

BREXIT – RELEVANT LEGAL ASPECTS*Abstract*

Although there are many drastic economic consequences of the exit of Great Britain from the EU (Brexit), the accent of this paper is put on relevant legal aspects (Lisbon Treaty) and possible scenarios of the forthcoming establishing of the new relations between Great Britain, on the one side and the EU, on the other. The European Union (EU) is faced with the turning point in its evolution in contemporary conditions. Besides putting the question about the future of the EU after Brexit, it is important to consider relevant legal aspects of Brexit.

The fact that, for the first time, one Member State has legally decided to leave this very significant trading block and this sui generis organization with clearly exposed supranational features, dramatically points out that interdependence of states in modern world obviously is shaken. Many Eurosceptics predicted in vain the imminent end of the Union, this especially after a British referendum - BREXIT on the exit of the Great Britain from the Union. As the Community existed before joining Great Britain (1973), also the Union, as its legal successor will exist after British withdrawal. There is no doubt that this is a serious blow for further development of the EU, which imposes the necessity of implementation of comprehensive reforms of the Union. If in the EU practice of implementation of the Lisbon Treaty, would prevail an effectiveness of the functioning of the EU institutions, it will be a realistic conclusion that it is a democratic Union with the optimal institutional architecture. In case of opposite development, the EU will face with further rise of extremism in its Member States.

Key words: *European Union, Brexit, Lisbon Treaty*

¹ Institute of Comparative Law, Belgrade, Senior Research Fellow, mail: gordana.gasmi@gmail.com.

1. Introductory notes

It is important to discuss relevant legal aspects of Brexit, since the European Union (EU) is faced with the turning point in its evolution in contemporary conditions. Furthermore, Brexit is the reason to put the question about the future of the EU. The fact that, for the first time, one Member State has legally decided to leave this the most important trading block and this *sui generis* organization with clearly exposed supranational features, dramatically points out that interdependence of states in modern world obviously is shaken.

Namely, in Great Britain the stream of self-sufficiency achieved the victory on June referendum (2016) on “Yes or No to exit from the Union”. However, although there are many drastic economic consequences of the exit of Great Britain from the EU (Brexit), the accent of this paper is put on relevant legal aspects and possible scenarios of the forthcoming establishing of the new relations between Great Britain, on the one side and the EU, on the other. Namely, the process of negotiating the new collaboration model between Great Britain and the EU is expected to start in the first trimester of the 2017, but the duration is legally limited to maximum two years, by the provisions of the Lisbon Treaty². The high officials of the EU have already expressed strong willingness to start and finish negotiations with the Great Britain at the most quick and the most effective manner. The objective of such attitude of the Union is to avoid legally vague situation and simultaneously, to foster intraregional economic stability that is hampered since the end of 2008.

2. Legal framework of exit from EU - Lisbon Treaty on EU

At the EU summit held on 21/22. June 2007, the political decision was brought on convening a new intergovernmental conference in order to formulate the text of the EU Reform Treaty. After the failure of the Draft Constitutional Treaty of the EU (2005) in the process of its ratification in France and the Netherlands, the idea of constitutionalization of the EU was abandoned and the Lisbon Treaty on EU replaced the creation of the EU Constitution. The Intergovernmental Conference was opened at the beginning of October 2007. The first draft of the Treaty on reform of the EU saw the light of day on 17 / 18 October 2007. It was the moment of signing the Lisbon Treaty on EU, thus ending several years of negotiations of the Member States on the EU institutional reform.

² G. Gasmi, *Quo Vadis EU?: relevantni pravni i institucionalni faktori*, Institut za uporedno parvo, Beograd 2016, 92.

At the EU Summit in Lisbon, agreement was reached on the remaining provisions of the Treaty on the reform of the EU, on 13 December 2007. The EU Reform Treaty is named after the venue of the Summit of Heads of State and Government of the EU in Lisbon, at the end of the Portuguese Presidency of the EU. The enforcement of the Lisbon Treaty on the EU needed ratification of all Member States. The initial ambitious plan was that the ratification process is to be completed during the year 2008, so the new EU Treaty would have entered into force on 1 January 2009 before the European Parliament elections in June 2009. The main difference compared to the Draft Constitution of the EU's is the fact that the Lisbon Treaty on EU has no form of constitution and does not abolish existing primary legislation, but rather complements Rome Treaties and the Treaty establishing the European Union (Maastricht Treaty).

