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Північної Ірландії з Європейського Союзу та Європейської спільноти з
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DIPLOMA

**Legal regulation of withdrawal of the United Kingdom of Great Britain and
Northern Ireland from the European Union and the European Atomic Energy
Community**

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Я, **Біленко Вікторія Максимівна**, студентка **2 року навчання** **магістерської програми** за спеціальністю «Право» факультету правничих наук НаУКМА, адреса електронна пошта – viktoriia.bilenko@ukma.edu.ua:

- Підтверджую, що написана мною магістерська робота на тему **«Правове регулювання виходу Сполученого Королівства Великої Британії та Північної Ірландії з Європейського Союзу та Європейської спільноти з атомної енергії»**, англійською: **“Legal regulation of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community”** відповідає вимогам академічної доброчесності здобувачів НАУКМА від 07.03.2018 року, зі змістом якого ознайомлена;

- Підтверджую, що надана мною електронна версія роботи є остаточною та готовою до перевірки;

- Згодна на перевірку моєї роботи на відповідність критеріям академічної доброчесності, у будь-який спосіб, у тому числі порівняння змісту роботи та формування звіту подібності за допомогою електронної системи Unicheck;

- Даю згоду на архівування моєї роботи в репозитаріях та базах даних університету для порівняння цієї та майбутніх робіт.

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Біленко В.М

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LIST OF TERMS

2000 Act – Political Parties, Elections and Referendums Act 2000

2015 Act – European Union Referendum Act 2015

2017 Act – European Union (Notification of Withdrawal) Act 2017

2020 Act – European Union (Withdrawal Agreement) Act 2020

A. Racke GmbH & Co. v Hauptzollamt Mainz Case - A. Racke GmbH & Co. v Hauptzollamt Mainz, case C-162/96, on the validity of Council Regulation (EEC) No 3300/91 of 11 November 1991 suspending the trade concessions provided for by the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 315, p. 1)

Akæruvaldið Case - Ákæruvaldið (The Public Prosecutor) v Ásgeir Logi Ásgeirsson, Axel Pétur Ásgeirsson and Helgi Már Reynisson, case E-2/03, on on the interpretation of the rules of origin in trade in fish, as referred to in Protocols 4 and 9 to the EEA Agreement and Protocols 3 and 6 to the Free Trade Agreement between the European Economic Community and the Republic of Iceland of 22 July 1972

Brexit – the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

Brexit Referendum - United Kingdom European Union membership referendum held on 23 June 2016

CETA – EU-Canada Comprehensive Economic and Trade Agreement

CJEU – Court of Justice of European Union

ECHR – European Convention on Human Rights

ECJ – European Court of Justice

EEA – European Economic Area

EFTA – European Free Trade Association

EU-UA Association Agreement – Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part

GATS – General Agreement on Trade in Services

GATT – General Agreement on Tariffs and Trade

GDP – Gross domestic product

Miller Case – R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)

Negotiating Directives – Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union dated 22 May 2017, and Supplementary directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union dated 29 January 2018

Negotiating Guidelines – European Council (Art. 50) (15 December 2017) – Guidelines, European Council (Art. 50) (23 March 2018) – Guidelines.

Notification letter

Shindler Case – Harry Shindler v Council of the European Union, Case T 458/17, on application under Article 263 TFEU for annulment of Council Decision (EU, Euratom) of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for that Member State's withdrawal from the European Union (document XT 21016/17), including the annex to that decision establishing directives for the negotiation of that agreement (document XT 21016/17 ADD 1 REV 2

TEU – Treaty on European Union

TFEU – Treaty on functioning of the European Union

Wightman Case – Andy Wightman and Others v Secretary of State for Exiting the European Union, case C 621/18, a preliminary ruling concerns the interpretation of Article 50 TEU

Withdrawal Agreement – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

INTRODUCTION

Relevance of the topic: On 1 January 2021, the United Kingdom of Great Britain and Northern Ireland (“UK”) has withdrawn the European Union (“EU”) and the European Atomic Energy Community (“**Brexit**”). The British Government has finally implemented the will of its citizens expressed during a referendum, in which 51.89 percent voted in favour of leaving the European Union in 2016 (“**Brexit Referendum**”).

For five years the UK and the EU have been taking actions towards the establishment of new terms of their cooperation. With the entry into force of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the United Kingdom officially ceased to be a member of the European Union. These recent events and the fact that the UK is the first of the major Member states to leave the EU emphasize the relevance of the topic.

Moreover, the example of the UK’s withdrawal shows the lack of clarity in both material and procedural legislation of the EU with regard to Member States’ right to exit the Union. Hence, the lack of regulation in the EU founding treaties and complexity of procedural requirements of withdrawal of a Member State pose additional threat to future relations of the EU and its exiting Member States. According to calculations made by the Financial Times, after leaving the European Union, the UK will cease to be a party to about 759 international treaties¹, it will be necessary to update regulations in the areas of trade, migration, health care, territorial regulation, protection of citizens’ rights recognition of court decisions, etc.

Further, it is also worth noting that the academic research on withdrawal of an EU Member State legal basis and procedure is rather underdeveloped and therefore insufficient for use in practice. The Brexit shows a great example as multiple legal acts, position papers, additional consultations and negotiations had to take place to ensure not only political, but also legal cooperation between the UK and the EU.

¹ McClean, P. (May 30, 2017). *After Brexit: the UK will need to renegotiate at least 759 treaties*. Financial Times. <https://www.ft.com/content/f1435a8e-372b-11e7-bce4-9023f8c0fd2e>

Therefore, the ***purpose*** of this study is to understand how each stage of Brexit is regulated and what actions and legislative acts had to be adopted to ensure the legitimacy of it. We further aim to analyse and address legal issues related to different concepts that constitute elements of the withdrawal procedure and appropriate interpretation.

The ***objectives*** of the study are to:

- determine the process of withdrawal of a Member State from the EU under EU founding treaties and define key disadvantages of the legal regulation;
- analyse legal issues related to the withdrawal procedure and specific instruments of the UK from the EU and how such issues were mitigated;
- analyse issues related to legal nature and interpretation of fundamental concepts;
- analyse academic research on abovementioned issues; and
- analyse legal regulation of relations between the United Kingdom and the European Union throughout withdrawal process.

Importance of the topic. In the light of the above goals and objectives, the importance of this diploma is based on in-depth analysis of policy and legal frameworks of the Brexit, consolidation of legal issues of the key elements of the withdrawal process and the identification of the full spectrum of the composing relations .

The ***object*** of the study is the legal regulation of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

The ***subject*** of the study is international legal relations related to the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community and their regulation.

In the course of the research, it is relevant to use the following methodology:

- *the dialectical method* will allow analyzing the relations of the UK with the EU in their inseparable connection, and also their behaviour under provisions of the international law;

- *the analytical method* will allow analyzing the level of scientific validity and expediency of legal regulation of the subject of research;
- *the formal legal method* will make it possible to determine the existing norms governing the issue of Brexit;
- *the systematic structural method* will make it possible to establish the hierarchy of normative acts and their legal force. This will help to establish the consequences of the adoption of new acts and the conclusion of new agreements on the validity of previous ones;
- *the functional method* will allow analyzing legal norms, rules and standards in their functioning in a coordinated and interconnected way;
- *the hermeneutic method* will allow analyzing in detail and find out the meaning and legal content of the provisions of the legal acts regulating the subject of research;
- *the synergetic method* will allow studying the subject as a complex system formation, the stability and formation of which depends on the needs of the parties.

CHAPTER 1. EU POLICY AND INSTITUTIONAL CONTEXT OF BREXIT

The European Court of Justice (“ECJ”) pointed out² that the *Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals*. Hence, it is important to analyse the key aspects in both legal and operational areas of such an order.

1.1. Impact on legislation

The Treaty on the Functioning of the European Union (the “TFEU”) and the Treaty on the European Union (the “TEU”) are the main acts governing relations between the EU and its Member States as well as the EU and third countries. These so-called constitutional treaties create an overall framework for Member State’s withdrawal.

Several areas of relations between the EU and other parties play significant role within the concept of the withdrawal of the Member State. Such areas include: (1) the right of a Member State to exit the EU; (2) rights of a Member State to participate in the EU bodies during the withdrawal process; and (3) cooperation of the EU and third countries (ex-Member States) in the post-exit context.

The right of the Member State to leave the EU is established in Article 50 of the TEU. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements³. We address issues regarding the legal nature of Article 50 and related procedures in CHAPTER 2 and CHAPTER 3 of this diploma. The key issues include (1) the overarching concept of Article 50 of the TEU, (2) the

² Judgment of the Court of 5 February 1963. *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*. Reference for a preliminary ruling: Tariefcommissie - Pays-Bas. Case 26-62. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026>

³ Article 50(1) of the TEU.

disputable irrevocability of the notification of withdrawal, (3) changes in the legal status of the leaving Member State in relation to the EU before the complete withdrawal, etc.

The withdrawal procedure, in particular, negotiation rounds of the Withdrawal Agreement were also subject to adoption of multiple legal acts and interbody cooperation. The flexibility of the EU institutions and respective pieces of legislation are described in details in CHAPTER 4 of this Diploma.

The withdrawal itself and the post-Brexit era is governed by the Withdrawal Agreement and the EU-UK Trade and Cooperation agreement. Such a combination of treaties was predicted by some scholars and effectively enables for a more adaptive approach to regulation of the relations. A “thin” Withdrawal Agreement also allows for a smooth transition for both the UK and the EU within the given timeframes. We further elaborate on the Withdrawal agreement in CHAPTER 5 of the diploma.

UK citizens and UK government participate in and execute their willpower through different EU bodies. Citizens are directly represented at Union level in the European Parliament, and Member States are represented in the European Council by their Heads of State or Government and in the Council of European Union by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.⁴

As a result of the UK’s withdrawal from the EU the composition of the bodies changed significantly. Not only the British part of the European Parliament and the European Council will leave, but also there will be a redistribution of powers in the respective bodies.

1.2. Impact on bodies

It is also crucial to evaluate the overall effect on EU key bodies. Since each body is one way or another is a tool of representative democracy either of Member State governments or their citizens, UK’s withdrawal may significantly affect the established order.

⁴ Article 10(2) of the TEU.

1.2.1. The European Parliament

The members of the European Parliament are elected for a term of five years.⁵ After the Brexit Referendum and official notification of withdrawal the next change of the members of the parliament was scheduled for 2019. Therefore, the EU had to arrange for different scenarios of parliament's composition.

Taking into consideration that the 9th term for Members of the European Parliament had to end in 2019, just 8 weeks before the end of the two-year-withdrawal period, the possible scenarios had to be considered:

- the UK withdraws from the EU on time, does not elect new Members of the Parliament, and ceased mandates for Members of the Parliament of the 9th term;
- the UK withdraws from the EU on time, does not elect new Members of the Parliament, and prolongs mandates for Members of the Parliament of the 9th term for the first 8 weeks of the 10th term;
- the UK withdraws from the EU on time and elects new Members of the Parliament for the 10th term;
- the UK withdraws from the EU after end of the two-year-withdrawal period, does not elect new Members of the Parliament, and ceased mandates for Members of the Parliament of the 9th term;
- the UK withdraws from the EU after end of the two-year-withdrawal period, does not elect new Members of the Parliament, and prolongs mandates for Members of the Parliament of the 9th term for the respective part of the 10th term;
- the UK withdraws from the EU after end of the two-year-withdrawal period and elects new Members of the Parliament for the 10th term.

Every option that included non-election of the new Members of the Parliament would have resulted in breach of the right of the British EU citizens for representation

⁵ Article 14(3) of the TEU.

on the EU level. At the same time, every option including prolongation of the term breaches the principle of 5-year-term. Therefore, such scenarios should not be considered. Since the EU prolonged UK's withdrawal period several times⁶, the last option had to be addressed.

