

# THE FINANCIAL SETTLEMENT OF BREXIT

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## Abstract

*Brexit is a main problem in today's Europe. The original two-year deadline of Article 50 has passed by and we have witnessed extensions of the exit deadline of the United Kingdom. During the negotiations one of the three mainstream issues that were taken into consideration as a must is the financial settlement between the United Kingdom and the European Union. No-deal Brexit as an United Kingdom exit from the European Union without a negotiated and signed agreement settling the terms after departing was a default situation from the start. Settlement we call the negotiated agreement regarding the financial issues may not be a part of the no-deal Brexit. Such settlement in case of a no-deal may only be slumbering and used as a guide and its content as principles when the parties wish to cooperate on such an area. As the financial settlement part was one of the easiest areas to be accepted by both parties should have as much highlight as areas the parties cannot reach an agreement even at the last minute.*

**Keywords:** *Brexit, Financial, Settlement, Agreement, No-deal*

## Introduction

23 June 2016 marks the latest crisis of the European integration. The United Kingdom European Union membership referendum took place, resulting the 51.9% of the voters favoring leaving the European Union.

Brexit, a linguistic blend of words, British and exit. What do we mean about it? Generally, it is the ongoing British withdrawal from the European Union. If we narrow it down, it could mean only the exact exit, which is now 29 March 2019 23:00 GMT. If we take a general look at the process, Brexit means the meant-to-be two years Article 50 period from 29 March 2017 until 29 March 2019, now extending to 31 October 2019. In a wider sense we could

take Brexit from the referendum, or in an even wider viewpoint from the promise of David Cameron that a referendum will be held.

At the beginning of the negotiations between the European Union and the United Kingdom there were three mainstream issues regarding the Brexit: issues related to citizens' rights, the financial settlement, the Northern Irish border. We would like to take a look at the financial settlement in the paper.

To understand the relevance, significance and main aspects of the financial settlement, the following must be clear. As for an agreement regarding the financial settlement, we could easily say that it is one of the clearest areas of the Brexit issues. The financial settlement provisions

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got a green lit in the first, shorter draft of the Withdrawal Agreement.

Being considered as the easiest approvable part by both parties of the Withdrawal Agreement the financial settlement is not receiving as much emphasis as the other two mainstream issues. It should be covered, because the main slogan for the campaign was taking back control, meaning taking back also the control of the financial amounts payable towards the European Union budget.

The British withdrawal process could be seen as the greatest crisis in the European integration. As the Article 50 of the Treaty on European Union states the alternative for member states to leave, and the history of the United Kingdom itself and its relations with the European integration, still the decision came as a surprise.

The no-deal scenario is the main scenario of Article 50. A financial settlement is not the part of the no-deal, such settlement can only be achieved when the agreement has been negotiated and signed by the parties. No draft, document or agreement created or reached is wasted during the Brexit period, it created such ideas that are now essential and can be used in the future or in other areas of law, business and finance.

### Fractures during the European integration

Before the Brexit we sadly witnessed downfalls during the course of the European integration. What were these? In a nutshell

the failure of the Pleven-Plan (the European Defence Community)<sup>1</sup>, the flaw of the Constitutional Treaty (the Treaty establishing a Constitution for Europe), the crisis of the Eurozone (the European debt crisis), Euroscepticism<sup>2</sup> itself too, maybe the small states leaving the European Union, and the question of supremacy<sup>3</sup>.

Rene Pleven presented its plan of the European Defence Community<sup>4</sup> in 1950, which process resulted into the Treaty establishing the European Defence Community in 1952. The situation was undermined by France failing to ratify the treaty, still in 1954 when the last intentions were made resulting into a non-existing cooperation. The spirit of this kind of cooperation still lived on, and also we have to mention that such kind of idea is not fully off the table.

The Constitutional Treaty of 2004 failed mainly in 2005 because of its name, suggesting it to threaten the sovereignty of the member states by establishing an overruling constitutional entity. After its fail the provisions of this treaty mostly were able to make their way into the Lisbon Treaty which was accepted and ratified by the member states. A small change in the approach could nearly mean a world to someone. This situation showed that the time of the United States of Europe will have to wait.

The crisis we have witnessed from the end of 2009 in the Eurozone can be explained as the fragility of an Economic and Monetary Union. It highlights the need

<sup>1</sup> Klemm Dávid: An Attempt to Establish the European Army: The Pleven Plan, *Journal on European History of Law*, VOL. 7/2016 No. 1, STS Science Centre Ltd., EU, pp.105-110.

<sup>2</sup> Klemm Dávid: *The United Kingdom and the European Integration*, In: Doktoranduszok Fóruma: Miskolc 2013. november 7.: Állam- és Jogtudományi Kar szekciókiadványa, Miskolci Egyetem Tudományszervezési és Nemzetközi Osztály, Miskolc, 2013, pp. 153-157.

<sup>3</sup> Klemm Dávid: *Az elsőbbség elve az európai integrációban*, In: *Studia Iurisprudentiae Doctorandorum Miskolciensium – Miskolci doktoranduszok jogtudományi tanulmányai* 17, Bfbor Kiadó, Miskolc, 2017, 117-134.

<sup>4</sup> Klemm Dávid: *Az Európai Védelmi Közösség, mint az Európai Integráció katonai lépcsőfoka*, In: Tavaszi Szél 2016 = Spring Wind 2016 Tanulmánykötet I. kötet: Agrártudomány, állam- és jogtudomány, föld- és fizikatudomány, had- és rendszertudomány, Doktoranduszok Országos Szövetsége, Budapest, 2016, pp. 219-225.

and necessity of cooperation and mutual understanding, also how the shifts in power may result into vulnerability in a cooperation based on an ever closing integration and most importantly on equality – even being formal. Also the Outright Monetary Transactions of the European Central Bank received<sup>5</sup> highlight<sup>6</sup> during the crisis.

There were three precedents when states have left the European integration, without reducing the number of the member states. French Algeria in 1962, Greenland in 1985 and Saint Barthélemy in 2012. First, French Algeria was the part of France – and also became the part of the European Communities via France – and in 1962 gained independence, resulting into its “withdrawal”. The story of Greenland may be the biggest of the three, leaving in 1985. From 1953 until 1979 Greenland was the part of Denmark, as the County of Greenland. With Denmark joining in the first accession wave in 1973, Greenland also became a member. After independence intentions, the in 1979 Denmark in its Home Rule Act enabled Greenland to gain autonomy. So Greenland became an autonomous constituent country of the Kingdom of Denmark. In 1982 a referendum was held whether to remain a member of the integration or leave. The leave votes were in favour with 53%, as a results the Treaty establishing the European Communities to

be amended with regard to Greenland in 1984. The last one is Saint Barthélemy was an outermost region of the European Union. Its relationship to France changed from overseas department to overseas collective – not effecting the outermost region status. But this change made possible for them to have a change in their status in the European Union from an outermost region to overseas country or territory. France requested<sup>7</sup> the change for them<sup>8</sup> from the European Union. From 2012 they have “left” the European Union and they function as requested.

