



NEAR EAST UNIVERSITY  
GRADUATE SCHOOL OF SOCIAL SCIENCES  
INTERNATIONAL LAW PROGRAM

**THE LEGAL FRAMEWORK OF UNITED KINGDOM'S  
WITHDRAWAL FROM EUROPEAN UNION**

RIMON MERA

MASTER THESIS

NICOSIA  
2018

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**NICOSIA  
2018**

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## **ABSTRACT**

### **The Legal Framework of UK's Withdrawal from European Union**

The results of the 2016 referendum in the United Kingdom marked a major international event. The majority of British voters chose the UK to withdraw from the EU. The United Kingdom requested the activation of Article 50 of the Treaty of Lisbon, which includes the mechanism of voluntary withdrawal from the European Union.

activation of Article 50 opened the door for negotiations with the European Union on several issues such as citizens rights of the two parties residing in the territory of the other party. The issue of the financial settlement and the contribution of the United Kingdom to the EU budget also emerged. One of the most complex issues raised by the Brexit is the border between the Republic of Ireland and Northern Ireland. Ireland has experienced a long civil war that ended with the Good Friday Agreement 1998, which provided for the avoidance of the hard border between the Republic of Ireland and Northern Ireland. Brexit also has implications on UK's business relations, where the UK decided to withdraw from the Customs Union and the Common Market. This means that a new free trade agreement between the UK and EU should be negotiated. The UK will also come out of free trade agreements concluded by the EU with other countries.

This thesis deals with the legal framework for the UK's withdrawal from the European Union, in particular article 50 of the Treaty of Lisbon. The thesis also examines the EU withdrawal Act 2018, which repeals EU laws after the withdrawal and allows for their amendment and integration into British legislation. The thesis seeks to discuss the withdrawal negotiations between the UK and the EU and the mutually agreed solutions to the legal challenges raised by the Brexit.

Key words: negotiation, withdrawal, European Union, United Kingdom, border

## ÖZ

### **İngiltere'nin Avrupa Birliğinden Çekilmesinin Yasal Çerçevesi**

İngiltere'deki 2016 referandumunun sonuçları büyük bir uluslararası olayı işaret etti. İngiliz seçmenlerin çoğu, İngiltere'yi AB'den çekilmek için seçti. Birleşik Krallık, Lizbon Antlaşması'nın 50. Maddesinin, Avrupa Birliğinden gönüllü geri çekilme mekanizmasını içeren aktivasyonunu talep etmiştir.

50.Maddenin faaliyete geçirilmesi, diğer tarafın topraklarında ikamet eden iki tarafın vatandaş hakları gibi çeşitli konularda Avrupa Birliği ile müzakerelere açılma kapılarını açtı. Mali anlaşmanın konusu ve Birleşik Krallık'ın AB bütçesine katkısı da ortaya çıkmıştır. Brexit tarafından gündeme getirilen en karmaşık konulardan biri de İrlanda Cumhuriyeti ve Kuzey İrlanda arasındaki sınırdır. İrlanda, İrlanda Cumhuriyeti ile Kuzey İrlanda arasındaki sert sınırın ortadan kaldırılmasını sağlayan İyi Cuma Anlaşması 1998 ile sona eren uzun bir iç savaş yaşamıştır.

Brexit'in İngiltere'nin Gümrük Birliği ve Ortak Pazardan çekilmeye karar verdiği ticari ilişkileri üzerinde de etkileri vardır. Bu, İngiltere ve AB arasındaki yeni bir serbest ticaret anlaşmasının müzakere edilmesi gerektiği anlamına gelir. İngiltere, AB'nin diğer ülkelerle imzaladığı serbest ticaret anlaşmalarından da çıkacak.

Bu tez, Birleşik Krallık'ın, özellikle Lizbon Antlaşması'nın 50. maddesinin Avrupa Birliği'nden çekilmesine ilişkin yasal çerçeve ile ilgilidir. Tezi ayrıca, geri çekilmeden sonra AB yasalarını yürürlükten kaldıran ve İngiliz mevzuatına uyum ve bütünleşmesine izin veren 2018 sayılı AB çekilme yasasını da inceliyor. Bu tez, İngiltere ile AB arasındaki geri çekilme görüşmelerini ve Brexit'in ortaya koyduğu yasal sorunlara karşılıklı olarak üzerinde anlaşılan çözümleri tartışmayı amaçlamaktadır.

Tez, çekilmeden sonra İngiltere ve AB arasındaki gelecekteki ilişkiyi ve yeni bir serbest ticaret anlaşması imzalama olasılığını ele almaktadır. Bu tez aynı zamanda AB üyesi olmayan ülkelerle de İngiltere ilişkilerini ele almaktadır.

