

Alternatives for a Future Relationship between the UK and the EU

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It is not much surprising that the right of withdrawal introduced by the Lisbon Treaty in 2009 has first been exercised by the UK. However, no one could predict that Brexit could have been such a long-standing and energy consuming process for both the UK and the EU. This paper seeks to identify the possible likely scenarios that might take effect in terms of the future trade relationship between the two parties from a comparative approach by focusing on the advantages and the disadvantages of these models as well as the parties' benefits and red lines. The paper tries to demonstrate that all these scenarios bring forward serious negative effects in comparison to preserving the EU membership.

Key Words: *Brexit, withdrawal agreement, future trade relationship, United Kingdom, European Union*

1. INTRODUCTION

British citizens delivered a very significant decision on June 23, 2016 which has serious repercussions both on the country's destiny as well as the further integration process of the European Union. (EU) The outcome of the referendum attracted the attention of every one not only in terms of the UK as being the first country to exercise the newly introduced right of withdrawal, but also in terms of the fact that the withdrawing country is one of the leading countries of the whole integration process. Hence a new, painful crisis erupted. It already has seen three Prime Ministers into deep political trouble, and this has exacerbated the EU's crisis, even as the EU had been mired in problems related to the Euro-zone and migration.

During all these three and a half years, the UK seemed to be a country which was stuck in between remaining and leaving. The withdrawal negotiations precisely revealed how difficult it was to leave the EU even for such a powerful member. Though the parties have agreed on the terms and the scope of a Withdrawal Agreement during Theresa May's term of office, yet it could not get sufficient support from the British Parliament. This eventually led to May's resignation. The official time for proceeding with the negotiations was running out and May was succeeded with Boris Johnson who is a key leader for the 'leave side' during the referendum campaigns. Johnson has recently agreed with the EU on a revised version of May's deal with some significant changes. However, the House of Commons postponed voting on that deal until the full withdrawal legislation has been scrutinized. Yet, the process remains far from being clear enough to put forward some reliable estimations. The parties after solving the political deadlock with regard to the Withdrawal Agreement shall continue their negotiations for setting up the terms and the scope of their future trade relationship. It would only be after the official withdrawal that both the UK and the EU will be eligible to sign a bilateral trade agreement under legal terms. However, the UK seems not to leave the EU without guaranteeing the certain terms of any possible trade deal. Hence, it's likely that this paradox might continue for some time until the sides finally reach a compromise that would fit well to everyone's interests.

This paper seeks to explore the alternative trade agreements that can be invoked as a

model in terms of the future trade relationship between the UK and the EU. However, the paper will try to demonstrate that none of these models are more beneficial than remaining in the EU. The research approach chosen in this paper is largely based on a comprehensive literature review which is strengthened through official sources as well as the leading press agencies. The paper starts by providing an analysis on the procedural aspects and the substantive scope of the legal right of withdrawal as granted under Article 50 of the Treaty on the Treaty on Functioning of the EU (TFEU). This is followed by the second part of the paper which briefly brings forward an analysis in terms of the current state of level within the withdrawal negotiations. The core and the last part of the paper seeks to demonstrate the different trade models which can shed some light in terms of determining the future trade relationship of the UK and the EU. Hence these alternative trade models are analysed within a detailed and comparative perspective and their advantages and disadvantages are illustrated. To this end, the alternatives that are likely to fit best to the sides' interests will be explored through taking into consideration their red lines.

2. A LEGAL ANALYSIS OF THE RIGHT OF WITHDRAWAL BEFORE THE LISBON TREATY

The existence of a right of withdrawal from the European Union has long been debated under both EU law and international law since the Founding Treaties earlier did not include any provisions for a withdrawal. Legal scholars in that regard were divided in terms of their interpretations as to whether or not it was possible for a Member State to withdraw from the EU on a unilateral basis.

Some argued that a unilateral right of withdrawal was closely linked with the sovereignty of a nation state and was necessary in terms of keeping it. However, some others who rejected a right of withdrawal on a unilateral basis, still accepted that a Member State could withdraw from the Union if all Member States who were the 'Masters of the Treaties' in agreement decided to allow it to leave in accordance with Article 54 of the Vienna Convention on the Law of Treaties of 1969. On the other hand, the last group totally rejected this right arguing that the EU had an autonomous legal order apart from international law and the EU was a permanent polity with a supranational character which did not include any possibility for a voluntary right of withdrawal (Poptcheva, 2016:2).

Scholars who were arguing in favour of a unilateral right of withdrawal based their argumentation in the Vienna Convention since the EU is based on international treaties between the Member States. In that regard, though cautiously, it would have been possible to seek some ways to invoke the implementation of Article 62 of the Vienna Convention which refers to the doctrine of 'clausula rebus sic stantibus' corresponding to the fundamental change of circumstances (Berglund, 2006:152; Poptcheva, 2016:2). The doctrine of 'clausula rebus sic stantibus' provides that a party to an agreement may unilaterally withdraw from or terminate it in cases where there has been a fundamental change of circumstances since that agreement has initially been concluded. However, that clause is to be interpreted in very narrow limits with the condition of fulfilling some certain criteria. Firstly, the existence of those circumstances must be the essential basis of the consent of the parties to conclude such a treaty. In other words, the parties would not have any intentions to conclude any such deal if these circumstances did not exist. Secondly, the change must not be any type which could have been foreseeable by the parties. Lastly, the effect caused by the change must

transform the extent of the obligations radically which would put one of the parties into severe difficulty. Needless to say that, all these three criteria have to be met together for the capacity to invoke this clause (Miller and de Mars, 2019:7; Bilgin, 2014:213). However, it's noteworthy that the implementation of Article 62 of the Vienna Convention is quite limited and exceptional (Bilgin, 2014:222; Berglund, 2006:152).

