

## SECTION 2. THE INFLUENCE OF HUMAN RIGHTS ON LAW

### THE LEGAL, POLITICAL AND ECONOMIC IMPLICATIONS OF THE BREXIT

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#### ABSTRACT

*This article aims to highlight the effects of the referendum from June 23, 2016 and its results, which were announced on the morning of 24 June 2016 by the Election Commission for the Results of the referendum in Great Britain. In favor of leaving the European Union voted 51,89% (17.410.742) of the participants, and in favor of remaining in the European Union only 48,11% (16.141.241) of the participants.*

*As a result of the referendum for leaving the European Union there have been occurred substantial political consequences that have influenced the other economic and legal ones.*

*Of course that Brexit will create problems of adaptation, in very many areas, not only for the United Kingdom, but also for the European Union and especially for the Member States with full rights. It is also almost impossible to analyze only the legal implications of Brexit, without its links to the foundations of such implications, which are also political and economic implications. For these reasons, the present analysis was done by examining the legal implications together with the political and economic ones. In fact, everything that is legal is generated in content and form by the foundations of power in a state, namely the economic and social power, and political means social.*

***Key-words:** the membership of the European Union of Great Britain, positive effects, referendum, Brexit, economic and social implications.*

#### I. The Campaign for BREXIT

In the campaign for the Brexit there have been set up two large groups, one for leaving the European Union which included organizations such as: Leave EU, Grassroots Out, Get Britain Out și Better Off Out and another one, Britain Stronger in Europe, for the maintaining in the European Union, that was chaired by Stuart Rose. This group was informally named Remain, naming that appeared on all the

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banner ads of this social group. In the latter group there were also included: Conservatives In, Labour In for Britain, Intogether (Liberal Democrats), Greens for a Better Europe, Scientists for EU, Environmentalists for Europe, Universities for Europe and Another Europe is Possible.<sup>1</sup>

The referendum took place on June 23, 2016 and the results were announced on the morning of 24 June 2016 by the Election Commission for the Results of the referendum in Great Britain. Very precisely, in favor of leaving the European Union voted 51,89% (17.410.742) of the participants, and in favor of remaining in the European Union only 48,11% (16.141.241) of the participants<sup>2</sup>. Interestingly, there was a second petition calling for a second referendum, which has attracted more than 4 million signatures, but this petition was rejected by the Government on 4 July 2016<sup>3</sup>.

## II. BREXIT Consequences

### 1. Political Consequences

As a result of the referendum for leaving the European Union there have been occurred substantial political consequences that have influenced the other economic and legal ones.

Thus, David Cameron announced that he will resign in October 2016, and after his dismissal, Mrs. Theresa May has become Prime Minister, following her acceptance by the conservative party. George Osborne was replaced by Philip Hammond at the Ministry of Justice, Boris Johnson was appointed Secretary of State for foreign and Commonwealth affairs, and David Davis became Secretary of State for European Union expansion. Interesting is also the fact that Nigel Farage, UKIP Chairman, announced his resignation on July 4, 2016<sup>4</sup>.

Then, after the model of the United Kingdom, also other Member States of the European Union celebrated its exit from the Union. Among these States there are: Netherlands, which announced that it would follow the example of Great Britain and will hold a referendum on this. Such danger has been spotlighted also by Gordon Brown, former Chairman of the Liberal Party, and by former British Prime Minister, who signed the Treaty of Lisbon<sup>5</sup>.

On the 28<sup>th</sup> June 2016, the European Parliament debated Britain's exit from the European Union, and as a result adopted a motion requesting this state immediate activation of art. 50 from the Treaty of Lisbon<sup>6</sup>. Great Britain's Government hasn't raised it so far, which creates the impression that it could not even invoke it or

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<sup>1</sup> See: Ian Sone, Vote leave designated as official EU referendum out campaign, 13 April 2016; Better off out and Leave.eu, May 2016; Conservativs In, 2 June 2016.