Anahtar kelimeler: müzakere, geri çekilme, Avrupa Birliği, Birleşik Krallık, sınır

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**ABBREVIATION**

ACP	Caribbean and Pacific States
CJEU	Court of Justice of the European Union
ECA	European Communities Act
EDF	European Development Fund
EEA	European Economic area
EEC	European Economic Community
EFTA	European Free Trade Association
EIB	European Investment Bank
EU	European Union
FTAs	Free Trade Agreements
GDP	Gross domestic product
MFF	Multiannual Financial Framework
OCTs	External States and Regions
SBA	sovereign base areas
UK	united Kingdom
UKIP	UK independence party

# INTRODUCTION

## I. Background

On June 23, 2016, a referendum was held on UK membership in the European Union. 17.4 million People voted to leave the United Kingdom for the EU, who are representing 51.9% of the UK voters. While 16.1 million voted for remain United Kingdom in the EU, who are representing 48.11% of the voters. 33.5 million Voted in the referendum, Representing 72.21% of the registered and 65.38% have the right to vote. This result meant that the UK should leave the EU.<sup>1</sup>

The announcement of the results of the referendum was a major shock in UK, Europe and the world, where British Prime Minister David Cameron announced his intention to resign and called for a new prime minister to run the exit negotiations. On July 23, 2016, Cameron resigned and Theresa May formed the new British government. The British scene has prevailed state of division after the referendum between supporters of the exit from the Union and those who feared the negative effects of leaving of UK to the Union.<sup>2</sup>

The post-referendum economic outlook was negative and pessimistic in the short term as there was uncertainty in the financial markets and a lack of consumer confidence. These results immediately reflected on the pound, which fell more than 10% against the US dollar. The pound settled on Friday morning at \$ 1.35 for the first time since 1985, its lowest level in 30 years. The pound also fell against the Japanese yen by more than 5% and. In addition, the euro fell more than 3% against the dollar to \$ 1.1024.<sup>3</sup>

Inflation in the post-referendum period rose by 1.7 percentage points. The EU is an important trading partner for UK. UK exports to the EU are 12.6% of GDP,

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<sup>1</sup> EU referendum (BBC news,23 June 2016) <[www.bbc.com/news/politics/eu\\_referendum/results](http://www.bbc.com/news/politics/eu_referendum/results)> <sup>1</sup> accessed 5 October 2018

<sup>2</sup> Heather Stewart, Rowena Mason& Rajeev Syal, David Cameron resigns after UK votes to leave European Union (The guardian,24 June 2016) <[www.theguardian.com/politics/2016/jun/24/david-cameron-resigns-after-uk-votes-to-leave-european-union](http://www.theguardian.com/politics/2016/jun/24/david-cameron-resigns-after-uk-votes-to-leave-european-union)> accessed 5 October 2018

<sup>3</sup> James K. Jackson, Shayerah Ilias Akhtar& Derek E. Mix, Economic Implications of a United Kingdom Exit from the European Union, (2016) 7-5700, 5-7

44% of UK's total exports to the world and 60% of UK's trade volume. The membership in EU gives UK preferential access to 53 markets outside the European Union. The United Kingdom has achieved a net surplus in the services provided in the EU countries, which amounted to 10.8 billion pounds sterling. Moreover, UK is an attractive center for European investment.<sup>4</sup>

While the results of the referendum were a disappointment on the European level, where the President of the European Parliament, Martin Schultz and European Council President Donald Tusk expressed sorrow and regret for the results, despite respecting the will of the British people to leave the Union. The heads of governments and European leaders also expressed their regret for the departure of Britain from the Union.<sup>5</sup>

The European reaction expressed a European official desire for the continued membership of Britain in the Union, where the French government rushed to hold a meeting to discuss the repercussions of Britain's exit from the European Union. French President François Hollande said, "The decision of the British puts Europe in the face of a serious test". While German Foreign Minister Frank-Walter Steinmeier said that, "the European leaders have to work to maintain the cohesion of Europe after British voters supported their country's withdrawal from membership of the Union".<sup>6</sup>

On the contrary, right-wing parties in Europe welcomed the results of the vote and called for similar referendums in their countries. Marin Le Pen, leader of France's National Front, described the referendum results as "a victory for freedom, as I have been demanding for many years. Now we need a similar referendum in France and in the EU".<sup>7</sup>

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<sup>4</sup> ibid 3

<sup>5</sup> Joint Statement by Martin Schulz, Donald Tusk, Mark Rutte and Jean-Claude Juncker on the outcome of the United Kingdom Referendum( European Parliament web site, 24 June 2016) <[www.europarl.europa.eu/news/en/press-room/20160624IPR33834/joint-statement-by-schulz-tusk-rutte-and-juncker-on-uk-referendum-outcome](http://www.europarl.europa.eu/news/en/press-room/20160624IPR33834/joint-statement-by-schulz-tusk-rutte-and-juncker-on-uk-referendum-outcome) > accessed 7 October 2018