According to Marklund and Stenwall, a new referendum which reveals an outcome that people of that state are no more willing to remain as EU members, can indeed constitute such a fundamental change of circumstances if that particular state had acceded to the EU after holding such a referendum (Berglund, 2006: 152). However, this would again cause controversy in case of the British withdrawal since the UK held such a referendum in 1975 two years after becoming a full member, not before its accession. British voters amounting to 67.23 % of the whole electorate within that first referendum decided to remain in the European Economic Community (EEC).¹ (Martill and Staiger, 2018:5)

3. ON THE WAY TO THE INTRODUCTION OF THE RIGHT OF WITHDRAWAL

Yet, one is no more required to engage in any such controversial interpretations since the right of withdrawal has officially been introduced under Article 50 within the Lisbon Treaty in 2009. Therefore, it is no more possible to invoke international law related provisions mentioned above in parallel to Article 50 TFEU (Poptcheva, 2016:3). However, this right indeed had primarily been included in the Draft Constitutional Treaty which never came into effect due to the negatively resulted referendums held in France and the Netherlands in 2004.

It's noteworthy that the political negotiation process with regard to the introduction of this clause in the Draft Constitutional Treaty was not an easy one. There were different opinions among the members of the Draft Committee representing the Member States as well as the Commission with regard to the inclusion of this clause in the Treaties. The Commission who continuously advocated in favour of an 'ever closer Union' unsurprisingly was not a supporter of this initiative since such a clause could give some Member States the opportunity to blackmail others for threatening to leave the Union. According to the Commission, this clause carried the risk of being abused by the Member States as well as weakening the EU (Spinant, 2014; Berglund, 2006:153). However, the approach of the Praesidium of the Convention was different from the Commission. According to the Praesidium, the Member States should have been granted such a withdrawal right since the EU was a voluntary entity. If States were to join the EU on a voluntary basis, the same should have been applied in cases where they wanted to leave. Moreover, the exit clause was perceived as a political signal to countries which were indecisive about applying to the EU so far due to their considerations and worries in terms of being trapped (Spinant, 2014; Berglund, 2006:153).

It was not only the Commission, but also some pro-integration countries who welcomed the introduction of this clause with hesitation and scepticism such as Belgium and France. It was suggested that an automatic withdrawal should not have been possible and the decisions of withdrawal in the Council should have been made by unanimous voting. This sceptic view was also supported by some other Member States such as Romania and Portugal relying particularly on the ground that such a right was incompatible with the idea of an 'ever closer

¹ 1975:UK Embraces Europe in Referendum, BBC News Home, Accessed March 25, 2019. http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.st

Union'. Moreover, as pointed out by Italy and to some extent by Sweden, there emerged the risk of making future treaty revisions by qualified majority if the Council was allowed to take withdrawal decisions instead of unanimity voting. Germany even went further arguing that a right of withdrawal could facilitate Eurosceptic groups to advocate against membership. On the other hand, there were also Member States arguing in the opposite direction which was in favour of the introduction of this clause. For instance, Denmark advocated that a withdrawal clause could possibly reduce the pressures of the arguments of the Eurosceptics who had the tendency of marketing the EU as a prison. Moreover, the UK supported this approach by putting the emphasis on the voluntary characteristic of the EU (Berglund, 2006:153–154).

4. THE SCOPE OF THE RIGHT OF WITHDRAWAL IN THE TFEU

Yet this highly debated right is currently laid down under Article 50 TFEU. This article requires Member States to invoke the right of withdrawal in accordance with their own constitutional requirements. (Article 50/1 TFEU) In that regard, a Member State willing to withdraw is required to notify the European Council about its intention. Accordingly, the EU in light of the guidelines provided by the European Council shall negotiate and conclude an agreement with that particular state with regard to the arrangements for its withdrawal as well as its future relationship with the Union. The agreement shall be negotiated in accordance with Article 218/3 TFEU. Withdrawal agreement is to be concluded by the Council on behalf of the EU acting by a qualified majority, after obtaining the consent of the European Parliament. (Article 50/2 TFEU)

It's clear that Member State concerned officially does not need to submit any reasons for its withdrawal decision (Poptcheva, 2016:3). Furthermore, unanimity is not set as a condition for the Council while deciding on withdrawal cases. Ratification of the withdrawal agreement by all the Member States of the EU is also not required since the withdrawal agreement is to be concluded only between the institutions of the EU and the withdrawing state. Yet, it's noteworthy that the withdrawal would probably require a revision of the EU Treaties which would necessitate the approval and the ratification of all the Member States (Piris, 2016:4–5).