The new EU Treaty was signed on 13 December 2007 at the EU Summit in Lisbon. This was followed by the ratification process in 2008 and 2009, which had the usual turbulent flow, as the previous ratification procedures of the EU Treaties of Maastricht up to Nice. The main blow to ratification of the Lisbon Treaty took place in Ireland refusal in a referendum held on June 13, 2008, when more than half of Irish people voted negatively on the Lisbon Treaty. Nevertheless, the ratification process is continued by the adoption of the Lisbon Treaty in the Parliament of the United Kingdom on 18 June 2008. The ratification process lasted throughout 2008 and at the beginning of October 2009 there has been repeated the referendum in Ireland, this time with the positive outcome. There has been put successful political pressure on Ireland, the Czech Republic and Poland as the Member States that were opponents of the Lisbon Treaty on EU.

The conditions for the entry into force of the Lisbon Treaty have been met at the end of 2009, when the President of the Czech Republic (V. Havel) had put his signature on the text of the Treaty. This was preceded by consideration of whether the proposal of the Lisbon Treaty on EU is in accordance with the Constitution of the Czech Republic and a positive decision of the highest court in the Czech Republic in this case. Entry into force of the Lisbon Treaty therefore happened on the 1st of December 2009.

Deepening integration in the EU shows its falls and is sometimes late, but it took place at continuous and irreversible manner. Political concessions and internal negotiations among EU Member States are an integral part of the process of adoption of primary legislation, i.e. amendments of the founding Treaties. At the time of the conclusion of the Treaty of Rome the European Community membership counted only six Member States, and at the time of the signing of the Lisbon Treaty, the EU has grown to twenty seven members, with a tendency of further expansion of membership. EU

institutions, in such conditions, must meet the requirements of efficiency of decision-making, provided that there is no loss of legitimacy and of the democratic functioning. Such complex context has imposed the necessary institutional reforms of the Union with the aim of its efficient functioning.

Status of the legal entity was explicitly established by the EU Treaty of Lisbon for the first time for the Union. Furthermore, for the first time, the Lisbon Treaty formulated the legal possibility for a Member State to withdraw from membership of the Union (“exit clause”, in Art. 50). A legal entity means the capacity of the EU to conclude international treaties and a membership of the Union as a whole in international organizations. Until the Lisbon Treaty, it was reserved for the two European Communities (EEC and Euratom) that both had a legal entity, which is in practice of international relations led to problems and uncertainties. EU Treaty of Lisbon has changed the earlier tripartite structure of the EU, introduced by the Maastricht Treaty (1993) and the former three pillars have been merged into one. Thus the Union is a unity, which has legal personality.

Prevailing view in the literature³ is that the EU Reform Treaty of Lisbon largely kept many solutions from a failed Treaty on the EU Constitution, but the term „Constitution of the EU“ is avoided as the term, in the EU official documents and in political proclamations. Draft Treaty on the EU Constitution was supposed to revoke and replace all previous Treaties of the European Community and the EU, while the Lisbon Treaty on EU rests on them, only amending it and in this respect there is a legal continuity of the EU primary law. Changes to the Treaty on European Union (Maastricht, Amsterdam, and Nice) refer to the EU institutions, improved cooperation among Member States, common foreign policy, security and defence policy of the EU. Compared to the provisions of the Treaty of Rome establishing the EEC (1957), the modifications envisaged by the Lisbon Treaty are aimed at the distribution of competences between the EU institutions and the Member States. Previous Treaty of Nice (2003) consists practically of two treaties - the European Union and the European Community, while in the Treaty of Lisbon a former Rome EEC Treaty is replaced by the Treaty on the Functioning of the European Union.

The question is why has been established such a complex legal structure⁴ by the Lisbon Treaty. This is done as a compromise with the demands of certain EU Member States (Czech Republic, Great Britain and the Netherlands), who have asked to explicitly give up the constitutional symbols, such as the terms “Constitution”, “European Foreign Minister”, “European laws” and “European framework laws”, as well as the symbols

³ J.C. Piris, *The Lisbon Treaty – A Legal and Political Analysis*, Cambridge University Press, New York 2010, 63 – 70.

⁴ *Ibid.*, 69 – 70.

of the Union (flag, anthem, motto, etc.). European Union of XXI century became very complex and full of diversity due to successive enlargements and the accession of very different countries, so legal appearance of the voluntary withdrawal of a Member State from the Union, formulated in the Lisbon Treaty was logical consequence. Therefore, Article 50 of the Lisbon Treaty states that:

„Any member State may decide to withdraw from the Union in accordance with its own constitutional requirements“.

Those provisions regulate process of withdrawal of Member State, for the first time in the history of European integration. Specific kind of „divorce procedure“⁵ requires the conclusion of the agreement between the Union and a Member State concerned, which previously made notification to the Union. This agreement is to settle out the arrangements for the withdrawal, as well as future relations between the EU and a Member State concerned. Internal EU procedure foresees that the Council of ministers makes decision by qualified majority after the negotiations on the agreement, but the European parliament is to give assent before decision making in the Council. If there would be no agreement on conditions for withdrawal, the exit from the EU becomes effective within two years from the notification of the withdrawal intention to the European Council⁶.

