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WITHDRAWAL FROM THE EUROPEAN UNION: LEGAL ANALYSIS AND MODELS FOR FUTURE COOPERATION

Abstract

Since its establishment as European Coal and Steel Community (ECSC) with 1951 Paris Treaty and European Economic Community (EEC) together with European Atomic Energy Community with 1957 Rome Treaty, and gathering under one - European Union roof all these Communities with Maastricht Treaty in 1992, the European Union always continued to grow with its new members, especially with great enlargement of Eastern Bloc countries. However, in 2016 the Union experienced something that never happened through its more than half-a-century existence, a Member State decided to leave. In this article we will analyze legal aspects of withdrawal from the European Union, how the procedure works and what are the various ways for future cooperation in the areas of single market, customs union, etc. after leaving the Union.

Annotasiya

1951-ci il Paris Müqaviləsi ilə Avropa Kömür və Polad Birliyi kimi əsası qoyulan və 1957-ci il Roma Müqaviləsi ilə Avropa İqtisadi Birliyi və Avropa Atom Enerjisi Birliyi kimi fəaliyyətinə davam edən, daha sonra 1992-ci il Maastrix Müqaviləsi ilə bu birlikləri eyni adaltında birləşdirən Avropa İttifaqı yeni üzvlərin, xüsusilə Şərq Bloku ölkələrinin qoşulması ilə daimə böyüməyə və genişlənməyə davam edirdi. Lakin 2016-cı ildə Avropa İttifaqının yarım əsrlik tarixi ərzində heç baş verməyən hadisə yaşandı – Üzv Ölkə İttifaqdan çıxmaq qərarına gəldi. Məhz bu məqalədə Avropa İttifaqından çıxmanın hüquqi aspektləri, prosesin işləmə mexanizmi və gələcəkdə birgə bazar, gömrük və digər sahələrdə mümkün ola biləcək əməkdaşlıq haqqında analiz aparılacaq.

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Introduction

In June 2016 the referendum was held in the United Kingdom about whether to leave the European Union or not which was called as "BREXIT" where with a narrow majority (51.89% to 48.11%) British citizens decided to leave the Union and in March 2017 the United Kingdom triggered Article 50 of Treaty on European Union with notification to the European Council. Until this event there was not a case of leaving the EU.

There were some reasons, which can be deemed as preventing it from happening. From its foundation in form of European Communities on, there was not a single legal norm regulating the withdrawal process. This resulted in views by scholars that it was not possible to leave the Union after becoming its member, while many others argued that the unilateral withdrawal from the Union was possible under the terms of 1969 Vienna Convention on Law of Treaties. Firstly, as Vienna Convention rules, any provision which prohibits a Party State to withdraw unilaterally from international agreement, is in itself a violation of basic principle of international law - *pacta sunt servanda.*[1] Therefore, saying it was impossible to withdraw unilaterally from the EU was not correct from the perspective of international law. Moreover, it is worth to mention that in case of international agreements, which are silent on this specific issue such as Maastricht Treaty, Vienna Convention touches upon two ways for unilateral withdrawal. According to Article 56 of the said Convention, if it is established that the parties intended to admit the possibility of denunciation or withdrawal or a right of denunciation or withdrawal may be implied by the nature of the treaty, then a Party State can withdraw from the treaty.[2] However, if we go deep into the previous EU treaties and other agreements among Member States, we can see that they always intended to further integrate with one another, they transferred part of their sovereignity to the supranational institutions in exclusive competence areas and achieve high degree of sustainable convergence in economic and monetary union, which means Member States excluded such an intention.

