

VIEW FROM THE BALKANS: BREXIT AND THE POSSIBLE IMPLICATIONS ON THE CANDIDATE COUNTRIES FOR EU MEMBERSHIP

Summary

The debate of the UK's future in the European Union has shifted the focus away from the enlargement of the bloc, which might affect what was considered to be the most successful EU external policy. This article will give an overview of the beginning of the Brexit idea, together with the possible legal and political implications the exit might have on both the UK and the EU, going even further and looking into the possible implications of the Brexit on the candidate countries for EU membership. It argues that the Western Balkan countries, as part of the Stabilization and Association Process will not be directly affected by the Brexit, but the enlargement policy is affected by the struggle of the Union to keep its member states together.

Key Words: Brexit; European Union; EU Membership; Western Balkans; United Kingdom.

I. Introduction

Today's European Union is beset by four major crises challenging its future: the Eurozone crisis; the Russian annexation of Crimea and the ongoing war in Ukraine; the enormous influx of refugees from the wars in the Middle East arriving in Europe and the need to deal with the complex procedure of a Brexit. Troubled with these issues, we are rarely looking back to acknowledge the great achievements of the European integration. The peace project that started after the Second World War has been the core of the European integration to the present days. The EU law has become an exportable commodity many years ago, influencing and changing the states and societies on the external borders of the Union. In this context, the Union's enlargement policy has long been considered to be its most successful foreign policy.

However, the migrant crisis and the debate over the UK's future in the European Union have shifted the focus away from the enlargement of the bloc, which might affect the process of building the democracy in the future member states. The article will give an overview of the inception of the idea for the UK exit from the EU membership, together with the possible legal and political implications the exit might have on both the UK and the EU. Since the Brexit has further outreach, the article will focus on the possible implications on the candidate countries for EU membership. It argues that any debate that does not take into consideration the geostrategic importance of the Balkans might have effect on the EU's future.

II. Brexit: The inception

In his well known Bloomberg speech from 23 January 2013, UK's Prime Minister David

* Julija Brsakoska Bazerkoska, PhD, Assistant Professor, , Ss. Cyril and Methodius University, Faculty of Law "Iustinianus Primus", Skopje, R. Macedonia.

Cameron opened the scenario for Britain's exit from the EU, what has latter become known as Brexit. He made a promise during that speech to negotiate better terms for the UK's EU membership. But he did not stop there – he also promised that after a successful renegotiation British people will get to decide in a referendum whether they would rather remain in the EU or leave. According to Weiss and Blockmans, this was a high-stakes gamble with the future of his party, country and the entire EU.²

UK's Prime Minister listed the four reforms that were crucial to have a successful renegotiation with the Union. The first one was the reform related to the issue of sovereignty. An opt-out from the "ever closer union" was on the table, as mentioned in the preamble and Article 1 of the Treaty on European Union. Moreover, Cameron demanded the creation of a 'red card' procedure for national parliaments to halt draft EU legislation.³ The second reform item was supposed to give UK safeguards against legal acts or intergovernmental agreements directly linked to the functioning of the euro area and give protection to the City of London from potentially harmful EU financial and banking regulations. Furthermore, Cameron called for the strengthening of the competitiveness of the internal market that will generate jobs and growth. This was the only item on the reform agenda that didn't hit the wall when presented to the other member states capitals. Finally, UK demanded to ban in-work benefits for migrants from other EU countries for a period of up to four years.⁴

The "Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union", was released by President of the European Council, Mr. Donald Tusk on 2 February 2016. The draft was welcomed by the most of the EU member states as a fair starting point for negotiations. The most contentious issues were connected to the French and German opposition to the special rules for the City of London on one side, and Poland and other Eastern member states objecting on the aspects of intra-EU migration on the other. However, it has been shown once again that if there is a political will, there is a way to reach a deal. That was done on the European Council summit of 18-19 February⁵, when the heads of state or government endorsed the 'New Settlement' for the United Kingdom within the European Union. The 'New Settlement' was supposed to become effective on the date the

² S. Weiss and S. Blockmans, *The EU deal to avoid Brexit: Take it or leave*, (2016) CEPS Special Report, No.131.

³ Ibid.