The right of withdrawal from the EU indeed necessitates a similar procedure to that of accession to the EU. Nicolaidis makes a comparison of the EU's accession and exit procedures. The author primarily points out to the weakened role of the European Commission within the exit procedures in comparison to the accession process to the EU which is laid down under Article 49 TFEU. The Commission is expected to provide opinions under the name 'avis' on the readiness of the specific candidate country to become a full member to the EU according to Article 49 TFEU. However, for withdrawal cases it is solely engaged with the duty of providing recommendations with regard to opening the negotiation process under Article 218/3 TFEU. Moreover, while it is always the Commission which holds the task of negotiating with the candidate countries on behalf of the Union, the same article provides that in withdrawal cases it is the Council which shall determine on the identity of the negotiator who will represent the benefits of the EU (Nicolaidis, 2013:211–212). Nicolaidis also draws attention to the difference between the periods laid down for the completion of both procedures. Whereas the Treaties do not provide any time limits for finalizing the accession process, the withdrawal negotiations are restricted to a maximum period of two years. Therefore, Nicolaidis rightfully argues that under theoretical terms, withdrawal offers an easier process rather than accession which necessitates the fulfillment of

several complicated criteria. However, one also has to note that the period after a country's accession to the EU is quite clear compared to the vague process likely to follow after a withdrawal (Nicolaidis, 2013:212–213).

It is noteworthy that the Treaties shall cease to apply to that particular state from the entry into force of the withdrawal agreement. However, if the parties fail to conclude such an agreement, then the Treaties shall cease to apply two years after the notification submitted to the European Council unless the European Council in agreement with that Member State, unanimously decides to extend this period. (Article 50/3 TFEU) It's clear that the Treaties encompass a unilateral right of withdrawal in cases of the failure of reaching a withdrawal agreement (Berglund, 2006:153). Piris argues that the complexity of the withdrawal situation would probably lead to the extension of the period of two years laid down in this Article. That extension would provide the withdrawing state with sufficient time for the enactment of the national legislation to replace the EU *acquis*. According to Piris, it would be more beneficial for a withdrawing state to negotiate the withdrawal when it is still an EU member since after the withdrawal, the withdrawing state would be considered as a third country in terms of the ongoing negotiations. Hence, that would require unanimity in the Council for the conclusion of such an agreement which would put the situation into more difficulty (Piris, 2016:5).

Moreover, the Treaties provide that the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions or in decisions concerning that particular state. (Article 50/4 TFEU) It's noteworthy that the Treaties also grant the right to rejoin the Union to former Member States which regret their decisions after withdrawal. In that regard, states that intend to rejoin the Union, shall be subject to the implementation of Article 49 TEU² which lays down the general procedure for any European State willing to apply to the EU for full membership. (Article 50/5 TFEU)

One also has to note that it is not possible to terminate the EU membership of a Member State against its intention. Membership can only be suspended in cases where serious and continuing breaches of human rights, democracy and the rule of law take place as laid down under the Article 7 TEU (Peers, 2014).

5. SOME REMARKS WITH REGARD TO THE WITHDRAWAL NEGOTIATIONS BETWEEN THE UK AND THE EU

It indeed does not appear to be so much surprising that the right of withdrawal has been exercised for the first time by the UK. The UK has always been regarded as one of the most skeptical countries and the voice of opposition among all the EU Member States (Cini and Verdun, 2018:67). It's been a country which was already 'having the best of two worlds' since its accession to the European Economic Community (EEC) in 1973. The UK had already made a distinction between what it wanted to be a part of and what it wanted

² Article 49/1 TEU reads as: "*Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.*"

to opt out with regard to the EU integration process. It did not participate at the Eurozone, the Schengen area, large part of the provisions related to the area of police cooperation and judicial cooperation over criminal matters, has been exempted from the European Court of Justice (ECJ) jurisdiction in terms of the implementation of the EU Charter of Fundamental Rights and has been enjoying a special budget arrangement (Emerson, 2016:2–5). However, still these were not sufficient for the country to remain in the EU and the former Prime Minister David Cameron held a referendum in June 2016 which would be the country's second referendum questioning its EU membership. British people chose to leave the EU with 52% against the ones who preferred to remain with 48% within the referendum held in 2016. It was revealed that young voters particularly voted in favour of remaining while older voters chose to withdraw (Mueller, 2019).

Obviously, the outcome of the referendum was considerably striking and attracted the attention of the whole world. It was for the first time that a Member State had determined to leave this *sui generis* entity. Furthermore, it was one of the most powerful Member States as well as a net contributor to the EU budget. Therefore, the long-standing process of withdrawal which still seems to be uncertain has given a start.

The UK and the EU started their official withdrawal negotiations in June 2017 and the negotiations ended in March 2019 during Theresa May's government (Martill and Steiger, 2018:6). May's government and the EU had agreed on a Withdrawal Agreement in November 2018. They also agreed on a Political Declaration that was concluded on the future relationship on the same date. Both the Withdrawal Agreement and the Political Declaration are to be read together on a common understanding that "*nothing is agreed until everything is agreed*."³ In other words, the parties will not sign the draft Withdrawal Agreement until they eventually agree on the terms of their future relationship.⁴ It's precise that determining on the terms of a future relationship between the sides will not be an easy process and the negotiations have already been continuing for more than two years. Therefore, a separate further agreement shall be required to regulate the future trade relationship between the two sides. It has to be underlined that according to most legal scholars, those two agreements shall not be concluded at the same time due to the lack of a legal basis. The legal base of the Withdrawal Agreement between the parties is Article 50 TFEU which is to be concluded with the EU when the UK is still a Member State. However, the UK will be considered as an outsider third country when it shall determine on the terms and the scope of its future trade relationship with the EU. The legal basis of that relationship might be either Article 207 TFEU, 281 TFEU or 271 TFEU which arranges common commercial policy, negotiation and conclusion of international agreements and association agreements, respectively. Hence, scholars advocate that it would be more correct in legal terms when both the Withdrawal Agreement and the agreement determining the future relationship shall be concluded one after the other (Flavier and Platon, 2016; Carmona, Cîrlig and Sgueo, 2017:11).