And here we are in 2019 witnessing the procedure of Brexit which mainly started for the public with the 2016 referendum. Again the ever closer union is suffering again, not a scenario that Richard von Coudenhove-Kalergi<sup>9</sup> would be happy to see, dreaming about the United States of Europe.

### The Brexit

Brexit is the main phenomenon in the last 2-3 years regarding the issues of the European Union and also one of the biggest challenges in the law of the European Union as well as the law of the United Kingdom.

To take a different approach, a viewpoint regarding the United Kingdom’s specialties as a common law country and the main country for the parliamentary sovereignty could speak for itself. Also the European Union counts toward the future

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<sup>5</sup> KLEMM Dávid: *Alkotmányos-e az uniós jog? Az EKB állampapír-vásárlási programja a német alkotmánybíróság és az EB szerint*, In: *Via scientiae iuris: International Conference of PhD Students in Law, Gazdász Elasztik Kft., Miskolc, 2015*, pp.191-202.

<sup>6</sup> THEIL, Stefan: *A union of states, constitutions, administrations and judiciaries: some initial thoughts on the OMT ruling of the German Constitutional Court*, U.K. Constitutional Law Blog, 20th July 2016

<sup>7</sup> 15224/10 Draft European Council Decision on amendment of the European status of the island of Saint-Barthélemy, Brussels, 20 October 2010, (3)

<sup>8</sup> France’s request reflects the desire expressed by the elected representatives of the island of Saint-Barthélemy, which is an overseas collectivity within the French Republic, governed by Article 74 of the French Constitution, with autonomy, to obtain a European status which would be better suited to its status under domestic law, particularly given its remoteness from the mainland, its small insular economy largely devoted to tourism and subject to difficulties in obtaining supplies which hamper the application of some European Union standards.

<sup>9</sup> KLEMM Dávid: *Kalergi Páneurópa mozgalma, mint az európai integráció előfutára*, In: *Doktoranduszok fóruma: Miskolc, 2015. november 19.: Állam- és Jogtudományi Kar Szekciókiadvány, Miskolci Egyetem, Miskolc, 2016*, pp. 161-164.

with its current member states but the United Kingdom.<sup>10</sup>

The first etap is until the voting day. Everything began with the draft renegotiating deal, where the European Union membership of the United Kingdom was put on the table, for a better set of rules for them, which would have been negotiated further after the 2016 referendum.<sup>11</sup> As in one of many member states, the United Kingdom also highlighted the sovereignty issue, this time during the renegotiation.<sup>12</sup> All this was before the referendum, everyone was waiting for it to pass by with a remain majority.<sup>13</sup> As an aspect of UK (constitutional) law, the question was in the air of the binding nature of the referendum. Furthermore there was an inclusion of voters, citizen who reside abroad, for example the Shindler case before the ECJ started with this issue.<sup>14</sup> Before the voting day some possible outcomes were foreshadowed in case of a leave majority (which many of them we face and are facing

even right now).<sup>15</sup> Where we were at a point, no one thought many remain objective, and provided us with detailed milestones.<sup>16</sup>

From the leave majority at the referendum begins our next stage. The role of the Parliament after the referendum was beginning to gain highlight.<sup>17</sup> As in most matters it was unclear at the first, and even at the second sight what is the solution or the possibility regarding Article 50, it was not otherwise with the triggering it in the United Kingdom.<sup>18</sup> Also until the triggering there was period of uncertainty, everyone speculating in the unknown areas of Article 50.<sup>19</sup> Furthermore the devolution of the four nations came up.<sup>20</sup> What could happen, if the majority of the people awaits a different result than the result was voted for from the majority of voters? Questions could be thrown at the legitimacy<sup>21</sup> issue of the referendum.<sup>22</sup> It became clear in the first days that the Government and the Parliament will have to go hand in hand to achieve.<sup>23</sup> The fundamental constitutional principles

<sup>10</sup> Klemm Dávid: *A 27-ek Európai Uniója – az Európai Unió jövőjéről szóló fehér könyv*, In: *Profectus in litteris IX.: Előadások a 14. debreceni állam- és jogtudományi doktorandusz-konferencián*, Lícium Art, Debrecen, 2018, pp. 175-184.

<sup>11</sup> Peers, Steve: *The Draft Renegotiation Deal: EU Immigration Issues*, U.K. Constitutional Law Blog, 3rd February 2016

<sup>12</sup> Gordon, Mike: *The UK's Sovereignty Uncertainty*, U.K. Constitutional Law Blog, 11th February 2016

<sup>13</sup> Eleftheriadis, Pavlos: *The Proposed New Legal Settlement of the UK with the EU*, U.K. Constitutional Law Blog, 13th February 2016

<sup>14</sup> Barczentewicz, Mikolai: *Does EU Law Bind Parliament as to Withdrawal from the EU? British Expats and Their Right to Vote (Shindler)*, U.K. Constitutional Law Blog, 16th June 2016

<sup>15</sup> Walker, Neil: *The Brexit Vote: The Wrong Question for Britain and Europe*, U.K. Constitutional Law Blog, 21st June 2016

<sup>16</sup> Renwick, Alan: *The Road to Brexit: 16 Things You Need to Know about What Will Happen If We Vote to Leave the EU*, U.K. Constitutional Law Blog, 22nd June 2016

<sup>17</sup> Barber, Nick - Hickman, Tom - King, Jeff: *Pulling the Article 50 "Trigger": Parliament's Indispensable Role*, U.K. Constitutional Law Blog, 27th June 2016

<sup>18</sup> Armstrong, Kenneth: *Push Me, Pull You: Whose Hand on the Article 50 Trigger?*, U.K. Constitutional Law Blog, 27th June 2016

<sup>19</sup> Mayer, Franz C.: *Two Years Are Two Tears Are Two Years? When Does the Brexit Countdown Actually Begin?*, U.K. Constitutional Law Blog, 27th June 2016

<sup>20</sup> Murkens, Jo: *Brexit: The Devolution Dimension*, U.K. Constitutional Law Blog, 28th June 2016

<sup>21</sup> Ekins, Richard: *The Legitimacy of the Brexit Referendum*, U.K. Constitutional Law Blog, 29th June 2016

<sup>22</sup> Tierney, Stephen: *Was the Brexit Referendum Democratic?*, U.K. Constitutional Law Blog, 25th July 2016

