingdom.²⁰

Theoretically, before the referendum was run, there were several other routes that Britain could have taken to exit the EU, each bringing forward some flaws. As Oliver points out, the first and most likely form of a Brexit was via a nation-wide referendum that would result in supporting Britain's withdrawal. The second option was the British Government's unilateral withdrawal, backed only by a vote of the House of Commons. Both were far more plausible than the remaining ones, i.e. the third possibility, which was the EU expelling

¹⁸ R. Ruparel, *The mechanics of leaving the EU – explaining Article 50*, London 2015, p. 2.

¹⁹ E.M. Poptcheva, *Article 50 TEU: Withdrawal of a member State from the EU*, European Parliamentary Research Service, 2016, p. 3.

²⁰ N. MacCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth*, Oxford 1999, p. 203-204.

Britain or, the forth option, making its life in the EU suitably uncomfortable. Finally, a Brexit could have come about due to a divide between the UK and EU on such a contentious issue as the Eurozone. Its development would have left Britain isolated in some outer tier. In that case, Britain would not have left the EU, but would rather have been left behind²¹.

The easiest option would have been to let the British Government withdraw unilaterally being backed only by a vote of the House of Commons on the bill annulling *The 1972 European Communities Act*. All that the bill requires in such a case would be to bring forward a clause stating that “the European Communities Act (1972) is repealed”.²² Then, under international law, nothing, in theory, could have been done to keep Britain inside the EU. Also, the EU’s treaties do not have any legal force to stop the move, except compelling the EU to seek a negotiation. Further, under the uncodified British constitution, the sovereign Parliament would not need to seek any approval of the British people. This, however, might not be well seen in the present-day Britain, which has run several sub-national referenda on devolution in Scotland, Wales and Northern Ireland, Greater London Authority or a mayor election recently.²³ Denying the British the right to decide in such a momentous moment might have led to severe political, legal and economic problems.

Having included the nationwide referendum in the programme of new laws unveiled by the Queen during the State Opening of Parliament in 2015, David Cameron clearly determined the further route of legal and constitutional measures of the process. Because the referendum’s result is ‘out’, this automatically obliges make Prime Minister to trigger and activate Article 50 of *The Lisbon Treaty*. The article facilitates a voluntary withdrawal of a member state by indica-

²¹ T. Oliver, The five Routes a British Exit from the EU Could Take, *The Huffington Post*, 2014, http://www.huffingtonpost.co.uk/tim-oliver/eu-referendum_b_5542483.html

²² J. Murray and R. Broomfield, *Cutting the Gordian knot: A road map for British exit*, London 2014, p. 12.

²³ V. Bogdanor, *The New British Constitution*, Oxford and Portland 2009, p. 173.

ting what measures must be taken in the two-year period. On notifying the European Council of its decision, Britain will be presented guidelines for negotiations whose aim is to provide necessary parameters regarding the foundations of the final settlement, i.e. the future relationship of the state with the Union. Some informal discussions may take place prior to the notification process.²⁴

Article 50 requires that any withdrawal agreement include a framework of future relations with the seceding member state. In other words, it implies an orderly and negotiated withdrawal. It does not oblige the member state to formally state the reasons for its decision. Finally, the Council of Ministers, after a qualified majority vote of approval (roughly two thirds) and the consent of the European Parliament, comes forward with the settlement.²⁵ Following Article 50 arrangements seems most reasonable, as they present the form of the withdrawal procedure. Any alternative mechanisms do not exist at present and would need to be devised and agreed upon by the rest of the member states. The options presented above, like “go it alone” or “unilateral withdrawal”, would seem too tricky and might bring forward undesirable outcomes.

In spite of the initial shock at the referendum outcome, the vote's result was already confirmed by Mr Cameron in his statement given on June 28, 2016, when he attested that: “a vote to leave is a vote to leave.” Also, Theresa May, the newly chosen Prime Minister, announced on July 20 that the decision to leave is irreversible, although the official negotiation would not start in 2016. What the British Government wants to secure at present is “sensible and orderly” departure, which will require some time to prepare.²⁶ Therefore, it appears most likely that Article 50 will be followed and Britain will cooperate with Europe so as to avoid chaos and preserve its strong position in the region.