The Withdrawal Agreement concluded between the parties is regarded as an international treaty which aims to clarify and solve the most problematic and controversial issues between

³ Explainer for the Political Declaration setting out the framework for the future relationship between the United Kingdom and the European Union, November 25, 2018:2, Accessed May 7, 2019. <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

⁴ Explainer for the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, November 14, 2018:2, Accessed May 7, 2019. <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

the UK and the EU. Citizens' rights, financial settlement of the UK's obligations and assets and the border situation between Northern Ireland and the Republic of Ireland can be listed as the major issues that the sides do tackle within their relationship.⁵ On the other side, the Political Declaration lays down the framework which will be the basis for the future relationship of both sides. Though the Withdrawal Agreement and the Political Declaration are to be considered as a package, the Political Declaration has no legal force. Still, it acknowledges the precise intention of the sides that they shall negotiate the agreements related to the future relationship in good faith. It's noteworthy that the agreements with regard to the future relationship shall also need to be ratified by the European Parliament and the national parliaments of the Member States which require so (Círlig, 2019:9).

The unresolved long-standing controversies between the British parliamentarians prevented the Withdrawal Agreement from being adopted three consecutive times at the House of Commons during the period between January and March 2019.⁶ Indeed the official divorce date between the parties was set up as March 29, 2019. However, when May's deal could not pass from British Parliament, the leave date was postponed by the EU first to April 12 and accordingly to October 31. Rejection of the deal was followed by Theresa May's resignation from her post as Prime Minister in June 2019 which was replaced by the new Prime Minister Boris Johnson. Johnson who was the former Mayor of London is a well-known key name for the leave side during the campaigns for the referendum (Watt, 2016). That's why it was indeed unsurprising for Johnson when he told that the UK would leave the EU with or without a deal on October 31 and that he would "*rather be dead in a ditch* than seeking a further extension from the EU (Mueller, 2019). However, British Parliament has dismissed the possibility of leaving the Union without any deal through a new act blocking a no-deal Brexit (Woodcock, 2019).

Accordingly Johnson has agreed on a new deal with the EU in a short course of time. The new deal indeed can be regarded as a revised version of May's deal with some significant changes introduced particularly with regard to the Irish border and the so-called back-stop clause which raised the major part of the criticisms and the main reason behind the rejection of May's deal.⁷ The back-stop clause had the purpose of preventing a hard border between Northern Ireland and the Republic of Ireland. The clause was set to be implemented as a sort of guarantee in case that the parties could not reach any agreements in terms of setting up their future trade relationship till the end of the transition period which was December 31, 2020 (Wright and Naselli, 2018). According to the back-stop clause as envisaged in May's deal, the UK should have continued to remain in the customs union of the EU to avoid a hard-border in Northern Ireland within an indefinite period until an agreement was reached.⁸ The facts that the clause was brought forward for an indefinite period and that an exit from it was to be conditional upon the approval of the EU were disliked and rejected by most of

⁵ Explainer for the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, 2018:2–3.

⁶ "Brexit: MPs reject May's EU withdrawal agreement, BBC News, March 30, 2019, Accessed June 10, 2019. <https://www.bbc.com/news/uk-politics-47752017>

⁷ "Brexit: What is in Boris Johnson's new deal with the EU?, BBC News, 21 October 2019, Accessed October 23, 2019. <https://www.bbc.com/news/uk-50083026>

⁸ European Commission Fact Sheet, Protocol on Ireland and Northern Ireland, Questions & Answers, Brussels, November 14, 2018: 1, Accessed June 25, 2019. http://europa.eu/rapid/press-release_MEMO-18-6423_en.pdf

the British parliamentarians (Kentish, 2019). The major negotiations between Johnson's government and the EU particularly focused on the backstop clause and some changes have been introduced to the clause. The revised deal provides that the whole UK shall be able to leave the EU's customs union. According to some, that is highly significant in giving the UK the independence in concluding its own trade agreements with the third countries after the withdrawal. Hence, it would only be the Northern Ireland to remain in the EU's customs territory rather than the whole UK in comparison to May's deal. In terms of the free circulation of goods, the deal envisages no hard border control between the Northern Ireland and the Republic of Ireland. However, this time border checks might need to be introduced between the Northern Ireland and the rest of the UK which shall not be bound by the EU's rules.⁹ However, Johnson's deal could not pass from the House of Commons since the parliamentarians decided to postpone any support until full legislation to the Withdrawal Agreement was explored (Mason, 2019). Therefore, the uncertain process has been extended once more until January 31, 2020.