<sup>23</sup> Tucker, Adam: *Triggering Brexit: A Decision for the Government, but under Parliamentary Scrutiny*, U.K. Constitutional Law Blog, 29th June 2016

set up a clear road<sup>24</sup>, but as we see later, everything regarding Brexit needs a confirmation. Article 50 arose questions of its own rules and of rules regarding international law too.<sup>25</sup> The referendum shook up the still waters of the constitutional law in the United Kingdom<sup>26</sup> as well as the sleeping areas of European Union law too. It should become clear that the United Kingdom and its special legal system requires a more cautious approach.<sup>27</sup> Unwritten and flexible, the two main aspects<sup>28</sup> of the UK constitution<sup>29</sup> which could delay the processes and cause even more uncertain moments. Even more touches regarding the binding nature<sup>30</sup> of the referendums<sup>31</sup> came along the way<sup>32</sup>, all slumbering issues waking up. The early

general election<sup>33</sup> was already in the air a few days after the referendum.<sup>34</sup> Seeing the long-continued issues before the triggering<sup>35</sup> could warn us what a short two years we will have. Questions of the result following regarding the referendum even mention a second<sup>36</sup> possible referendum which will be targeted even more and more.<sup>37</sup> Before pulling the trigger, it already made sense to get clear about the one way scenario of the Brexit.<sup>38</sup> European Union citizenship also began to arise as an issue.<sup>39</sup> Triggering Article 50 brings further questions. The real questions began to rise what the triggering would mean.<sup>40</sup> What is being in the present days put behind the mainstream questions is the Fundamental Rights Charter of the European Union.<sup>41</sup> The Vienna Convention

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<sup>24</sup> Smith, Ewan: *What Would Happen if the Government Unlawfully Issued an Article 50 Notification without Parliamentary Approval?*, U.K. Constitutional Law Blog, 30th June 2016

<sup>25</sup> Besselink, Leonard F. M.: *Beyond Notification: How to Leave the Union without Using Article 50 TEU*, U.K. Constitutional Law Blog, 30th June 2016

<sup>26</sup> Young, Alison: *Brexit, Article 50 and the “Joys” of a Flexible, Evolving, Un-codified Constitution*, U.K. Constitutional Law Blog, 1st July 2016

<sup>27</sup> Arvind, T. T. - Kirkham, Richard - Stirton, Lindsay: *Article 50 and the European Union Act 2011: Why Parliamentary Consent is Still Necessary*, U.K. Constitutional Law Blog, 1st July 2016

<sup>28</sup> Reid, Paul: *Brexit: Some Thoughts on Scotland*, U.K. Constitutional Law Blog, 2nd July 2016

<sup>29</sup> Taylor, Robert Brett: *Constitutional Conventions, Article 50 and Brexit*, U.K. Constitutional Law Blog, 15th July 2016

<sup>30</sup> Nehushtan, Yossi: *Why the EU Referendum’s Result Is not Morally-Politically Binding*, U.K. Constitutional Law Blog, 5th July 2016

<sup>31</sup> Green, Alex: *Why the EU Referendum Might Be Morally Binding – A Partial Response to Yossi Nehushtan*, U.K. Constitutional Law Blog, 14th July 2016

<sup>32</sup> Trueblood, Leah: *Referendums, Compromise, and Ratification*, U.K. Constitutional Law Blog, 5th July 2016

<sup>33</sup> Morgan, Jonathan: *A Brexit General Election?*, U.K. Constitutional Law Blog, 9th July 2016

<sup>34</sup> Gordon, Mike: *Brexit: The Constitutional Necessity of an Early General Election*, U.K. Constitutional Law Blog, 6th July 2016

<sup>35</sup> Craig, Robert: *Triggering Article 50 Does not Require Fresh Legislation*, U.K. Constitutional Law Blog, 8th July 2016

<sup>36</sup> McCrea, Ronan: *Is the United Kingdom a Mini-EU?*, U.K. Constitutional Law Blog, 18th July 2016

<sup>37</sup> O’Cinneide, Colm: *Why Parliamentary Approval for the Triggering of Article 50 TEU Should Be Required as a Matter of Constitutional Principle*, U.K. Constitutional Law Blog, 7th July 2016

<sup>38</sup> Streeten, Charles: *Putting the Toothpaste Back in the Tube: Can an Article 50 Notification Be Revoked?*, U.K. Constitutional Law Blog, 13rd July 2016

<sup>39</sup> Mantouvalou, Virginia: *EU Citizens as Bargaining Chips*, U.K. Constitutional Law Blog, 14th July 2016

<sup>40</sup> LIENEN, Christina: *Brexit and the Domestic Judiciary: Some Preliminary Thoughts on the Aftermath of Triggering Article 50*, U.K. Constitutional Law Blog, 21st July 2016

<sup>41</sup> Adenitire, John: *The Executive Cannot Abrogate Fundamental Rights without Specific Parliamentary Mandate – The Implications of the EU Charter of Fundamental Rights for Triggering Art 50*, U.K. Constitutional Law Blog, 21st July 2016

on the Law of Treaties will become a handy tool regarding the international law elements.<sup>42</sup> EEA and WTO, two magic words begun to circulate and get itself popularity.<sup>43</sup> The European Communities Act 1972 is of high significance during the debates before the trigger.<sup>44</sup> Also the House of Lords Constitutional Committee supplied us with a report on Article 50 as well.<sup>45</sup> The referendum was recalled as the lost gamble of David Cameron.<sup>46</sup> The idea of a Great Repeal Bill surfaced as a solution for removing the European Communities Act.<sup>47</sup> The decision for the execution of the triggering floating in the air whether the parliament or the government shall execute it.<sup>48</sup> Back in the days even the revoking surfaced before the triggering,<sup>49</sup> but only has been made clear in the not so distant past. We must take a moment to note that the

parliamentary sovereignty is gradually eroding.<sup>50</sup> As time passed the Miller case started and was concluded<sup>51</sup> on the level of the High Court.<sup>52</sup> There shall be an Act of Parliament to trigger Article 50 by the government.<sup>53</sup> Brexit created a complex process under three legal systems.<sup>54</sup> An Act is required to ensure the constitutional requirements in Article 50.<sup>55</sup> Should the Miller case be the main highlight of that era before the trigger, the mainstream line was given in mediums regarding the Brexit.<sup>56</sup> We see now that on the European Union level also made its clear statements. The fear of irreversibility is a main factor of triggering Article 50.<sup>57</sup> The Miller case went before the Supreme Court, but really, during this period of time, there should have been more important issues behind the curtains in development and research. As the rules of

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<sup>42</sup> Rylatt, Jake W.: *The Irrevocability of an Article 50 Notification: Lex Specialis and the Irrelevance of the Purported Customary Right to Unilaterally Revoke*, U.K. Constitutional Law Blog, 27th July 2016

<sup>43</sup> Bobić, Ana - van Zeben, Josephine: *Negotiating Brexit: Can the UK Have Its Cake and Eat It?*, U.K. Constitutional Law Blog, 2nd August 2016

<sup>44</sup> Creelman, Gavin: *The Relevance of Thoburn to the Article 50 "Trigger" Debate*, U.K. Constitutional Law Blog, 6th September 2016