The second possibility is regulated by Article 62 of the Vienna Convention which is about *clausula rebus sic stantibus*[3] where it is shown that in case fundamental change of circumstances constitutes an essential basis of the consent of the parties to be bound by the treaty or the effect of the change is radically to transform the extent of obligations still to be performed under the treaty, then the Party States can terminate or withdraw from the treaty.[4] Many

[1] *Pacta sunt servanda* (Latin for "agreements must be kept") implies that nonfulfillment of respective obligations is a breach of the pact.
[2] Vienna Convention on the Law of Treaties, art. 56, May 23, 1969. (hereinafter *VCLT*)
[3] *Clausula rebus sic stantibus* (Latin for "things thus standing"), in public international law, is the legal doctrine allowing for a treaty to become inapplicable because of a fundamental change of circumstances.
[4] *VCLT*, *supra* note 2, art. 62.

academicians agree upon that conditions for *clausula rebus sic stantibus* cannot be much used in case of the EU. Herdegen reckons that the use of *clausula* can be possible only if the change can result in impossibility of execution of obligations arising from its membership of the Union.[5] We can see such argumentation in the Maastricht judgment of German Federal Constitutional Court where it stated that the price stability was primary goal of European Monetary Union and if it was not achieved, the agreement would become meaningless and Germany would not be bound by it.[6] Therefore, it can be said that pre-Lisbon treaties did not provide Member States with a right to withdraw from them.

Nevertheless, some might confuse the case of Greenland with unilateral withdrawal issue. Back then the population of Greenland decided to withdraw from European Communities in 1982 with referendum, but it cannot be deemed to be a precedent as it was not a Member State, but its territory (Denmark). It took place in the form of a reduction of the territorial jurisdiction of the Treaties through amendments which were ratified by all Member States and agreement of the European institutions. After it Greenland became an "associated overseas territory" under Article 204 of Treaty on Functioning of the European Union (TFEU) with special arrangements under Protocol 34 to the Treaties.

The situation changed with Lisbon Treaties in 2007 as Article 50 of Treaty on European Union (TEU) clearly defined unilateral withdrawal right of Member States. Actually, this legal norm was laid down firstly in Constitutional Treaty of 2004. However, as it failed in the referendums in France and Netherlands, its content was revived in Lisbon Treaties with some changes. There are many arguments regarding why Article 50 was added to the EU legal system. While some stress that it is a backward step against integration within the Union, others emphasize that ratio behind it was to eliminate the risk of failure in referendums as it was with Constitutional Treaty. Ferhat Chamlica thinks that it can also be for answering harsh criticism towards the European Union for being non-democratic and making leaving at any time available for Member States so that they cannot be forced to stay in.[7] Anyway, Article 50 of TEU while creating a plan and process for leaving the Union, at the same time enables Member States to withdraw from it without having a political tension to some point. Besides making it easy for a leaving State, it also touches upon the involvement of European Council, the

[5] M. Herdegen, *Monetary Union as a Permanent Community Based on the Rule of Law*, 52 Deutsche Bank Research Paper Series, 8 (1998).
[6] Bundesverfassungsgericht (Federal Constitutional Court) v. 12.10.1993, 2 BvR 2134/92, 2 BvR 2159/92, BVerfGE 89, 155, 26.
[7] Ferhat Chamlica, *Avrupa Birliği ve Ekonomik Parasal Birlikten Ayrılmanın Lizbon Antlaşması Çerçevesinde Değerlendirilmesi*, 11 Ankara Avrupa Çalışmaları Dergisi 25, 34 (2012).

Council of the European Union, European Commission and European Parliament as the institutions playing main role in this procedure.

Article 50 does not contain any specific norm on levels and fields of future cooperation with the Union after withdrawal. It is debated that which kinds of matters can be included in the withdrawal agreement, such as acquired rights, transitional periods, etc. and which cannot be, because some reckon that such an agreement would be international agreement with the third State that requires other type of conclusion procedure for it according to the Treaties. After BREXIT, there are many forms of cooperation with the EU that can be chosen by the Parties and which are discussed below, as well.

I. Legal aspects of Article 50: How it is hard to leave the European Union

Lisbon Treaties on European Union and on Functioning of the European Union were adopted in 2007 and entered into force from 1 December 2009. With this Treaties, legal questions about unilateral withdrawal from the Union was answered. The main Articles regulating the process are Article 50 of TEU, Article 218(3) and 238(3) of TFEU.