To address the issues that may arise during the two-year-long withdrawal period, the European Council adopted a decision on composition of the European Parliament.⁷

In practice, Article 2 of the abovementioned decision had to be enacted, prolonging status quo of seats distribution in the body, as the United Kingdom was still a Member State of the Union at the beginning of the 2019-2024 parliamentary term. Hence, the number of representatives in the European Parliament per Member State taking up office shall be the standard⁸ until the withdrawal of the UK from the EU become legally effective. Once the UK's withdrawal became legally effective, the number of representatives in the European Parliament elected in each Member State had to be changed. All representatives in the European Parliament who fill the additional seats resulting from the difference between the number of seats allocated shall take up their seats in the European Parliament at the same time.⁹

This resulted in (1) deduction of the number of members of the European Parliament from 751 to 705 on 31 January 2020, (2) suspension of mandate of 27 new members, that took up places of British members from 2 July 2019 to 31 January 2020, and (3) allocation of seats between 27 new Members of the Parliament from 14 Member States starting from 31 January 2020.

Such a transition raised several issues:

- It caused conditionality of fulfilment of the “additional” Member of the Parliament's rights conditional and dependent on the external factor of whether the Brexit would have happened;¹⁰

⁶ Prime Minister Theresa May, Letter to European Council President Donald Tusk, 20 March 2019 and Prime Minister May, Letter to European Council President Donald Tusk, 5 April 2019.

⁷ European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament.

⁸ European Council Decision 2013/312/EU of 28 June 2013 establishing the composition of the European Parliament.

⁹ Article 3(2), European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament.

¹⁰ Fabbrini, F., & Schmidt, R. (2019). *The Composition of the European Parliament in Brexit Times: Changes and Challenges*.

- Limiting duration of mandates of the 27 new parliamentary members elected for 10th term; and
- Limiting duration of mandates of the 73 British Members of the Parliament elected for 10th term.

The first issue has not been addressed by the EU, however, national governments of 14 Member States who received at least one additional seat in the European Parliament upon the prolongation of the withdrawal process had to effectively address the created loophole.

For example, Ireland has made amendments to European Parliament Elections (Amendment) Act 2019 in February 2019 to define number of members to be elected for the European Parliament constituency. Under the proposed amendments the “additional” members of the European Parliament “*shall not take up their seats in the European Parliament until such time as a date has been specified by the Parliament for the taking up of such seats*”.¹¹ Analogous approach with the post-exit allocation of seats was adopted by Spain. Under the new legislation, “*once the the UK’s exit is legally effective, the five new seats that correspond to Spain will be allocated by the Central Electoral Board to the candidacies to which they may correspond as a result of the application of the rules established in article 216 of Organic Law 5/1985, of June 19, to the results of the electoral process held on May 26, 2019, without the need to hold new elections*”.¹²

Italian legislation makes an emphasis on the succession of the events as the members of the European Parliament are replaced: “*... the member of the European Parliament elected must declare to the national electoral office, within thirty days from the proclamation, which office he chooses. If the Member of the European Parliament does not do so, the office national electoral declares him fallen and replaces him with the candidate who, in the same list and constituency, follows immediately the last one elected*”.¹³

¹¹ European Parliament Elections (Amendment) Act 2019, s.6(j)

¹² Presidencia del Gobierno. (2019). *Real Decreto 206/2019, de 1 de abril, por el que se convocan elecciones de Diputados al Parlamento Europeo*. BOE (79). https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-4820

¹³ LEGGE 24 gennaio 1979, n. 18. <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1979-01-24;18>

Such approaches still do not allow for resolution of a potential inability to fulfill the mandate by 27 new members. It further does not address constitutionality of conditionality of fulfilment of such mandates. We believe that such issues should have been resolved by the ECJ.

The issue regarding duration of the mandate term of the new 27 Members of the Parliament is yet to be addressed. It is important to either legitimize the reduction of the term and align rotation of the 27 Members of the Parliament with the rest of the 10th term, or to adopt a new principle of rotations of the Members of the Parliament.

The EU has resolved the third issue by clarifying that the British Members of the Parliament will have their mandates revoked.¹⁴ However, such a decision is rather controversial in terms of its reflection of the constitutional principles.

In particular, 73 British Member of the Parliament had their mandate officially enacted on 23 May 2019. Under such a mandate, the principle of representative democracy provides that “citizens are directly represented at Union level in the European Parliament,”¹⁵ allows Members of the Parliament elected in the UK to serve their role for all five years of the mandate. Since Members of the Parliament represent the Union citizens, not only UK citizens, this could be considered a breach of their right for representation.

However, there are other criteria that should be taken into consideration. First of all, Members of the Parliament have to be EU citizens. Since the UK will no longer be a part of the EU, UK citizens that are Members of the Parliament will no longer be qualified for the mandate. Secondly, the TEU and TFEU will no longer apply to the UK.¹⁶ Since fundamental principles and rules regulating the operation of the European Parliament are prescribed in these treaties, such provisions would no longer regulate legal status of UK citizens. This argument can be also supported with application of Article 70 of the Vienna Convention on the Law of the Treaties, according to which the UK is released from any obligations under the TEU and TFEU. Hence, the UK citizens should terminate their mandate.

¹⁴ European Council Decision (EU) 2019/584, recital 11.

¹⁵ Article 10(2) of the TEU

¹⁶ Article 50 of the TEU.

The voting ratio remained unchanged and has been regulated by the TEU and the TFEU during the withdrawal period and after the UK's exit. However, the actual number of members of the European Parliament qualifying for two thirds, majority and other quorums altered on 31 January 2020 when the total number of the members of the Parliament was reduced. Such changes will affect the balance of political powers in the institution.¹⁷

1.2.2. The European Council

During the two-year-period of the UK's withdrawal UK's member of the European Council representing the UK as a withdrawing Member State shall not participate in the discussions of the European Council or in decisions concerning it.¹⁸ That means that the UK's Prime Minister was not participating in the European Council's meetings regarding the Brexit.

From the day of UK's withdrawal on 31 January 2020 the UK's Prime Minister has not been participating at any meetings of the European Parliament.

Therefore, UK's withdrawal also affected the voting balance in the body. The standard consensus under Article 15(4) of the TEU now means the consensus of 27 Member States instead of 28 after the Brexit.

1.2.3. The Council of the European Union

The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.¹⁹ As with the European Council, UK's representatives cannot take part in the meetings of the Council of the European Union regarding Brexit.²⁰ Additionally, UK's notification of withdrawal affected the rotation of Presidents of the Council of the

¹⁷ Clifford Chance. (January 2020). *The European Parliament After Brexit*. <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/01/the-european-parliament-after-brexite.pdf>

¹⁸ Article 50(4) of the TEU.

¹⁹ Article 16(2) of the TEU.

²⁰ Article 50(4) of the TEU.

European Union. Instead of the agreed under Article 16(9) of the TEU rotation schedule²¹, the UK had to step down from its turn in the second semester of 2017. Further, upon Britain's exit there will be no UK representatives neither in the Council of the European Union, nor in committees set up by the Council.

The majority of the decisions will be made by the new composition of the “simple majority” of Member States 's representatives under Article 16(3) of the TEU. However, the calculations might be altered significantly upon UK's exit as a qualified majority is defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.²² This also affects the political power distribution within the Council of the European Union.

1.2.4. The European Commission

The European Commission is composed of the College of Commissioners from each EU Member State elected for a 5-year term.²³ This is an executive body that is meant to represent interests of the EU through exercising coordinating, executive and management functions.²⁴

There are no requirements regarding prohibition for a British member of the College of Commissioner to participate in meetings on the EU issue. It can be explained by the default impartiality of each representative from a Member State. Therefore, the impact of Brexit will not have a significant effect neither on quantitative composition, nor on balance of political powers of the European Commission.

1.2.5. The European Court of Justice

²¹ Council Decision (EU) 2016/1316 of 26 July 2016 amending Decision 2009/908/EU, laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council.

²² Article 16(4) of the TEU.

²³ Articles 17(3), 17(4) of the TEU

²⁴ Article 17(1) of the TEU.

The ECJ shall consist of one judge from each Member State and the General Court shall include at least one judge per Member State.²⁵ Further, UK judges could have been appointed as Advocates-General. Hence, it is reasonable to conclude that upon UK's withdrawal it is unable to appoint judges to ECJ or the General Court and Advocates-General.

At the same time, under Article 23(3) of the European Convention on Human Rights ("ECHR"), the judges shall hold the office until replaced. Since there is no new Member State joining the EU, there will be no replacement, there will only be a shortage in the number of judges.

Due to a number of arising issues (e.g. lack of jurisdiction on infringement proceedings against UK upon withdrawal²⁶, lack of exclusive jurisdiction regarding disputes between the UK and other Member States²⁷, binding and no-binding nature of the ECJ decisions upon the UK after its withdrawal, etc.) this area of UK-EU relations had to be addressed in the Withdrawal Agreement.

Under the Withdrawal Agreement upon UK's withdrawal and till the end of the transition period, the Court of Justice of European Union ("CJEU") can rule on the following cases involving the UK:

- infringement proceedings under Article 258 of the TFEU;
- annulment actions under Article 263 of the TFEU; and
- preliminary references submitted by UK courts under Article 267 of the TFEU, for example regarding interpretation of EU law when deciding a domestic dispute.²⁸

²⁵ Article 19(2) of the TEU.

²⁶ Article 257, 258 of the TFEU

²⁷ Article 344 of the TFEU.

²⁸ Article 86 of the Withdrawal Agreement.

The UK's withdrawal from the EU has caused significant legal and institutional changes in the EU. In particular, after the UK triggered article 50 of the TEU, a number of procedures commenced. The EU institutions had to adopt number of legal acts to effectively address requirements for regulation of the withdrawal.

As for the institutional changes, UK's withdrawal causes significant shift of political powers in the European Council, the Council of the European Union and the European Parliament. In particular, Brexit resulted in shortage of members of the intuitions (significant shortage in case of the European Parliament). At the same time, provisions of the founding treaties provide for a partial transition practice for representatives of Member States in respective institution. For example, the representatives of EU 27 can establish new terms and approaches to cooperation during meetings on Brexit matters as the UK representatives cannot take part in such discussions.

We can see that the overall implications of the Member State's withdrawal triggered a number of procedures for the first time. Apart from creating a need to address certain loopholes in EU's legislation, the EU had to adopt procedures regulating functioning of the EU bodies. We believe that for future improvement of withdrawal, if any Member State would be willing to leave the EU, it is important not only to provide clarifications regarding interpretations of certain provisions (as discussed below), but also create an effective mechanism for rotation of representatives in EU bodies. Further it is important to issue a guidance of proper application of such provisions, confirming its compliance with EU constitutional principles.

CHAPTER 2. LEGAL REGULATION OF THE UK'S WITHDRAWAL UNDER ARTICLE 50 OF THE TEU

The process of the UK's exit is governed by multiple pieces of legislation on national, union and international level. Many legal acts had to be adopted to ensure an efficient and binding transition and exit of the UK from the EU. Below we analyse legal context of the Brexit in detail in accordance with each stage.

The fundamental principles and rules of withdrawal procedure from the EU are described in the TEU and the TFEU, mainly in Article 50. Article 50 TEU contains fundamental, yet too basic procedural requirements for the process of withdrawal of a Member State from the EU. This was partially caused by the historical development of the article.

Before the Lisbon Treaty there had been no provision in the EU's legislation providing for withdrawal of a Member State. Some argue that the founding fathers perceived the integration endeavour as an irreversible process, following the aim of the drafters of the European Coal and Steel Community Treaty and the two European Communities treaties that followed in 1957.²⁹ Therefore, it is reasonable to assume that prior to the TEU, the right to withdraw was regulated by the international law. In particular, section 3 of the Vienna Convention on the law of the Treaties.³⁰ However, since the EU itself and a number of the EU states are not parties to the convention, such provisions can be applied only on the basis of customary law. Such an idea was supported by CJEU in Judgment of the Court of 16 June 1998 in *A. Racke GmbH & Co. v Hauptzollamt Mainz* Case:

*"...It follows that the rules of customary international law concerning the termination and the suspension of treaty relations by reason of a fundamental change of circumstances are binding upon the Community institutions and form part of the Community legal order."*³¹

²⁹ Lazowski, A. (2012). *Withdrawal from the European Union and Alternatives to Membership*. European Law Review, 37, 523.

³⁰ Vienna Convention on the Law of Treaties 1969.

³¹ Case, I., & Mainz, H. (1998). *JUDGMENT OF THE COURT 16 June 1998*. (EEC/Yugoslavia Cooperation Agreement-Suspension of trade concessions-Vienna Convention on the Law of EEC.

