

# WITHDRAWAL FROM THE EUROPEAN UNION ACCORDING TO ART. 50 OF THE TREATY OF LISBON. PRACTICAL APPLICATION – BREXIT

Assistant professor **Adriana DEAC**<sup>1</sup>

## **Abstract**

*Lisbon Treaty on the Functioning of the European Union regulates Article 50 possibility for Member States to withdraw voluntarily respecting national constitutional provisions<sup>2</sup>. BREXIT (Britain and exit) is the term that has been named Britain's withdrawal from the European Union<sup>3</sup>. Following a consultative referendum held in the UK in June 2016 52% of the votes cast were in favor of leaving the EU. The new prime minister of Great Britain, Theresa May announced that by the end of March 2017 the government she leads will invoke Article 50 of the Treaty on the Functioning of the European Union, triggering the formal withdrawal, it will be finalized by in late March 2019<sup>4</sup>. Beyond the political and economic implications, unprecedented in the past 60 years of the European Union (including the three European Communities), the procedure of withdrawal from the European Union and Brexit itself raises a number of legal issues, uniqueness being the consequence of the fact that such a procedure has never been used again anyway not in this form, on the one hand and, on the other hand, it is a state belonging to the system of common law based on judicial precedent which, in this case, does not exist.*

**Keywords:** withdrawal Brexit, the European Union, the Treaty of Lisbon, UK referendum.

**JEL Classification:** K33

## **1. Introduction**

Britain's situation as a member of the three European Communities and subsequently the European Union is controversial. Britain is not a founding member of the three European Communities, joining the European Economic Community only in 1973, after previously in 1963 and then, in 1967, filed a membership application, both applications were rejected due to veto of French President Charles de Gaulle who believed that Britain harbored a deep hostility to any pan-European project. Only after de Gaulle left the French presidency, Britain's third application for accession treaty was signed in January 1972.

Although the status of British membership of the European Communities was confirmed by referendum in 1975<sup>5</sup>, when 67% of votes were in favor of remaining EEC, there were also supporters of withdrawal, particularly among Labour Party.

Following the entry into force of the Treaty of Maastricht<sup>6</sup>, the European Economic Community became the European Union on 1 November 1993, the new name representing its transformation from an economic union, a political union, which had increased the number of dissatisfied the status of British membership of the European Union, especially members of the UK Independence party, a eurosceptic political party, more powerful on the British political scene. Under the pressure of British parliamentarians and the rise of UKIP in January 2013 Prime Minister David Cameron<sup>7</sup> announced that a Conservative government will hold a referendum on remaining in the EU, which happened on 23.06.2016 when the British were called to vote to answer the question "should the UK remain a member of the European Union or should leave the European Union?"

Following the vote<sup>8</sup>, 51.9% of British participants in the referendum voted in favor of leaving the EU and 48.1% voted in favor of remaining British member of the European Union. Prime Minister David Cameron

---

<sup>1</sup> Adriana Deac – Law Department, Bucharest University of Economic Studies, adriana.deac@yahoo.com

<sup>2</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, published in the Official Journal of the European Union no. 306 of 17.12.2007.

<sup>3</sup> "Britain and the EU: A Brexit looms". The Economist. 21 June 2012.

<sup>4</sup> Hjelmgard, Kim; Onyanga-Omara, Jane. "Explainer: The what, when and why of 'Brexit'". USA Today. Retrieved, June 2016; Brexit: PM to trigger Article 50 by end of March". BBC News. 2016-10-02.

<sup>5</sup> Davis Butler. "The 1975 Referendum" (PDF). Eureferendum.com. Retrieved 19 May 2016.

<sup>6</sup> The Maastricht Treaty on European Union signed on 07.02.1992 and entered into force on 01.11.93, published in the Official Journal C191 of 07.29.1992.