It is possible that the European Council extends this deadline with the consent of a Member State concerned. European Council decided unanimously. Legal effect of the agreement on withdrawal is to abolish implementation of the EU Treaty in a Member State concerned, from the date of entry into force of that agreement. Representatives of the country which intends to leave the EU may participate in the work of the European Council and the Council of Ministers of the EU, except for the work of these institutions in which they are engaged in consultations on an agreement on the withdrawal of that Member State, or vote on it.

If the country which has withdrawn wishes to be re-admitted to the EU, it must submit a new application for membership and fulfil the criteria for accession. The most critical attitude towards the expansion of the Union, towards the Lisbon Treaty and other forms of deepening of integration within the EU (such as the acceptance of a single currency, the Euro and the entry into the Schengen zone) showed British people. They almost exactly represent the official policy of the Great Britain, unlike most of other NGO representatives in other EU Member States, which were openly opposed to some decisions of their governments. Fortunately

⁵ G. Gasmi, 92.

⁶ S. Zečević, *Institucionalni sistem i pravo Evropske unije*, Institut za evropske studije, Beograd 2015, 153 – 155.

for British people, the Lisbon Treaty for the first time provides for the possibility of leaving the EU membership, which they used during the June 2016 referendum with a negative outcome in terms of the stay-in of Great Britain in the EU.

3. British withdrawal from the EU

Great Britain organized on 23 June 2016 a referendum on leaving the EU membership (BREXIT - Britain exit). According to the final results of a British referendum 51.9 percent of citizens voted for leaving the EU, while 48.11 percent voted for stay-in the EU. Prime Minister David Cameron immediately after the presentation of the results of the referendum offered his resignation. His campaign months-long for Great Britain to stay-in the EU was fruitless. The analysis of the votes shows that the majority of residents in small British towns opted to exit from the Union. This happened after forty three years of membership.

After a couple of months of discussions, the new prime-minister Theresa May announced that Great Britain will initiate the procedure based on Article 50 in March 2017. At the time of writing this paper, total consequences of the referendum in the UK with a negative response to the question about the stay-in the EU, are still not completely figured out. However, there is a serious blow to further institutional and economic development of the Union, with the long-term consequences. It can be assessed that the Union is indeed at a crossroads of its functioning.

It has not helped the fact that on 19 February 2016, the European Council had decided on the special status guaranteeing to Great Britain in the event that a vote at referendum would be to stay in the Union. *Inter alia*, in terms of social benefits for European immigrants, access to certain types of social benefits⁷ will be frozen for an indefinite period if the “public services would have been exhausted”.

Despite February decision of the European Council, Eurosceptics won the victory at the British referendum⁸. Their main argument was that the Union represents a big threat to British national sovereignty, especially because of centralized decision-making in Brussels (Council of ministers, European Council and the Commission as an initiator). Besides, the other essential reason for leaving the Union was urgent migrant crisis that endangers economic prosperity of internal market, so there is no need to stay in such Union.

⁷ C. Deloy, Supporters and adversaries to the UK remaining in the European Union are running neck and neck in the polls just one month before the referendum, <http://www.robert-schuman.eu>, last visited 24 June 2016.

⁸ <http://www.electoralcommission.org.uk>, last visited 24th June 2016.

Opposite to those reasons, supporters of European future of Great Britain pointed out that the exit would produce a significant loss of jobs, specifically in financial domain, but also in other sectors of British economy. In addition, local opponents to Brexit warned that it will be necessary to re-negotiate trade agreements with the remaining twenty-seven EU Member States, which could take over ten years, with all the negative consequences for the British economy that globally accounts for only 3% of the world economy and less than 1% of the world's population. The prevailing logic of V. Churchill won victory. Churchill saw strategic guidelines for the development of Great Britain in turning the country away from the rest of Europe.

Immediately after the referendum the resignation of the British Commissioner Lord Hill followed, a member of the EU Commission responsible for financial services and capital markets. President Juncker reacted with the regret to this resignation and nominated Vice-President of the Commission V. Dombrovski, who was in charge of the euro and social dialogue. A special declaration of the Commission on the EU's official portal was published on this occasion⁹. The resignation came immediately after the British referendum, despite the fact that Commissioners are elected in their personal capacity (Art. 17 par 3 of the Lisbon Treaty), on the basis of general competence and taking into account their European engagement that guarantees their independence from national governments.