As Christophe Hillion noted, Article 50 TEU sets out a specific hybrid procedure comprising both the supranational production of an EU act in the form of a Withdrawal Agreement and a significant, albeit indirect, influence of the Member States, through the European Council.³² Despite the fact that this article sets the whole procedure, it has a number of drawback which were highlighted by the European Parliament in its Assessments of the implementation of Article 50 TEU.³³

Hence, there are several issues with Article 50, which affected Brexit including (1) the framework nature of Article 50 of the TEU, (2) requirements to implementation of the withdrawal procedure are not specified on a sufficient level in the EU founding treaties, (3) there is a number of loopholes regarding the principles, terms and assignation of power to respective bodies during the withdrawal, etc.

Fortunately, the ECJ has addressed certain aspects of Article 50 in the judgement in the Wightman Case. The court stressed out two objectives pursued by Article 50 of the TEU: (1) ensuring the sovereign right of a Member State to withdraw from the European Union and (2) establishing a procedure to enable such a withdrawal to take place in an orderly fashion.³⁴

Regarding the first aspect, the key goal of Article 50 is to establish a right of an EU Member State to withdraw upon its own discretion, without any limitations. As was mentioned above, before adoption of the Lisbon Treaty there were no provisions in the EU legislation for such a right. We would like to point out consideration of the balance between EU and Member States' competences regarding decision making process on the issue.

Regarding the second point, Article 50 describes different elements of exit of a Member State from the EU, including (1) decision of withdrawal under national constitutional requirements, (2) official notification of the EU of its intentions,

³² Hillion, C. (2018). Withdrawal under article 50 TEU: An integration-friendly process. *Common Market Law Review*, 55(Special). P.40

³³ European Parliament resolution of 16 February 2022 on the assessment of the implementation of Article 50 TEU

³⁴ Andy Wightman and Others v Secretary of State for Exiting the European Union, Opinion of AG Campos Sánchez-Bordona, Case C-621/18, [4 December 2018], para. 56.

(3) negotiations under guidelines provided by the European Council, and (4) conclusion of the agreement.³⁵

However, the article does not provide us with a sufficient number of specific details and requirements of the implication of such steps. Despite the fact that key steps are foreseen by the article, a lot of details of the procedure itself are missed. Such details include defining and assigning specific powers to respective bodies of the withdrawing state and the EU, key principles, procedural requirements, etc. These loopholes in the legislation create a need for implementation of additional legislation on both national and EU level. Further, even if the parties of the withdrawal procedure under Article 50 fail to negotiate and conclude a withdrawal agreement, the withdrawal will happen upon the two-year period after the leaving state notifies the European Council of its intention to withdraw. The inevitability of the withdrawal along with abovementioned issues makes us question that Article 50 is aimed to “establishing a procedure to enable such a withdrawal to take place in an orderly fashion”, as was stated in the judgement in the Wightman Case.

Despite the “umbrella” nature of Article 50 of the TEU, the ECJ’s judgment in *Minister for Justice and Equality v RO* established three stages of withdrawal from the EU: (1) notification of the intention to withdraw; (2) negotiations for and conclusion of the Withdrawal Agreement; and (3) the actual withdrawal.³⁶ These stages and their specific implementation on example of the UK’s withdrawal will be discussed in the following chapters.

Article 50 provides for a relatively new concept in the EU law as it was not originated from the European Coal and Steel Community Treaty. As we can see, Article 50 of the TEU establishes the right of a Member State to withdraw from the EU. It

³⁵ Article 50 of the TEU.

³⁶ *Minister for Justice and Equality v RO*, ECJ, Case C-327/18, [19 September 2018], para. 46.

provides for a few stages that, unfortunately, do not have a comprehensive regulation further in the TEU or the TFEU.

A framework nature of Article 50 of the TEU resulted in lack of clarity regarding withdrawal procedure. Therefore, a number of legal acts have to be implemented during withdrawal of any Member State. Such acts, in particular have to establish: notification requirements and recognition of the notification, terms and principles of negotiations, detailed procedure for negotiation and conclusion, time terms of each stage, etc.

Therefore, we believe that the framework nature of article 50 should be addressed by the EU through additional guidance. Such guidance may take a form of legal acts regulating the competences and procedures, guidelines that will further elaborate on distribution and execution of powers between stakeholders, and ECJ decisions, clarifying interpretation and proper application of respective rules.

CHAPTER 3. Initiation of withdrawal under Article 50 of the TEU

3.1. National procedure – referendum, its acknowledgement

Under clause 1 of Article 50 of the TEU, any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.³⁷ In the UK referendum procedure is regulated by the Political Parties, Elections and Referendums Act 2000 (“**2000 Act**”) that sets general procedural requirements for the referendum and the European Union Referendum Act 2015 (“**2015 Act**”) which was adopted specifically to set provisions for the holding of a referendum in the United Kingdom and Gibraltar on whether the United Kingdom should remain a member of the European Union.³⁸

In particular, article 1 of the 2015 Act sets the question of the referendum and the deadline for holding the Brexit Referendum.³⁹ Under the 2000 Act, the result of the referendum is not binding on the Government or on the Parliament. The vote requires a simple majority and there is no participation threshold. The Brexit Referendum has an advisory character as there are no provisions in the 2015 Act that overrule or extend the provisions of the 2000 Act.

Under the 2015 Act, the Brexit Referendum should be conducted by the Electoral Commission and overseen by an appointed Chief Counting Officer and a deputy chief counting officer who are responsible for the results of the referendum. The Electoral Commission is the public body responsible for raising public awareness ahead of polling day and overseeing the conduct of the referendum.⁴⁰ The Prime Minister should appoint a date for the holding of the referendum. It should be any day before 31 December 2017, except for 5 May 2016 or 4 May 2017.

³⁷ Article 50 of the TEU.

³⁸ 2015 Act.

³⁹ Article 1 of the 2015 Act.

⁴⁰ Clause 11 of Schedule 3 to the 2015 Act.

On 20 February 2016 Prime Minister David Cameron announced that the referendum would be held on 23 June 2016.⁴¹ On 23 June 2016 the referendum took place and the UK citizens took the vote that resulted in 51.89 percent for leaving the EU.⁴²

In June 2017, the United Kingdom Parliament confirmed the result of the referendum by voting with majorities in both of its Houses, thus passing the European Union (Notification of Withdrawal) Bill.^{43,44} The Bill was passed by the Parliament on 13 March 2017 and it received Royal Assent from Her Majesty The Queen and became an Act of Parliament on 16 March.⁴⁵ This procedure gave the Government the legal power to notify the European Council of the UK's intention to leave the EU and to formally begin the Brexit process.

As it was stated above, the 2015 Act did not provide any specific consequences that would follow the result of the referendum. Moreover, in the UK referendums have never been legally binding for the UK government.⁴⁶ Thus, we can come to the conclusion that the Brexit Referendum has never been legally binding. However, the UK Government have always perceived it as a politically binding decision of the UK citizens and adhered to the referendum results by filling the notification.

⁴¹ Prime Minister's Office. (February 20, 2016). *PM statement following Cabinet meeting on EU settlement*. UK Government.

<https://www.gov.uk/government/speeches/pms-statement-following-cabinet-meeting-on-eu-settlement-20-february-2016>.

⁴² The Electoral Commission. (September 25, 2019). *Results and turnout at the EU referendum*. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum>.

⁴³ Hansard. (February 8, 2017). *Division 161: European Union (Notification of Withdrawal) Bill*. UK Parliament. [https://hansard.parliament.uk/Commons/2017-02-08/division/0293BE52-2603-4E5C-BAE3-C03D371FB92C/EuropeanUnion\(NotificationOfWithdrawal\)Bill?outputType=Names](https://hansard.parliament.uk/Commons/2017-02-08/division/0293BE52-2603-4E5C-BAE3-C03D371FB92C/EuropeanUnion(NotificationOfWithdrawal)Bill?outputType=Names).

⁴⁴ House of Commons Library. (January 6, 2021). *Brexit timeline: events leading to the UK's exit from the European Union*. UK Government. <https://commonslibrary.parliament.uk/research-briefings/cbp-7960/>.

⁴⁵ UK Prime Minister. (March 29, 2017). *Letter of the UK Prime Minister to the European Council President Tusk*. UK Government. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf.

⁴⁶ Select Committee on the Constitution. (2009). *Referendums in the United Kingdom. 12th Report of Session 2009–10*. HL Paper 99. <https://publications.parliament.uk/pa/ld200910/ldselect/ldconst/99/99.pdf>, para 197.

3.2. Notification of the EU Commission

The next stage of the Brexit procedure, according to Article 50 of the TEU is an official notification of the EU of UK's intentions. There are no requirements regarding authority or a type of legal act that is required for legally binding notification. Therefore, the UK proceeded with notification in accordance with national legislation.

As the first step to fulfil its obligations in a proper and legally binding manner the UK passed the European Union (Notification of Withdrawal) Act 2017 ("**2017 Act**").

The 2017 Act was passed because no power of Ministers to lawfully give notification under article 50(2) was established in the UK's legislation. This argument was appealed in the *R(Miller) v Secretary of State for Exiting the European Union*. As stated in the decision:

The main issue on this appeal concerned the ability of ministers to bring about changes in domestic law by exercising their powers at the international level, and it arises from two features of the United Kingdom's constitutional arrangements. The first is that ministers generally enjoy the power freely to enter into and to terminate treaties without recourse to Parliament. This prerogative power is said by the Secretary of State for Exiting the European Union to include the right to withdraw from the treaties which govern UK membership of the European Union. The second feature is that ministers are not normally entitled to exercise any power they might otherwise have if it results in a change in UK domestic law, unless statute, in an Act of Parliament, so provides. The argument against the Secretary of State is that this principle prevents ministers withdrawing from the EU Treaties, until effectively authorised to do so by a statute.⁴⁷

The Miller claimants argued that Ministers cannot lawfully give notification under article 50(2) unless an Act of Parliament authorises them to do so.⁴⁸ This position was supported by the court. It ruled that because there was an Act of Parliament, the European Communities Act 1972, to give effect to our joining the (then) EEC and to

⁴⁷ *R(Miller) v Secretary of State for Exiting the European Union*, [24 January 2017], para 5

⁴⁸ *R(Miller) v Secretary of State for Exiting the European Union*, [24 January 2017], para 164.

make European rules part of UK law, there has to be another Act of Parliament to authorise service of notice to leave.⁴⁹

Based on this decision on 29 March 2017, the UK's Prime Minister Theresa May sent a letter on behalf of the Government stating the UK's intention to withdraw from the EU ("**Notification letter**"). This letter triggered Article 50 of the TEU. The Notification letter along with notification of the UK's intention to withdraw from the EU set the intention to withdraw from the European Atomic Energy Community under Article 106a of the Treaty Establishing the European Atomic Energy Community.⁵⁰

It was also argued whether the UK has made a valid 'decision to withdraw' from the European Union in accordance with its constitutional requirements under TEU. However, the High Court of Justice upheld the arguments in Miller and further confirmed that both the referendum and 2017 Act were part of constitutional requirements and that "no additional UK constitutional requirements remained to be satisfied".⁵¹

Despite the fact that notification is an integral part of the withdrawal procedure, established in Article 50, according to the Committee on Constitutional Affairs, a revocation letter is not an EU act, it is not even a legal act but merely a piece of diplomatic information. Yet, such an act also creates certain legal consequences, namely the beginning of the two-year period for the conclusion of the Withdrawal Agreement.⁵²

One of the important details of Article 50 of the TEU is that it prescribes only for notification of the intention to withdraw. As was stated in the Judgment of the Court (Full Court) dated 10 December 2018 in the judgement in the Wightman Case by General Campos Sánchez-Bordona, a Member State which decides to withdraw shall notify the European Council of its intention, thereby activating the second phase of the procedure. The provision refers to the notification of the 'intention' to withdraw, and

⁴⁹ R(Miller) v Secretary of State for Exiting the European Union, [24 January 2017], para 279.