<sup>7</sup> "Prime Minister sets out legal framework for EU withdrawal". UK Parliament. 22 February 2016

<sup>8</sup> "EU referendum: BBC forecasts UK votes to leave". BBC News. Retrieved, 24 June 2016.

has announced his resignation, considering that a new prime minister will have to decide on when to invoke Article 50 and begin the process formally and legally leave the EU. As a result, the 7/13/2016, Mrs. Theresa May has become the new prime minister of Great Britain.

Although legally, the result of the referendum does not oblige the British government in any way, in reality referendum effects are difficult to assess given that affects the entire European Union, the entire British society and, in fact, worldwide.

Internally, the legal issues are related, firstly, the activation of Article 50 of the Treaty of Lisbon. That, in a legal system where case law has an important role, there is legal precedent for the withdrawal from the European Union, he created chaos. Almost 5 months of the referendum, the British Government and the Parliament dispute the constitutional authority to inform the European Union of its intention to withdraw Britain and activation of Article 50 TFEU. The dispute was resolved by the High Court of Justice of England which ruled that the government led by Theresa May can not activate Article 50 of the Lisbon Treaty and to initiate the procedure of exit from the European Union., According to royal prerogatives without agreement Parliament.

Amid this state of uncertainty, the European Parliament urged Britain immediately activate Article 50 and to start withdrawal process, which is not, however, the prerogative of the European Union. Lisbon Treaty governing the right of Member States to withdraw from the Union, and Union law not to invoke article 50. Despite the referendum, as long as the British government invoked Article 50 TFEU, Britain remains a member of the European Union; must continue to fulfill all EU-related treaties, including any future agreements; The European Union has no framework that excludes the UK, as long as Article 50 is invoked and the UK do not infringe EU law<sup>9</sup>.

Beyond the UK on jurisdiction disputes, the timing and procedures to be followed to activate withdrawal, this paper aims to analyze the possibility of withdrawing from the European Union before and after the entry into force of the Treaty of Lisbon.

## **2. The procedure for withdrawal from the European Union before the entry into force of the Treaty of Lisbon.**

Until the entry into force of the Lisbon Treaty, was not covered by the constituent treaties, treaties or subsequent accession treaties of the Member States, the possibility of voluntary withdrawal from the European Union. The draft European Constitution proposed such a provision and after the failure of ratification, that provision was included as Article 50 in the Treaty of Lisbon reason that there was no express regulation of this possibility is that it would put questioned the firmness and determination of states to be members of the European Union, the irrevocability of the decision to join the Union. However, that possibility was accepted by the literature, there are two interpretations distinct pros and cons. The first review found the possibility of leaving the European Union on the right of sovereign states to withdraw from international treaties concluded when national interests of each state imposed this decision. The contrary opinion believes that a lack of regulations on possibility of withdrawing from the European Union is evidence of firmness and the irreversibility of EU accession, citing in support indefinite period the constituent treaties, accepting the *acquis* of the Union, the principle of solidarity, the revision of the Treaties. As a result, we believe that, until the entry into force of the Lisbon Treaty, the only way out was negotiating with EU representatives.

Previously the Lisbon Treaty, we can mention two cases of apparent withdrawal from the European Communities, namely Greenland case and the case of Algeria.

Greenland became part of the European Communities in 1973 as a Danish province, part of Denmark, not as independent Member State. After obtaining autonomy from Denmark in 1980, Greenland ceased to be part of the European Union. Given that never had the status of a member state of the European Communities can not speak of an actual withdrawal of a State, Greenland did not have this quality. Following separation from Denmark, it has ceased to be part of the European Communities, subsequently, the European Union ceased to apply EU law. After separation from Denmark, if he wanted to become a member of the Union, Greenland would have to follow the entire procedure for membership as an independent state.

Algeria has acceded to the European Communities since their establishment as part full French. After gaining independence in 1962, Algeria has left the European Communities. However, in this case, membership of Algeria in the African continent, not the European one, represent a major impediment to be able to keep its membership of the European Communities.