6. ALTERNATIVES WITH REGARD TO THE FUTURE TRADE RELATIONSHIP BETWEEN THE UK AND THE EU

There are several alternatives which can be invoked in terms of determining the future trade relationship of the UK to the EU after the British withdrawal takes place. Yet, it's still unclear whether or not the parties would conduct their trade relationships under the agreed Withdrawal Agreement and the Political Declaration or in the context of a no-deal alternative corresponding to a trade relationship under the WTO (World Trade Organization) terms or a comprehensive deal such as the one between the EU and Canada. However, whatever the case is, scholars estimate that the trade relations particularly in the financial services, transport and communications would endure severe negative effects and losses in terms of British access to EU markets under each scenario in comparison to keeping the EU membership (Hantzsche, Kara and Young, 2019:9).

6.1. Remaining in the European Economic Area

As one of the primary alternatives, one shall consider whether or not staying in the European Economic Area (EEA)¹⁰ can be beneficial for the withdrawing state. It's well-known that Iceland, Liechtenstein and Norway as members of the EEA, join the EU's Internal Market and exercise the four freedoms though are not obliged to participate in all EU policies (Piris, 2016:6). This alternative is regarded as the one which is the closest to preserving the EU membership (Sampson, 2017:165). Emerson argues that a state has to choose between either joining the EEA or the customs union since participation to both is not possible. Furthermore a country first has to join the European Free Trade Association (EFTA)¹¹

⁹ "Brexit: What is in Boris Johnson's new deal with the EU?, BBC News, 2019.

¹⁰ The Agreement on the European Economic Area that entered into force on 1 January 1994 brings together the EU Member States and the three EEA EFTA States -Iceland, Liechtenstein and Norway- in a single market. For further information see, Accessed March 28, 2019. <http://www.efta.int/eea>

¹¹ The European Free Trade Association is an intergovernmental organization that was founded in 1960 and currently is comprised of Iceland, Liechtenstein, Norway and Switzerland. The main aim of this

to become a member of the EEA.¹² (Emerson, 2016:8)

The option of remaining in the EEA might seem beneficial for the withdrawing state in terms of decreasing the costs of withdrawal and avoiding the risks of uncertainty. Therefore some scholars refer to this option as a form of ‘soft Brexit’ (Hix, 2018:12). However, it’s noteworthy that the withdrawing state will still be likely to be subject to the EU legislation covering this wide area without participating in the decision making mechanism as well as still making a remarkable contribution to the EU budget. These are crucial matters to be challenged in the long run (Berglund, 2006:162; Emerson, 2016:8; Piris, 2016:6–7; Sampson, 2017:165; Hix, 2018:12). Moreover, this would still necessitate the continuation of the free movement of people (Emerson, 2016:8) which in British case, the UK would hardly accept. Furthermore, Piris points out to another fact that both the EU and the three EEA EFTA states are not that much pleased about the way the EEA has been working. The Commission complains about the slow progress those three EEA EFTA countries have been showing in integrating new EU acts with regard to the Internal Market into the EEA legal system. On the other side, those three countries have been complaining that the EU has not been adequately addressing their benefits and constitutional problems (Piris, 2016:7). However, in case that the UK becomes a member of the EFTA, this would mean that it would accept the existing package of almost 27 free trade agreements encompassing 38 countries (Carmona *et al.*, 2017:24; Emerson, 2016:18). Still, due to the fact that the EEA does not cover a customs union relationship, EFTA/EEA members preserve their competences of negotiating preferential trade agreements and introducing their own external tariffs to third countries on their own initiatives (Carmona *et al.*, 2017:25; Sampson, 2017:165) which might still be regarded as beneficial for the UK. On the other side, the lack of a customs union relationship leads to the fact that the trade between the EEA members and the EU is subject to border barriers including the need to comply with customs procedures, rules of origin as well as anti-dumping liabilities (Sampson, 2017:165) which might be counted as dissuasive by the UK authorities.

However, it’s noteworthy to underline that Theresa May’s government had already eliminated the alternative of remaining in the EEA within the White Paper on the UK’s exit from and new partnership with the EU¹³ released in the early 2017. According to that policy paper, the then British government declared that the UK would not choose to remain in the Internal Market, but rather prefer to build up a new strategic partnership with the EU in the form of an ‘ambitious and comprehensive’ free trade agreement accompanied by a new customs agreement. It was also announced that the UK was not looking for a model which

organization is to promote free trade and economic integration among its four Member States. For further information see, Accessed March 10, 2019. <http://www.efta.int/about-efta/european-free-trade-association> Piris describes the free trade agreement between the EU and EFTA as an ‘empty shell’ that has a very limited content. This free trade agreement covers free trade merely for some fish and agricultural products and therefore offers very few advantages with regard to access to either main European or other export markets. See Piris, 2016:7–8.

¹² It’s noteworthy that the UK had left the EFTA when it became a full member to the EEC in 1973.