The first sentence of Article 50 clearly states that any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements. The interesting part about the process begins even with this one. As it is laid down, if any Member State wants to leave the EU, it has to follow its own constitutional law. The European Union is founded on values such as freedom, democracy. Respect for human rights and the rule of law, according to Article 2 of TEU. Therefore, in order to eliminate the possibility of use of power by political parties and groups which are against eurointegration in different Member States the norm might be construed as so that for exiting the Union in each state constitutional requirements should be met. For example, in case of BREXIT we have witnessed a referendum in overall United Kingdom where nations of devolved states (Scotland, Wales and Northern Ireland) took part together with England. Moreover, according to the UK Supreme Court ruling of January 2017, in order to trigger Article 50 of TEU with notification to European Council, the UK government needs to get approval from British Parliament and only after approval the UK government became responsible for deciding negotiating objectives and conducting talks.[8] Moreover, in order to answer heating debates around whether devolved legislatures can block notification or not, whether they need to be consulted or not, as in Scotland and Northern Ireland majority voted for remaining in the EU, Supreme Court ruled devolved legislatures need not to be consulted or give their agreement prior to withdrawal

[8] R (on the application of Miller and another) v. Secretary of State for Exiting the European Union, Judgement, U.K. Supreme Court, January 24, 2017.

notification, since relations with the EU and other foreign affairs matter remain reserved to the UK government and national parliament, which means devolved legislatures do not have a right to veto on withdrawing from the European Union. [9] Consequently, following British constitutional law on March 2017, the European Union (Notification of Withdrawal) Bill completed its way through Houses of Parliament (House of Commons and House of Lords) and received royal assent.

According to the second paragraph of Article 50, Member State should notify the European Council about its decision to leave. As it is shown in Article 15 of TEU, European Council provides define the general political directions, consequently, it is European Council which assembles and maps a guideline for future talks and conclusion of an agreement(s) in which further relationships between the EU and withdrawing Member State is regulated. The European Council will act with consensus in laying down the guidelines. The agreement is concluded on behalf of the Union by the Council of the European Union. The negotiations are carried out negotiator who is appointed by the Council according to Article 218(3) of TFEU where it is written that the Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorizing the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.[10] Almost in all the EU institutions appointments were made to carry out heavy workload related with BREXIT. Michel Barnier, a former European Commissioner and French foreign minister, was designated chief negotiator for the European Commission and entrusted with leading the Commission's Article 50 Task Force, The Conference of Presidents of the European Parliament designated Guy Verhofstadt, leader of the ALDE Group and former Belgian prime minister, as the Parliament's coordinator on Brexit, with Didier Seeuws leading corresponding work in the Council. The Council needs the consent of the European Parliament for concluding the withdrawal agreement. The European Parliament approves the agreement with majority of votes cast according to Article 231, which means in order to pass from European Parliament, withdrawal agreement have to be consented by majority of parliamentarians present in the voting which must be no less than one third of the component Members of Parliament, as such it is defined as the quorum according to Article 168 of the Rules of Procedure of European Parliament.[11] But it is not the end of the process as the Council of the EU has

[9] *Ibid.*
[10] Consolidated version of the Treaty on Functioning of European Union, C115 Official Journal of European Union 47, 144-145 (2008). (hereinafter *Consolidated Version of the Treaty*)
[11] Rules of Procedure of the European Parliament, art. 168 (2018).

to act in qualified majority for conclusion of an agreement. As it is generally known, according to Article 238(3)a of TFEU, qualified majority in the Council is at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. However, as it is the case when a proposal comes from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, but not with the withdrawal agreement, a qualified majority (we would rather say "super-qualified majority) for conclusion of such an agreement will be at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States as it is laid down in Article 238(3)b. Unlike Treaty amendments, a withdrawal agreement does not need to be ratified by all Member States- in line with the voluntary character of the withdrawal.