---

<sup>9</sup> Patrick Wintour Diplomatic (22 July 2016). "UK officials seek draft agreements with EU before triggering article 50". The Guardian

### 3. The procedure for withdrawal from the European Union under the Lisbon Treaty

By signing the Lisbon Treaty, it has been expressly regulated in art. 50 possibility for Member States to withdraw from the European Union. This regulation, as legislative technique, it is logical and natural, the text being entered by regulating the conditions of accession to the European Union.

According to art. 50 of the Lisbon Treaty, "any Member State may, in accordance with its constitutional rules, to withdraw from the Union. Member State which decides to withdraw shall notify the European Council of its intention. Based on the guidelines of the European Council, the Union shall negotiate and conclude an agreement with the state that sets conditions for withdrawal, taking account of its future relationship with the Union. This agreement shall be negotiated in accordance with Article 188 N (3) of the Treaty on the Functioning of the European Union. It is concluded on behalf of the Council, acting by a qualified majority after the approval of Parliament. Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing such agreement, two years after the notification referred to in paragraph (2), unless the European Council, in agreement the Member State concerned, unanimously decides to extend this period. For the purposes of paragraphs (2) and (3) the member who represents the European Council and Council Member State withdraws not participate in discussions or in the decisions of the European Council and the Council concerning State. A qualified majority shall be defined in accordance with Article 205 (3) (b) of the Treaty on the Functioning of the European Union. If the State which has withdrawn from the Union submits a new application for membership, the application shall follow the procedure laid down in Article 49".

The text interpreting art. 50 TFEU, we can not fail to notice that although the attempted regulation as clear, complete and concise, there are still some questionable aspects. Thus it is clear that the intention to withdraw the notification is a unilateral manifestation of will of the EU Member State<sup>10</sup>. But it must be followed by a bargaining agreement. The question is whether a Member State may withdraw from the EU by simply notifying the intention to withdraw or compulsory retirement and conclusion. One opinion states that it is necessary for an agreement to withdraw by which to establish the limits of future relations with the Union State withdrawing.

We believe that withdrawal from the EU is a unilateral manifestatre Member State, given the text of art. 50 that the withdrawal is not conditional on achieving any tangible results in the negotiations may be to provide a final solution be to fail to materialize without in any agreement. Even so, his intention to withdraw the notification shall take effect.

We believe this is the reason provided was that, failing agreement, the state wishing to withdraw will not be subject to EU law after passing a period of two years from the date of notification of intention to withdraw. As such, withdrawal is not subject to the conclusion of any agreement or obtaining any consensus or compromise any future Union as regards relations with that state. The lack of such an agreement will not prevent the Member State to withdraw, being sufficient notification of intention to withdraw. Withdrawal decision and the procedure followed is entirely subject to constitutional rules of each Member State is free to determine the procedure following which the European Union is committed retargerea, that decision will not be censored in any way to the Union. Just here, just we hope here Brexit's resulting uncertainty; that there is a constitutional regulation, a legal precedent to be followed, British authorities put in a position to "make right".

Another problem with the text of art. 50 quorum requirement for the conclusion of the European Council, on behalf of the European Union, of the withdrawal agreement with the requesting State. According to art. 50, the quorum requirement for the agreement withdrawal is most qualified, although application to join the European Union is subject to the unanimity rule. Also, art. Unanimity requires 50 members of the European Council if desired, with the agreement of the applicant, extension of the term of no longer apply to the European Union treaties. We might conclude that in order to join the EU and to extend the applicability of the Treaties require unanimity European Council members, while to "approve the withdrawal of" qualified majority is sufficient. In other words, to enter and remain in the EU must agree all states; to leave the EU, no. Also regulate art. 50 of the Treaty of Lisbon, envisages a situation, at least hypothetical, namely, a withdrawal mass of states in the European Union and the European Council, which negotiated the agreement to withdraw behalf of the Union would not be able to fulfill the condition quorum for the conclusion of withdrawal.

Although not directly aimed at the withdrawal from the European Union, there is another situation that would lead to the loss of membership of the European Union, namely, exclusion from the European Union.