The response of the EU officials on the BREXIT result has come in the form of the Declaration of Ministers of Foreign Affairs of the founding Member States of the European Communities. Ministers of foreign affairs of France, Germany, Italy, Luxembourg, the Netherlands and Belgium met on 25 June 2016 and expressed regret at the decision of the British people to leave the Union. Declaration estimated that it is a turning point for the EU, which has lost its Member State. Therefore, a proposal for special status of United Kingdom has ceased to exist, which was passed at the February meeting of the European Council. Bearing in mind that the provisions of Art. 50 of the Lisbon Treaty on EU provides for the voluntary exit from the EU, the Ministers called on the United Kingdom to activate the mechanisms provided for the commencement

⁹ Commission européenne, Déclaration concernant la décision de Lord Hill de démissionner de la Commission européenne et le transfert du portefeuille des services financiers au vice-président Valdis Dombrovskis, http://europa.eu/rapid/press-release_STATEMENT-16-2332_fr.htm, last visited 25 June 2016.

of negotiations on the Agreement on withdrawal, as soon as possible¹⁰. Special political significance of the Declaration lies in the momentum of its launching and in its authors, the high political representatives of the founding countries of the European Economic Community (1958), as a predecessor of today's the EU. The ministers of those countries have highlighted the great contribution of the Community and a contemporary Union to the modern processes of economic development and peace on the European continent, which lasts the longest period in recent times in Europe.

The unification of West and East Europe under the auspices of the Union has been achieved, i.e. the end of „Cold war“ era. Ministers have highlighted the mutual benefits of the peoples united under the umbrella of the Union and have pointed to the strong political will of the new Europe of twenty seven Member States to follow European values based on founding treaties and the rule of law, in accordance with the aspirations of its citizens. Hence, the Declaration emphasized the need to strengthen solidarity and cohesion within the Union. At the same time the need was identified to improve the functioning of the EU, faced with many challenges of globalization, among which the most vulnerable point is endangered safety of EU citizens, both external as well as internal. In this context, it was accentuated the need to build a stable framework of cooperation among Member States in managing migration crisis and taking care of refugees.

In second place the Declaration emphasized the importance of sustainable economic growth and improvement the convergence of the Member States' economies. Progress towards the realization of monetary union in the EU and towards ensuring full employment has also been formulated in the form of important objective of the Union and a response to the British exit from the EU. The Declaration expressed strong confidence of founding countries of the Community in the common future under the auspices of the Union, in spite of great geopolitical changes and global instability. It remains to be seen in the upcoming period, to which extent stated goals for the future development of the Union will be achieved, which will certainly require the implementation of institutional reforms of the Union.

Some authors reasonably assess¹¹ that after the Brexit there are a possibility of „domino effect“, taking into account the situation in the

¹⁰ France Diplomatie, Déclaration conjointe, <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/europe/evenements-et-actualites-lies-a-la-politique-europeenne-de-la-france/article/declaration-conjointe>, last visited 25 June 2016.

¹¹ C. Deloy, 43 ans après leur adhésion, les Britanniques décident de quitter l'Union européenne, <http://www.robert-schuman.eu>, last visited 24 June 2016; G. Gasmì, 238.

Netherlands, where elections are to be held in Spring of the 2017, coloured with strong opposition of local population to future enlargements of the Union. Precisely, the Netherlands has rejected the Association Agreement between Ukraine and the EU at the referendum held on 6th of April 2016, when 61% negative votes appeared. The same situation could happen in France also¹², where public discussion had launched the idea of so-called “Frexit”, i.e. possibilities for French exit from the Union.

Great Britain, however, for more than four decades of its membership, was one foot outside the EU, first and foremost, by the fact that during the launching of the EU, the Great Britain won so-called „opt-out clause“, or waiver of entry into the monetary union and acceptance of the single currency. Second example is the refusal of the Social Protocol on the rights of workers, also during the adoption of the EU Treaty of Maastricht (1993) as well as its absence from the formal system of common Schengen visa list and Schengen zone, based on the freedom of movement and residence for EU citizens (third example). Besides, Great Britain managed to obtain special Protocol concerning EU Charter on fundamental human rights and freedoms (Piris, 2010). EU Charter is an integral part of the Lisbon Treaty on the EU, but by the virtue of that Protocol, the Charter is not legally binding for Great Britain, although it is not explicitly stated in that Protocol (fourth example).

It follows that those examples are very serious exceptions to the obligations of the EU membership that led to the final compromise proposal on the special status of Great Britain in the event of her stay in the EU, adopted in February 2016 in the European Council. Finally, concept of preserving a strong national political and economic sovereignty of Great Britain has prevailed. Prime Minister Theresa May has explained¹³: “... Brexit has to mean the full repatriation of political power from Brussels. Anything less was unacceptable...it means having the freedom to make our own decisions on a whole host of different matters, from how we label our food to the way in which we choose to control immigration”.