As a withdrawal agreement is concluded between the EU and leaving State, participation of that State in decision-making procedure in EU institutions is excluded. While it continues to take part in the procedure in other fields within the deadline period, for the purposes of conclusion a withdrawal agreement, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it, according to paragraph 4 of Article 50 of TEU. It is seen that nothing is said about participation in the voting in European Parliament. Some argue that it is because even they are elected from withdrawing Member State, Members of European Parliament (MEPs) represent all EU citizens, rather than nationals. Therefore, Treaties do not prevent MEPs from Member State in question from participating either in debates in the European Parliament and its committees, or from voting on Parliament's motion for consenting withdrawal agreement.[12]

Paragraph 3 of Article 50 rules that the Lisbon Treaties (the primary sources of European law) will cease to apply to the State in question from the date of enrty into force of the withdrawal agreement. Nonetheless, EU law would remain valid until national laws are adopted repealing or amending it. But what happens if Parties do not reach an agreement? Can Member State not exit the EU? Of course, even if the EU and leaving State cannot agree on terms of withdrawal agreement and do not conclude it, Member State is considered to have leave the Union, but after two years after European Council receives the notification. If the Union agrees with the Member State concerned to prolong this deadline, then European Council can extend this period deciding unanimously.

[12] G. Sgueo, J. Carmona, C. Cîrlig, *UK Withdrawal from the European Union. Legal and Procedural Issues*, European Parliamentary Research Service Research Paper No. PE 599.352, 6 (2017).

If leaving Member State decides to join back to the Union in the future, it has to follow the same procedure laid down in Article 49 of TEU as other states wanting to join the Union, according to the fourth paragraph of Article 50. This means there is no preferential system for post-members and they should apply for membership, and if they fulfil eligibility criteria (which are known as Copenhagen criteria), after the consent of the European Parliament with absolute majority of component members, the Council of the EU will adopt a decision about conclusion of admission agreement via acting unanimously after consulting the European Commission. Additionally, this agreement will be a subject for ratification in all other Member States according to their constitutional requirements.

As it is seen from Article 50 of TEU, the Court of Justice of the European Union (CJEU) is not involved in the withdrawal process. The withdrawal agreement, as an international agreement of the EU, is subject to CJEU judicial review. It can be contested before the Court through an action for annulment regulated by Article 263 of TFEU. In addition, questions for a preliminary ruling related to the withdrawal agreement could be referred to the CJEU by a national court of one of the remaining Member States according to Article 267 of TFEU, while a domestic court of the withdrawing Member State could do the same, if explicitly provided for by the withdrawal agreement. Furthermore, the CJEU could be requested to give an opinion on the compatibility of the draft withdrawal agreement with the EU law.

It worth to note at this point that although Article 50 regulates the unilateral withdrawal process from the European Union, there is no single norm saying that other Member States can jointly act and forcefully exclude another Member State if it violates the founding principles of the Union. In the preamble of TEU it is written that the Member States are determined to 'continue the process of creating an ever closer union among the peoples of Europe'. While the preamble has no legal effect, we know from the case law of the Court of Justice of the European Union that in the interpretation of the Treaties themselves preamble plays essential role. It can make us to jump to the conclusion that no Member State can be expelled from the Union. However, here we can put forward an argument *vice versa* that leaving behind a recalcitrant state may actually lead to much closer cooperation between the remaining Member States which in turn may make the Union more attractive to future candidate countries. Still, the EU treaties do not contain any explicit expulsion clause. That may mean *prima facie* that such possibility is not permitted. The question here: "If it is not permitted to forcefully expel a Member State and this MS does not what to voluntarily leave the Union, then what can other Member States do in order to continue further and stronger cooperation?" In fact, some mechanisms are available in the Treaty that the EU could implicitly implement. The most important one of them is laid down in the Article 20 of TEU: The Enhanced Cooperation Procedure (ECP).

According to the afore-mentioned procedure, at least eight member states can proceed to a further stage of integration within a policy area, provided that they are not contrary to EU integration efforts. Nevertheless, ECP can be used only in the areas which are in the framework of non-exclusive competence of the Union.