Constitutive treaties do not provide for such a sanction for failure by Member States of their obligations, this option is unavailable now. The introduction of a right to exclude collective of a Member State

---

<sup>10</sup> Nelly Militaru, *Dreptul Uniunii Europene*, 2<sup>nd</sup> edition, Universul Juridic, Bucharest, 2011, p. 72.

of the European Union, although a penalty effective, which may arise as a last resort to assumptions of serious violations committed by a Member State, it is nevertheless likely to cast doubt permanent rights and obligations of citizens of member states, which will reflect on this sanction, affecting seriously. In such cases, the only possibility remains negotiation with the State concerned, because its output Union to do voluntarily<sup>11</sup>.

#### 4. Conclusions.

Theoretically, the removal of an EU Member State would result in immediate termination of that State Member State of the European Union.

Basically, the implications are unexpected and hard to predict, given that the same issues that must be negotiated and were negotiated at the time of joining the European Union. From this point of view, we believe that within 2 years to complete the withdrawal procedures, even if there is a possibility of extension, it is an unrealistic deadline. Negotiated procedures for accession takes years. We consider that the procedures for withdrawal should benefit from a longer period of time.

Obviously, withdrawal from the European Union would have consequences on the implementation of the 4 principles of free movement of persons, goods, services and capital, the economic and political relations of the State withdrawing the European Union, Member States and third countries.

On Brexit, as mentioned already, the consequences can not be predicted, the status of Great Britain in the European Union and worldwide by the implications of the withdrawal to be unexpected, but directly affecting in one way or another every British citizen every citizen of the European Union.

However, given the uncertainty surrounding the intentions of withdrawal yet officially not provided to the European Union, it remains to be seen who are the future developments of the situation and be able to analyze the consequences. Until now, the certainty, we only answer to British citizens who, by majority, found that Britain should leave the European Union. Which it is a popular consultation, 5 months after its realization was not followed by any official action by the British authorities, except for the change and Prime-ministre cabinet. This, however, should not mean that it will remain only at the level of popular consultation.

#### Bibliography

1. Davis Butler. "The 1975 Referendum" (PDF). Eureferendum.com. Retrieved 19 May 2016.
2. Tratatul de la Maastricht privind Uniunea Europeană, semnat la 07.02.1992 și intrat în vigoare la 01.11.93, publicat în Jurnalul Oficial C191 din 29.07.1992.
3. "Prime Minister sets out legal framework for EU withdrawal". UK Parliament. 22 February 2016
4. "EU referendum: BBC forecasts UK votes to leave". BBC News. Retrieved 24 June 2016.
5. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, published in the Official Journal of the European Union no. 306 of 17.12.2007.
6. "Britain and the EU: A Brexit looms". The Economist. 21 June 2012.
7. Hjelmgard, Kim; Onyanga-Omara, Jane. "Explainer: The what, when and why of 'Brexit'". USA Today. Retrieved, June 2016;
8. Brexit: PM to trigger Article 50 by end of March". BBC News. 2016-10-02.
9. Andreea Miheș "Retragerea voluntară și excluderea din Uniunea Europeană și din Uniunea Economică și Monetară", 24 mai 2012 | [www.juridice.ro/.../retragerea-voluntara-si-excluderea-din-uniunea-euro](http://www.juridice.ro/.../retragerea-voluntara-si-excluderea-din-uniunea-euro),
10. Nelly Militaru, Dreptul Uniunii Europene, ediția a II-a, Editura Universul Juridic, București, 2011,
11. Patrick Wintour Diplomatic (22 July 2016). "UK officials seek draft agreements with EU before triggering article 50". The Guardian.

---

<sup>11</sup>Andreea Miheș "Retragerea voluntară și excluderea din Uniunea Europeană și din Uniunea Economică și Monetară", 24 mai 2012 [www.juridice.ro/.../retragerea-voluntara-si-excluderea-din-uniunea-euro](http://www.juridice.ro/.../retragerea-voluntara-si-excluderea-din-uniunea-euro).