<sup>45</sup> Elliott, Mark - TIERNEY, Stephen: *The House of Lords Constitution Committee Reports on Article 50*, U.K. Constitutional Law Blog, 13th September 2016

<sup>46</sup> Joseph, Philip: *Brexit: A View from Afar*, U.K. Constitutional Law Blog, 23rd September 2016

<sup>47</sup> Douglas-Scott, Sionaidh: *The "Great Repeal Bill": Constitutional Chaos and Constitutional Crisis?*, U.K. Constitutional Law Blog, 10th October 2016

<sup>48</sup> Eeckhout, Piet: *The UK Decision to Withdraw from the EU: Parliament or Government?*, U.K. Constitutional Law Blog, 15th October 2016

<sup>49</sup> Sari, Aurel: *Biting the Bullet: Why the UK Is Free to Revoke Its Withdrawal Notification under Article 50 TEU*, U.K. Constitutional Law Blog, 17th October 2016

<sup>50</sup> Campion, Elizabeth: *Pay No Attention to the Man Behind the Curtain: Parliamentary and Governmental Power in the Wake of the EU Referendum*, U.K. Constitutional Law Blog, 24th October 2016

<sup>51</sup> Barber, Nick - King, Jeff: *Responding to Miller*, U.K. Constitutional Law Blog, 7th November 2016

<sup>52</sup> Elliot, Mark - Hooper, Hayley J.: *Critical reflections on the High Court's judgment in R (Miller) v Secretary of State for Exiting the European Union*, U.K. Constitutional Law Blog, 7th November 2016

<sup>53</sup> King, Jeff: *What Next? Legislative Authority for Triggering Article 50*, U.K. Constitutional Law Blog, 8th November 2016

<sup>54</sup> Allott, Philip: *Fundamental Legal Aspects of UK Withdrawal from the EU: Eight Stages on the Way to a New Relationship*, U.K. Constitutional Law Blog, 9th November 2016

<sup>55</sup> Adenitire, John: *Exiting the EU Constitutionally*, U.K. Constitutional Law Blog, 9th November 2016

<sup>56</sup> O'Connell, Paul - Sultany, Nimer: *Miller and the Politics of the Judiciary*, U.K. Constitutional Law Blog, 10th November 2016

<sup>57</sup> McCrea, Ronan: *Arguing that Article 50 Notification Is Reversible Involves Risks for the Government*, U.K. Constitutional Law Blog, 15th November 2016

the European Union law the Supreme Court could refer to the ECJ<sup>58</sup>, but dealing with the revoke was not a practical question at that times.<sup>59</sup> The nature of European Union law in the United Kingdom's special legal environment is also an interesting topic.<sup>60</sup> The essence and importance of the Miller judgement should not be lost<sup>61</sup>, because of high significance.<sup>62</sup> Besides the revoke, also the interpretation issues began arising speaking of Article 50.<sup>63</sup> The Supreme<sup>64</sup> Court<sup>65</sup> was expected to approve the High Court.<sup>66</sup> As time passing by the Northern Ireland issue should surface.<sup>67</sup> The Miller case also highlighted some past aspects that could slumber forever without the Brexit, even in the case of a renegotiation.<sup>68</sup> The

Supreme Court decision was a must after the appeal.<sup>69</sup> The government is accountable to the parliament in all cases.<sup>70</sup> Also that Miller could get us closer to the special nature of European Union law.<sup>71</sup> Notification of withdrawal, the named triggering of Article 50 generated even more disputes.<sup>72</sup> Brexit showed us how complex the British constitutional law is.<sup>73</sup> It became clear that the Parliament enables the triggering without knowing how the deal and the future relationship will be.<sup>74</sup> Could the taking back control be achieved after the approval was the main question.<sup>75</sup> The instructions regarding the European Union law will be changed from the European Communities Act to the Great Repeal Bill.<sup>76</sup> The latter will

<sup>58</sup> De Cecco, Francesco: *Miller, Article 50 Revocability and the Question of Control*, U.K. Constitutional Law Blog, 17th November 2016

<sup>59</sup> Georgopoulos, Aris: *(Un)Crossing the Rubicon: Why the Supreme Court Should Not Refer a Question Regarding the Revocability of Article 50 to the ECJ*, U.K. Constitutional Law Blog, 17th November 2016

<sup>60</sup> Barcentewicz, Mikolaj: *Consequences of the High Court's Reasoning in the Article 50 Judgment: EU Law-making Unlawful*, U.K. Constitutional Law Blog, 18th November 2016

<sup>61</sup> King, Jeff - Barber, Nick: *In Defence of Miller*, U.K. Constitutional Law Blog, 22nd November 2016

<sup>62</sup> Phillipson, Gavin: *The Miller Case, Part 1: A Response to Some Criticisms*, U.K. Constitutional Law Blog, 25th November 2016

<sup>63</sup> Smismans, Stijn: *About the Revocability of Withdrawal: Why the EU (Law) Interpretation of Article 50 Matters*, U.K. Constitutional Law Blog, 29th November 2016

<sup>64</sup> Jones, Rachel: *The Importance of Silences in the "Brexit" Appeals*, U.K. Constitutional Law Blog, 7th December 2016

<sup>65</sup> Howarth, David: *On Parliamentary Silence*, U.K. Constitutional Law Blog, 13th December 2016

<sup>66</sup> Craig, Robert: *Miller: The Statutory Basis Argument: A Primer*, U.K. Constitutional Law Blog, 5th December 2016

<sup>67</sup> Harvey, Colin: *Northern Ireland's Transition and the Constitution of the UK*, U.K. Constitutional Law Blog, 12th December 2016

<sup>68</sup> Renton, Simon: *Historical Perspectives and the Miller Case*, U.K. Constitutional Law Blog, 19th January 2017

<sup>69</sup> Craig, Robert: *Miller Supreme Court Case Summary*, U.K. Constitutional Law Blog, 26th January 2017

<sup>70</sup> Endicott, Timothy: *A Treaty of Paramount Importance*, U.K. Constitutional Law Blog, 26th January 2017

<sup>71</sup> O'Brien, Patrick: *All for Want of a Metaphor: Miller and the Nature of EU Law*, U.K. Constitutional Law Blog, 30th January 2017

<sup>72</sup> Allott, Philip: *Taking Stock of the Legal Fallout from the EU (Notification of Withdrawal) Act 2017*, U.K. Constitutional Law Blog, 2nd February 2017

<sup>73</sup> Lock, Tobias – DALY, Tom Gerald: *Brexit and the British Bill of Rights: Capturing Constitutional Complexity*, U.K. Constitutional Law Blog, 13rd February 2017

<sup>74</sup> Barcentewicz, Mikolaj: *The Principle of Legality in the EU-Withdrawal Statute*, U.K. Constitutional Law Blog, 21st February 2017