¹³ Policy paper on the United Kingdom’s exit from, and new partnership with, the European Union, updated May 15, 2017, Accessed August 10, 2019. <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-2>

was already exercised by other countries.¹⁴

6.2. Remaining in the Customs Union

As a second alternative, remaining in the customs union might apparently seem to be more advantageous since there would be no customs controls and no obligations to prove the rules of origin with regard to exported products within the customs union. However, this does not necessarily mean that remaining in the customs union without full membership would not have any disadvantages. Participation in the customs union without full membership as challenged by Turkey for many years raises two major difficulties. First of all, the participating country has to follow the EU's decisions on tariffs without participating in the making of those decisions. As a second problem, that country has to apply the EU's preferential tariffs to third countries while the third countries do not hold any obligations to respond the same way. This means that the participating country is unlikely to benefit from the free trade agreements the EU concludes with third countries (Piris, 2016:10; Emerson, 2016:8). Therefore it might take long for the UK to negotiate the free trade arrangements with those third countries and convince them. The fact that the EU has started to introduce new country specific clauses to request the third countries to negotiate a similar free trade agreement with that particular state is less likely to help in that case. Hence choosing the customs union might not be such a beneficial option in that regard (Emerson, 2016:8). Furthermore, scholars estimate that even if the UK remains in the customs union, still it is expected to be a reduction of 25 % in goods trade accompanied with a reduction of 50 % in services trade in comparison to continuing EU membership (Hantzsche *et al.*, 2019:11–12).

The issue of whether or not staying in a customs union relationship with the EU has indeed long been highly controversial among the British parliamentarians. It was regarded as one of the red lines of Theresa May during her term of office. She dismissed the alternative of remaining in the customs union and advocated that the UK “*must have new opportunities to trade with the rest of the world* within a post-Brexit process (Rankin, 2019). On the other hand, the Labour Party led by Jeremy Corbyn, has advocated in favour of remaining in a permanent and comprehensive customs union relationship with the EU within the condition of having a say in the EU's future trade negotiations with third countries (Elgot, Rankin and Stewart, 2019). Yet, it would be a small possibility for the EU to accept the latter condition. It's noteworthy that the House of Commons in March 2019 rejected a permanent and comprehensive customs union plan put forward by Ken Clarke-a senior Conservative Member of Parliament (MP)- with 265 votes in favour (backed by notably the Labour Party's MPs) and with 271 votes against (backed by particularly the Conservative Party's MPs) the plan.¹⁵ Clarke advocated that the UK should still preserve the economic advantages of remaining in “the biggest and most prosperous international free trade area in the world after Brexit (Pickard, 2019). Still, Clarke's customs union plan is to be regarded as one of the best performed plans that came out to secure a high majority among the MPs in the House of Commons (Blitz, 2019; Kirk and Scott, 2019).

According to commentators, the UK should better make a decision on either remaining

¹⁴ Policy paper on the United Kingdom's exit from, and new partnership with, the European Union, updated May 15, 2017.

¹⁵ “How did my MP vote on Brexit indicative votes, BBC News, March 27, 2019, Accessed August 10, 2019. <https://www.bbc.com/news/uk-politics-47726787>.

in the EEA or the customs union in order to minimize the economic costs of the withdrawal. These two choices would provide the continuity of business and abolish the misinformation with regard to the existing technical and legal mechanisms. However, remaining in the Internal Market shall necessitate further implementation of a wide category of EU legislation (Piris, 2016:6; Emerson, 2016:7; Carmona *et al.*, 2017:23–25). Still, this shall abolish the costs to be borne when entering European markets if the UK introduces new and different standards since different technical standards lead to significant costs (Emerson, 2016:7). The EU is only expected to allow full access to its Internal Market as long as its rules are respected. However, escaping from adherence to those rules is indeed something what Eurosceptics have been seeking for. Moreover, it would not be unreasonable for the EU to ask for the exercise of the free movement of people and still a contribution to its budget if the UK looks for an access to the Internal Market.¹⁶ (Piris, 2016:6) Still, remaining in either the EEA or the customs union seem to be better and less costly alternatives in comparison to other solutions (Emerson, 2016:8; Carmona *et al.*, 2017:23).

6.3. Chasing the Swiss Model

Another model that can shed some light with regard to the UK's future relationship with the EU is Switzerland which chose to stay out of the EEA and made a series of bilateral sector-specific agreements with the EU instead. Switzerland was regarded as an attractive model by the British Prime Minister Boris Johnson when he said that he wanted to create a 'Britzerland' during the leave campaign as London's former mayor in December 2012 (Stephens, 2018).

Switzerland has concluded more than 120 bilateral agreements with the EU on a comprehensive scale comprising of different sectors ranging from air transport, public procurement to agriculture (Carmona *et al.*, 2017: 26). However, these agreements do not cover services, particularly financial services which form a significant part of the UK's trade in services to the EU (Piris, 2016:8) and this is to be regarded as a significant reason why Switzerland indeed might not be such a suitable model for the UK (Stephens, 2018).

The EU and Switzerland indeed had based the framework of their relationship on international public law. Still, in practice Switzerland is under the obligation to integrate the EU legislation into its national legal order, follow the case law of the ECJ and provide a serious contribution to the EU budget while staying out of the EU's decision-making mechanism (Piris, 2016:8).