4. Legal models of future cooperation between EU and UK - options

It is possible to point out the legal modalities of future cooperation, taking into account the existing legal factors, although bearing in mind that negotiations between the UK and the EU are to start in the first

¹² T. Chopin, J.F. Jamet., „After the UK’s EU referendum: redefining relations between the ‘two Europes’“, *Policy Paper European issues*, n°399, <http://www.robert-schuman.eu>, last visited 5 July 2016.

¹³ T. McTague, C. Cooper, Theresa May sets Brexit course on hard, <http://politico.eu/article/theresa-may-sets-brexite-course-on-hard>, last visited 2 October 2016.

trimester of the 2017, it is not realistic at the time of writing this paper, to predict precisely the shape of future cooperation between the Union and the Great Britain.

In the UK political confusion after a referendum and a big ‘No’ to the Union was noticeable, because many influential sectors of society highlighted their interests for future close ties and strong economic presence at the EU internal market, as opposed to the expressed will of the people to exit from the Union. Especially big companies expressed their fear of financial loss due to the forthcoming absence from the EU single market. In addition to the internal political welter, a huge future task for the UK will be negotiation process with the rest of the Union on the exit agreement in line with the provisions of the Art 50 of the Lisbon Treaty. Those negotiations could last maximum two years.

Exactly it was the reason for high officials of the EU to urge Great Britain to define own attitudes and start the official exit procedure. However, beside exit conditions, there are also the issues of future obligations and rights of the UK in relation to the Union, which wait for their precise establishment. In this regard, there are several possible legal modalities of future cooperation between the UK and the EU.

“Norwegian” model means that Britain would join the European Economic Area. European Economic Area (abbreviation: EEA) is the Agreement signed on 2 May 1992 to ensure that the benefits of the EU single market can expand to the EFTA States (European Free Trade Association), except for Switzerland, which had not ratified the establishment of the EEA. So this agreement has united economies of the EU Member States, on the one hand, and Norway, Iceland and Liechtenstein, on the other. This means that those non-EU countries enjoy the benefits of the single market based on four freedoms: free movement of goods, services, capital and labour. In return those countries must apply the EU regulations, except when it comes to taxation, agriculture and fisheries. Also they are not bound by the common trade policy of the EU.

Swiss model provides an opportunity for the Great Britain to regulate bilateral economic relations with the EU on the basis of an agreement on free trade zone, or on the basis of the Association Agreement. Swiss federation itself has regulated relations with the EU on the basis of several bilateral agreements (agriculture, free movement of people, trade, taxation etc.). For the UK the first problem would be that this status does not give Switzerland access to the Single Services Market, including financial services¹⁴. Swiss banks use branches that are established in

¹⁴ P.A. Coffinier, „Soft or Hard Brexit?“, *European issues*, n° 408, <http://www.robert-schuman.eu>, last visited 25 October 2016.

London. This relationship allows no control over community migrants. The EU Member States presumably will not want to apply this model with the UK, since it brought many disputes with Swiss.

Finally, so-called “Turkish” model for the Great Britain could provide customs union with the EU. Should the two sides fail in reaching an agreement, Article 50 of the Treaty calls for an automatic transition to trade based on WTO rules, both the UK and the EU being members, which implies having the same rules regarding foreign trade as, for example, with the Russian Federation. Neither of these options is satisfactory for the British government.¹⁵ Those options do not provide the United Kingdom adequate way to participate in decision making on the functioning of the EU single market, although the Great Britain will continue to do business with this very important market. *Exempli causa*, in 2015 44% of its goods and services exports were directed to the continent (i.e. EU market), whilst 53% of its imports originated from the EU market. London is the world’s leading financial market and a great deal depends, in many areas (insurance, clearing in euro) on its inclusion in the European Economic Area¹⁶. It is hard to imagine a complete interruption of economic cooperation between the EU and the UK, especially as the Scottish determined to stay in the framework of the Union, as well as a large percentage of the population in major cities.

Hence the internal political confusion and economic uncertainty for British economic tomorrow is present. If the UK opts for the so-called “Norwegian” model, the country could resort to amending the Agreement on the European Economic Area that would allow the State of EEA, although not in the Union, to vote on policies involving, especially the policy concerning the internal market. On the other hand, to clarify several levels of European integration, there is the idea of equating the European Union with the Economic and Monetary Union, i.e. Eurozone, which is currently composed of nineteen member countries of the remaining twenty seven Member States. In return ***the European Economic Area would legally regulate the functioning of the single market. The*** institutional framework for the two possible solutions would be the same, however the EU institutions should adapt to different ways of governance in the Eurozone and within the European Economic Area.