<sup>75</sup> Jancic, Davor: *A Very Parliamentary Brexit: Satire in Two Acts*, U.K. Constitutional Law Blog, 23rd February 2017

<sup>76</sup> Horsley, Thomas: *UK Courts and the Great Repeal Bill – Awaiting Fresh Instruction*, U.K. Constitutional Law Blog, 28th February 2017

also delegate powers of legislation.<sup>77</sup> Right before the trigger the dangers of Brexit began to surface, and the possible solutions also.<sup>78</sup> The Act on the notification is able to cause a constitutional ripple effect.<sup>79</sup>

The next stage can be seen when Theresa May triggered Article 50 on 29 March 2017. After the trigger of the notification, solutions and future relations began to emerge, like the WTO rules and the European Economic Area.<sup>80</sup> The Great Repeal Bill has a trio of tasks, repealing, converting and empowering.<sup>81</sup> The Good Friday Agreement has enormous significance and cannot become fragile.<sup>82</sup> After the notification that was the 9 months from the referendum, we could ask a question that would it still be on valid grounds?<sup>83</sup> The rights of the citizens also

emerged.<sup>84</sup> The proper transition should be the aim, time is passing by, the clock is ticking.<sup>85</sup> There shall be both constitutional change and also legal continuity.<sup>86</sup> The Henry VIII clauses<sup>87</sup> received also numerous comments.<sup>88</sup> The House of Lords Constitutional Committee continued its work.<sup>89</sup> The European Union Directives<sup>90</sup> were likely paralled with the new Henry VIII provisions.<sup>91</sup> After half a year from the triggering there are thoughts whether Brexit can be stopped.<sup>92</sup> Revoking the trigger would also require the Parliament.<sup>93</sup> Two tools could have been used to avoid the no deal Brexit, one being the delayed exit the other the decreasing membership, but none

<sup>77</sup> Elliott, Mark – Tierney, Stephen: *The “Great Repeal Bill” and Delegated Powers*, U.K. Constitutional Law Blog, 7th March 2017

<sup>78</sup> Schwartz, Alex: *Mitigating the Hazards of Brexit: The EEA Option for Northern Ireland*, U.K. Constitutional Law Blog, 27th March 2017

<sup>79</sup> Campion, Elizabeth: *The Constitutional „Ripple Effect” of the European Union (Notification of Withdrawal) Act 2017*, U.K. Constitutional Law Blog, 27th March 2017

<sup>80</sup> Tomlinson, Joe: *UK Quo Vadis? The EEA as a Workable Framework*, U.K. Constitutional Law Blog, 6th April 2017

<sup>81</sup> Hayne, K M: *The “Great Repeal Bill”*, U.K. Constitutional Law Blog, 12th April 2017

<sup>82</sup> Harvey, Colin – Holder, Daniel: *The Great Repeal Bill and the Good Friday Agreement – Cementing a Stalemate or Constitutional Collision Course?*, U.K. Constitutional Law Blog, 6th June 2017

<sup>83</sup> Armstrong, Kenneth: *Has Article 50 Really Been Triggered?*, U.K. Constitutional Law Blog, 14th June 2017

<sup>84</sup> McCrudden, Christopher: *An early deal-breaker? EU citizens’ right sin the UK after Brexit, and the future role of the European Court of Justice*, U.K. Constitutional Law Blog, 27th June 2017

<sup>85</sup> Gauci, Jean-Pierre – McCorquodale, Robert: *Brexit and Transitional Provisions: International Law Can Assist*, U.K. Constitutional Law Blog, 28th June 2017

<sup>86</sup> Caird, Jack Simson: *The European Union (Withdrawal) Bill: Constitutional Change and Legal Continuity*, U.K. Constitutional Law Blog, 18th July 2017

<sup>87</sup> Khaitan, Tarun: *A Constitution Protection Clause for the Great Repeal Bill?*, U.K. Constitutional Law Blog, 19th July 2017

<sup>88</sup> Campbell, Kenneth QC: *Henry VIII Comes to Scotland, Wales and Northern Ireland, and Other Devolution Questions in the EU (Withdrawal) Bill*, U.K. Constitutional Law Blog, 20th July 2017

<sup>89</sup> Elliott, Mark – Tierney, Stephen: *House of Lords Constitutional Committee Issues Interim Report ont he EU (Withdrawal) Bill*, U.K. Constitutional Law Blog, 7th September 2017

<sup>90</sup> Lang, Richard: *The European Union (Withdrawal) Bill: Clause 4(2)(b), a Reply to Downie and Furhter Reflections*, U.K. Constitutional Law Blog, 15th November 2017

<sup>91</sup> Downie, Gordon: *Brexit: What to Make of Directives?*, U.K. Constitutional Law Blog, 8th September 2017

<sup>92</sup> Mac Amhlaigh, Cormac: *Can Brexit Be Stopped under EU Law?*, U.K. Constitutional Law Blog, 10th October 2017

<sup>93</sup> Craig, Robert: *Why an Act of Parliament Would Be Required to Revoke Notification under Article 50*, U.K. Constitutional Law Blog, 16th October 2017



of these are likely to be.<sup>94</sup> Retained European Union law will be in the hands of domestic courts.<sup>95</sup> At the end of 2017 we can witness the mention of a transitional period.<sup>96</sup> The Withdrawal Agreement could cause problems regarding the parliamentary sovereignty<sup>97</sup> during its implementation.<sup>98</sup> Also the two clashing principles are still the sovereignty and the supremacy during the debates of the implementation of withdrawal into United Kingdom law.<sup>99</sup> Retained EU law<sup>100</sup> is an enormous question.<sup>101</sup> A second referendum is once again digging up questions regarding the referendums in general and its history.<sup>102</sup> Also what was split into two, that there shall be an agreement regarding the exit itself and also

one separate for the future relationship.<sup>103</sup> There is a four sided interaction between national, EU, WTO and international law during the Brexit.<sup>104</sup> The implementation of withdrawal would “provide continuity and certainty” like behaving as a “legal rule book” in the United Kingdom.<sup>105</sup> The retained EU law term is generating<sup>106</sup> issues in the national law order in the United Kingdom.<sup>107</sup> The EU law status in the United Kingdom<sup>108</sup> from a legal<sup>109</sup> aspect could be more of importance than any other Brexit issues, but it is a national issue, not gaining any highlight in the mostly European Union aspect press releases. Wightman<sup>110</sup> also started as a could be milestone case<sup>111</sup> (with

<sup>94</sup> Cuyvers, Armin: *Two Legal Tools to Avoid Hard Brexit: Delayed Exit and Decreasing Membership under Article 50 TEU*, U.K. Constitutional Law Blog, 24th November 2017

<sup>95</sup> Horsley, Thomas: *In (Domestic) Courts We Trust: The European Union (Withdrawal) Bill and The Interpretation of Retained EU Law*, U.K. Constitutional Law Blog, 27th November 2017