⁵⁰ UK Prime Minister. (March 29, 2017). *Letter of the UK Prime Minister to the European Council President Tusk*. UK Government.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf

⁵¹ R (Elizabeth Webster) v Secretary of State for Exiting the European Union, [12 June 2018], para 15.

⁵² Directorate General for Internal Policies, Policy Department For Citizens' Rights and Constitutional Affairs. (2018). *The (ir-)revocability of the withdrawal notification under Article 50 TEU*. https://op.europa.eu/en/publication-detail/-/publication/88ca6963-0af2-11e8-966a-01aa75ed71a1?WT.mc_id=NEWSLETT-ER_%20June2018-interested-in-blurbs, p.27.

not to withdrawal itself, because withdrawal may only occur after the agreement is reached or, in the absence of an agreement, after two years have elapsed.⁵³

Additionally, the importance of the notification as the “turning point event” can be highlighted by irrevocability of the notification. Such a legal nature is of course debatable as there are no legal provisions that prohibit revocation of the notification under Article 50 of the TEU or discreetly prescribe such a right of a Member State or provide for a procedure.

On the one hand, under general principles of international law, *a notification or instrument provided for in article 65 or 67 [including notification of withdrawal] may be revoked at any time before it takes effect*⁵⁴. Despite the fact that the EU and some of its Member States are not parties to the Vienna Convention, such provisions can be applied on the basis of customary law as described above.

Moreover, one of the authors of Article 50 of the TEU stated in his speech⁵⁵ that the notification is revokable during the two-year negotiation period. The European Union Committee has expressed the similar opinion, stating that “*nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations*”⁵⁶.

Further, in judgement in the Wightman Case CJEU states that “... *according to settled case-law of the Court, the interpretation of a provision of EU law requires that account be taken not only of its wording and the objectives it pursues, but also of its context and the provisions of EU law as a whole.*”⁵⁷ Therefore, the court states that “... *the wording of Article 50(2) TEU [shows] that a Member State which decides to withdraw is to notify the European Council of its ‘intention’. An intention is, by its nature, neither definitive nor irrevocable.*”⁵⁸

⁵³ Andy Wightman and Others v Secretary of State for Exiting the European Union, Opinion of AG Campos Sánchez-Bordona, Case C-621/18, [4 December 2018], para 99.

⁵⁴ Article 68 of the Vienna Convention on the Law of Treaties, of 23 May 1969.

⁵⁵ Weaver, M. (November 2017). *Brexit is reversible even after date is set, says author of article 50*. The Guardian. <https://www.theguardian.com/politics/2017/nov/10/brexit-date-is-not-irreversible-says-man-who-wrote-article-50-lord-kerr>

⁵⁶ UK Parliament. *The process of withdrawing from the European Union, Chapter 2, para 15*. <https://publications.parliament.uk/pa/ld201516/ldselect/ldeucom/138/13804.htm>

⁵⁷ Andy Wightman and Others v Secretary of State for Exiting the European Union, [10 December 2018], para 47

⁵⁸ Andy Wightman and Others v Secretary of State for Exiting the European Union, [10 December 2018], para 49

Joining the “revocability team”, Adam Lazowski highlights the probability that a withdrawing Member State changes its mind in the course of negotiations (for instance as a result of change of government) and decides to stay in the European Union.⁵⁹ Further, Raymond J. Friel said that “*as a matter of common sense, it should be open to a Member State to change its mind within the two-year period*”.⁶⁰

At the same time there have been multiple arguments for irrevocable nature of the notification of withdrawal. The first argument would be that there are no material or procedural grounds for revocation of notification of Article 50 of the TEU. That does not mean that such a procedure cannot be established, yet again it requires implementation of additional decisions.

Further, the abovementioned provisions of the Vienna Convention cannot be recognized as a customary law due to the fact that they are of a procedural nature. Such an opinion was stated in the same case: “*59 Even if such declarations do not satisfy the formal requirements laid down by Article 65 of the Vienna Convention, it should be noted that the specific procedural requirements there laid down do not form part of customary international law.*”⁶¹

A comprehensive analysis was provided in opinion by Campos Sánchez-Bordona, in which he provides following argument for revocability

- substantive and procedural obligations imposed by Article 50 TEU on a Member State which decides to withdraw are very limited, there are no obligations regarding entering into a withdrawal agreement. Further it does not have any prohibitions with regard to retraction of the withdrawal;
- as was stated above, the provision refers to the notification of the ‘intention’ to withdraw, and not to withdrawal itself. Therefore, the party that notifies a third party of its intentions does not assume an obligation to maintain that intention irrevocably. For such an effect to have a place, Article 50(2) TEU

⁵⁹ Lazowski, A. (2012). *Withdrawal from the European Union and alternatives to membership*. European Law Review, 37(5), 523-540.

⁶⁰ Raymond J. Friel. (2003). *Secession From the European Union: Checking Out of the Proverbial "Cockroach Motel"*, 27 Fordham Int'l L.J. 590 <https://ir.lawnet.fordham.edu/ilj/vol27/iss2/4>

⁶¹ A. Racke GmbH & Co. v Hauptzollamt Mainz, [16 June 1998].

could have used the formula ‘shall notify that decision’ (or another similar formula), instead of ‘shall notify its intention’.

- interdependence between the first and second phases of the procedure which results in conditionality of the second stage. In particular, if first phase of the procedure loses its foundation, either because the original decision was invalidly adopted, or because the application of the national constitutional mechanisms have undermined that decision or deprived it of effect, there will be no legal foundation for conducting negotiations;
- the court also projects a hypothetical scenario when the will of a Member State has changed in accordance with its own constitutional requirements and it wishes to remain in the European Union. In such a case there would be a risk of a forced exit;
- the change of the willpower also should not result in additional wait of two years and further imposition of burden to re-join the association under Article 49 of the TEU;
- the negotiation phase also does not change the notifying country’s status as an EU Member State suspension of the application of EU law or complete deprivation of rights and powers of participation in EU bodies.⁶²

We believe that such the notification should be recognized revocable due to (1) contextual reading of provisions of the TEU, (2) reflection of EU’s constitutional goals and principles, (3) necessity to prevent violation of any rights of the Member State and its citizens, and (4) need to provide a room for efficient reaction to change of circumstances (e.g. political willpower or constitutional order and principles of the notifying Member State).

Further, it is reasonable to question whether the withdrawal can be unilateral since the EU does not vest power of notification of the withdrawal itself. Lazowski addressed the issue and provided arguments for and against unilateral nature of the withdrawal. In

⁶² Advocate General Sanchez-Bordona, C. (4 December 2018). *Opinion of in Case C-621/18 Whiteman and others v Secretary of State for Exiting the European Union*. ECLI:EU:C:2018:978, paras 96-116.

particular, he references the following supporting arguments provided by Herbst and Tatham:

- two years' notice allows a departing country to leave the EU on the basis of domestic constitutional law;
- the obligation to conclude a withdrawal agreement is imposed on the EU and thus does not rest on the shoulders of the departing country; and
- the right to withdraw is not conditional on a change to EU constitutional law.⁶³

The respective vision was reflected in the judgement in the **Shindler** Case. In particular, the court stated that:

- Article 50(3) TEU confirms that the possibility for a Member State to withdraw from the EU is not subject to authorisation from the EU institutions.
- A decision of acceptance by the Council or by any other EU institution [confirming adherence of the exiting state to its own constitutional requirements] is not needed and is not provided for by Article 50 TEU.
- The Council's decision does not contain any decision ratifying or accepting the notification of intention to withdraw.⁶⁴

At the same time a unilateral nature of the decision to withdraw can be also supported by conducive nature of such a decision to the possibility of unilateral revocation of the notification of that decision, until the moment at which the latter's effects become final. From that perspective, unilateral revocation would also be a manifestation of the sovereignty of the departing Member State, which chooses to reverse its initial decision.⁶⁵

Through a synthetic contextual analysis of all paragraphs of Article 50, Lazowski further opposes the opinion of his colleagues. He suggests that the withdrawal cannot be deemed unilateral because:

⁶³ Lazowski, A. (2012). *Withdrawal from the European Union and Alternatives to Membership*. European Law Review, 37, p. 526-527

⁶⁴ JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition). *Harry Shindler v Council of the European Union*, [26 November 2018], paras 57-59.

⁶⁵ Advocate General Sanchez-Bordona, C. (4 December 2018). *Opinion of in Case C-621/18 Whiteman and others v Secretary of State for Exiting the European Union*. ECLI:EU:C:2018:978, paras 94.

- art.50(1) TEU leaves the decision on withdrawal to the domestic constitutional laws, while at the same time providing an EU procedural framework for departure;
- both sides are interested in provision of an adequate legal basis for withdrawal and future relations due to the legal, economic and political environment conditions.⁶⁶

Taking into consideration all of the arguments provided by scholars and the ECJ, we are more inclined to recognition of Member State's right of unilateral withdrawal. Since there are no obligations implied on the Member State neither to participate in negotiations, nor to conclude a withdrawal agreement, there are no legal basis for limitation of Member State's actions.

Another uncertainty related to Article 50 of the TEU is that the withdrawal can happen, whether or not a Withdrawal Agreement is concluded upon the two-year period after the leaving state notifies the European Council of its intention to withdraw. Such risk was foreseen in the Notification letter, where the Prime Minister said that in case the UK leaves the EU without an agreement, the default position of the trade will be conducted on the World Trade Organisation terms.

As we can see, the initiation of the UK's withdrawal required the adoption of a number of legal acts for its sufficiency. It shows that disintegration from a polity such as the EU is a rare phenomenon that is usually not regulated and not prescribed in powers and competencies of any body. What is also important is that despite the lack of legally binding nature of certain steps (e.g. referendum results and notification letter), further actions of stakeholders resulted in the continuation of the UK's withdrawal process.

⁶⁶ Lazowski, A. (2012). *Withdrawal from the European Union and Alternatives to Membership*. European Law Review, 37, p. 527-529.

The first part on the withdrawal procedure was majorly regulated by the national legislation which was due to (1) the lack of requirements established in Article 50 of the TEU, and at the same time (2) discretion of the exiting Member State's actions provided by the same article. Organisation of the Brexit Referendum and issuance of the Notification letter required adoption of additional legislation on the national level which was caused by the procedural requirements of the 2000 Act in case on the referendum and lack of powers of UK bodies to notify the EU of UK's intention to withdraw under UK legislation.

Another issue is the disputable legal nature of Article 50 of the TEU, in particular whether it is irrevocable or not. The majority of arguments stand for the right of an EU Member State to revoke its notification of withdrawal within the two-year-period. Despite the fact, the UK did not use such an opportunity and opted out for a prolongation of negotiations, the academic analysis received a certain development thanks to the Brexit. It is therefore reasonable to make certain amendments to the TEU and TFEU to clarify the procedure of the withdrawal or adopt guidelines clarifying the issues described above.

In this chapter we have analysed multiple issues related to the legal nature. We showed how controversial are certain characteristics of legal nature of Article 50 of the TEU. In particular, we came to conclusion that the provisions do not prohibit (1) the right to revoke notification of intention to withdraw and (2) the right to unilateral withdrawal. It is also worth noting that the wording of the article has a high level of political ambiguity because the notification itself is rather an act, opposite to a legally binding piece of legislation. Such characteristic is further depicted through the intentionality of the decision to withdraw, meaning that (1) the Member State notifies only of its intentions, and (2) such an intention can be revoked or be deemed unconstitutional. This leads us to understanding that the development between the notifying Member State and the EU may highly depend on the political agenda of each party.

CHAPTER 4. NEGOTIATIONS OF THE WITHDRAWAL AGREEMENT

According to Article 50, negotiations regarding Member State's withdrawal from the EU should be regulated by the guidelines provided by the European Council. The EU shall negotiate and conclude an agreement with the UK, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.⁶⁷

The negotiations should be held in accordance with Article 218(3) of the TFEU⁶⁸, which states that the European Commission, or the High Representative of the Union for Foreign Affairs and Security Policy shall submit recommendations to the European Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the EU negotiator or the head of the EU's negotiating team.⁶⁹

Therefore, the Council of the European Union can choose which institution should take the leading role in the negotiations process on behalf of the EU. When deciding, the Council should take into consideration the subject of the agreement envisaged, hence its content and the depth of coverage of the respective issues. Apart from the negotiations it is also important to address the role of each EU institution and their input to the “behind the scenes” on the negotiations, i.e. participation in internal negotiations, analysis of the draft documents, facts, coordination of the EU's position on various matters.