Opponents of the “Norwegian” model in Britain point out that it suffers from dangerous lack of democracy, as members of the EEA have

¹⁵ HM Government, Alternatives to membership: possible models for the United Kingdom outside the European Union, 2016, <https://www.gov.uk/government/publications/alternatives-to-membershippossible-models-for-the-unitedkingdom-outside-the-europeanunion>, last visited 4 July 2016.

¹⁶ P.A. Coffinier.

no right to vote on EU regulations, concerning the EU internal market, and are subsequently bound by these rules. Certainly this is a serious drawback that can be eliminated by the revision of the Agreement on the EEA (section 7).

Possible institutional changes would mean that the Council EEA, instead of the Council of Ministers, would be authorized to decide on directives, regulations and decisions concerning the internal market, in the co-decision procedure with the European Parliament¹⁷. It would be very convenient for Britain to continue enjoying benefits of the EU internal market, but without coercion to participate in other obligations of the EU membership.¹⁸

At the same time, in the UK would reduce internal tensions, primarily by Scotland and Northern Ireland, which are opposed to the break-up with the Union. Bearing in mind the great fear of foreign labor migration in the UK, the EEA Agreement provides advantages, because it allows unilateral application of safeguard mechanisms (Art. 112) in relation to the free movement of workers. The agreement with the UK to withdraw from the EU has to be approved by the European Parliament. Attentive to the interests of European citizens, the Parliament would reject a text that would include an exception to the free movement of people in the country's participation in the EU single Market. On the other hand, the susceptibility of these institutional changes lies in the fact that they could cause a huge resistance in other EU Member States and could disrupt the achieved level of inter-institutional (dis)balance within the Union.

In any case, the inevitability of the EU institutional reform entails the necessity of answering the question whether there are some other EU Member States to follow the British example¹⁹, which would be black scenario for the Union. Second option is also possible. Namely, there is the open question of deepening integration through the expansion of the Eurozone, or whether other EU Member States will start to apply the single currency through the fulfilment of the convergence criteria, but also by strengthening political union within the EU. Furthermore, third alternative exists. One cannot reduce the importance of Member States who seek to preserve the political *status quo* in the institutional structure of the Union, although it is unsustainable in the long run.

All those reasons leave open avenues of development of contemporary Union, indicating the negative result of the British withdrawal, both for the UK and the EU as well. The UK which is the

¹⁷ T. Chopin, J.F. Jamet.

¹⁸ G. Gasmi, *op.cit.*

¹⁹ G. Gasmi, *op.cit.*

second or third European economy (depending on the value of the £), accounts for 10% of its continental partners' trade²⁰. For the EU, British departure would be a real economic, political, strategic, civilization and cultural amputation. On the other side, the new economic advisor at the ministry responsible for the Brexit, Raoul Ruparel estimates that in the long term the UK's departure from the European Customs Union (which does not include Norway and Iceland) would cost the UK between 1 and 1.2% of the GDP, i.e. £25 billion per year²¹. However, there are also assessments in favour of greater coherence of the future EU consisted of the remaining twenty-seven EU Member States, which will be able to make decisions easier, especially on strengthening the Eurozone. This could be relevant in the field of future unified tax policy, except Denmark, which remains an exception to the economic and monetary union that is legally established by the provisions of the Treaty on EU from Maastricht (1993).

5. Concluding remarks

EU summit meeting of Heads of States or Governments will be held in Rome in March 2017 in order to celebrate the anniversary of the Rome Treaties of EEC. For this occasion, the European Commission is the author of a White Paper with the aim to address ways of strengthening and reforming the Economic and Monetary Union. Many Eurosceptics predicted in vain the imminent end of the Union, this especially after a British referendum - BREXIT on the exit of the Great Britain from the Union. As the Community existed before joining Great Britain (1973), also the Union, as its legal successor will exist after British withdrawal, which was announced by the result of the referendum in June, 2016. There is no doubt that this is a serious blow for further development of the EU, which imposes the necessity of implementation of comprehensive reforms of the Union²².

Previous European integration processes within the Union seem to indicate the accuracy of the famous "bicycle theory", which rightly points out to the ongoing updating of the EU as being the modality of its survival and prosperity. Through the creation of new imbalances and by seeking new answers to the political and economic challenges, the EU is moving forward step by step, as Jean Monnet once said.

²⁰ P.A. Coffinier.

²¹ A. Asthana, R. Mason, R. Syal, Brexit adviser: leaving EU customs union will cost UK £25bn a year, <https://www.theguardian.com/politics/2016/oct/11/government-adviser-leaving-eu-customs-union-uk-25bn>, last visited 12 October 2016.

²² J.D. Giuliani, Les possibilités d'un continent, <http://www.robert-schuman.eu>, last visited 27 June 2016.

