
Brexit and Constitutional Law of the European Union

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Abstract: This paper analyses the impact of Brexit to the European Union. What effect does it have on the integration process? And what are the possible options that the United Kingdom has at the moment. The idea of the European Union army is discussed briefly. And what would be the consequences of a "Hard Brexit".

Keywords: Brexit, Integration, European Union army, Sovereignty

INTRODUCTION

Integration in the European Union has been affecting the member states sovereignty more than ever. Even if the process has had a positive effect on the economy and functioning of the states, it has another side to it. If people start to feel that the decisions for their future are being not made in the hands of their representative in the state, it causes the feeling of losing sovereignty. Although their elected representatives may also not act in the will of their voters, they are easier to be manipulated by public opinion and they may react to the voice of the people more as being afraid to lose their position in the state. In the United Kingdom, people started to feel that the decisions were made without their will. The British were mainly demanding to minimize the immigration and to get back the sovereignty to make trade deals for themselves freely.

As the people of United Kingdom have expressed their will through referendum and decided to leave the European Union, the aftermath of the decision is still unknown. Negotiations are ongoing and in order to find out what are to come as a result of Brexit, it is needed to analyse the possible consequences of agreements that could be made.

IDEOLOGICAL SWIFT

It is difficult to evaluate the effect of the United Kingdom leaving the European Union to the integration process as a whole, because in some fields, the UK has been a big supporter of integration and in some areas, that has not been the case. The area that the UK has surely expressed their support for has been the development of the single market. But they have a reputation of being against integration in social policy areas.¹

The United Kingdom has been regarded as one of the northern liberal countries in the union with the Baltic states and countries like Germany, Denmark, Sweden, Finland and the Netherlands, these states have had an ability to block legislation by qualified majority voting in the European Council². But if they leave the union, the northern liberal bloc will lose the blocking minority to block legislation, because the southern protectionist countries will have more power. In order for to not lose the power to have an ability to block legislation, when needed, the northern liberal countries will have to find other partners. By classifying the member states as countries who are in the Eurozone opposed to those, that are not, the Eurozone states will also gain such a majority, that the non- Eurozone states don't have a blocking minority against.

¹ [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604973/IPOL_STU\(2018\)604973_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604973/IPOL_STU(2018)604973_EN.pdf)

² <https://www.ucl.ac.uk/constitution-unit/research/europe/briefing-papers/Briefing-paper-2>

A research has been done, evaluating, how has the voting of the UK affected the decisions that have been made in the EU parliament by comparing, what kind of results would have been made without the UK. The research showed, that the UK parliament representatives tend to be for reducing “red tape”, also without the UK being in the parliament, the vote for stricter copyright regulation would not have passed, the EU budget would have been smaller, but member state’s contribution would have increased and there would be a stronger push for tax harmonisation and a higher taxation for financial transactions.³

EUROPEAN UNION ARMY

As the UK has one of the biggest armies of EU and therefore has had a major foreign relations influence, the leaving, will weaken the European Unions power on an international power scale. The United Kingdom represented 23% of the total budget spent on defence by European countries in 2015.⁴ But as the departure from the union weakens the European Union’s international power it has given a possibility to increase power that wasn’t possible before. Rousseau had a discussion on uniting Europe in a letter the idea of creating a European Union army has been raised by Macron and Merkel. The UK has been against the idea of a European Union army and vetoed the idea because they have thought that it would undermine NATO, but now when they don’t have a say, there is a possibility. For the European Union influence in international matters the existence of a united army would surely be beneficial, but as some countries see the current integration process moving too fast, it could instead create more tension in the union and possibly cause a mentality of disintegration in states like Poland. The Foreign minister of Estonia, Sven Mikser has said that he doesn’t see that the government of Germany would accept giving the right of making a decision to move the German forces to a representation of the European Union. A state giving away power over a state’s army is definitely a big loss of sovereignty.