II. Models for future cooperation with the European Union after withdrawal

In order to regulate its relations with the EU, a withdrawing Member State can conclude an agreement where they mutually agree on the level of their future relations regarding customs union, single market, free movement rights (goods, services, people and capital), etc. While some argue that agreement on future cooperation can be part of withdrawal agreement and there may not be need to have separate agreement, others say regarding the sequencing of the agreements that the withdrawal agreement and the agreement(s) on the future relationship would logically need to be concluded one after the other. The main argument against concluding the withdrawal agreement and the agreement (or agreements) on the future relationship at the same time is the lack of a legal basis: while Article 50 TEU provides the basis for the withdrawal agreement between the EU and the withdrawing (but still a) Member State only, a future-relationship agreement would require a legal basis applicable to relations between the EU and a third country, such as Article 207 of TFEU (common commercial policy) or 217 of TFEU (association agreements). Most experts, therefore, agree that the withdrawal agreement must be concluded first, and an agreement on the future relationship can only be formally concluded and take effect after the withdrawal agreement has entered into force, transforming the withdrawing state into a third state in relation to the EU. At this point it is worth to note that any international agreement between the EU and the state which has withdrawn defining their future relationship would require ratification in the remaining Member States, unless the agreement were only to cover matters falling within the exclusive competence of the European Union.[13]

In March 2018, the European Commission released a draft withdrawal agreement where it seems parties agreed relatively on most of the issues.[14] The transition period is established till the end of 31 December 2020. The Union and the UK tried to mutually regulate different areas such as goods placed on the single market, ongoing customs procedures and taxation,

[13] Flavier H., Platon S., *Brexit: A Tale of Two Agreements*, European Law Blog, http://europeanlawblog.eu/2016/08/30/brexit-a-tale-of-two-agreements/ (last visited Aug 23, 2018).
[14] European Commission, *Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community,* 19 March, 2018.

judicial and administrative procedures and cooperation and to protect acquired rights of citizens. However, this agreement is limited mostly to the transition period and does not extend to the matters beyond it.

There are many templates which can be useful for future relations such as European Free Trade Association (EFTA), European Economic Area (EEA), Swiss model of cooperation and preferential trade agreements. The European Free Trade Association (EFTA) was founded in 1960 by the Stockholm Convention signed by Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom in order to liberate trade in goods amongst its Member States. Finland became Party to the Association in 1961, Iceland in 1970 and Liechtenstein in 1991. With six of these states having joined the EU, EFTA today have four Member States: Iceland, Liechtenstein, Norway and Switzerland. Although the EFTA is not a customs union, they usually negotiate preferential trade agreements as a group. EFTA states have 27 free trade agreements covering 38 countries. However, each Member of the Association retains the right to conclude bilateral trade agreements with third countries outside the EFTA framework. The free trade agreements within the EFTA have evolved in time from trade in goods and protection of intellectual property rights to cover areas such as trade in services, investment, competition and government procurement, and more recently trade facilitation, sustainable development and cooperation.

The European Economic Area (EEA) brings together the 28 EU Member States and three of the EFTA States (Iceland, Liechtenstein and Norway). It was established by the EEA Agreement in 1992, which enables the three EFTA states to participate extensively in the single market. The EEA agreement provides for the incorporation of EU legislation in all policy areas covering the single market on a continuous basis, as and when the EU adopts legislation related with EEA. It encompasses the four freedoms, i.e. the free movement of goods, capital, services and persons, plus competition and state aid rules and horizontal areas related to the four freedoms. It has been argued that a post-withdrawal UK could simply, if it wished, retain its membership in the EEA. However, most commentators consider that, in this scenario, the UK would need to re-join EFTA once it withdraws from the EU (having left EFTA when joining the European Communities in 1973), in order to be able to subsequently re-join the EEA. If the rights and obligations arising from the EEA agreement are a matter of EU law for the EU Member States, then when EU law ceases to apply to the UK post- withdrawal, so will the EEA agreement. Commentators remark that the "status of the UK as a contracting party to the EEA agreement today is contingent upon and inherently linked to its EU membership".[15]

[15] Sif Tynes D., Lian Haugsdal, *In, out or in-between? The UK as a Contracting Party to the Agreement on the European Economic Area*, 41 European Law Review 753, (2016).