Hence the conclusion that the latest text of the Treaty on EU (Lisbon Treaty) is not the last word in the EU primary legislation and in the institutional evolution of the Union. We should not be surprised that in the near future the amendments to the Lisbon Treaty on EU will be proposed. It is no coincidence that in the new EU Treaty of Lisbon is removed any reference to the EU Constitution, which was a failed attempt of constitutionalisation of the Union and a collapse try to convert the Union into a super-state.

Member States are the main constituent entities of the EU and as such, they dictate the flow and pace of institutional reforms of the Union. In fact, for all EU institutional reforms an unanimity of the Member States is necessary. There is an evident growth of nationalism and populism in many EU Member States. It is the result of previous failure of the EU institutions to resolve majority of issues that tackle ordinary EU citizens, such as unemployment, migratory pressures, economic crisis, lack of political unity, geographically unclear external borders, fight against terrorism and organized crime, etc. Some of those issues are not completely in the exclusive competence of the EU institutions, especially employment (regulated in art 145-150 of the Lisbon Treaty, but only as the field for coordination of national policies). The same is valid for national economic policies of the Member States that are subjected to complex mechanism of multilateral coordination in the EU context.

The lack of real competence of the EU in those domains resulted in the imperfection of the functioning of the Union on the one side, but also in rather bad image of the Union in the eyes of its citizens²³. The erosion of cohesion within the Union began since the year 2000. The reactions after the adoption of the Treaty of Nice were negative, followed by European analysts' estimates, as well as the assessment of the president of the European Parliament Nicole Fontaine about the Nice summit that it had not met the expectations specified. The spirit of unity and solidarity among Member States, which is so widely propagated within the Union, was visibly absent during the session of the European Council in Nice. Each Member State has sought to maintain their positions within the existing institutional structure of the EU. Therefore, it was very difficult to achieve the necessary consensus and compromise on key reforms of the EU. The outcome was that the confidence of public opinion in the EU in the perspective of the integration process was weakened.

In other words, the gap between those who make decisions in the EU and public opinion, i.e. the majority of ordinary citizens is particularly

²³ J.C. Piris, „How can we make Europe popular again?“, *European issues*, n° 401, <http://www.robert-schuman.eu>, last visited 6 September 2016; G. Gasmi, 271 – 286.

increased in recent years. This caused the alarm and pointed to the necessity of stopping the present democratic deficit and to the need to strengthen the democratic legitimacy of the Union. Majority of the EU citizens have a prevailing feeling of the limited achievements made by legal and institutional reforms of the EU. The process of institutional reform of the European Union is characterized primarily by its evolutionary character, with the long-term feature, but with varying dynamics depending on economic conditions and political milieu in the Member States of the EU²⁴.

Certainly institutional change of the EU is some kind of “story without end”, and is therefore impossible to give resolute and definitive conclusions and estimates. However, the challenge of defining and tracing of future EU developments, especially after Brexit, lies in finding the answers to the following questions, such as the question how to remove still present democratic deficit in the EU. Furthermore, there is also important issue of optimal mechanisms to strengthen financial discipline in the Member countries and to encourage economic growth in the entire EU internal market. Equally significant are the following: to strengthen stability and prosperity of the single currency, to manage effectively migration crisis within the Union; to improve security against terrorism in the EU; to strengthen solidarity and cohesion in the complex structure of the Union and to ensure implementation of functional EU common foreign and defence policy.

In this long process of the EU emergence, which takes place in complex circumstances of globalization and the technological revolution at the beginning of XXI century, the EU seeks to gain a recognizable international personality and to overgrow the contours of classical international organization²⁵. The Union has succeeded to a large extent, thanks to many features of supranational functioning of European Parliament, the Commission and the European Court of Justice. Especially after the takeover of military capacities (1999), the Union seeks to obtain political and military credibility, with the help of its own military forces. In gaining international political influence and international identity, Union, however, lacks a single foreign policy, as well as unified executive bodies to represent that policy in international relations²⁶.

The capacity of the effective EU decision-making is significant and needed at the foreign policy field, and even more in the internal domain to

²⁴ G. Gasmi, 271 – 286.

²⁵ S. Samardžić, *Evropska unija kao model nadnacionalne zajednice*, Institut za evropske studije, Beograd 1999, 58; V. Dimitrijević, „Evropska unija kao međunarodna organizacija“, in: *Pravo Evropske unije* (eds. D. Mitrović, O. Racić), Centar za međunarodne studije, Beograd 1996, 37.

²⁶ G. Gasmi, S. Zečević, „Evropski bezbednosni i odbrambeni identitet i migrantska kriza“, *Strani pravni život* 2/2016, 73-74.

promote economic growth, employment and sustainable development, but also to resolve migrants' crisis. The problem of ensuring the democratic legitimacy of the Union is constantly backing those issues²⁷.