4.1. UK's and European Parliament's vision regarding Negotiating Guidelines

Both the EU and the UK had their visions regarding the Negotiating Guidelines. For example, the UK suggested seven principles to guide discussions in the Notification letter. These included:

⁶⁷ Article 50(2) of the TEU.

⁶⁸ Article 50(2) of the TEU.

⁶⁹ Article 218 (3) of the TFEU.

- constructive and respectful engagement, in a spirit of sincere cooperation;
- prioritisation of citizens' interests and securing their rights. In particular through reaching an early agreement about the rights of EU citizens living in the UK and UK citizens living in the EU;
- preparation of a comprehensive agreement that will cover both economic and security cooperation. The UK also makes stress that these provisions should be made alongside withdrawal provisions;
- achievement of minimization of disruption and maximum level of certainty through setting implementation periods aimed at adjustment in a smooth and orderly way to new arrangements;
- regulation of relationships with the Republic of Ireland with regard to peace maintenance in Northern Ireland and the Belfast Agreement;
- an early start of detailed technical talks about the proposed free trade agreement. Such policy should prioritise management of the regulatory frameworks and standards evolution and maintenance of a fair and open trading environment, and how to resolve disputes; and
- further support of liberal democratic European values and their protection.⁷⁰

On the EU's behalf the final vision on negotiation was expressed and decided by the Council, it is important to understand the position of different EU bodies that had a certain impact of the Negotiating Guidelines. Although the European Parliament is not directly involved in Article 50 negotiations, the European Parliament's position set out in resolutions⁷¹ had certain level of influence on scope and direction of negotiations. A number of resolutions set out main principles and objectives for the negotiations and

⁷⁰ UK Prime Minister. (March 29, 2017). *Letter of the UK Prime Minister to the European Council President Tusk*. UK Government.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf

⁷¹ Such resolutions included: (1) European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union, (2) European Parliament resolution of 3 October 2017 on the state of play of negotiations with the United Kingdom, (3) European Parliament resolution of 13 December 2017 on the state of play of negotiations with the United Kingdom, and (4) European Parliament resolution of 14 March 2018 on the framework of the future EU-UK relationship.

provided for a benchmarks for determination of the EU's position on the agreement before giving its consent.⁷²

Parliament's principles were setting the next set of goals or principles to be met depending on the relevant status of negotiations. The provisions, depending on the time period included the following principles:

- the negotiations between the European Union and the United Kingdom must be conducted in good faith and full transparency;
- securing the right of the United Kingdom to enjoy its rights as a Member State of the European Union until the Withdrawal Agreement comes into force and to remain bound by its duties and commitments arising therefrom;
- disapproval of UK kicking-off any negotiations of trade agreements with non-EU countries before Brexit as a breach of the principle of sincere cooperation laid down in Article 4(3) of the TEU; and
- elaboration on key criteria that should be regulated by the agreement regarding (1) citizens' rights, (2) financial obligations, (3) international obligations of the UK as a Member state, (4) Ireland and Northern Ireland, and (5) transitional period and agreement, etc.

As will be described below, despite the fact the European Parliament does not have a comprehensively integrated role in negotiations process, it has a final say in the withdrawal process. Therefore, these positions were taken into consideration and implemented in two types of documents: the Negotiating Guidelines and directives for the negotiation.

4.2. Negotiating Guidelines adopted by the European Council

According to Article 50(2) of the TEU, the European Council adopted (Art. 50) guidelines following the United Kingdom's notification under Article 50 TEU

⁷² European Parliament. (April 5, 2017). *European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union (2017/2593(RSP))*. https://www.europarl.europa.eu/doceo/document/TA-8-2017-0102_EN.html?redirect

(“**Negotiating Guidelines**”) on 29 April 2017.⁷³ These Negotiating Guidelines define the overall principles the EU had to follow during negotiation process of UK’s withdrawal.

The Negotiating Guidelines focused on such aspects of the negotiation process:

- the core principles for the negotiations on withdrawal and the discussions on the framework for the future relationship include integrity of the single market, balance of rights and obligations, unity of the four freedoms of the Single Market, etc.;
- division of the negotiation into two phases with a specific number of issues to be set with the deadline of the two-year timeframe set out in Article 50 TEU ends on 29 March 2019;
- striving for an orderly withdrawal through prioritizing issues covered by the agreement: (1) citizens’ rights, (2) prevention of legal vacuum for businesses, (3) single financial settlement, (4) peace maintenance in Northern Ireland, (5) further cooperation in different areas including judicial cooperation, law enforcement and security;
- initiation of work towards a UK-EU free trade agreement which should be balanced, ambitious and wide-ranging and ensure a level playing field, notably in terms of competition and state aid; and
- compliance with the principle of sincere cooperation, etc.

The European Council (excluding the UK) further adopted supplemental Negotiating Guidelines at its meetings on 15 December 2017⁷⁴ addressing transition period regulation, and on 23 March 2018⁷⁵ addressing EU-UK free trade agreement and key provisions.

The European Council said that the key purpose of its guidelines is to define the framework for negotiations under Article 50 TEU and set out the overall positions and

⁷³ European Council. (April 29, 2017). European Council (Art. 50) guidelines for Brexit negotiations. *Press release*. <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brex-it-guidelines/>

⁷⁴ General Secretariat of the Council. (December 15, 2017). *European Council (Art. 50) meeting (15 December 2017) - Guidelines*. European Council. <https://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>

⁷⁵ General Secretariat of the Council. (March 23, 2018). *European Council (Art. 50) (23 March 2018) - Guidelines*. European Council. <https://www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf>

principles that the EU would pursue throughout the negotiation. The EU, still, would remain permanently seized of the matter, and would update these guidelines in the course of the negotiations as necessary.⁷⁶

According to Christophe Hillion, formally, only the EU is bound by Article 50 of the TEU to engage in such a negotiation; since the right to exit is not conditional upon a deal, the Member State intending to leave is by contrast not obliged to negotiate.⁷⁷ However, as noted further by Christophe Hillion, the UK during the negotiations remains to be a Member State of the EU, therefore, it remains bound by the duty of cooperation and it should assist the EU in setting out the arrangements of its withdrawal. This implies that the Negotiating Guidelines are binding for both, the UK and the EU.

On 22 May 2017 the European Council (excluding the UK) at the Special European Council meeting adopted the Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union (“**Negotiating Directives**”).⁷⁸ The vote was unanimous according to requirements of Articles 50(2) and 15(4) of the TEU. The Directives provide more detailed instructions for the European Commission regarding issues set in the Negotiating Guidelines and cover the first phase of the negotiations. Supplemental Negotiating Directives were adopted on 29 January 2018⁷⁹. These directives include matters that should be subject to transitional arrangements. The legally binding nature of such directives is standard as for all directives – they shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.⁸⁰

4.3. Opening of negotiations and practical regulation

⁷⁶ European Council. (December 15, 2016). *Statement after the informal meeting of the 27 heads of state or government*. <https://www.consilium.europa.eu/en/press/press-releases/2016/12/15/statement-informal-meeting-27/>, para 1.

⁷⁷ Hillion, C. (2018). Withdrawal under article 50 TEU: An integration-friendly process. *Common Market Law Review*, 55(Special). P.31

⁷⁸ General Secretariat of the Council. (May 22, 2017). *ANNEX to Council decision (EU, Euratom) 2017/...* Council of the European Union. <https://www.consilium.europa.eu/media/21766/directives-for-the-negotiation-xt21016-ad01re02en17.pdf>

⁷⁹ General Secretariat of the Council. (January 29, 2018). *ANNEX to the COUNCIL DECISION supplementing the Council Decision of 22 May 2017*. Council of the European Union. <https://www.consilium.europa.eu/media/32504/xt21004-ad01re02en18.pdf>

⁸⁰ Article 288 of the TFEU.

On 22 May 2017, the Council adopted the Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union.⁸¹ With the same decision the Council nominated the European Commission as the EU negotiator and authorised it to open negotiations, on behalf of the Union.⁸² The European Commission appointed Michel Barnier as its chief negotiator.

It is important to note that the abovementioned decision “does not constitute an implicit act by which the UK’s notification of intention to withdraw is accepted or that the it acknowledges the ‘exit’ of the United Kingdom from the EU on 29 March 2019”.⁸³

On 19 June 2017, the first round of negotiations begun. On the same day the Terms of reference for the Article 50 negotiations between the UK and the EU were agreed. These terms set the structure and organizational aspects of the negotiations, including key issues, frequency of Negotiating Rounds, official languages and other aspects.⁸⁴

EU 27 during the Informal Meeting of the Heads of State or Government of the 27 Member States in Brussels on 15 December 2016⁸⁵ has also agreed on strategy of their cooperation during the negotiations. In particular:

- *“The European Council will remain permanently seized of the matter, and will update these guidelines in the course of the negotiations as necessary...*
- *The Council will be invited to nominate the European Commission as the Union negotiator...*
- *To ensure transparency and build trust, the Union negotiator's team will be ready to integrate a representative of the rotating Presidency of the Council. Representatives of the President of the European Council will be present and*

⁸¹ Council of the European Union. (May 15, 2017). *COUNCIL DECISION (EU, Euratom) 2017/...* <https://data.consilium.europa.eu/doc/document/XT-21016-2017-INIT/en/pdf>

⁸² Council of the European Union. (May 15, 2017). *COUNCIL DECISION (EU, Euratom) 2017/...* <https://data.consilium.europa.eu/doc/document/XT-21016-2017-INIT/en/pdf>

⁸³ JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition). *Harry Shindler v Council of the European Union*, [26 November 2018], para 60.

⁸⁴ UK Government. (June 19, 2017). *Terms of Reference for the Article 50 TEU negotiations.* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/620409/Terms_of_reference_for_the_Article_50_negotiations_between_the_United_Kingdom_and_the_European_Union.pdf

⁸⁵ Informal meeting of the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission Brussels. (15 December 2016). <https://www.consilium.europa.eu/media/24173/15-euco-statement.pdf>

participate, in a supporting role, in all negotiation sessions, alongside the European Commission representatives...

- *The Union negotiator will systematically report to the European Council, the Council and its preparatory bodies...*
- *Between the meetings of the European Council, the Council and Coreper, assisted by a dedicated Working Party with a permanent chair, will ensure that the negotiations are conducted in line with the European Council guidelines and the Council Negotiating Directives, and provide guidance to the Union negotiator...*
- *Representatives of the 27 Heads of State or Government (Sherpas/Permanent Representatives) will be involved in the preparation of the European Council as necessary. Representatives of the European Parliament will be invited at such preparatory meetings.*⁸⁶

Therefore, we can see that the responsibility and specific functions were distributed between the different EU bodies.

Professor Derrick Wyatt has predicted the overview of the negotiation process:

“The Council would lay down a negotiating mandate to the Commission, which would get on with the job. Whatever the treaty base, there would be a special committee working alongside. There would also be toing and froing between the European Parliament and the Commission. ... The European Council is not going to be hands-on all the time. Who will be hands-on all the time will be the Committee of National Representatives, which is overlooking the Commission negotiations. The normal committee is the Trade Policy Committee, which I think meets once a month, but its deputies meet every week. One would be getting toing and froing between representatives from member states in the committee and its deputies. Changing of the negotiation mandate is possible and could, and would, happen. To some extent, we are in an exercise of guesstimating, but my guess is that the European Council would lay down its general guidelines, and after that the

⁸⁶ Ibid.

*hands-on role would be the Council and the special committee liaising with the Commission.”*⁸⁷

Such a distribution of powers and roles is rather logical. Despite the fact that certain details are missing e.g. an intense involvement of bodies in development of comprehensive strategy, role and impact of actions and opinions of the European Parliament, the fundamental links and stakes are reflected. Let's take a look on the details.