<sup>96</sup> Daly, Paul: *EU Law in the UK after Brexit: EU Nationals’ Rights and a Transitional Period*, U.K. Constitutional Law Blog, 15th December 2017

<sup>97</sup> Gordon, Mike: *Parliamentary Sovereignty and the Implementation of the EU Withdrawal Agreement (Part I)*, U.K. Constitutional Law Blog, 17th January 2018

<sup>98</sup> Gordon, Mike: *Parliamentary Sovereignty and the Implementation of the EU Withdrawal Agreement (Part II)*, U.K. Constitutional Law Blog, 18th January 2018

<sup>99</sup> Elliott, Mark - TIERNEY, Stephen: *Sovereignty or Supremacy? Lords Constitution Committee Reports on EU (Withdrawal) Bill*, U.K. Constitutional Law Blog, 29th January 2018

<sup>100</sup> Craig, Paul: *The Withdrawal Bill, Status and Supremacy*, U.K. Constitutional Law Blog, 19th February 2018

<sup>101</sup> Ford, Michael - Syrpis, Phil: *Retained EU law in the EU (Withdrawal) Bill: A Reaction to the House of Lords Constitution Committee Report*, U.K. Constitutional Law Blog, 14th February 2018

<sup>102</sup> Trueblood, Leah: *The Merits and Meaning of a “Second” Referendum*, U.K. Constitutional Law Blog, 5th February 2018

<sup>103</sup> Caird, Jack Simson: *Parliament and the Withdrawal Agreement: The “Meaningful Vote*, U.K. Constitutional Law Blog, 9th February 2018

<sup>104</sup> Allott, Philip: *The EU Legal System Is Not a Thing You Can Leave*, U.K. Constitutional Law Blog, 21st February 2018

<sup>105</sup> Craig, Paul: *European Union (Withdrawal) Bill: Legal Status of EU Retained Law*, U.K. Constitutional Law Blog, 26th February 2018

<sup>106</sup> Laws, Stephen: *Giving “Deemed” Domestic Law Status to Retained EU Law*, U.K. Constitutional Law Blog, 28th February 2018

<sup>107</sup> Craig, Paul: *European Union (Withdrawal) Bill: Legal Status and Effect of Retained Law*, U.K. Constitutional Law Blog, 8th March 2018

<sup>108</sup> Young, Alison: *Status of EU Law Post Brexit: Part One*, U.K. Constitutional Law Blog, 2nd May 2018

<sup>109</sup> Young, Alison: *Status of EU Law Post Brexit: Part Two*, U.K. Constitutional Law Blog, 4th May 2018

<sup>110</sup> Jones, Brian Christopher: *Wightman and How Not to Advance the Law*, U.K. Constitutional Law Blog, 11th April 2018

<sup>111</sup> Campbell, Kenneth: *Wightman v Secretary of State: Article 50 and Parliamentary Privilege*, U.K. Constitutional Law Blog, 22nd June 2018

another possible, but rejected one).<sup>112</sup> A dispute resolving mechanism is also a fundamental need to settle any issues.<sup>113</sup> We should not forget that besides the Commons, the Lords are there too in the Parliament.<sup>114</sup> Once again<sup>115</sup> there could be a feeling that the national, internal issues of the United Kingdom minimize the real upcoming threat of a no deal scenario. With the end drawing near implications of Article 50 began to be highlighted.<sup>116</sup> We can find the mainstream problems arising too in the national debates.<sup>117</sup> The possible models for the future like the EFTA are part of a complicated future picture.<sup>118</sup> Again half a year before the exit date and the possibilities and questions regarding the revoke surface again.<sup>119</sup> The acknowledged fact that before the exit day<sup>120</sup> all pending issues regarding the inner withdrawal issues have to be settled

becomes questionable when the date could be moved. The political declaration besides the withdrawal agreement draft also brings us questions regarding the procedures<sup>121</sup> in the United Kingdom (regarding the meaningful vote.)<sup>122</sup> Like all things regarding the Brexit, we could speculate or draw possible plans and outcomes<sup>123</sup>, but even in the last days or even hours a surprise can come up.

14 November 2018 marks the “final” version of the Withdrawal Agreement published. Also the Wightman<sup>124</sup> decision<sup>125</sup> of the ECJ has been delivered.<sup>126</sup>

“Article 50 TEU must be interpreted as meaning that, where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State — for as

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<sup>112</sup> Craig, Robert: *New Article 50 Case Resoundingly Rejected by the Divisional Court*, U.K. Constitutional Law Blog, 26th June 2018

<sup>113</sup> Horne, Alexander: *Dispute Resolution and Enforcement after Brexit*, U.K. Constitutional Law Blog, 3rd May 2018

<sup>114</sup> Young, Francis: *“Packing” the Lords: Some Legal Reflections*, U.K. Constitutional Law Blog, 16th May 2018

<sup>115</sup> Caird, Jack Simson: *Parliament’s Right to a “Meaningful Vote”: Amendments to the EU (Withdrawal) Bill*, U.K. Constitutional Law Blog, 11th June 2018

<sup>116</sup> Young, Allison: *European Union (Withdrawal) Bill and the Meaningful Vote: Constitutional Inconsistency or Constitutional Inconvenience?*, U.K. Constitutional Law Blog, 20th June 2018

<sup>117</sup> Deb, Anurag: *The Unquiet Irish Border Problem: Implications in the Aftermath of the Withdrawal Act*, U.K. Constitutional Law Blog, 5th July 2018

<sup>118</sup> Solomon, Solon: *The Chequers Agreement: Brexit and the Infeasibility of Judicial and Legal Independence*, U.K. Constitutional Law Blog, 12th July 2018

<sup>119</sup> Taylor, Robert Brett - WILSON, Adelyn L. M.: *Seeking and Implementing a Referral on Revocability of Article 50 Following Wightman*, U.K. Constitutional Law Blog, 26th September 2018

<sup>120</sup> Caird, Jack Simson: *Taking Back Control: Brexit, Parliament and the Rule of Law*, U.K. Constitutional Law Blog, 10th October 2018

<sup>121</sup> Caird, Jack Simson: *Brexit and the Meaningful Vote: Down the Procedural Raab-it Hole?*, U.K. Constitutional Law Blog, 22nd October 2018

<sup>122</sup> Craig, Robert - Phillipson, Gavin: *Could the “Meaningful Vote” End up in Court?*, U.K. Constitutional Law Blog, 24th October 2018

<sup>123</sup> Allott, Philip: *UK/EU Withdrawal Agreement: A Legal Speculation*, U.K. Constitutional Law Blog, 7th November 2018

<sup>124</sup> Phillipson, Gavin - YOUNG, Alison L.: *Wightman: What Would Be the UK’s Constitutional Requirements to Revoke Article 50?*, U.K. Constitutional Law Blog, 10th December 2018

<sup>125</sup> Armstrong, Kenneth: *The Advent of Brexit – Can It Be Paused?*, U.K. Constitutional Law Blog, 12th December 2018

<sup>126</sup> Georgopoulos, Aris: *Revoking Article 50 TEU (C-621/18 Wightman and others): “Iphigenia Must Reach the Altar”*, U.K. Constitutional Law Blog, 17th December 2018

long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired — to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.”<sup>127</sup>

Revoking is officially an option now.<sup>128</sup> The Backstop of the withdrawal agreement regarding Northern Ireland is named as one of the vote against factors.<sup>129</sup>

With the original exit date closing in, there was an extension period granted on 21 March 2019 until 12 April the same year. Thanks to this on 29 March 2019 the UK did not leave the EU but Theresa May asked for another extension of the exit date on 5 April. It was granted on 10 April until 31 October 2019. There was a special requirement that the UK had to hold the European Parliament Elections, failing this, the extension would have been only valid until 1 June.