The relationship of the sides deteriorated when Switzerland decided to restrict the exercise of the free movement rights of European citizens after a referendum held in 2014. The EU in return terminated the cooperation in educational and research fields and suspended the application of Erasmus exchange programmes. Though a deal with regard to the free movement of persons was eventually reached by the parties towards the end of 2016, the EU has been trying to introduce a stricter framework agreement to replace all the existing agreements which have not been functioning satisfactorily (Carmona *et al.*, 2017: 27; Piris, 2016:8–9). It is doubtless that the free movement of persons has created a major problem in Swiss and the EU relations. Taking into consideration that the UK has a similar approach to the exercise of free movement rights of European citizens, this could be another reason behind why the Swiss model is less likely to serve as the best alternative for the UK in terms

¹⁶ "The Real Danger of Brexit, The Economist, February 27–March 4, 2016:7.

of its future relationship with the EU (Stephens, 2018).

One also has to keep in mind that there is a striking difference between the UK and Switzerland in terms of invoking public votes for their legislative processes. While holding referendums in the UK are quite rare, it is definitely the opposite case in Switzerland which is regarded as “the world’s champion of direct democracy (Allemand, 2018). This could also -though indirectly- necessitate a different model for the UK in the post-Brexit era.

Currently, the EU and Switzerland still have been negotiating for amending the framework of their relationship. Therefore the existing Swiss model which is considered almost to collapse is less likely to be accepted and tested by the EU again (Piris, 2016:9; Stephens, 2018).

6.4. Making Its Own Free Trade Deals with the EU and the Rest of the World

Last but not the least, the UK might not choose to stay in either the Internal Market or the customs union of the EU and rather prefer to conclude its own free trade agreements with the EU as well as with the other third countries from all over the world. The EU has concluded a wide-ranging set of preferential trade agreements with several countries from different regions in the world. The types of these trade agreements might serve as a basis for the UK in terms of building up a new trade relationship both with the EU and with the rest of the world. Yet, scholars argue that even in case of conclusion of a generous free-trade agreement with the EU, the UK is still estimated to face a reduction of 60 % particularly in services trade with the EU which is regarded as such a significant loss (Hantzsche *et al.*, 2019:11). Furthermore, under the terms of each free trade agreement to be concluded, trade costs with the EU would always result in an increase when compared to remaining in the Internal Market (Sampson, 2017:166).

Immediately after the withdrawal, almost 1100 international agreements concluded between the EU and the third countries shall cease to apply to the UK. In that regard, all the EU’s trade and economic cooperation agreements shall become void for the UK unless it decides to renegotiate them with those third countries (Emerson, 2016:17). Koutrakos draws attention to a significant point that the renegotiation process of those trade agreements might be long and difficult for the UK since it had transferred this competence to the EU since 1973. That does not mean that British diplomats are less skilled than those of the EU’s; however they have not practiced it for quite a long time (Koutrakos, 2016:476; Piris, 2016:11). Some scholars furthermore argue that the UK would probably have a lesser bargaining power in the negotiation process of those agreements in comparison to the EU acting as a regional power and a strong trade bloc (Piris, 2016:11; Stephens, 2018).

However, taking into consideration that the EU has presumably the largest set of trade agreements in the global arena, this shall be a real challenge for the UK (Nicolaidis, 2013:215). The preferential trade agreements the EU had concluded with the third countries encompass free trade agreements, association agreements, deep and comprehensive free trade agreements and economic partnership agreements (Carmona *et al.*, 2017:28). It’s also noteworthy that most of those agreements are highly detailed, complicated and different from each other both in nature and content. Some of them were concluded with the members of the EFTA which as earlier said might be an alternative for the UK to join (Emerson, 2016:18).

Another set of agreements relates to the ones that the EU had concluded with its neighbouring countries such as the southern neighbours including Algeria, Egypt, Israel, Jordan, Libya, Tunisia and more others (under Euro-med Agreements), the Balkans and the

eastern neighbours comprising of countries such as Ukraine, Georgia and Moldova. However, most of these agreements concluded within the European Neighbourhood Policy are formulated under the framework provided for association agreements (Art.217 TFEU). The prior agreements concluded with the Mediterranean countries under the Barcelona process of mid 1990's might be regarded as simple free trade agreements. However, the countries which are currently on the way of concluding association agreements such as Armenia and Azerbaijan already base their relationships with the EU on deep and comprehensive free trade areas (Carmona *et al.*, 2017:29–30). However due to the fact that these recent deep and comprehensive free trade agreements include more commitments and a wider model presumably rather different than what the UK would seek for, they might not be a true precedent for the UK. Furthermore, the EU is currently trying to renegotiate some of these free trade agreements concluded much earlier with the Mediterranean countries such as Morocco and Tunisia with a view to transforming them into deep and comprehensive ones. Therefore, the UK would in the first place prefer to observe how the EU's new negotiations for upgrading those agreements would be proceeding (Emerson, 2016:18).

Preferential trade agreements the EU had concluded with third countries vary in size and content. For instance, the EU had also concluded economic partnership agreements with the African, Caribbean and Pacific countries (ACP) as well (Carmona *et al.*, 2017:29). ACP countries include 79 developing countries which had signed the Cotonou Agreement with the EU. These preferential trade agreements necessitate more commitments for the EU side in terms of implementing a fully and immediate trade liberalization and granting economic aid packages to these countries (Emerson, 2016:18). ACP countries in that regard are allowed to open up their markets to the EU imports within a long transition process on a gradual basis particularly in terms of the sensitive and less competitive sectors.¹⁷

A last category consists of trade and cooperation agreements concluded between the EU and more developed countries such as the Central American countries, Mexico, South Korea, Canada (Emerson, 2016:18), Singapore and Vietnam (Carmona *et al.*, 2017:31). The agreements the EU had concluded with the last four countries are comprehensive ones going further than just making trade in goods into providing greater market access in specific sectors such as particularly public procurement, services, investment (Carmona *et al.*, 2017:31).