The European Council and the Council of the European Union are responsible for the framework of the Brexit negotiations. Apart from the Negotiating Guidelines and Negotiating Directives, bodies provide for organizational issues. In particular, on 22 May 2017, an ad hoc Working Party on Article 50 TEU (“**ad hoc Working Party**”) was created to assist Committee of Permanent Representatives (“**Coreper**”) and the Council in all matters pertaining to the withdrawal of the UK from the EU. In particular, the ad hoc Working Party should (1) assist Coreper and the Council in the course of the negotiations under Article 50 TEU, in line with the European Council guidelines and the Council Negotiating Directives, (2) provide assistance on matters related to the process under Article 50 TEU that are not for negotiation with the UK.

The ad hoc Working Party is forming the position and proposals on any matter which is further transferred to the Coreper and General Affairs Council. The final stage is adoption on the EU level by the European Council. As was described above, the UK does not take part in the meetings of the European Council regarding Brexit due to a direct prohibition under Article 50 of the TEU.

With its decision, the European Council has authorized the European Commission to negotiate the Brexit withdrawal agreement with the UK. Such a decision was disputed in the EU General Court.⁸⁸ The decision of the court ruled against the applicant stating that “The Court has held that a decision adopted on the basis of Article 218(3)

⁸⁷ The Select Committee on the European Union. (8 MARCH 2016). *Inquiry on The Process of Leaving the European Union, Evidence Session No. 1, Questions 1 – 17*. House of Lords. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/the-process-of-leaving-the-eu/oral/30396.html>

⁸⁸ JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition). *Harry Shindler v Council of the European Union*, [26 November 2018].

and (4) TFEU produced legal effects as regards relations between the European Union and its Member States and between the EU institutions”.⁸⁹

Apart from being EU’s voice, the European Commission as a key negotiator also played a significant role in shaping the “written” representation as only EU institution with the right of legislative initiative. It coordinated negotiations through its Taskforce for relations with the UK, which included the Article 50 Taskforce. Key work products of the European Commission included position papers on various issues that were discussed throughout years of negotiations. The ultimate work product was the final draft of the Withdrawal Agreement.

Even though the prescribed role of the European Parliament is rather limited, this institution had a hands-on approach in negotiations. Article 50 of the TEU mentions the European Parliament only once when it sets a requirement for the approval of the withdrawal agreement prior to conclusion by the Council of European Union. Because of such a role, the European Parliament was able to stay closely informed about negotiation process and observe the development of the future withdrawal agreement in accordance with Article 218(10) of the TFEU.

The importance of such involvement is caused by:

- the European Parliament directly representing the EU citizens at Union level;⁹⁰
- the European Parliament is the only EU organ directly elected by the EU citizens via elections;⁹¹
- the European Parliament exercises legislative and budgetary functions, functions of political control and consultation;⁹² and
- the European Parliament has competences to initiate review of the EU’s actions through.⁹³

The Conference of Presidents of the European Parliament has established a Brexit Steering Group on 6 April 2017. This body is composed of the chairs of the five political

⁸⁹ JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition). *Harry Shindler v Council of the European Union*, [26 November 2018], para 39.

⁹⁰ Article 10(2) of the TEU.

⁹¹ Article 14(3) of the TEU.

⁹² Article 14(3) of the TEU.

⁹³ Article 263 and Article 265 of the TFEU.

groups that supported the European Parliament resolution of 5 April 2017. The Brexit Steering Group was responsible for coordination and preparation of European Parliament's deliberations, considerations and resolutions on the UK's withdrawal from the EU.

Even though, resolutions of the European Parliament do not constitute the EU's official position and hold no legal weight, they are taken into consideration due to European Parliament's de-facto veto right on conclusion of the withdrawal agreement.

The negotiations were not regulated under Article 50 of the TEU, thus this part of the procedure required adaptation of new provisions by the EU. The power to adopt respective legislation falls within the competencies of the European Council. As we can see, from analysis of acts adopted by both the UK and the European Parliament, they had their impact on provisions on the Negotiating Guidelines.

As we can see, the European Council adopted Negotiating Guidelines, Negotiating Directives and then agreed with the UK on Terms of reference for Article 50. This shows a diversity of issues that have direct influence on efficiency and results of negotiations of withdrawal. The key part of the effectiveness of all these regulations was the implementation of changes through adaptation of additional Negotiating Guidelines and Negotiating Directives according to the needs during respective stage of negotiations and the progress made.

Based on analysis of provisions of adopted legislation we can see that provisions of Article 50 of TEU lacks key guideline principles of negotiation process. Therefore, I think it would be reasonable to adopt an EU legal act to establish fundamental principles of negotiations under Article 50, e.g. good faith and full transparency, sincere cooperation, protection of citizens' rights, etc.

Further it is important to note that the EU institutions has been responsible for fulfillment of the abovementioned guidelines in accordance with the TEU, the TFEU

provisions. The role of each institution is either directly prescribed in founding treaties, imposed upon decision of a competent authority, vested upon its creation, or organically developed through interinstitutional relations and cooperation.

In our opinion, the strategy of actions taken by each body starting from setting the terms (e.g. Negotiating Guidelines and Negotiating Directives) and finishing with establishment of specific committees/bodies, has helped to provide an effective response to amount of issues that had to be addressed in the short period. We also believe that the concept established provided for enough flexibility in relation to changing circumstances. Therefore, in case of withdrawal of other Member States, the experience should be taken into consideration, especially the provisions that provide for flexibility, in-depth analysis of issues to be addressed and assurance of protection of rights and interests of the EU citizens. At the same time the new approach should reflect specialties of relation between the EU and the withdrawing Member State as well as the concept of the withdrawal agreement and regulation of post-exit relations.

CHAPTER 5. WITHDRAWAL AGREEMENT

After implementation of the first two steps set in the first part of Article 50 of the TEU (notification of withdrawal and negotiations), it is time to conclude the agreement. For the agreement to be binding and to enter into force, certain procedural requirements should be fulfilled and legislative background should be provided.

According to the EU primary law, the Withdrawal Agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.⁹⁴ However, the procedure of approval is rather complicated and requires a number of actions to be made and acts to be adopted by different EU and UK bodies.

5.1. Content of the Withdrawal Agreement – potential scenarios

Article 50 of the TEU does not provide for any guidelines or restrictions regarding the content of the withdrawal agreement. The agreement could have been either extensive with elaborate and detailed regulation of all areas of the future EU-UK cooperation or cover only the key areas that impact interests of the EU and the UK citizens. In the second scenario the EU-UK relation should be further regulated by a new agreement, which should be concluded under a different procedure.

Another dimension in which terms of the withdrawal agreement could vary is the approach to relations. Until the final draft of the Withdrawal Agreement it was impossible to predict whether the UK will be granted the right to stay in the EU market or will have to cooperate with the EU on WTO terms, or a new approach will be created. Therefore, there have been several scenarios of Brexit.

Therefore, the parties as well as scholars analysed several major scenarios for the withdrawal agreement and future regulation of EU-UK relations. The key considerations of these models included customs union, access to the EU single market, EU citizens' rights, consumer protection, public procurement.

⁹⁴ Article 50(2) of the TEU.

Hard Brexit – No-deal scenario

The first scenario that was considered is a base case if the UK and the EU have not reached the withdrawal agreement. In such a case the post-exit relation would have been regulated by applicable provisions of international law. With respect to the trade relations, the fundamental principle would have been regulated by WTO rules.

The fundamental principles of the WTO are most-favoured-nation (“**MFN**”) and national treatment principles. Subject to MFN principle WTO members must extend the same favourable treatment that it accords to any other country, thus prohibiting discrimination between trading parties. At the same time EU single market regime does not fall under this principle as it does not apply to agreements on economic integration.⁹⁵ Therefore, upon withdrawal without an agreement, the UK will not be able to claim the same treatment that is applicable to Member States, which effectively will result in a closure of the EU market for the UK. However, under the national treatment principle the UK products upon entering the EU market (after payment of custom duties and complying with tariff requirements, where applicable) will be treated in the same manner as domestic products.⁹⁶

The practical application of the WTO rules will be subject to market access rules prescribed in schedules and commitments that have to be agreed separately between the EU and the UK. Since UK’s commitments were regulated by overall EU commitments when it was a Member State, the UK would have had to develop its own commitments. On the one hand, the UK might have replicated the EU commitments into its own membership. On the other hand, the UK can develop its own set of schedules. Either way, the new rules would have to be approved by all other WTO members, including the EU. Hence, many political interests would have to be taken into consideration.

The no-deal scenario is the worst outcome due to the negative impact on the UK’s GDP.⁹⁷ The no-deal scenario also will not address the citizens’ right with regard to

⁹⁵ Article V of GATS, Article XXIV of GATT 1947.

⁹⁶ Article XVII of GATS, Article III of GATT 1947.

⁹⁷ The House of Commons. (11 December 2018) *The UK’s economic relationship with the European Union: The Government’s and Bank of England’s Withdrawal Agreement analyses*. Twenty-Fifth Report of Session 2017–19, p. 12-13. <https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1819/1819.pdf>

freedom of movement which will result in burden on both the citizens as employees, and companies in both the EU and the UK with regard to foreign employees.

Norwegian model - EEA membership

Upon withdrawal to join the European Economic Area (“EEA”), the UK as a third country to the EU will have to join European Free Trade Association (“EFTA”).⁹⁸ The EEA provides for internal market and flanking policies between the EU Member States and three EFTA countries: Norway, Liechtenstein and Iceland.⁹⁹ The first benefit of such an arrangement is access to the benefits of the Single Market and the four freedoms: free movement of goods, services, capital and labour. Hence the UK would have been required to keep all EU Single Market legislation, except for the common agriculture and fisheries policies, customs union, common trade policy, the common foreign and security policy, justice and home affairs, direct and indirect taxation, and the economic and monetary union.¹⁰⁰ The UK will further be obliged to integrate into the EFTA-EEA two-tier institutions system and participate in activities of the bodies.

The overall EEA concept was well described in the *Ákærvaldið (The Public Prosecutor) v Ásgeir Logi Ásgeirsson*: “... an international treaty *sui generis* which contains a distinct legal order of its own ... This legal order as established by the EEA Agreement is characterized by the creation of an internal market, the protection of the rights of individuals and economic operators and an institutional framework providing for effective surveillance and judicial review.”¹⁰¹

Further to securing its interest in the major areas, the UK will receive access to certain tools enabling influence on EU legislation. In particular, UK officials would be able to (1) participate in expert groups and committees of the European Commission, and (2) submit comments on forthcoming legislation.¹⁰²

⁹⁸ Article 126 of the Agreement on the European Economic Area.

⁹⁹ Lazowski, A. (2012). *Withdrawal from the European Union and Alternatives to Membership*. European Law Review, 37, p. 354.

¹⁰⁰ EFTA. *The Basic Features of the EEA Agreement*.

¹⁰¹ R (Á. L. Ásgeirsson, A. P. Ásgeirsson and H. M. Reynisson) v Ákærvaldið (The Public Prosecutor), [12 December 200], para 28

¹⁰² European Union Committee. (13 December 2016). *Brexit: the options for trade*. Authority of the House of Lords, 5th Report of Session 2016–17, p. 22. <https://publications.parliament.uk/pa/ld201617/ldselect/lddeucom/72/72.pdf>

In terms of economic effect, this scenario is among the most efficient.¹⁰³ Additionally, as was mentioned above, entering the EEA will not affect the movement of people.

Different FTA models

Following the typical models, there is also a standard practice for the EU to conclude free trade agreements with third countries. Among the most famous we can highlight Ukraine, Canada and Switzerland.

Ukrainian model - Deep and Comprehensive Free Trade Area

Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (“**EU-UA Association Agreement**”) is one of the most recent and most elaborate mixed FTAs. It has set a new level of details to be prescribed in the agreement. Due to the goals of the parties, in particular, Ukrainian eurointegration and potential membership in the EU, the EU-UA Association Agreement has gained unique qualities such as comprehensiveness, complexity and conditionality.¹⁰⁴ Since the agreement is focused on integration, a number of provisions would not be applicable to a potential UK-EU model, such as:

- Establishment of a free trade area for trade in goods over a transitional period of a maximum of 10 years (because the UK-EU agreement should be aimed at continuous cooperation);
- Asymmetrical liberalization of tariffs (the EU and UK could have agreed on tariff-free trade from the beginning).

At the same time some outtakes could be made (e.g. extensive list of standards and procedure that should be reintegrated to UK’s legislation, obligation to conduct annual meetings on the highest political level, etc.).