<sup>2</sup> EU referendum results, Sky News (United Kingdom), 24 July 2016.

<sup>3</sup> See: Brexit: Petition for second EU referendum rejected, BBC News, 9 July 2016.

<sup>4</sup> *Idem*.

<sup>5</sup> Brexit, David Cameron to quit after UK votes to leave EU, BBC, 24 June 2016.

<sup>6</sup> BBC News 28 June 2016, Brexit vote: Bitter exchanges in EU Parliament debate.

could invoke it, but subsequently carry out procedures, especially the ones that involve the customs of the British Constitutional Law, to remove the effects of the Brexit. In case that the European Parliament's motion will not be applied, the European Union would be able to apply the provisions of article 7 of the Treaty (called "the nuclear option"), on the basis of which to terminate the membership of the European Union of Great Britain, accompanied by cancellation of all rights, that it could have, namely: freedom of trade and freedom of movement of its citizens in the Union.

At the same time, the provisions of article 50 could not be raised on the basis on further negotiations on the future membership of the Union. In an opinion expressed by a German Supreme Court constitutionalist judge, Udo Di Fabio, such possibility would exist, but the procedure of returning of the Great Britain in the European Union would take a very long time, because only the notification of such intention must be followed by a period of 12 months<sup>7</sup>. At the same time, any separate negotiations with London, Scotland and Northern Ireland constitutes a violation of the Treaty of Lisbon, because it protects the territorial integrity of the Member States of the European Union.

## **2. The necessity of implementing the provisions of article 50 of the Treaty of Lisbon**

Immediately after the referendum, Cameron said that the Prime Minister will activate the provisions of article 50, and at a cabinet meeting on 27 June 2016, it was decided to establish a group of officials, led by Conservator Oliver Letwin that should proceed to an intensification of the work relating to this issue, because it is very important for the future Prime Minister<sup>8</sup>. Theresa May, after taking the dignity of the Prime Minister, declared that she wants to work with the European Council for finding a constructive solution to this end. A similar position was supported also by German Chancellor Angela Merkel<sup>9</sup>. Former Prime Minister Tony Blair also showed on the 28<sup>th</sup> October 2016 that efforts are needed in order for the British to understand all the consequences and implications of the Brexit. At the same time, he indicated that the referendum would have to follow a new referendum or even a general election, in which the British people to decide whether the United Kingdom should leave the European Union. Tony Blair also showed that Britain's exit from the largest political Union and giving up to the right to use the world's largest commercial market, is a big mistake<sup>10</sup>.

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<sup>7</sup> Udo di Fabio, Future of the European Union-Chin up FAZ Frankfurter Allgemeine Zeitung, 7 July 2016.

<sup>8</sup> Henley Jon, Will art. 50 ever be triggered? The Guardian 26 June 2016.

<sup>9</sup> Rankin Jennifer, What is art. 50 and why is it so central to the Brexit debate? The Guardian, 25 June 2016.

<sup>10</sup> Gordon Brown, The key lesson of Brexit is the globalisation must work for all of Britain, The Guardian, 29 June 2016; Joe Watts Political Editor, Brexit: Tony Blair says there must be a second vote on Uks membership of EU, The Independent, 28 October 2016.

The procedure laid down in article 50, which will take about two years from the date on which a Member State shall notify officially the European Union that wishes to leave this Union, will allow the negotiation of a new agreement with the European Union, without this negotiation to be mandatory.

What is important, however, is the fact that the British Parliament, which is the holder of the national sovereignty, will have to rule in relation to all issues raised by the Brexit, even if the will of the people must be respected. At the same time, the Parliament will have to be sanctioned by the Queen, sanctioning that has not been refused from 1707.

In other words, a law of the British Parliament is needed for official notification to the European Union that the United Kingdom wants to leave the European Union. The settlement is also the hardest since the United Kingdom has no written Constitution, and in the area there is no common law and constitutional customs because it is the first time that there was a situation of Brexit.<sup>11</sup>

To resolve this problem, The British Supreme Court will have a hard word to say in connection with the notification in question and the role of the Parliament in this constitutional procedure. Moreover, at present, the UK Supreme Court examines such a question.