²⁴ R. Smits, *The European Constitution and EMU: An appraisal*, “Common Market Law Review”, 2005, 42/2, p. 464.

²⁵ B. Clements, *Britain outside the European Union*, London, 2014, p. 11.

²⁶ BBC News, *Brexit: Theresa May says talks won't start in 2016*, June 20 2016, <http://www.bbc.com/news/uk-politics-36841066>

The legal and constitutional implications of the British withdrawal

Despite definite plans and statements concerning Britain's leaving the European Union, not enough attention has been drawn to the very proceedings of the move and their consequences until recently. It might be because the idea of leaving has always been in a way regarded as incompatible with the very nature of the Union, whose major intention is to work towards a closer unification. The implications however seem to be broad and involve the whole complex of duties, tasks or projects.

First of all, Her Majesty's Government needs to prepare a timetable that determines the precise procedure for Britain to secede from the Union. Theoretically, the British government and the EU should spend no more than two years negotiating its withdrawal and the framework for a new post-withdrawal EU-UK relationship, which is a constitutional obligation. The period aims at concluding the secession agreement and any other resulting amendments to the UE treaties.²⁷ It is to be followed by the UK-EU negotiations in line with Article 50 of the EU's treaty. Separate negotiations could also take place within the remaining EU states to reflect Britain's withdrawal. The final agreement negotiated in accordance with Article 218(3) offered to Britain would be subject to the approval of the rest of the EU, including the European Parliament.²⁸

Britain's effective secession will automatically require completing a Free Trade Agreement (FTA) with the EU during the two-year negotiation period. It will ensure that the new deal is in place for Britain's proposed withdrawal date, say, 2019 (unless unanimously exceeded), as outlined in *The Treaty of Lisbon*. Further, it requires commencing FTA negotiations with countries and economic trading entities outside of the EU from the year 2017. The decision concerns such issues as, for instance, Britain's future complying with the Internal Market rules involving subsidies and protectionism, which will in some way restrict its position. Further, much depends on

²⁷ B. Clement, *Britain outside the European Union*, London 2014, p. 10.

²⁸ House of Commons Library, *Leaving the EU*, Research paper 13/42, July 2013, p. 20.

what agreement Britain is able to reach with the EU. If it is beneficial, it will significantly reduce the economic risk for the state and its citizens. If Britain does not enter into any satisfactory solutions with the EU and decides to leave on a unilateral basis, the costs are likely to exceed those of retaining the economic ties with the EU.²⁹ Such an approach, though theoretically possible, might damage the kingdom's chances of striking any preferable future relationship with the EU.³⁰

Besides, after leaving the EU, Britain will automatically discontinue its engagements with all European agencies and programmes: the European Monetary Union (EMU), the European Central Bank (ECB), the Common Agricultural Policy (CAP) as well as the Common Fisheries Policy (CFP) to mention the most important ones. It should discontinue all engagements in each and every area of EU policy. All other international programmes should also be terminated. Only then, to complete the withdrawal procedure, HM Government should repeal *The European Communities Act (1972)* by means of a parliamentary act in order to symbolically denote the formal discontinuation of the UK as a Member State of the EU.³¹

Finally, the British are to decide which option they want to take in relation with the EU. The proponents to the UK withdrawal see the other European free trade arrangements as possible alternatives to the present EU membership. Firstly, the UK could re-enter the European Free Trade Area (EFTA) alongside Norway, Iceland, Switzerland or Liechtenstein. It could also negotiate a similar arrangement with European Economic Area (EEA) or stay outside EEA and apply for its own relationship with the EU. However, as Murray indicates, these options do not seem attractive as they might not solve any of the major reasons why the British wished to leave the EU, i.e. its democratic deficit, the costs and the immigration issue. The question of democratic deficit would not disappear and the costs

²⁹ S. Berglung, *Prison or Voluntary Cooperation? The Possibility of Withdrawal from the European Union*, "Scandinavian Political Studies", 2006, 29, p. 162.