Canadian model – Comprehensive Economic Trade Agreement

EU-Canada Comprehensive Economic and Trade Agreement (“**CETA**”) establishes a free trade area between the EU and Canada (Article 1.4). The agreement

¹⁰³ The House of Commons. (11 December 2018) *The UK’s economic relationship with the European Union: The Government’s and Bank of England’s Withdrawal Agreement analyses*. Twenty-Fifth Report of Session 2017–19, para 32. <https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1819/1819.pdf>

¹⁰⁴ Van Elsuwege P. in G. Van der Loo, P. Van Elsuwege, R. Petrov (2014), *The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument*, EUI Working Papers (Law) 2014/09.

addresses an extensive list of trade related aspects, including trade remedies, technical barriers to trade, technical regulations, standards, conformity assessment procedures, market surveillance or monitoring and enforcement activities. The CETA further provides regulation for specific sectors of economy.

Due to its simplicity and straight-forward approach CETA can be a great example of addressing the key issues. At the same time, it is not beneficial for protection of citizens' rights.

Swiss model – bilateral relations

The Swiss-EU relations model if applied to the UK case would have several major characteristics:

- It would have been regulated by bilateral agreements;
- Need to settle the limits of UK's obligation to reflect developments of EU secondary legislation and interpretation of the EU *acquis* by the CJEU;
- Lack of a uniform and coherent institutional structure for cooperation;
- Absence of a common judicial authority like ECJ or EFTA court;¹⁰⁵
- Lack of access to the Single Services Market including financial services; and
- Potential risk for a number of disputes arising from the model.¹⁰⁶

Taking into consideration an exceptional status of Switzerland at political arena and background of the EU-UK political relations, it is very unlikely that the EU would have agreed to the Swiss model for future relations.

Even though joining EEA would have been the most beneficial for the UK, the parties opted out for a tailored FTA. We address the content of the agreement further in sub chapter 5.4.

With regard to the balance between the withdrawal agreement and further regulation of the UK-EU relations, in the end, the parties opted out for a “thin” withdrawal agreement and more elaborate and detailed free trade agreement. In our

¹⁰⁵ Lazowski, A. (2012). *Withdrawal from the European Union and Alternatives to Membership*. European Law Review, 37, p. 536-538.

¹⁰⁶ Foundation Robert Schuman (24.10.2016). *Soft or hard Brexit?*
<https://www.robert-schuman.eu/en/european-issues/0408-hard-or-soft-brexite>

opinion it was the most efficient solution, taking into consideration an unprecedented background circumstances and effectiveness of negotiations.

5.2. Legal nature of the withdrawal agreement

According to Article 50(2) the TEU, the procedure of the negotiation of the Withdrawal Agreement falls within the scope of Article 218(3) of the TFEU. It means that the withdrawal agreement does not need to be ratified by the Member States. At the same time, the UK's exit will imply certain changes to the TEU and the TFEU.

The withdrawal agreement is not meant to be of a mixed nature, unlike the majority of the trade and cooperation agreements. Taking into consideration this and the number of options of the context of the withdrawal agreement, it is reasonable to agree with Paul Craig. He said that there could be an agreement *“that deals only with the core essentials of terminating the UK's current relationship with the EU, while leaving details concerning the future to be decided by a later treaty; at the other end of the scale there might be a much thicker withdrawal agreement that includes the detailed architecture to govern future interaction between the EU and the UK, being mindful of the warning from Richard III that the EU may not be in a giving mood at that time”*.¹⁰⁷

We agree with Craig's approach as the complexity of relationship between the UK and EU in political, legal and trade aspects caused an elaborate list of issues to be resolved. Hence, focusing on the primarily issues in the withdrawal agreement and then addressing regulation of developing relations in the trade and cooperation agreement provides for ability of the parties to meet the timeline and obligations under Article 50 of the TEU.

The ultimate goal of the withdrawal agreement is, nevertheless, provision for a controlled exit of the EU Member State and termination of its membership with further establishment of a new relationship between the EU and the former Member. Such relationship will have international legal nature between two independent actors, hence it will be governed by international law.

¹⁰⁷ Craig, P. (2016). *Brexit: a drama in six acts*. RRDE, p. 11.

5.3. The EU's requirements for ratification of the Withdrawal Agreement

The first part of the conclusion of the agreement on the EU's behalf was authorisation by the Council. Such a decision under Article 50(4) of TEU and Article 238(3)(b) has to be voted for by a qualified majority. The qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States (at least 20 out of 27 Member States or 72 per. cent +1 of Member State, excluding the UK). On 30 January 2020, the Council adopted Council Decision 2020/135,¹⁰⁸ which authorised the conclusion of the Withdrawal Agreement on behalf of the European Union and of the European Atomic Energy Community.¹⁰⁹

Further the conclusion of the withdrawal agreement requires the consent of the European Parliament by simple majority. In this case for the purposes of calculations British Members of the European Parliament are taken into consideration, even though they do not vote. Thus, the Parliament's approval requires a simple majority of at least one third of the total number of Members of the European Parliament.¹¹⁰

On 29 January 2020, the European Parliament passed a legislative resolution on the draft Council decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.¹¹¹ With this resolution, the European Parliament gave its consent to the conclusion of the Withdrawal Agreement and forward its position to other stakeholders. Under Article 50(2) of TEU and Article 231 of TFEU such resolution should be voted "in favour" by the simple majority of Members of the European Parliament.

¹⁰⁸ Council of the EU. (January 30, 2020). Brexit: Council adopts decision to conclude the Withdrawal Agreement. *Press release*.

<https://www.consilium.europa.eu/en/press/press-releases/2020/01/30/brexit-council-adopts-decision-to-conclude-the-withdrawal-agreement/>

¹⁰⁹ European Council. (2020). *Council Decision (EU) 2020/135*, L 29. Official Journal of the European Union. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.029.01.0001.01.ENG&toc=OJ:L:2020:029:TOC

¹¹⁰ Article 231 TFEU; Rule 168(2) of the European Parliament's Rules of Procedure.

¹¹¹ House of Commons Library. (January 6, 2021). *Brexit timeline: events leading to the UK's exit from the European Union*. UK Government. <https://commonslibrary.parliament.uk/research-briefings/cbp-7960/>

The Council is obliged to obtain the European Parliament's consent to the Withdrawal Agreement before adopting its decision on the authorisation of the conclusion of the agreement.¹¹² Technically this provision of TEU establishes the European Parliament's power to veto the Withdrawal Agreement.

The signing of the Withdrawal Agreement was authorised by Council Decision 2019/274 (as amended), which was adopted on 11 January 2019.¹¹³

The last step of the EU's ratification of the Withdrawal Agreement is the signature. On 24 January 2020, Presidents Charles Michel and Ursula von der Leyen signed the Withdrawal Agreement in Brussels.¹¹⁴ The Withdrawal Agreement did not require ratification by individual EU Member States.

5.4. UK requirements for ratification of the Withdrawal Agreement

Under Article 185 of the Withdrawal Agreement, prior to its entry into force, the UK and the EU are required to give the depositary of the agreement written. The depositary of the Agreement is the Secretary-General of the Council.¹¹⁵ This notification must confirm that the UK and EU have completed their necessary internal procedures for ratification.¹¹⁶

Article 185 provides that the Withdrawal Agreement enters into force on the earlier of the following dates:

- The day following the end of the Article 50(3) period, as extended by the European Council in agreement with the UK, subject to prior receipt by the depositary of the agreement of written notifications by the UK and the EU that they have completed the necessary internal procedures. (Article 50(3) of

¹¹² Article 50 (2) of the TEU.

¹¹³ European Union. (February 19, 2019). *Council Decision (EU) 2019/274*, L 47. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0274&from=EN>

¹¹⁴ European Council. (2020). *Signature of the UK Withdrawal Agreement*. Newsroom. <https://newsroom.consilium.europa.eu/events/20200124-signature-of-the-uk-withdrawal-agreement-for-the-eu-by-european-council-president-charles-michel-and-european-commission-president-ursula-von-der-leyen>

¹¹⁵ Article 183, Withdrawal Agreement.

¹¹⁶ House of Commons Library. (January 23, 2020). *Brexit next steps: Ratifying the EU Withdrawal Agreement*. UK Government. <https://commonslibrary.parliament.uk/brexit-next-steps-ratifying-the-eu-withdrawal-agreement/>

the TEU, and the agreements on extension reached under it, governed the timing of the UK's exit from the EU;

- The first day of the month following receipt by the depositary of the last of those written notifications.¹¹⁷

On 23 January 2020, the European Union (Withdrawal Agreement) Bill received Royal Assent.¹¹⁸ Thus it became an Act of Parliament -- the European Union (Withdrawal Agreement) Act 2020.¹¹⁹ The government could not ratify the Withdrawal Agreement until Parliament had passed this legislation, which implemented the terms of the Withdrawal Agreement into UK law.

On 24 January 2020, the Prime Minister signed the Withdrawal Agreement on behalf of the UK under the Royal prerogative.¹²⁰

The Withdrawal Agreement did not have to be laid before the Parliament for its further ratification under section 32 of the European Union (Withdrawal Agreement) Act 2020 (“**2020 Act**”). Section 32 of the Withdrawal Agreement clarifies that this does not affect whether section 20 applies in relation to any modification of the Withdrawal Agreement. Such misapplication entered into force on 23 January 2020¹²¹ and was due to efficiency, in particular for the avoidance of any additional delay that could be created by the 21-day process prescribed in section 20.¹²² Thus, the requirements of section 20 of the Constitutional Reform and Governance Act 2010 are not applicable to the Withdrawal Agreement.

After Foreign Secretary Dominic Raab signed the Instrument of Ratification on behalf of the UK on 28 December 2020, which expressed the UK’s formal acceptance to be bound by the terms of the Withdrawal Agreement, Sir Tim Barrow deposited the Instrument of ratification with the Secretary General of the Council of the European

¹¹⁷ Article 185 of the Withdrawal Agreement.

¹¹⁸ Hansard. (January 23, 2020). *Royal Assent. Volume 670*. UK Government. <https://hansard.parliament.uk/commons/2020-01-23/debates/14692F26-1508-41E7-A595-0C6A9ED58FC7/RoyalAssent>

¹¹⁹ UK Public General Acts. (2020). *European Union (Withdrawal Agreement) Act 2020*. UK Government. <https://www.legislation.gov.uk/ukpga/2020/1/enacted>

¹²⁰ Prime Minister's Office. (January 24, 2020). *PM Boris Johnson signs the Withdrawal Agreement*. UK Government. <https://www.gov.uk/government/news/pm-boris-johnson-signs-the-withdrawal-agreement-24-january-2020>

¹²¹ *Section 42(6)(c), 2020) Act*.

¹²² House of Commons. (2020). *European Union (Withdrawal Agreement) Bill*. UK Government. <https://publications.parliament.uk/pa/bills/lbill/58-01/016/5801016en.pdf>, para 322

Union on 29 January 2020, confirming that the UK had completed its necessary internal procedures.¹²³

5.5. Content of the Withdrawal Agreement

Following the prior completion of the ratification and notification procedures by the UK and the EU the Withdrawal Agreement came into force at 11.00 pm (UK time) on 31 January 2020 under the first paragraph of Article 185. The agreement consists of six parts and three protocols. The Protocols and Annexes form an integral part of the Withdrawal Agreement.¹²⁴ The Withdrawal Agreement divides UK-EU relationship into several stages: (1) transition period from 1 February 2020 to 31 December 2020, and (2) cooperation between the EU and the UK as a third country under trade and cooperation agreement starting on 1 January 2021.

Part of the provisions entered into force before the end of the transition period, but the majority became enforceable upon the exit day. Majorly it is due to the fact that during transition period, the UK continued to apply the EU law but did not participate in any of the EU institutions.

Below is a brief summary of the provisions of each part of the agreements and its protocols.

Part One: Common provisions (Articles 1-8)

The first part sets out relevant definitions, interpretation of references to respective legislation and stakeholders and territorial scope of the Withdrawal Agreement.