Within the EU there is a problem of perception²⁸. The trend of an increase in the number of euro-sceptics in the EU is the best evidenced by the increased rate of abstention from the vote in direct elections for the European Parliament every five years. Certainly it is a bad phenomenon, because there is no lasting political union without the active participation and support of EU citizens. Some authors²⁹ consider this in the light of the negation of the thesis that the empowerment of the Parliament will also strengthen its democratic accountability. Consequently, they leave the assessment of the long-term impact of the strengthening of the position of the EP as an open issue.

It remains to be seen whether the enlarged Union, in the situation of greatly reduced internal cohesion, due to differences in the level of development of its member countries, would be able to project stability to its neighbours. Decrease of the EU cohesion is directly mirrored in the reduction of autonomy of the EU institutions in their daily activities. Next outcome of the absence of cohesion is the lack of really common foreign policy of the Union³⁰.

Hence the conclusion of a permanent legal and institutional development of the Union, which does not allow for establishing the final determinant of the future EU. The Treaty of Nice and after it, the Treaty of Lisbon are just a stage on the path of the EU development that is conditioned by external factors (enlargement, globalization, migrant crisis, economic and monetary crisis) and also by internal necessities for greater competitiveness, economic growth, full employment and prosperity of the Union.

The eternal duality of action of the Union: supranationality and intergovernmental cooperation continue to coexist in contemporary international relations³¹, while producing the complicated legal forms of decision-making and institutional pattern of the EU.

The only viable answer to the challenges of reducing the democratic legitimacy of the Union and the present trend of turning the EU citizens back to the Union is in the institutional responsibility

²⁷ M. Đurković, *Iluzija Evropske unije*, Catena Mundi, Beograd 2015, 63.

²⁸ J. C. Piris (2016).

²⁹ A. Rasmusen, „Institutional Games Rational Actors Play – The empowering of the European Parliament”, *European Integration online Papers (EioP)*, Vol. 4, No. 1.

³⁰ S. Zečević, *op.cit.*.

³¹ G. Gasmi, „Pravne i institucionalne perspektve Evroopske unije”, *Strani pravni život* 3/2015, 92-95.

of each of the EU institutions and in clear competencies within the EU structure. The essential notions in this context are: stability, credibility and effectiveness of the functioning of the EU institutions. To the extent that this is ensured in the EU practice of implementation of the Lisbon Treaty, it will be a realistic conclusion that it is a democratic Union with the optimal institutional architecture. In case of opposite development, the EU will face with further rise of extremism in its Member States.

Prof. dr Gordana Gasmi

vanredni profesor, Institut za uporedno pravo, Beograd

BREXIT – RELEVANTNI PRAVNI ASPEKTI

Rezime

Iako postoje mnoge drastične ekonomske posledice izlaska iz Velike Britanije iz članstva EU (Brexit), akcenat ovog rada je usmeren ka relevantnim pravnim aspektima (Lisabonski sporazum) i mogućim scenarijima u budućem uspostavljanju novih odnosa između Velike Britanije, na jednoj strani i EU, s druge strane. Evropska unija (EU) je suočena sa prekretnicom u svojoj evoluciji u savremenim uslovima. Pored postavljanja pitanja o budućnosti EU posle Brexit-a, važno je razmotriti relevantne pravne aspekte u pogledu Brexit-a.

Činjenica da je, po prvi put, jedna država članica EU legalno odlučila da napusti ovaj vrlo značajan trgovinski blok i ovu *sui generis* organizaciju sa jasno izraženim nadnacionalnim odlikama, dramatično naglašava da je međuzavisnost država u modernom svetu očigledno uzdrmana. Mnogi evroskeptici uzalud su predvideli skorašnji kraj Unije, ovo posebno nakon britanskog referenduma - BREKSIT o izlasku Velike Britanije iz Unije. Kako je Zajednica postojala i pre pristupanja Velike Britanije (1973), takođe i Unija, kao njen pravni naslednik će nastaviti da postoji nakon britanskog povlačenja. Nema sumnje da je to ozbiljan udarac za dalji razvoj EU, što nameće neophodnost sprovođenja sveobuhvatnih reformi Unije. Ako u praksi EU implementacije Lisabonskog ugovora prevlada efikasnost funkcionisanja institucija EU, realan zaključak biće da se radi

o demokratskoj Uniji sa optimalnom institucionalnom arhitekturom. U slučaju suprotnog razvoja, EU će se suočiti sa daljim rastom ekstremizma u zemljama članicama.

Ključne reči: Evropska unija, Brexit, Lisabonski sporazum