³⁰ R. Ruparel, *The mechanics of leaving the EU – explaining Article 50*, London, p. 4.

³¹ B. Clement, *Britain outside the European Union*, London 2014, p. 17.

would remain equally high as EFTA states are expected to contribute to the EU's budget. Finally, EFTA membership would again incorporate the principle of free movement within EEA and the EEA regulations would still be imposed by the Brussels technocrats.³²

Alternatively, Britain could attempt to follow Switzerland, which is a member of EFTA but not EEA, and its 'EEA-lite' arrangement with this organisation. However, if she does that, the major reasons for leaving the EU would not disappear either. Britain might expect the same reaction as Switzerland does in case of controversial matters when the country's proposals are questioned and the existing treaties between this country and the EU are threatened to be renegotiated. Thus, obtaining a looser, more trade-oriented relationship with the EU, promoting a free prosperous economy, which underline the political debate and public sentiment, might not be feasible irrespective of the route Britain decides to follow. Other obstacles like a necessity to sign a number of treaties with third parties would also have to be reconsidered.³³

There is also an option of a 'total exit' both from the EU and the single market. If the UK follows this scenario, first it will need to resume its own individual seat and vote in its own right in the World Trade Organisation (WTO), then, similarly to Turkey, seek to join the EU Customs Union and access the EU market under the WTO rules. Otherwise, it will have to negotiate a special deal from scratch under a new trade agreement.³⁴ Only then will it become an 'independent' state regaining its sovereignty, and its institutions and agencies will enjoy their right to function on their own. The question remains whether such a model would be beneficiary to the UK in the world governed by tariffs, rules or arrangements. Also, any economic consequences of the UK-exit are problematic to calculate.

With reference to the EU budget and Britain's contributions to the EU, the British gross contributions both to and from the EU

³² J. Murray and R. Broomfield, *Cutting the Gordian knot: A road map for British exit*, London 2014, pp. 6-10.

³³ B. Clement, *Britain outside the European Union*, London 2014, pp. 6-7.

³⁴ Slaughter and May, *Brexit essentials: Alternatives to the EU membership*, 2016, pp. 7-8.

Budget should be progressively decreased by a similar amount until the completion of the two-year negotiation period. It might be assumed that, depending on its future relationship with the EU, the British annual contributions to the EU budget should be much lower.³⁵ Also, the UK's contributions to the EU should be reduced by 1/24 from the beginning of negotiations in 2017.³⁶ Such a progressive reduction of costs will indicate the UK's increasing separation from the EU. Not all estimates are so optimistic. Despite the formal secession, the British cost could still remain high. For instance, EFTA nations are expected to contribute to the EU budget according to the relative size of their economies.³⁷ Any other relationship will definitely dwarf the savings by new regulations imposed on the British economy. Ultimately, they might amount to merely single figure reduction of the total cost of the kingdom's present membership.³⁸

As far as trade is concerned, if Britain follows the most 'independent' route, it will no longer be connected to the EU and its trade will not be regulated by the EU. After taking its own individual seat at the WTO, its trade with the EU as well as other countries will be carried out as already covered by the WTO, OECD or other alternative multilateral settlements and treaties in addition to relevant declarations of the Commonwealth.³⁹ However, Britain will have to enter into new international trading treaties with the EU and third countries to supplement the WTO rules. It will no longer automatically be able to use those that operate within the EU or those that the EU has negotiated for its members. This process may take years. Further, Britain might lose on the Transatlantic Trade and Investment Partnership agreement (TTIP) that the EU is presently working

³⁵ R. Lea and B. Binley, *Britain and Europe: a new relationship*, London 2012, 16.

³⁶ B. Clement, *Britain outside the European Union*, London 2014, p.15

³⁷ D. Campell- Bannerman, *Time to jump: A positive vision of a Britain out of the EU and in EEA- lite*. London 2013, p.10.

³⁸ J. Murray and R. Broomfield, *Cutting the Gordian knot: A road map for British exit*, London 2014, p. 9.