⁴ For more on this issue in: M. Emerson, *Dear Donald ... Yours, David*, (2015) CEPS Commentary, available at <https://www.ceps.eu/system/files/CEPS%20Commentary%20M%20Emerson%20Dear%20Donald.pdf>; M. Emerson, 'Cameron's 'renegotiations' (or Russian roulette) with the EU An interim assessment', (2015) CEPS Commentary, available at :

https://www.ceps.eu/system/files/WD413%20ME%20Camerons%20renegotiations_0.pdf; S.Blockmans and S.Weiss, 'Will Cameron get what he wants? Anticipating reactions to Britain's EU reform proposals', (2015) CEPS Commentary, available at: https://www.ceps.eu/system/files/Cameron%20demands%20CEPS%20Commentary%20S%20Blockmans%20S%20Weiss_1.pdf.

⁵ For more information visit: <http://www.consilium.europa.eu/en/meetings/european-council/2016/02/18-19/>, last visited 03.05.2016. In short, the measures decided by the European Council on Cameron's four points are as following: 1. Position of non - eurozone member states: i) Discrimination between euro and non-euro economic actors prohibited; ii) Eurozone measures to respect the internal market of EU as a whole; iii) Banking union open to non-euro member states as an option; 2. Competitiveness: i) Better regulation, lowering of administrative burdens; ii) Repeal of unnecessary legislation, with an annual review mechanism; iii) Ambitious trade policy towards the US, Japan, Latin America and Asia-Pacific; 3. Sovereignty: i) Ever-closer union of peoples not a legal basis for extending EU competences; ii) All member states do not have to aim at a common destination, with recognition that the UK does not want further political integration; iii) Role of national parliaments enhanced with a new 'red card' mechanism (55% of vote trigger); 4. Social benefits and free movement of workers: i) Safeguard mechanism, restricting non-contributory in-work benefits for four years; ii) Member states control over benefits for non-active EU migrants; iii) Indexation of exported child benefits; iv) Measures against abuses, such as marriages of convenience.

UK Government informs the Secretary-General of the Council that has decided to remain within the European Union.

III. And so the story goes...

After the 'New Settlement' was agreed, the UK Prime Minister announced that the referendum on whether the UK should remain or leave the EU will be held on 23 June 2016. The announcement of the referendum date heated the ongoing debate about the possible implications of the UK exit from the EU membership⁶. The trouble with the EU referendum is that it is not a choice between two clearly defined options. The option to 'Remain' may seem to have a relatively predictable outcome, which means more of the status quo. But thanks to the 'New Settlement' even that option involves many unknowns, especially in the context of free movement. However, those uncertainties all of a sudden gain clarity when compared with 'Leave' option, which is a vote for number of things.

Waking up on 24 June 2016, the EU, the UK and the World are faced with a new reality - 'Leave' option prevailed on the referendum. With 52% of the voters that voted on the day of the referendum, against 48% in favor of 'Remain', the 'Leave' campaign won. Now, the question is – when and how to trigger Article 50 TEU? That is the primary issue on which both the academics and the practitioners have divided opinion - how to put Article 50 TEU into practice⁷. In theory, by reading Article 50 TEU⁸ it allows for both a unilateral exit as well as for a consensual divorce. However, it seems that in practice, the unilateral exit is an ineffectual solution. UK would have to negotiate a withdrawal agreement with the EU in order to cover all the terms of withdrawal as well as to cover the future relations with the Union. Łazowski goes even further and argues that in order to avoid a legal vacuum, the withdrawal agreement should not only take account of future relations between the UK and the Union, but should actually deal with them thoroughly.⁹ This will make the negotiations difficult and, most likely, time consuming, since the country leaving the European Union

⁶ Brexit Brief, IIEA, available at: <http://www.iiea.com/ftp/Publications/BrexitBrief-april16.pdf>.

⁷ For the legal effects of EU withdrawal see: A.F. Tatham, 'Don't Mention Divorce at the Wedding, Darling!: EU Accession and Withdrawal after Lisbon', in: A. Biondi, P. Eeckhout, S. Ripley (eds), *EU Law after Lisbon* Oxford, 2012; H. Hofmeister, *Should I stay or Should I Go? - A Critical Analysis of the Right to Withdraw from the EU*, (2010) 16 ELJ; A. Łazowski, *Withdrawal from the European Union and Alternatives to Membership*, (2012) 37 ELRev.; P. Nicolaides, *Withdrawal from the European Union: A Typology of Effects*, (2013) 20 MJ; C. M. Rieder, *The Withdrawal Clause of the Lisbon Treaty in the Light of EU Citizenship: Between Disintegration and Integration*, (2013) 37 FILJ.