In fact, ever prior to the date of the referendum for the Brexit, it was argued very clearly that the ratification of an international treaty is a royal prerogative, but the ratification of a Treaty concerning the European Union is a prerogative that requires a previous act of the Parliament. Only that, nowhere is covered how to do it and who is involved in the removal of a treaty, because this problem to be solved has never occurred until now.

Lately, it has appeared as a necessity to settle, the important discussion related to the involvement of the Parliament or not in the action of the official notification of the European Union and the implementation of article 50. Based on these themes, in the case Santos and Miller versus the Secretary of State for the extension of the European Union, of the Supreme Court, it is showed that in Brexit's case, the notification cannot be done by the Government, without the approval of the Parliament<sup>12</sup>.

At the same time, in another opinion, it is stated that, a notification without a prior approval by the Parliament might not be consistent with British constitutional rules<sup>13</sup>.

Also. the Party of the Peoples Interested in Changing, made up of citizens of England, Scotland, Gibraltar, Northern Ireland, Wales and England expatriates in

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<sup>11</sup> Eva-Maria Poptcheva, Art. 50: Withdrawal of a Member State from the EU, Briefing Note for European Parliament.

<sup>12</sup> Judicial Review, Litigation over the correct constitutional process for triggering Article 50, Lexologie, October 13.2016.

<sup>13</sup> Proctor Kate, Cameron sets up Brexit unit, Yorkshire Post, West Yorkshire, 13 October 2016. See also The Times, 30 June 2016.

France, agree that article 50 might not be activated without an act of the British Parliament, because the Royal prerogatives are waste and they were repealed by the internal constitutional written laws, and, as a result, the Executive could not use these powers to ensure that the United Kingdom to leave the European Union; if any prerogatives of power would subsist in this area, this power could not be extended to the repeal, amendment or renewal of the fundamental rights of the citizens; such a prerogative of power would constitute an abuse if it were used to enable Britain's exit from the European Union<sup>14</sup>.

However, the Government is about to activate the provisions of article 50, without the involvement of the Parliament, through the use of the Royal prerogatives. Moreover, such an approach has been made by a number of requests addressed to certain courts, other than the Supreme Court, which has been settled previously the intimation of the latter. The Government motivates such an attitude in that it gives effect to the will of the people as provided in the law on referendum in 2015. Further, shows the Government, the exit from the European Union is not a matter of justice, as it is the decision to entry in the European Union, but it is a very important political issue which is reserved for the Crown. If still it would be used the justice, then such use shall be made according to the rules of constitutional law, and the Royal prerogatives depend on the legislative intentions of the British Parliament<sup>15</sup>. As we have already pointed out, the Supreme Court has begun debating the matter in December 2016.

To this end, the hearings at the Divisional Court were held, in front Lord Chief of Justice, the Master Bar and Lord of the Justice of Liquidation, on 13 October 2016 and 17 October 2016. The Divisional Court decided that it would submit an appeal to the Supreme Court in early December 2016, in order for it to decide on the final position on the issue before the Government to achieve, in March, what it intends to do, namely to activate the provisions of article 50<sup>16</sup>.

### 3. The Great Repeal Law

In October 2016, the Prime Minister of Great Britain announced that March 2017 is the deadline for activation of article 50 and vowed a Great Repeal Law, which will repeal the Law of European Communities since 1972 and will reintroduce in Great Britain's legislation all decisions in force in the EU legislation. This was supposed to be adopted in the autumn session of the Parliament in the

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<sup>14</sup> Lexologie, Judicial review litigation over the correct constitutional process for triggering Article 50, October 13.2016.

<sup>15</sup> The case Attorney General versus De Keyser s Royal Hotel, Mason Rowena, Theresa May s great repeal bill: what s going to happen and when ?, The Guardian, 2 October 2016.