³⁹ I. Milne, *Time to Say No: Alternatives to EU Membership*, London 2011, p.20.

on with the USA and thus be at a disadvantage to EU businesses trading with the USA.⁴⁰

Hence, in Schiemann's view, the concept of sovereignty, understood as being freed from all constraints and allowed to go its own way or taking control over decision-making within its own borders, should not be overused in the discussion on Britain's future relationship with the EU. A state's own sovereignty needs to be shared with others even at the cost of waiving some of it. Otherwise, Britain is going to be left alone to negotiate with many other states on numerous issues, which is not the most effective way of making progress in the present day world.⁴¹

Finally, British officials and employees of the Council Commission and all EU institutions and agencies as a whole will settle the timetable and stipulations concerning Britain's secession with the applicable EU authorities of the EU. The British representation at the Committee of Permanent Representatives (COREPER) and all other institutions and agencies should be progressively decreased over the two-year negotiation period, in cooperation with the applicable EU institutions and all member states of the EU from the 2017 to 2019. Britain should also discontinue all engagement with the EMU, as well as the ECB and both the Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP). Lastly, after the withdrawal, the kingdom will no longer be engaged in matters relating to EU immigration and asylum policies. Thus, theoretically, it might be said that Britain will regain complete command over its borders in 2019, two years after the commencement of the negotiations.⁴² Practically, it will have to subject the rules to some other restrictions.

Despite what British eurosceptics might wish, Britain and the EU will remain deeply interconnected. The withdrawal will never mean "the end of Britain in Europe."⁴³ As Cameron himself acknow-

⁴⁰ Court of Justice of the European Union. *The legal implications of a Brexit*, "Lawyer 2B", 2015, p.1

⁴¹ K. Schiemann. The debate about Sovereignty. In (ed.) *The UK and Europe: Costs, benefits and options. The Regent's Report*, London, London 2013, p. 230.

⁴² B. Clement. *Britain outside the European Union*, London 2014, p.16.

⁴³ T. Olivier. *Europe without Britain*, Berlin 2013, p. 6.

ledged in the Bloomberg speech, leaving the EU would not mean leaving Europe, which was going to remain for many years Britain's biggest market, and forever its closest geographical neighbourhood, "tied by a complex web of legal commitments."⁴⁴ The same position has already been taken by Theresa May who, in her talks with Angela Merkel on July 20, 2016, confirmed that Britain would not "walk away" from Europe and that the "closest economic links" with Europe should be retained.⁴⁵

Whatever Britain chooses, whether to remain within the EFTA, EEA or enter its own much looser trade-oriented relationship with the EU, it will still be obliged to implement to a smaller or wider extent a large part of European directives and regulations.

The vote and Britain's internal implications

A withdrawal from the European Union effects not only the member state's foreign policies or politics but its internal polity as well, i.e. it brings forward a massive constitutional change. The change takes place on the most fundamental level, notably the position of the government versus Parliament. All the constitutional practices of a member state are going to be altered. More specifically, Britain's secession means a transfer of power back to the national government. All other institutions and agencies will enjoy their right to function as individual units and the state itself will resume much of the former exercised freedom.⁴⁶ Seemingly, the kingdom may finally robust the effects of Europeanization.

Before however Britain sees which of the above is plausible, it has to start and properly manage the process of withdrawal. Britain needs a thorough plan on how to go through the whole process. For instance, it should establish a Ministry to deal with the transition from the EU Member State status to a non-EU Member State status.

⁴⁴ D. Cameron. *EU speech at Bloomberg*. Available at: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

⁴⁵ BBC News, *Brexit: Theresa May says talks won't start in 2016*. June 20, 2016, <http://www.bbc.com/news/uk-politics-36841066>

⁴⁶ S. Berglung, *Prison or Voluntary Cooperation? The Possibility of Withdrawal from the European Union*, "Scandinavian Political Studies", 2006, 29, p. 156.