EUROPEAN UNION BUDGET

The United Kingdom has been reliable of a significant part of European Unions budget. In 2017 the UK contributed to the EU public sector a net worth of about 10, 2 billion euros⁵ that is the so called “Brexite gap”. That makes the UK the second biggest net contributor after Germany. Although United Kingdom is supposed to continue to contribute in paying for some of the institutions after the next Multiannual Financial Framework period starts⁶. But if the UK ends contributing to the European Union budget, the European Union has to fill the 10 billion euros worth gap, therefore budget changes will be inevitable. “Since the UK is a significant net contributor, the EU27 will either need to cut spending, increase contributions or do a combination of both.”⁷ This means that EU members will have more economic obligations in relation to EU contribution affected by the UK actions, if they exit the EU.

³ http://60811b39eee4e42e277a-72b421883bb5b133f34e068afdd7cb11.r29.cf3.rackcdn.com/2016/04/VoteWatch-Report-2016_digital.pdf

⁴ file:///C:/Users/User%20name/Downloads/Brexit_-_Major_Consequences_on_the_Process_of_Euro.pdf

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691017/EU_finances_2017_Cm9576_web.pdf

⁶ https://www.cer.eu/sites/default/files/prbrief_mff_gordon_24.4.18.pdf

⁷ https://www.cesifo-group.de/DocDL/EconPol_Policy_Report_04_2017_Brexit.pdf

SINGLE MARKET AND CUSTOMS UNION

One of the reasons why the people of the UK chose to leave the European Union was the promise to regain its sovereignty of establishing trade deals, and to end the immigration flow. One way to leave the union would be to join the European Economic Area, as Norway, Iceland and Liechtenstein have, even though, they would still have to follow the four freedoms and the EU legislation, but they would have some freedom to negotiate trade deals for themselves.⁸ But the negotiations are showing that Theresa May is focusing to stay in the customs union. If the deal that states that the UK will stay in the customs union will be approved, it will mean, that the UK will lose its decision power, but has to follow the rules imposed on them by the EU until the end of the new date of transition period, which is set on the end of 2021, but the UK cannot leave without permission from the EU, because the EU has a right to extend the transition period to the end of the century.⁹

BORDER PROBLEMS

Although in the withdrawal agreement that is on the table at the moment proposes that the United Kingdom will stay in a customs union until the end of the new date of the transition period, one of the most important problems regarding the departure that still remains, is the border between Northern Ireland and the Republic of Ireland. If the United Kingdom chooses to restrict the free movement of people, it is necessary for them to start controlling their borders, and the border with the Republic of Ireland has a history of causing tension. The problems of border control start from local farmers, that have land that crosses the border and people who live on one side of the border, but work on the other side a border. A hard border would definitely be causing harm for the everyday lives of such people. And it could possibly harm the peace process that the “Good Friday Agreement” has accomplished.¹⁰

If the migration would be controlled without a “hard border” and using technology to control the border, it would be a big risk to take, because such a border would be hard to have control over in a way that doesn't harm the everyday lives of the people that need to cross the border daily. Another way to deal with the situation is to let the Northern Ireland have free movement with the Republic of Ireland. The border control would therefore be carried out on the route from the Northern Ireland to other parts of UK. This would bring Northern Ireland closer to EU and that is not something the UK is willing to accept.

EUROPEAN UNION LEVERAGE

If the United Kingdom will have greater financial growth without the European Union, it will certainly make other states of the union hesitate on the utility of the union for their own economy and they will see it as an opportunity to start bargaining some benefits for themselves too. But as the EU has leverage over the UK, by being a bigger economic power, it is unlikely that such a deal would be made between the two, that the EU will let the United Kingdom leave and have bigger economic growth. That is one reason why it is so hard to get a “divorce deal” that satisfies both

⁸ file:///C:/Users/User%20name/Downloads/SSRN-id2841333.pdf

⁹ https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf

¹⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2933715

parties. If the economic growth in the European Union will be bigger than in the United Kingdom, the support in member states will likely to grow as people will acknowledge the positive impact that being a member states gives to a country's economy. This would therefore encourage support for integration in the member states. EU has significant leverage in negotiating a withdrawal agreement, and the possibility of UK getting a deal that would give them the benefit of participating in free market with the EU and to gain the sovereignty to make their own trade agreements internationally is very low,¹¹ the UK basically has two possibilities. To remain in the customs union and act under EU legislation and the European Court of Justice decisions, or to go through with a hard Brexit. As it is unlikely that the UK parliament will support the deal that would be worse than if they had stayed in the union and remained a right to participate in legislation and governing of the union. The chances of a "hard Brexit" are very likely.