Swiss model of cooperation with the Union has its own particular nature. A member of EFTA, Switzerland rejected accession to the EEA (and to the EU) by referendum in 1992. Consequently, the Swiss-EU relationship is based on a multitude of sector-specific agreements (more than 120), negotiated over many years, starting with the 1972 Free Trade Agreement between the EEC and Switzerland. EU-Swiss cooperation is characterized by classical international cooperation, without any transfer of competences to supranational authorities, however, an exception exists in the field of air transport competition rules, where monitoring and application of these rules are a European Commission and CJEU competence, except for state aid and the bilateral agreements rely either on the equivalence of EU and Swiss legislation or on the incorporation of EU legislation. One important aspect of the bilateral relationship is the freedom of movement of persons, subject of a referendum vote in 2014 seeking to limit the free movement rights of EU citizens in Switzerland. As a result, Switzerland must implement legislation in 2017 which could infringe the existing bilateral agreements. Following the vote, the EU suspended cooperation with Switzerland in the fields of education and research. A compromise deal on the free movement of people was reached at the end of 2016.

The most widely used form of collaboration among the European Union and world countries is preferential free trade agreements. The EU's preferential trade agreements include free trade agreements (FTA), association agreements (AA), and deep and comprehensive FTAs, as well as economic partnership agreements (EPA). Concluding an FTA is a rather flexible option, as the scope of the agreement depends on what the parties agree to include. As a result, the EU's FTAs with third countries and regions vary significantly – for instance between EPAs with the African, Caribbean, and Pacific(ACP) group of states, trade agreements with countries in South America, and deep and comprehensive FTAs with some of the EU's eastern neighbors. In general, EU FTAs mean less access to the EU single market than EEA membership, for goods and particularly for services, no requirements regarding ensuring freedom of movement of labor or contributing to the EU budget, freedom to conclude trade agreements with other countries/regions, as FTAs are less integrated than a customs union, few provisions on non-tariff barriers to trade (e.g. standards and regulations), which are the most significant obstacles to trade. Newer 'comprehensive' FTAs and economic agreements go further in terms of market access (e.g. provisions on public procurement markets) and may set standards in certain areas such as intellectual property rights, investment protection and the environment.

Some recent FTAs also move beyond trade in goods to aim at greater regulatory convergence, as well as further market access in certain sectors. While there are comprehensive free trade agreements negotiated by the EU with Canada, Singapore, South Korea and Vietnam, only the EU-South Korea

FTA has entered into force since 2011. Considered a mixed agreement, CETA must be approved by the European Parliament, and by all Member States through their national procedures. Essentially, CETA eliminates tariffs on all industrial products – with some products excepted, for which tariffs will be eliminated gradually on condition that these goods comply with preferential rules of origin, eliminates tariffs and quotas on almost all products in agriculture and all in fisheries on condition that these goods comply with preferential rules of origin and provides for market access, national treatment and most favored nation (MFN) status, both at federal and provincial level (for example, in case of Canada) for environmental, telecoms, financial and other services, if not subject to specific reservations.

We should also mention that without negotiated preferential market access with the EU, the post-withdrawal United Kingdom would rely on World Trade Organization (WTO) rules in its trade relationship with the EU. This means that the EU would apply tariffs to UK goods at the most favored nation (MFN) rates that the EU applies to all WTO members without a preferential trade agreement in place with the EU. In addition, it is argued that the UK will have to renegotiate its terms of trade within the WTO, as the UK's obligations currently arise in its capacity as an EU Member State rather than through its individual WTO membership. The rights secured by the EU in the WTO for its Member States would not automatically apply to the UK upon its withdrawal from the EU, and the EU commitments at the WTO would somehow need to be separated into EU and UK commitments, concerning goods and services. In practice, this would mean negotiating and agreeing updated schedules of commitments both for goods and services for the UK with all 164 WTO members (with unanimous agreement required), pending which a degree of uncertainty would affect UK access to WTO member markets. Conversely, some experts believe there is a possibility that the UK could 'inherit' EU tariffs. However, even if this might work for most trade, complications may arise in relation to agriculture and agricultural products.