<sup>16</sup> Brexit art.50 Challenge to quickly move to Suprem Court, Bloomberg, 19 July 2016. See also Full judgment, Agnew and others, Applying for leave to apply for judicial review versus HM Government and SoS for Northern Ireland and SoS for exiting the EU.

year 2016 and before negotiations for the activation of art. 50 or in their time, but this has not been achieved<sup>17</sup>.

Scotland also revealed that such a law should have also the consent of the Scottish Parliament, especially that according to the Scottish Law from 1998, any bill that passes through the Scottish Parliament should conform to the European law. A difficult to solve contradiction appears, namely: the need for the Scottish laws to comply with the European law, on the one hand, and the desire of Britain to have the consent of the Scottish Parliament which would alter, if given, the Scottish law, on the other hand<sup>18</sup>.

#### 4. The negotiating positions

Various leaders of the European Union took a stand in connection with the Brexit, before the invocation of art. 50. Thus, Jean Claude Juncker demanded members of the Commissions of the Union not to engage in any kind of contracts or discussions in connection with Brexit<sup>19</sup>.

Donald Tusk said that the United Kingdom will not be able to gain access to the European market, if it will not accept the four freedoms of the European Union relating to goods, services and capital and movement.<sup>20</sup>

Angela Merkel said that she is sure that the negotiations will not take place in accordance with the principles of the Union. We have and we want to make the difference between a country that wishes to be a member of the family of the European Union and another that does not want this.<sup>21</sup>

Nicola Sturgeon, Scotland's Prime Minister, said that Scotland refuse to assent to the legislation governing leaving the European Union, with all that Scotland could not block the Brexit.<sup>22</sup>

Theresa May, the conservative new Prime Minister of Great Britain, explained the negotiations with the EU and showed, in a broader approach shown in Scotland on 15 July 2016, that is very important, first, to see if they'll turn on the provisions of article 50 and then discuss about negotiations<sup>23</sup>.

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<sup>17</sup> Brooks Libby, May tells Sturgeon Holyrood will be fully engaged in art.50 decision, London UK, 15 July 2016.

<sup>18</sup> Laura Hughes, Brexit department spends more than 250.000 pounds on legal advice in just two months, Daily Telegraph, 9 September 2016.

<sup>19</sup> Leaving the EU - Researche paper 13/42. House Commons Library, 1 July 2013, Retrieved 19 May 2015.

<sup>20</sup> Parker George (4 July 2016), Britain turns to private sector for complex Brexit talks, Financial Times, Retrieved 5 July 2016.

<sup>21</sup> A and O Legal opinion on EEA membership.

<sup>22</sup> EFTA Bulletin Decisions Shaping in the European Economic Area, European Trade Association, March 2009. Retrived 19 May 2015 și Jonathan Lindsell, 12 August 2013, Fax democracy ? Norway has more clout than you know. Civitas.org.uk.

<sup>23</sup> The basic futures of the EEA Agreement, European Free Trade Association. Retrieved 8 August 2013.

## 5. Economic effects

British Treasury estimated that keeping Britain in the European Union would have positive effects on trade while otherwise it would seriously affect it.<sup>24</sup>

Brexit supporters argue that Britain's exit from the European Union will allow the elimination of some fees and as a result will increase government spending<sup>25</sup>. Otherwise, the British will pay a contribution to the budget of the European Union<sup>26</sup>. What is interesting is the fact that the British Institute for Fiscal Studies noted that, most of the forecasts of impact of the Brexit over the UK economy indicate that the Government may have less money to spend, even if it would no longer have to pay anything to the European Union<sup>27</sup>.

On June 2016, the supporters for leaving the European Union have presented the road map of Great Britain after Brexit. Parliament should vote on several laws, such as: The law of finances for VAT refund in certain situations; the law on asylum and immigration control and automatically that of the right of EU citizens to enter the United Kingdom; The law on the national health service, which will bring extra 100 million pounds; European Union Law; Trade law for the commencement of negotiations with countries outside the Union; The law repealing the law of the European Communities 1072, of termination of the jurisdiction of the European Court of Justice over Britain and cessation of payment of the contributions to the budget of the European Union<sup>28</sup>.