An advisory council should also be established. After the completion of the two-year negotiation period, the British Members of European Parliament (MEPs) should resign and its Trade Commissioner should step down. This should be implemented alongside a progressive reduction in the UK's contribution to the EU's budget.⁴⁷ Simultaneously, with the proceeding arrangements concerning the new status within Europe (EFTA agreements or treaties) Britain is to limit its own involvement in the EU. During the whole negotiation process, it will continue its engagement in all European business except for participation in Council and European Council discussions or decisions.⁴⁸

Further, there are significant changes to take place within Britain itself; its legal system, trade treaties or personal positions to mention just a few. As for the legal sphere, the day after the notification of Her Majesty's Government's intention to secede from the EU, judgements rendered by the European Court of Justice (ECJ), which cover and affect numerous matters, such as corporations, individuals and the government, will no longer have effects. Only the British courts, including the Supreme Court and the House of Lords, both the highest courts, will constitute and apply EU law, with no regard to the ECJ. The EU Directives and Regulations assented upon before the notification of HM Government's intention to leave the EU and invoking Article 50 of *The Treaty of Lisbon*, which have not yet been implemented into British Law, should accordingly not be applied⁴⁹.

However, to manage the process properly, British Parliament should bring forward a *Leaving the EU Bill*, based on *The Public Bodies Act of 2011*, which will implement the legal succession from the Union after the two-year negotiation period. Its main task is to introduce a comprehensive survey or repeal of EU regulations.⁵⁰ The process of change and the institutionalization of new policies will

⁴⁷ B. Clement, *Britain outside the European Union*, London 2014, p. 18.

⁴⁸ House of Commons Library, *Leaving the EU*, Research paper 13/42, July 2013, p. 21.

⁴⁹ B. Clement, *Britain outside the European Union*, London 2014, pp.12-13.

⁵⁰ J. Mansfield, *A Blueprint for Britain: Openness, not Isolation*. London 2014, p. 3.

take time. Further, it is going to be challenging as well due to due to the length of Britain's membership. During the two year period until the UK leaves the EU, contradictory rulings issued by the ECJ and UK courts will have to be subsequently resolved by the international dispute procedure. In some cases, this will involve arbitration for determining the legal inconsistencies between jurisdictions of independent sovereign nations. Other EU Directives and Regulations applied to the law in Britain should remain applicable. They are to be imposed solely by courts in Britain with no reference to the ECJ. Such an approach of handling the legal matters would provide greater certainty to British citizens, overseas governments and other important parties. It will provide greater clarity to handling the process in the globalised world and its economy.⁵¹

In short, Brexit will result in a loss of forty three years of inter-connection between the UK and EU law. Thus, in order to avoid any gaps or disorder, the British Government will in effect need to keep a large part of EU law by converting it into national law. It has to be remembered though that the affected law ranges from the rules on insolvency jurisdiction to vast swathes of EU health and safety, product liability, consumer protections or employment law applicable in the UK. Instead, Britain is likely to face a massive legislative review process. To make things more complicated, the UK does not possess a single institution for national legislation. Different branches of law, e.g. environmental law, fall within the competency of devolved administrations: the Legislature of Scotland as well as national Assemblies in Wales and Northern Ireland. Accordingly, four different replacements for a single European law are needed.

Furthermore, even transitional measures are not going to be so straightforward as it is assumed. Numerous treaty measures will cease to apply once the UK secedes the Union. If they are to be kept, new primary laws need to be prepared by the British. The government could simply pass a law that creates new laws similar to the UE Directives and Council Regulations and give them the status of parliamentary acts and change Commission Regulations into Statu-

⁵¹ B. Clement, *Britain outside the European Union*, London, 2014, pp.12-13.

tory Instruments. However, this might not suffice. Such laws typically assign on-going roles to the EU Commission or other EU bodies. Thus, appropriate ministers or bodies need to be identified to exercise such roles. It will also be necessary to preserve the current British measures implementing Directives or supplementing directly effective EU law, whether they are in the form of primary legislation, Statutory Instruments under *The European Communities Act of 1972* (which will be otherwise repealed) or under other UK Statutes or regulatory body rules, e.g. the Financial Conduct Authority and Prudential Regulation Authority Handbooks.⁵²

Presently, all the laws mentioned above are governed by the EU approach to interpretation, which is different from that of the UK law. HM Parliament has to decide whether to stick to the EU approach to any ‘co-opted’ rules or whether the laws should be read according to the relevant UK rules of statutory interpretation. Adopting the UK approach might increase uncertainty, because these laws were not written to be interpreted according to European rules. It might also result in an increasing divergence from the EU interpretation⁵³.