Theresa May ended her little more than three year term as a Prime Minister on 24 July 2019 by resigning. Boris Johnson

assumed his office as Prime Minister on 24 July. His plan to carry out the Brexit on the 31 October date stick to his mind. The prorogation of the UK Parliament that was carried out by Johnson was ruled unlawful by the Supreme Court on 24 September.

On 11 October, just weeks before the current deadline, there is again light at the end of the tunnel, there might be a solution as the negotiators from both sides are working on the agreement to avoid the hard Brexit, the no-deal scenario.

Brexit is now, as from the beginning, in a constant uncertainty.

### **The mainstream issues of Brexit**

After triggering Article 50, negotiations begun on 19 June 2017, naming the three mainstream issues, the Northern Irish border, the issues relating to citizens’ rights, and the financial settlement.<sup>130</sup>

If we take a look at these mainstream issues, it is clear that these received the most significance, and mainly the issues related to the European Union have the highlights, the internal United Kingdom issues are not showcased outside the United Kingdom.

### **The financial settlement**

The financial settlement should be regarded as a mainstream Brexit issue, one of the three topics that occurred in the first place during the negotiations. But it is not an issue that should rob the importance of the other issues. Every single question that arose during the Brexit is a significant one. The whole picture shall be counted as a sum of the to be solved questions. This is an

<sup>127</sup> Judgment of the Court (Full Court) of 10 December 2018 *Andy Wightman and Others v Secretary of State for Exiting the European Union* – Case C-621/18

<sup>128</sup> Dixon, Dennis: *Wightman and the General Interpretation of Article 50*, U.K. Constitutional Law Blog, 7th January 2019

<sup>129</sup> Caird, J. Simson - Paterson, Ellis: *Could the UK Courts Disapply Domestic Legislation to Enforce the Protocol on Ireland and Northern Ireland?*, U.K. Constitutional Law Blog, 19th February 2019

<sup>130</sup> Speech by Michel Barnier, the European Commission’s Chief Negotiator, following the first round of Article 50 negotiations with the UK Brussels, 19 June 2017

Achilles heel of the Brexit, putting too much pressure on a few issues, and for a longer period of time, and by doing so ticking the precious time from other issues, resulting into jeopardizing the whole process.

What describes the financial settlement the best are the three words: mutual financial claims.<sup>131</sup> We are faced with a set of agreed terms from which there is no non-performance for the parties. It can end in two possible ends. The two scenarios are one for any agreement between the parties and one for the lack of such an agreement.

### **In case of an agreement**

As in all matters of Brexit, the financial settlement is no exception, until the Withdrawal Agreement is not accepted, we have only a non-binding political declaration. First of all, the political agreement regarding the financial settlement was published on 8 December 2017, in the “Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union”. The binding legal document should have been the Withdrawal Agreement, from which we have now an older, shorter, and an up-to-date longer version – being published on 19 March<sup>132</sup> and 14 November 2018. Our basic sources regarding the financial settlement are the Joint report and the draft Withdrawal Agreement.

Comparing the coloured March version and the new November version of the Withdrawal Agreement, in the financial provisions chapter we do not find any

outstanding differences. What has to be pointed out, is the possibility of an extension of the transition period in the latest version, and the financial regulations of this possibility.

The Joint report starts its financial settlement part stating the agreement between the United Kingdom and the European Union on a methodology for the financial settlement. Consisting of four parts, a components list, a principles set regarding the value calculation and payment modalities, arrangements for the current Multiannual Financial Framework (for continued participation of the UK in the programmes of the current MFF until their closure), and also financial and related arrangements of the areas outside the EU budget (for the European Investment Bank, the European Central Bank, European Union trust funds, the Facility for Refugees in Turkey, Council agencies and also the European Development Fund).

There are three components of the settlement: United Kingdom participation in Union annual budgets to 2020, Outstanding commitments at the end of 2020, and Liabilities, contingent liabilities and corresponding assets. The annual union budgets of 2019 and 2020 will have the United Kingdom as a contributor and a participant during their implementation, in the form as the United Kingdom had remained in the Union. If there are any amendments after the date of the withdrawal and effecting the financial obligations of the United Kingdom, they will not apply on it. Also the annual revenue adjustment for 2020 will be calculated if it had remained in the Union regarding the amounts to be returned to or returned by it. The outstanding

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<sup>131</sup> Sánchez-Barrueco, Maria-Luisa: *Leaving the EU budget: Brexit and mutual financial claims*, ERA Forum (2018) 18:453-468

<sup>132</sup> 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 highlighting the progress made (coloured version) in the negotiation round with the UK of 16-19 March 2018

commitments financing share shall also be contributed by the United Kingdom at the end of 2020.

The situation clearly represents the rights and obligations arising from any contractual relationship. May the principle of *pacta sunt servanda* serve us during the initial detailing, and the understanding for the no deal scenario.

The United Kingdom shall fulfil the following obligations and have the following rights regarding the financial settlement in case of an agreement: contributing and participating in the European Union budgets of 2019 and 2020 being part of a transition or implementation period; the European Union funding towards the United Kingdom will be continued regarding European Union programmes being part of the 2014-2020 budget plan; contributing to the outstanding budget commitments on 31 December 2020 which commitments have been already undertaken but paid; contributing to before 31 December 2020 incurred European Union liabilities for example European Union staff pensions; liability for contingent liabilities of the European Union which mainly cover given financial guarantees and legal risks; the United Kingdom is entitled for its capital in the European Investment Bank which is 3.5 billion € and shall be paid back in twelve instalments beginning 2019; also the United Kingdom is entitled for its capital in the European Central Bank which is paid back at the time of withdrawal because of its rather small amount; United Kingdom liabilities remain regarding the European Investment Bank for its undertaken liabilities before the Withdrawal Agreement entering into force; also guarantee providing for the outstanding loans stock of the European Investment Bank; and lastly continuing the participation in the overseas

programmes of the European Union until the end of the current round for example the European Development Fund.<sup>133</sup>

The main three principles of the settlement are: because of the withdrawal of the United Kingdom, there shall be no member state in the European Union to pay more or to receive less; during the membership the United Kingdom shall pay the share of its commitments; for the payments of the United Kingdom it shall not pay more or shall not pay earlier, as it remained in the European Union.