Conclusion

While there was not any single provision regarding leaving the European Union, put aside withdrawal from it, however, everything changed with Lisbon Treaties which brought legal way of exiting the Union via unilateral withdrawal. In the whole process Member State is in mutual contact with the Union institutions as they are the main players in it, no other Member States. The European Council decides on policy guidelines upon receiving the notification from the Member State in question as it is main policy-making body in the Union, the Council appoints negotiator and concludes an agreement which is consented by the European Parliament. If such an agreement is not reached within two years, then Member State leaves the Union, anyway. Nevertheless, there are some questions that remain, for

example, what withdrawal agreement should contain as Article 50 of TEU does not touch this issue. It can be assumed transitional period, contract-based rights and so on as it is the case with draft agreement with the United Kingdom.

Another question is: "Can Member State revoke its notification?" Again Article 50 is silent on this matter. While Article 68 of Vienna Convention on Law of Treaties clearly stresses that a notification of intention to withdraw from a treaty may be revoked at any time before it takes effect,[16] because of the specific characteristics of Lisbon Treaties and the European Union, special provisions of Treaties take precedence. In such case, if all other Member States agree withdrawal process can be suspended, as Member States are "masters of Treaties". By contrast, the unilateral revocation of an Article 50 notification appears much more problematic. Some commentators argue that a Member State cannot unilaterally revoke its notification to leave the EU, in the sense that this action is legally compelling the rest of the Member States to accept this revocation. However, some commentators specify that unilateral revocation is possible under certain constraints, notably if the Member State has acted genuinely and in good faith in taking a new decision not to withdraw from the EU[17].The only institution which can rule about the compatibility of revocation of withdrawal notification with the Union law is the Court of Justice of the European Union as it gives ultimate interpretation to the Treaties.

Next matter concerns forcing a Member State to leave the Union. This question became a topic of heated debates especially when in the first referendum in Ireland voters said "No" to the ratification of Lisbon Treaties and some argued whether it was possible to exclude Ireland from the Union in order to keep moving on integration[18]. First of all, there is no single provision enabling Member States to exclude another one. The membership can be suspended if one Member State continuously and gravely breaches the values established in Article 2 of TEU.[19] But it is just a suspension, not exclusion. Therefore, we can agree on that there is no possible way of exclusion of membership in the European Union.

After leaving the Union, Member State can continue its relation and cooperation with the Union. We have analyzed different ways of cooperation and their characteristics such as European Economic Area, European Free Trade Association, Swiss model of cooperation and Preferential Free Trade Agreements which can vary from regions to countries. Focusing especially on

[16] *VCLT*, *supra* note 2, art. 68.
[17] Eeckhout P., Frantziou E., *Brexit and Article 50 TEU: A Constitutionalist Reading*, UCL European Institute Working Paper, 41 (2016).
[18] Phoebus Athanassiou, *Withdrawal and Expulsion from the EU and EMU: Some Reflections*, 10 ECB Legal Working Paper, 8 (2009).
[19] *Consolidated Version of the Treaty*, *supra* note 10, art.

BREXIT, deriving from the speech of Theresa May the UK government wants to negotiate a 'bold and ambitious free trade agreement with the European Union' allowing for the 'freest possible trade in goods and services', securing thus the greatest possible access to the EU's single market for the UK. While the draft agreement has legal norms related partly with acquired rights and transition periods, broader regulation of future cooperation can be done after conclusion of special international agreement which needs to be approved by all Member States.