In short, a vote to withdraw is likely to have far more significant implications for Britain than it had been imagined by citizens and politicians alike. The scale of the challenge ahead for the new government, parliament and business and administration agencies seems unprecedented.

Brexit and the kingdom’s devolved dimension

Another issue identified with the so called Europeanization effects points to the problem of the member state’s internal structure. The United Kingdom is not a unitary state. It will have to take into account the opinions on the lower level of governance, i.e. the Scottish Parliament’s as well as the Welsh and Northern Ireland’s Assemblies, which is more than likely to differ from the one in West-

⁵² Court of Justice of the European Union, *The legal implications of a Brexit*, “Lawyer 2B”, Jun. 18, 2015, p.1.

⁵³ Court of Justice of the European Union, *The legal implications of a Brexit*, “Lawyer 2B”, Jun. 18, 2015, p.2.

minster⁵⁴. There is thus an issue of how the Union's norms and adjustments, which have affected national identities, are going to be supplemented and by what. This dilemma will concern four distinct nations with their constitutive institutions. Further, the Union's policies have altered national identities and resigning from the EU membership will definitely involve the society.⁵⁵ In Britain's case, this will concern four distinct nations with their constitutive institutions, identities and aspirations.

Taking Wales as an example, one can notice how complex the issue has become over the last decade. Wales has benefited from the engagement in the EU's policies and funding opportunities. In the years 2007-2013, the Common Agricultural Policy and Structural Funds are estimated to be worth more than €5 billion. There are others, like the Cohesion Policy or research programmes or environmental ones, that bring equally impressive sums. Further, both the national Assembly of Wales and its government have important roles in implementing the EU laws, through which its own decision-making role has risen.⁵⁶

As Jill Evans, a MEP and a representative of Plaid Cymru, the biggest Welsh party represented in the European Parliament, stated during the Strasbourg session on UK Referendum (February, 2016), the UK Government should only "have a mandate to leave the European Union if all four constituent parts of the UK vote to leave in the forthcoming referendum"⁵⁷. In her opinion, Wales benefitted from the EU membership economically, socially and culturally. Thus, any discussion on the proposed changes had be considered in terms of their impact on the devolved governments of the UK. Wales should

⁵⁴ S. Berglung, *Prison or Voluntary Cooperation? The Possibility of Withdrawal from the European Union*, "Scandinavian Political Studies", 2006, 29, p. 161.

⁵⁵ J.T. Checkel, *Social Construction and Integration*, "Journal of European Public Policy", 1999, 6, pp. 545-60.

⁵⁶ House of Commons Library, *Leaving the EU*, Research paper 13/42, July 2013, pp. 93-95.

⁵⁷ Evans, Jill, *Brexit vote must respect all constituent parts of UK*. <http://www.greens-efa.eu/de/brexit-vote-must-respect-all-constituent-parts-of-uk-15136.html>

not be dragged out of the EU against the democratic will. She called for a mandate to leave only if the four parts do the same. Unfortunately, similarly to England, Wales voted for Brexit, with Leave campaigners getting 52.5% of the vote and Remain ones 47,5%⁵⁸.

In contrast, a majority of Scottish citizens supported the EU membership. Having access to the EU institutions within all its devolved areas, Scotland has enjoyed an international profile and connections that would be beyond its reach, when it is left behind in the British national structures after the UK's withdrawal. Nicola Sturgeon, the Deputy First Minister of Scotland, already in 2012, foreseeing Scottish independence vote, announced that it would be her country's intention to negotiate the terms of "an independent Scotland's continuing membership of the EU."⁵⁹ Not much has changed since then in the terms of Scotland-Europe relationship apart from the independence project falling through. A recent survey conducted by *The Guardian* (March 2016) found that 60% of Scots would choose to remain in the Union, with only 17% favouring leaving the EU.⁶⁰ The referendum vote confirmed this preference with 62% voting for Remain and 38% supporting Leave.⁶¹