Regarding the participation of the United Kingdom in the Union annual budgets to 2020 it is clear that the contribution and the participation will continue in 2019 and in 2020. Only non-applying rules in this field of finances are the amendments to the budget itself or the financing of the budget after the date of withdrawal (likely 29 March 2019?). For the programmes participation the United Kingdom shall perform its obligations occurred during the current budget until these programmes close. The next milestone is the outstanding commitments of the European Union budget, shortly RAL after *reste a liquider*, where the United Kingdom shall make its contribution for the RAL financing at 31 December 2020. Liabilities is the next topic, where of those incurring before 31 December 2020 on the side of the European Union, the United Kingdom shall finance theme. One of the main liability are the pensions and other benefits of European Union employees. There are also contingent liabilities. These are a special kind of liabilities, being only potential, that may be occurring in the future. For example these are financial operations and legal cases. One additional but remarkable aspect of the

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<sup>133</sup> Keep, Matthew: *Brexit: the exit bill*, Briefing Paper Number 8039, 21 January 2019, House of Commons Library, 3.

financial settlement, that the currency used shall be the euro.

Also there are areas outside the European Union budget. For the European Investment Bank the United Kingdom shall have its paid-in capital repaid. The amount we speak of is 3.5 billion euros. Starting the end of 2019 they shall have it back in twelve annual instalments. Also the 56 million € paid-in capital of the United Kingdom in the European Central bank is worth of mentioning. The aforementioned European Development Fund is also in play. So are the European Union Trust funds.

There is an estimate of the HM Treasury of the settlement and its components, giving us the United Kingdom participation in the European Union annual budgets to 2020 in 17-18 billion euros from 2019 to 2020, the RAL from 2021 to 2026 in 21-23 billion euros, the other net liabilities from 2021 to 2064 in 2-4 billion euros, coming to a total estimate of 40-45 billion euros from 2019 to 2064.

With the introduction of the possibility of transition period extension – in Article 132 of the Withdrawal Agreement draft – the financial settlement rules shall also comply with the new regulations. The extension means that the transition period will not end on 31 December 2020, but on the same day on 2021 or 2022. Regarding the next European Union budget for the years 2021-2027 the United Kingdom shall be treated in the European Union programmes as a third country. Moreover, the obligation of the United Kingdom to contribute towards the European Union budget will cease to exist. Also the Common Agricultural Policy will not have the United Kingdom as its part.<sup>134</sup>

### No deal scenario

From the beginning, there was a chance for the no deal scenario and there still is. The Withdrawal Agreement is the only thing that could bear a legally binding character. The no deal scenario occurs when there is no accepted agreement between the United Kingdom and the European Union. So, the political agreement that has been reached last year is not of legally binding character, all of its provisions or agreed terms including the financial settlement could not be enforced. The reached status regarding all fields is all depending on the political approach and on how the relationship between the two parties shall be honoured looking at the future. The financial settlement as it is in case of a no deal could be looked at as a gentlemen's agreement. After shaking hands it depends on you how you apply those rules for yourself. Before triggering Article 50, the House of Lords European Union Committee published a paper on Brexit and the EU Budget on 4 March 2017. In this document they state that "under EU law if there is no withdrawal agreement Article 50 allows the United Kingdom to leave the European Union without being liable for outstanding commitments, but the political and economic consequences of doing so are likely to be profound."<sup>135</sup> Under the rules of public international law, if making no payments regarding its non-binding financial commitments the United Kingdom could easily be targeted by other member states in form of cases. Unreliability could be easily stamped on the head of the United Kingdom, caution is advised how the country will be seen on the whole international spectrum.

The words of Mr. Geoffrey Cox, the Attorney General should be taken also into

<sup>134</sup> Keep, Matthew: *Brexit: the exit bill*, Briefing Paper Number 8039, 22.

<sup>135</sup> Keep, Matthew: *Brexit: the exit bill*, Briefing Paper Number 8039, 25.

account: “The position on money is this. The view of the Government, and my view, is that we would have obligations to pay a certain amount of money were we to leave the European Union without a deal. The House of Lords European Union Committee concluded that there would be no obligation under EU law. That is a stronger argument—not necessarily an incontestable one—as to our obligations under EU law, but the Committee also concluded that we might have obligations under public international law, and with that I agree. There is an argument that we would not have an obligation under public international law, but it is an argument unlikely to be accepted by any international tribunal. My view is therefore that we would owe a presently unquantifiable sum were we to leave the European Union without a deal. It is impossible at this stage to say how much. It is true that the European Union is not a member state and is not a state, and therefore it is unable to take the case to the International Court of Justice. It might therefore be difficult to enforce the public international law obligation that existed. However, I ask the House to reflect on the fact that if this country, acknowledging that such obligations probably exist or do exist, did not pay them, it would be likely to cause the deepest resentment, just as it would to any of us who were unpaid a debt. If we leave a club, we pay the bar bill. If we do not pay the bill, we are not likely to get a lot of consideration from the other side.”<sup>136</sup>

## Conclusions

Despite being a mainstream issue, we could easily mark the financial settlement as

the most straight up Brexit issue. It is clear that the referendum campaign supporting the leave was based on at one side paying enormous amount toward the European Union, but the detailed, and thanks to its development, the well-based budgetary and financial system is transparent.

Being a mainstream issue does not always mark its complexity. As mentioned the highlighted areas are mostly important from the European Union side.

The question remains, whether the United Kingdom is to leave the European Union, or not, and in case of exiting will a withdrawal agreement to be reached or a no deal scenario will take place.

The questions arising from the financial settlement enable us to peek inside in a specific area of the Brexit. Also this makes it possible to review how the European Union finances work and which budgetary mechanism are in place.

Another possibility is the viewpoint of the possible withdrawal intentions is to draw up two groups, the net contributors and the net beneficiaries. The United Kingdom being part of the first group could stand on its own legs, but being part of the latter is a significant warning sign not to engage any withdrawal intentions.

A complex issue was detailed in a simplified way as it could be, for an easier understanding. As it suggests, any arising issues are subject to the international law too. Any member state withdrawing has to face an enormous amount of issues. Would Brexit be a perfect opportunity for the European Union to scare off any intending member state from a withdrawal? I do not think that any net beneficiaries would take risk, and there shall not be another net contributor to have such intentions.

<sup>136</sup>

<https://hansard.parliament.uk/commons/2018-12-03/debates/67B4BC40-0578-417D-9467-F737BDD5079C/WithdrawalAgreementLegalPosition> (2 February 2018)

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