Article 4 of the Withdrawal Agreement sets out methods and principles relating to the effect, implementation and application of the Withdrawal Agreement. It includes requirements for its provisions, and the EU law applying to the UK under the Withdrawal Agreement, to have supremacy in the UK and direct effect (where the conditions are met). However, such requirements continue to apply to the UK after the end of the transition period.

¹²³ UK Mission to the European Union. (February 4, 2020). *UK Rep becomes UK Mission as the UK leaves the EU*. UK Government. <https://www.gov.uk/government/news/uk-rep-becomes-uk-mission-as-the-uk-leaves-the-eu>

¹²⁴ Article 182 of the *Withdrawal Agreement*.

Part Two: Citizens' rights (Articles 9-39)

This part regulates the key area that was mentioned in the Negotiating Guidelines and Directives and which were one of the key issues of the withdrawal procedure - protection of the rights of EU citizens in the UK, and UK nationals in one of the EU Member States. According to Article 10, the Withdrawal Agreement also covers frontier workers and family members who meet the conditions set.

EU citizens will be able to continue to exercise their right of free movement under EU law and live, work and study in the UK as they are currently able to do and UK citizens will be able to do the same vice versa in the EU 27. However, such a right of UK nationals is not provided for in the Agreement after Brexit, but as part of the future relationship with the EU, the UK will also seek to secure onward movement opportunities for UK nationals in the EU.¹²⁵

In addition to material provisions, the agreement sets provisions on the introduction of an administrative guarantee for such rights, namely through a requirement to set up an independent authority to monitor the implementation and application in the UK of the citizens' rights part of the Withdrawal Agreement.¹²⁶ Details of the Independent Monitoring Authority for the Citizen's Rights Agreements constitution and functions are set out Schedule 2 to the Withdrawal Agreement.

Part Three: Separation provisions (Articles 40-125)

The third part is one of the most extensive parts of the agreement. It describes how the parties should deal with issues that have begun before the end of the transition period and still continue to exist. Depending on the issue of a certain area that may vary from the Euratom issues to customs and duty matters the solution to the regulation question are established. One of the solutions is, for example, the continuation of application of the EU law until the relevant process is completed on an example of application of relevant EU law to judicial proceedings and procedures in civil and commercial matters that are ongoing at the end of the transition period.

¹²⁵ Herbert Smith Freehills. (March 2020). *Brexit - The Withdrawal Agreement Q&A*. https://www.herbertysmithfreehills.com/sites/contenthub_mothership/files/Brexit%20-%20The%20Withdrawal%20Agreement%20Q%26A.pdf

¹²⁶ Article 159 of the Withdrawal Agreement.

Part Four: Transition (Articles 126-132)

This part provides for the regulation of the transition period (starting from the date of entry into force of the Withdrawal Agreement and ending on 31 December 2020). This section addressed, among other, issues of (1) application of EU law to the UK as a non-Member State country, (2) limitations on its participation in EU bodies.

The Withdrawal Agreement has also foreseen an opportunity to extend the transition period once by up to one to two years. The parties have to make a decision jointly before 1 July 2020.

Part Five: Financial provisions (Articles 133-157)

The fifth part regulates the financial, monetary and budgetary aspects of EU-UK relations. In particular, it sets that the UK shall contribute to and participate in the implementation of the Union budgets in 20019 and 2020. The UK also bares the following obligations:

- to participate in EU programs and activities in 2019 and 2020 financed by the 2014-20 multiannual financial framework and previous multiannual financial frameworks until 31 December 2020;
- to be liable for its share of the EU's contingent liabilities that were decided or approved before the Withdrawal Agreement came into force; and
- to be liable to the EU for its share of the financing of the Union's liabilities incurred until 31 December 2020, etc.

Part Six: Institutional and final provisions (Articles 151-185)

Part Six of the Withdrawal Agreement includes provisions on the governance of the Withdrawal Agreement. It consists of a few parts: (1) interpretation of provisions, which, despite the UK's willingness to gain independence from CJEU, mostly refers to its opinion, (2) regulation of governance bodies for the Withdrawal Agreement (Joint Committee and specialized committees), (3) principles and rules of dispute settlement.

Protocols

The three protocols included the Protocol on Ireland/Northern Ireland, the Protocol relating to the Sovereign Base Areas in Cyprus, and the Protocol on Gibraltar. Each protocol addressed respective issues for each territory. For example, the Northern

Ireland Protocol sets out the rules regarding avoidance of a hard land border in Ireland, maintenance of the necessary conditions for continued north-south co-operation, and compliance with the Good Friday Agreement.

If we analyse the Withdrawal Agreement from the perspective of how successfully the parties have implemented their goals and adopted principles, we can come to a conclusion that the agreement has served its purpose. In particular, there was a number of principles set out in UK's Parliament and EU's Negotiating Guidelines and Negotiating Directives. If comparing the list of issues that parties wanted to cover:

- citizens' rights;
- single financial settlement and obligations;
- peace maintenance in Northern Ireland;
- international obligations of the UK as a Member state, further cooperation in different areas including judicial cooperation, law enforcement and security;
- initiation of work towards a UK-EU free trade agreement and transitional period;

and compare it to the content of the Withdrawal Agreement, we can come to the conclusion that they were all reflected.

We can see that as with notification and negotiations, a number of legal acts authorising bodies of the EU and the EU to sign and ratify the Withdrawal Agreement making it binding for both parties. Within regulated under the EU and the UK law ratification and notification procedures on both sides there is a number of factors that should be taken into consideration regarding legality of the Withdrawal Agreement. Such aspects of procedures include European Parliament's power to veto the Withdrawal Agreement or inability to ratify the agreement before implementation of the agreement into UK's legislation by the Parliament.

To reflect on the content of the Withdrawal Agreement it is important to address

the overall concept and legal issues behind such an agreement. As we can see, the UK opted out for a “thin” withdrawal agreement and more elaborate and detailed free trade agreement. Such decisions was caused by (1) commitment to ensure constructive and respectful engagement, in a spirit of sincere cooperation, (2) the limited timeframes, (3) complexity of UK-EU relations, (4) goals and vision of the future cooperation of parties, and (5) the legal nature of the withdrawal agreement under Article 50 of the TEU and trade and cooperation agreement.

Certain complexities and specialties of the content of the final version of the Withdrawal Agreement were caused by the fact that the UK has to sign it as a Member State. Thus, even though the Withdrawal Agreement is very comprehensive and takes into consideration the majority of issues addressed in the Negotiating Guidelines and directives. There are some aspects that can and should be covered only by agreements between the UK as a non-Member State country and the EU in the new agreements as (1) such areas are very dynamic and (2) trade and cooperation agreement is subject to the unanimous agreement of the Member States in the Council and the consent of the European Parliament.

The Withdrawal Agreement did not only regulate the key issues, such as ensuring citizens rights and addressing regulatory aspects, but also provided for a transition period that allowed for a smooth departure of the UK and enough time for both parties to fulfill the remaining obligations.

CONCLUSIONS

The EU has introduced and legalised on a union level a right of a Member State for unilateral withdrawal from the Union. Due to lack of precedents and relatively short term of existence of such right, the academic research on withdrawal of an EU Member State legal basis and procedure is rather underdeveloped and therefore insufficient for use in practice.

In this thesis the goal was to understand how each stage of Brexit is regulated and what actions and legislative acts had to be adopted to ensure the legitimacy of the UK's withdrawal. We further wanted to analyse the issues related to legal nature of certain tools prescribed in Article 50 of the TEU and issues related to interpretation of relevant provisions. We also aimed at defining institutional and legal implications as well as specific issues related to the UK's withdrawal.

The withdrawal from the EU is a right of a Member State established by Article 50 of the TEU. Despite the fact that provisions of the article do not provide a sufficient level of legal regulation, in case of the UK's withdrawal such loopholes have been mitigated through adoption of a variety of legal acts. Such acts have been introduced on both national, EU and international level. Some of them have been legally binding and some of them served as an expression of political stance of certain stakeholder. Furthermore, some uncertainties were resolved in the case law of both national and EU courts.

The cornerstone of the complexity of Brexit legal regulation is caused primarily by the framework nature of Article 50 of the TEU. It only sets the main stages failing to regulate important aspects such as terms, principles, assignation of powers, establishing binding nature and requirements to act of stakeholders, irrevocability of the procedure, terms of exit without withdrawal agreement conclusion, opportunity to cease the withdrawal upon mutual agreement, etc. Absence of such provisions results in uncertainty of legal nature of acts and clarity in the withdrawal roadmap.

Article 50 of the TEU also fails to reflect or address the legal nature of notification of withdrawal. The key controversial aspect include: (1) revocability of the notification, (2) binding nature of such a notification, because it is a political act and not a piece of

legislation, and (3) the notification itself concerns only intention to withdraw, not the decision to do so.

Another controversial aspect of the withdrawal concerned the unilateral nature of it and whether the Member State could have left the EU on its own. From plain reading of provisions of Article 50 of the TEU and its contextual analysis one can be certain that the unilateral withdrawal can take a place, however, it is not favorable for the withdrawal of the Member State.

The withdrawal process has also majorly affected composition of EU bodies. Hence, it is also important to reflect upon institutional changes in the EU that has been happening since notification of withdrawal. Such changes not only shifted the political balance in the EU, but also allowed institutions to adopt to such changes and establish new terms of cooperation. For some authorities the changes were not drastical (e.g. the European Commission, ECJ, etc.), however, there was no scenario for the European Parliament prepared beforehand. Therefore, both the EU and national governments had to enact additional legislation to (1) cover the logistics of transition between 9th and 10th parliamentary term and (2) to protect constitutional rights of both the EU citizens and Members of the European Parliament (both British and off other nations).

From a technical perspective of implementation, a number of legal acts and other action has been implemented on behalf of both, the UK and the EU in order to provide legal certainty and regulate the withdrawal process. These actions were incorporated on each stage of the Brexit: from notification to signing and ratification of the Withdrawal Agreement.

In order to properly notify the EU of its intentions, the UK after providing the Brexit Referendum had to adopt 2017 Act. This enabled Prime Minister to dispatch the Notification letter regarding UK's intention to leave the EU, thus resolving the first loophole in the legislation. However, it is important to point out that such notification was not binding and only further adoption of the Council Decision authorising the opening of negotiations with the UK enabled the continuation the withdrawal. Other issues are related to a disputable revocable nature of the notification of Article 50 of the TEU.

There was a number of aspects regarding guidelines that regulated the key part of withdrawal process. Implementation of guidelines was prescribed in Article 50 of TEU, under which the European Council is empowered to adopt such regulation. The issues related to the guidelines included:

- an indirect impact of the UK and the European Parliament on the content of guidelines through adaptation of certain legal acts;
- implementation of additional terms of negotiations to regulate practical aspects of negotiations; and
- amendment of guidelines according to progress of negotiations.

Despite the fact that such guidelines are majorly influenced by the political nature of the relations, certain aspects and principles can be regulated by general provisions. This would eliminate the need of adopting typical guidelines in case of other withdrawals. Further, the adopted guidelines were implemented through execution of respective rights and powers by the EU institutions.

The last stage of the Brexit was signing and ratification of the Withdrawal Agreement. This stage is well regulated under the EU and the UK law through ratification and notification procedures. Therefore it is crucial to make sure that each step is implemented properly and in respective order.

There have been a number of scenarios to be adopted for a regulation of post-exit EU-UK relations. Such scenarios included joining EEA framework, WTO cooperation and different approaches to trade and cooperation agreements. At the end the parties have opted for a thin Withdrawal Agreement covering the key issues and an elaborate trade and cooperation agreement covering the developing part of relationships.

The Withdrawal Agreement along with the EU-UK Trade and Cooperation Agreement became one of the most elaborate agreements with the EU. The parties succeeded in implementation of majority of issues addressed in the Negotiating Guidelines and therefore assured a smooth transition. However, many issues can only be regulated by international agreements concluded between the UK as a non-Member State country and the EU in the new agreements with regard to the new status of the UK on international arena.

We can now see how the UK and the EU had to regulate their actions and express their political, economic, social interests through legislation that was adopted while making sure that it is consistent and compliant with provisions of international, EU and national law.

The current EU-UK relations are regulated by the Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement. However, now, after the UK left the EU, there are many changes to be implemented and new provisions to be introduced and clarifications to be provided.

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