⁸ Article 50 TEU reads as following:

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.

⁹ A. Łazowski, *Withdrawal from the European Union and Alternatives to Membership*, (2012) 37 ELRev.

would most probably join EFTA and become an EFTA-EU Member State of the European Economic Area.¹⁰

Taking into consideration the fact that the procedure provided by Article 50 TEU has not been put into practice yet, it opens numerous issues that need to be considered. That the whole exercise will be long and painful, can be foretold by the fact that the issues of timing especially from institutional perspective of the Union should be considered, the issues of the potential costs should be taken into consideration and the issue of disengagement of the EU policies as well. This will lead to a process that will last longer than provided within the Treaties.¹¹ Two years period of concluding the whole procedure of withdrawal seems like a super optimistic scenario, especially taking into consideration the fact that unanimity from the rest of the EU Member States is required. This will lead to years of uncertainty that will bring damage to the businesses both at the continent and at the island.¹²

The debate on the legal implications of a UK exit from the EU has focused mainly on the different ways in which the UK-EU relationship would be structured. The external relations implications of Brexit would also be very considerable and worthy of attention for lawyers and policy-makers alike. This is the case mainly because the UK is bound, and UK citizens and firms enjoy rights granted, by a wide range of international agreements as a matter of EU law and Brexit would disrupt this state of affairs. The UK would have to engage in international treaty negotiations with a wide range of third countries and organisations. This would be a long, difficult and expensive process and would raise numerous legal, policy, and practical issues.

Furthermore, it is considered that Brexit will be a leap in the dark, mainly because it presents a huge uncertainty of how the future relations with the rest of the EU member states will be conducted after the exit. This will as well put a question mark to the future trade relations between the UK and the rest of the world. President Obama has emphasized this argument very clearly during his visit of the UK.¹³ When it comes to both the UK relations with the rest of the EU and the rest of the world after Brexit – there has been a lack of credible alternative.

According to Emerson¹⁴, in the external trade domain, all the EU's current preferential and free trade agreements would cease to apply to the UK. The default solution would be that the UK would move to WTO-based trade relations with all such third countries. The UK might continue with the EU's external trade tariff regime bound in the WTO as its MFN (most-favoured nation) rates for the time being without the EU's existing free trade agreements, but this would be a big backward step for the economy compared to the status quo.¹⁵

Another issue that needs to be taken into consideration is the secessionist movement in Scotland. What has been emphasized during the campaign in Scotland and immediately after the results of the referendum were made public - is that if the UK votes to leave and most of the Scottish voters vote to stay in the EU, which was the case, another referendum for leaving

¹⁰ Ibid.

¹¹ Article 50, paragraph 3 provides that the Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

¹² A. Łazowski, 'EU Withdrawal: Good Business for British Business?', (2016) European Public Law.

¹³ On his three-day visit to UK during which he celebrated the Queen's 90th birthday, Barack Obama has warned Britain's voters that it could take up to a decade to strike a trade deal with the United States from outside the European Union.

¹⁴ M. Emerson (ed.), *Britain's Future in Europe: The known plan A to remain, or the unknown plan B to leave*, Center for European Policy Studies, 2016, p.14.

¹⁵ Ibid.

the UK will be triggered in Scotland.¹⁶ Although, there are many unknowns in this equation, the possibility of disintegration of the Kingdom is on the table. Moreover, after the UK leaves the EU, the closing of the border between Ireland and Northern Ireland becomes an unwanted reality¹⁷.

Finally, the Brexit might have a knock-on effect on the other member states of the European Union. There have been emerging predictions for similar discussions in the other EU member states and possible Cxexit or Grexit.¹⁸

IV. The possible implications on the candidate countries

As a subject of the first enlargement of the original European Communities, the UK continues to be a supporter of the EU enlargement and the conditionality policy towards the newcomers. Since the EU enlargement is an issue that cuts across multiple policy areas, the UK exit can influence the process in numerous ways. It has been observed by Blockmans that the “UK has enjoyed significant influence among new and aspirant member states as a result of promoting EU enlargement. The enlarged EU has become a more comfortable environment for the UK, with the accession of many countries that share its liberal trading and Atlanticist outlook, and have a preference for English as a working language.”¹⁹ Furthermore, the enlargement has fitted with the UK's vision of a wider, looser and more flexible Europe.²⁰

When it comes to the candidate countries and the potential candidate countries for EU membership from the Western Balkans, it has been perceived that the Brexit would not have a direct impact on the Balkan countries. Rather, the Brexit debate has and the Brexit itself will have impact on the EU as such. In those terms the issue of Brexit influences the time and capacity the EU institutions are investing in the policy of enlargement and the view from the Balkans is that this EU policy has been neglected.