The World Pensions Council experts and University of Bath showed that beyond the discussions that are worn in conjunction with Brexit, the UK economy will remain resilient even after Brexit. British economic activities won't fall and the trade war with London is not in the interest of neither parts.<sup>29</sup>

On August 10, 2016, the British Institute for Fiscal Studies has published the report of British funding by the Council of Economic and Social Research. This report urges the British that they are in the face of a great difficult choice, if they don't remain with the benefits of the European Union as full members of the Union, in terms of restrictions on migration. The same Institute shows that all the costs of reducing the economic growth would have heavy effects for Brexit and for Germany, especially since the German car production largely depends on exports. Thus, on British exports depend 750.000 jobs in Germany, and in the United Kingdom 3 million jobs depend on exports to the European Union. To this adds the fact that economic predictions are however uncertain.

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<sup>24</sup> Brexit and the UKs public finances, Institute for Finances Report 116, May 2016.

<sup>25</sup> Eu referendum. Vote leave sets out post-Brexit plans BBC News, 15 June 2016.

<sup>26</sup> Agreement with the Swiss Federation, free movement of persons, European Commission, 14 July 2016.

<sup>27</sup> De Meulemeester Claudia, Country risk. Experts says UK economy will quickly recover from Brexit shock, Euromoney 17 June 2016.

<sup>28</sup> Steven Swinford, Britain could be up to 70 billion worse off if it leaves the Single Market after Brexit, IFS warns, 10 August 2016.

<sup>29</sup> Claim hard Brexit could cost UK 10bn in tax, Financial Times, 4 October 2016.

After the referendum, the German Bundestag has published an analysis on the Brexit consequences for the European Union and especially for Germany<sup>30</sup>. According to the analysis, the United Kingdom is, after France and the United States, the third most important market for German products. Germany's exports of goods and services to the United Kingdom are almost 120 billion euro annually, which means around 8% of German exports. In 2014, it was recorded a market surplus of 36,3 billion Euros.

With Brexit, the European Union has lost its second largest economy, the third largest population and the world financial center<sup>31</sup>. Also, with Brexit, the European Union has lost the second largest contributor to its budget (11, 5 billion Euros), after Germany (14.3 billion Euros), but ahead of France (5,5 billion Euros)<sup>32</sup>. As a result, the loss will have to be covered by the remaining Member States of the European Union, such as Germany, 4,5 billion Euros in 2019 and 2020. Then, the Member States will have to cover Britain's participation at the capital of the European Investment Bank, to which it had a 16 percent contribution<sup>33</sup>. Also, because of Brexit, the European Union has lost part of its military power that includes the nuclear shield and the second vote as power in the Security Council of the United Nations.

Of course that Brexit will create problems of adaptation, in very many areas, not only for the United Kingdom, but also for the European Union and especially for the Member States with full rights. It is also almost impossible to analyze only the legal implications of Brexit, without its links to the foundations of such implications, which are also political and economic implications. For these reasons, the present analysis was done by examining the legal implications together with the political and economic ones. In fact, everything that is legal is generated in content and form by the foundations of power in a state, namely the economic and social power, and political means social.

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<sup>30</sup> Angreas Koenig, Ökonomische Aspekte eines Eu-Austritts des Vereinigten Königreichs (Brexit), Deutsche Bundestag, 27 June 2016.

<sup>31</sup> EU-Austritt des UK: Diese Folgen hat der Brexit für Deutschland und die EU, Merkur, 22 August 2016.

<sup>32</sup> Hendrik Kafsack, EU Haushalt: Deutschland überweist das meiste Geld an Brussel, FAZ.

<sup>33</sup> Reuters-dpa, Brexit wird teuer für Deutschland, FAZ, 10 September 2016.