As the only state in the European Union that has chosen English as an official language will be leaving, the question of using English as a language for the European Union institutions to be working in, has been raised. But there is no other language that is so useful for the framework of EU affairs.¹²

CONSEQUENCES OF A "HARD BREXIT"

A "Hard Brexit" is something, that one could be expecting as an outcome of a referendum that was about leaving the EU. Although it may not be beneficial for the people of the UK, it was after all the majority and the will of the people must be respected, even if they did not know what could come out of the decision. If it would happen, the UK would get back all the sovereignty to start organizing their economy.

If the EU and UK will not agree on a trade agreement before march 2019, the World Trading Organisation rules on imports of third countries, and the tariffs of the same regulations will be implemented by the parties.¹³

As the trade between the European Union and the UK would in that case decline, the economies of both parties are not likely to benefit. The UK's gross domestic product per capita could in that situation be 14 per cent lower by the year 2030.¹⁴

One of the negative consequences could be, that some of the banks, located in the city of London are likely to move to the European Union market, if the UK would stay out of the customs union. A study shows that of the 90 per cent of the European banking industry, resides in London, and about about 30 per cent, would move to a member state if the circumstances would find it necessary.¹⁵ And as the international banks will lose as well the cross- border benefits, that they have been enjoying in the UK, they are likely to move their headquarters to a member state.¹⁶ If the banking industry would move to the union, it would surely be beneficial for the EU economy, as then, the member states could collect taxes off of those banks.

¹¹ Dobrin, S., & Chochia, A. (2016). The concepts of trademark exhaustion and parallel imports: a comparative analysis between the EU and the USA. *Baltic Journal of European Studies*, 6(2), 28-57.

¹² <https://onlinelibrary.wiley.com/doi/epdf/10.1111/weng.12264>

¹³ https://www.cesifo-group.de/DocDL/EconPol_Policy_Report_04_2017_Brexit.pdf

¹⁴ <https://pdfs.semanticscholar.org/d729/e7e6c2b8ad3944f0d8784e77c72740fd05db.pdf>

¹⁵ <https://books.google.ee/books?id=rj1LDwAAQBAJ&printsec=frontcover&dq=brexit&hl=et&sa=X&ved=0ahUKEwjNmtbb4cbeAhXI2SwKHTYecrwQ6AEIazAJ#v=onepage&q=brexit&f=false>

¹⁶ <http://www.kenwitsconsultancy.co.uk/wp-content/uploads/2016/09/BREXIT-2016-Policy-Analysis-from-the-Centre-for-Economic-Performance.pdf#page=40>

Some industries in Britain could not afford their shipments to go through border control, because they operate on precise time, that each of the part of their product is supposed to arrive and a delay of one part could harm the whole production process, so they could choose to move to the EU as well. As being in a larger economic area as the EU, without tariffs, gives the businesses the opportunity to export more and for the consumers to consume at a lower price.¹⁷ If the UK businesses would lose that advantage, some of them would certainly decide to move their businesses to the EU.

CONCLUSION

As the UK parliament would be the riskiest party, that would be have to vote for agreeing this withdrawal deal, it is unlikely that they would do so. The reason for that would be, that such a deal would not be beneficial in any way comparing it to if the UK would remain in the union. But this deal could not be seen beneficial in the sense of regaining sovereignty as well as they would have to obey EU regulation. So, to analyse the impact that the possibility of the UK leaving the EU would still be very speculative. If the UK leaves, it is sure, that there will be some ideological swifts in the parliament and the council. The international influence of the EU is likely to decrease and there has to be some compensation in that area to replace the UK's part. An EU army would be unlikely as the member states lack the willingness for giving away such an important part of a state sovereignty.

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¹⁷ http://eprints.lse.ac.uk/66144/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_LSE%20BrexitVote%20blog_brexit02.pdf

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