Moreover, there have been some discouraging sentiments towards the EU membership, which has been stated that it “lost its magic power”²¹. This statement of the Serbian Prime Minister goes in line with the behavior of the Macedonian governing elite that plays the victim card and blames the Union and the West for its irresponsible political behavior and the political crisis in the country. The fact that the EU accession process in the Western Balkans is a democracy-driven process, gives the countries the opportunity to transform the economy and to improve their democratic credentials. In this respect, in political, economic, and security terms it is essential for the EU to strengthen the credibility of its enlargement policy on the Balkans, where the UK is seen as an important partner and friend.

¹⁶ The SNP Nicola Sturgeon leader claimed during the campaign, that there would an 'overwhelming demand' for a fresh referendum if Scotland opted to stay in the EU while the UK voted to leave - <http://www.independent.co.uk/news/uk/politics/eu-referendum-brexit-scottish-independence-vote-nicola-sturgeon-a6887366.html>. After the results from the referendum were published, her stance is even more firm, claiming that independence referendum is "highly likely" after the UK voted to leave the EU - <http://www.bbc.com/news/uk-scotland-scotland-politics-36621030>

¹⁷ More on this issue in: EU Referendum Briefing Papers: Briefing Paper 1 - The UK Referendum on Membership of the EU: What does it mean for us?, The Centre for Cross-Border studies.

¹⁸ See at: <http://www.bbc.com/news/world-europe-32332221>;

<http://www.telegraph.co.uk/news/worldnews/europe/czechrepublic/12170994/Czechs-will-follow-Britain-out-of-EU.html>;

¹⁹ M.Emerson (ed.), *Britain's Future in Europe: The known plan A to remain, or the unknown plan B to leave*, Center for European Policy Studies, 2016, p.158 (section on Enlargement contributed by S.Blockmans).

²⁰ Ibid.

²¹ Serbian prime minister Aleksandar Vucic addressing a conference in London in February 2016 <https://euobserver.com/tickers/132399>; <http://www.rferl.org/content/vucic-says-eu-membership-has-lost-magic-power-for-balkans-migrant-crisis-brexit/27568380.html>.

Once again we need to be reminded that the EU is not solely an economic project, but a very important political project. We need to be reminded of the EU's progressive force and the capability to reconfigure the European continent after the Cold war. Thanks to the European project, zone of stability and prosperity was built and the failure of the EU's geopolitical role can threaten the UK security as well.

Having all this in mind, we once again need to be reminded of a famous quote by the Iron Chancellor Otto von Bismarck:

"Europe today is a powder keg and the leaders are like men smoking in an arsenal ... A single spark will set off an explosion that will consume us all ... I cannot tell you when that explosion will occur, but I can tell you where ... Some damned foolish thing in the Balkans will set it off."²²

V. Conclusion

The UK departure from the European Union which was triggered by the referendum decision on 23 June 2016 is politically and legally possible. At the same time it will be an extremely complex and controversial exercise. While Article 50 TEU provides only a general legal framework for withdrawal, there are many uncertainties when it comes to the additional decisions which would be required in order to develop it into a fully fledged withdrawal acquis. The UK exit from EU would mean a leap in the dark and unknown, putting in question the future relations not only between the UK and the rest of the EU member states, but between the UK and the rest of the world. The Western Balkan countries, as part of the Stabilization and Association Process will not be directly affected by the Brexit, but the enlargement policy is affected by the struggle of the Union to keep its member states together. It has been argued that the Brexit occupies, among other issues, the capacities of the EU institutions, not allowing the EU to think in more strategic terms on how to deal with its own periphery, to complete and consolidate the unification project. EU needs to continue to engage within the Western Balkans in strategic terms, in projects which would bring the needed economic development, which would strengthen the democratic capacity of the countries and with that will bridge the gap between the EU and the Western Balkans. In this endeavor, the EU needs to have the UK as a partner.

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