Further, as Marquand notices, if Britain decides to leave basing its decision on a majority of the English and Welsh votes that overwhelm and the Scottish ones, there is a high possibility of the UK break-up. Then, Scotland might probably wish to stay in the EU, leaving England and Wales on its own. That might become a far more

⁵⁸ BBC News, *The UK's EU referendum: All you need to know*. <http://www.bbc.com/news/uk-politics-32810887>

⁵⁹ Scottish Official Report, 13 Dec. 2012, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=7990&mode=html>

⁶⁰ *Scotland to campaign officially to remain in the UK*, "The Guardian", Mar. 3, 2016, <http://www.theguardian.com/politics/2016/mar/03/pro-eu-vote-would-harm-scottish-independence-ex-snp-deputy-jim-sillars>

⁶¹ BBC News. *The UK's EU referendum: All you need to know*, <http://www.bbc.com/news/uk-politics-32810887>

painful experience for England, much than the constant self-deception.⁶²

Likewise, Northern Ireland's position, although different form that of Wales and Scotland, might suffer in the process. The EU membership has facilitated Northern Ireland's engagement into European structures, the status of its institutions or regional development. It gave rise to the establishment of numerous north-south security, cooperation or cultural programmes. The UK's withdrawal is perceived as a step backwards which might put Northern Ireland's progress at risk again.⁶³ The result of the vote was thus one for stability with 55.8% choosing to remain against 44.2% opting for leave.⁶⁴ With the overall British decision to leave, there appears a 'democratic imperative' to let people of the whole island to vote on reunification. It is because leaving the EU seems to run counter to the wishes of the Irish people.⁶⁵

To sum up, there are also serious political consequences of the 'leave' decision for the British themselves. Brexit may have an impact on Scotland and its future devolution settlement or independence aspirations. Scotland's seems most complicated by the uncertain future within detached Britain. Likewise, Northern Ireland, which will become the only part of the UK that shares a land border with the EU, might be more interested in the all-island cooperation and a stronger relationship with the Republic of Ireland.

Conclusions

By voting to leave the EU, Britain has entered a period of uncertainty and economic adjustments. The process of disconti-

⁶² D. Marquand, *First Brexit, then break-up*, "New Statesman", 27. Sep. - 3. Oct. 2013, p. 31.

⁶³ House of Commons Library, *Leaving the EU*, Research paper 13/42, July 2013, pp. 97-100.

⁶⁴ *BBC News*. The UK's EU referendum: All you need to know. <http://www.bbc.com/news/uk-politics-32810887>

⁶⁵ *Sinn Féin calls for vote on Irish reunification if UK backs Brexit*, March 2016, <http://www.theguardian.com/politics/2016/mar/11/sinn-fein-irish-reunification-vote-brexit-eu-referendum>

uation of the United Kingdom as a Member State of the Union will definitely entail lengthy negotiations during which the complex relationships currently in place have to be unravelled. The future outcome of the process, i.e. ‘benefits without burdens’ scenario propagated by the eurosceptics, will not be easily achieved, if at all. The British cannot compel the EU to provide them with what they want. What Britain becomes in the nearest future will be shaped by what the rest of the EU and other powers such as the US are willing to grant it in terms of new political and economic relations. At the same time, a total neglect of the British aspirations will not solve the longer-term problem for the EU of how to deal with the country. Further, the Union without the UK will probably shift its directions of development, which makes the British or even European expectations concerning future plans based on the present-day arrangements delusive.

All the constitutional and legal options that Britain aspired to, i.e. no obligation to follow the EU legislation, no financial contributions or regaining control over its borders, will cause that Britain or the EU part definitely. Britain will remain a major European power and, unless there is some catastrophic change or disintegration of the Union, the EU will continue to be Britain’s neighbour, predominant political organisation and economic partner. Another outcome of the ‘leave’ vote is a vast legal sphere of arrangements, concessions and restrictions that have to be secured, which will definitely transform the British polity. It thus remains to be seen what ‘being outside’ is going to mean for Britain both in constitutional and legal terms.

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