However most of those agreements encompass long and comprehensive market rules and the most difficult part for the UK is to make a choice between what to preserve and what to repeal regarding these rules belonging to the EU Internal Market law. Yet, it's still questionable whether or not the UK would succeed in concluding similar bilateral agreements with those countries within a reasonable time (Emerson, 2016:18). All those agreements necessitate quite long time to be concluded such as in the case of EU-Canada Comprehensive Economic and Trade Agreement (CETA) whose negotiations were initiated in 2009 (Koutrakos, 2016:477) and entered into force in 2017.¹⁸ Yet, CETA is regarded as one of the most ambitious and wide-ranging trade agreements ever negotiated by the EU (Piris, 2016:9; Carmona *et al.*, 2017:32).

¹⁷ “Economic partnerships, EU Trade Policy and ACP countries, European Commission, February, 21, 2019, Accessed August 11, 2019. <https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>.

¹⁸ For further information on CETA, see Accessed August, 12, 2019. <https://ec.europa.eu/trade/policy/in-focus/ceta/>

One can assume that the UK would either conclude very similar agreements to that of the EU's or would prefer less comprehensive ones to be able to proceed fast. However, it's noteworthy that the countries which the EU has still been negotiating to make trade and cooperation agreements such as the US, Japan, India, Australia, New Zealand and Brazil are likely to give more priority to the EU rather than the UK. It's also considered to be a small possibility for the UK to proceed ahead of the EU and to conclude free trade agreements with Russia and China which might have disadvantageous outcomes for the UK in terms of preserving its strong place and close ties within the Western alliance (Emerson, 2016:19–20). The US already has declared that it has chosen to focus on regional trade agreements rather than a trade agreement with a single state such as the UK (Koutrakos, 2016:478). The UK would therefore have a less priority for the third countries which have already been negotiating with the EU in terms of concluding a free trade deal. According to Emerson, indeed the argument put forward by many Brexiteers that the UK might alone proceed faster and get more advantages and privileges in comparison to the EU in terms of negotiating these free trade agreements with the third countries is nothing more than a fantasy (Emerson, 2016:20).

6.5. Relying on the World Trade Organization Rules

In case that the negotiations between the UK and the EU cannot produce any fruitful outcomes and the sides cannot agree on a future trade relationship, then the relationship between them would be based on the World Trade Organization (WTO) rules. The possibility of a no-deal scenario might take place under two circumstances. The first scenario might apply for cases in which the UK and the EU fail to agree or ratify a Withdrawal Agreement and the EU no longer provides a further extension of the withdrawal deadline. The second possibility might take place in cases where despite of a Withdrawal Agreement that is agreed and ratified within the transitional period, the parties fail to agree or ratify their future relationship before the end of the transitional period and this period is no further extended (Hix, 2018:12).

Relying on WTO rules would basically mean that the tariffs that the EU would implement to British goods would be the ones at the most favoured nation (MFN) rates implemented to all other WTO members (Carmona *et al.*, 2017:32; Sampson, 2017:165). In such a case, the UK would be regarded as a third country to the EU and its Member States. Furthermore, the implementation of the EU's common external tariffs to British goods and products might have disadvantageous effects for British exporters within price competitive markets (Piris, 2016:9–10). Also, both border and non-tariff barriers in goods trade between the EU and the UK are expected to increase. This alternative is likely to lead to the highest volume of trade barriers between the parties (Sampson, 2017:166) and therefore being the worst scenario among all.

7. CONCLUSION

Having analysed the likely alternatives to be put in place in terms of the future relationship between the UK and the EU, it has been revealed that the trade relations between the parties are likely to encounter serious negative effects after British withdrawal in comparison to remaining in the EU. However, the closest options to preserving EU

membership which seems to be more efficient and still less costly in terms of the withdrawal are to be considered as either remaining in the EEA or the customs union of the EU. Yet, both May and Johnson have already ruled out the possibility of remaining in the customs union without full membership.

On the other hand, the UK is less likely to pursue a model which has already been followed by Switzerland which currently neither pleases Switzerland nor the EU. The UK can indeed choose to make its own free trade agreements with the EU and the rest of the world. Still, it's noteworthy that each trade agreement the UK will conclude with the EU is likely to result in an increase for the trade costs in comparison to remaining in the Internal Market. On the other hand, the possibility that the UK will conclude its own trade agreements with third countries faster and with more privileges in comparison to -such a big trade bloc- the EU, are far from being rational considerations. The last alternative of relying on the WTO rules might be regarded as the most costly alternative and likely to increase significantly the volume of trade barriers between the parties particularly when compared with the previous options.

Yet, it is still unclear which path the UK might follow in terms of its future relationship with the EU. All the alternatives mentioned in the paper cannot go any further than estimations. However, what is clear are the lessons to be drawn out by both the UK and all the Member States of the Union. Brexit process has undoubtedly revealed the hard reality that the withdrawal period can indeed be such difficult, long-standing and painful even for such a major and powerful country as the UK.

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