<sup>6</sup> Referendum on the UK's European Union membership (French Embassy in US web site, 24 June 2016) < [fr.franceintheus.org/spip.php?article7630](http://fr.franceintheus.org/spip.php?article7630) > accessed 8 October 2018

<sup>7</sup> Marin Le Pen statement (the guardian, 24 June 2016) < [www.theguardian.com/world/2016/jun/24/european-far-right-hails-britains-brexit-vote-marine-le-pen](http://www.theguardian.com/world/2016/jun/24/european-far-right-hails-britains-brexit-vote-marine-le-pen) > accessed 8 October 2018

The British-European relationship entered a new turning point on June 23, 2016. UK's membership in the European Union was not smooth or stable, but it has undergone many obstacles and difficulties, and it has always aroused public and official controversy since joining to the European Community in 1973.

## **II. Research Question**

My thesis aims at exploring the legal framework for UK withdrawal from the EU and discussing the necessary legal mechanisms in British legislation and in EU treaties. The thesis explores the legal implications of the activation of Article 50 of the Treaty of Lisbon on UK's membership in the European Union, as well as the legal effects of EU (withdrawal) Act 2018 in the UK. The thesis seeks to discuss the legal challenges facing the negotiations by analyzing the negotiation documents. It studies also obstacles that might prevent a smooth UK withdrawal from the EU. It examines the shape of the future relationship between the EU and the UK after the withdrawal and the UK's relationship with non-EU members.

## **III. Methodology and Chapters Overview**

The analytical descriptive approach will be used to answer the research questions. Where I describe the EU-UK relations thoroughly before the referendum and deal with the negotiations between the two sides through legal analysis and critical reading.

In the first chapter, the thesis examines the relationship between the UK and the EU before the referendum and it highlights on the internal situation in the UK in order to understand the reasons for the Brexit. The thesis shows the forces, which supported the UK withdrawal from the EU, as well as pro-EU forces. The thesis also addresses the results of the 2016 referendum and its impact on the domestic situation in the UK.

In the second chapter, the thesis examines the time frame for the UK's withdrawal from the EU. The thesis deals with the activation of article 50 of the Treaty of Lisbon, which examines the guidelines for negotiations between the UK and the EU approved by the European Council. The thesis also discusses

EU (withdrawal) Act 2018 and the internal mechanisms for brexit.

In the third chapter, the thesis deals with the first phase of the negotiations and it discusses the most important issues of negotiations during the first phase. The thesis examines the mechanisms of financial settlement between the European Union and the United Kingdom and it identifies the rights of citizens recognized by both parties to EU and UK citizens living in the territory of the other party. The thesis analyzes the legal documents of the negotiations, in particular the joint report and explains the agreed legal mechanisms to resolve the dispute between the parties.

In the fourth chapter, the thesis deals with the second phase of the negotiations. The thesis presents the legal solution in the negotiations on the issue of the UK's sovereign base areas in Cyprus. The thesis also discusses the agreement on the Gibraltar issue. The thesis analyzes the legal challenges that have faced the negotiations in the border issue between the Republic of Ireland and Northern Ireland and explains the agreed backstop mechanism to resolve the Irish issue. The thesis deals with terms and conditions for the transitional period. In addition, it shows possible scenarios for Brexit.

In the fifth Chapter, the thesis discuss the future relationship between the EU and the UK after the Brexit. The thesis highlights two important models of EU trade agreements, the Norwegian model and the Swiss model, And the possibility of using them in the new free trade agreement. The thesis deals the UK's future relationship with non-EU member states.

## **CHAPTER 1**

### **THE RELATIONSHIP BETWEEN UK AND EU FROM ESTABLISHMENT TO BREXIT**

After the Second World War, the European countries sought to establish peace and prevent being drawn into wars and conflicts. After a long period of conflict, the Europeans concluded that economic integration was the only way to ensure peace.

British Prime Minister Winston Churchill said in 1946, "We must build a kind of United States of Europe. In this way only will hundreds of millions of toilers be able to regain the simple joys and hopes which make life worth living". However, the actual beginning of the idea of the European Union came from France.<sup>8</sup>

In 1950, French Foreign Minister Robert Schuman proposed strengthening co-operation in coal and steel. In 1952, the European Coal and Steel Community was established. It included six countries - France, Germany, Italy, Luxembourg, the Netherlands and Belgium - consisting of the high authority, the Parliamentary Assembly and the Court of Justice.<sup>9</sup>

In 1957, the European Economic Community (EEC) was established. Its aim was to create free movement of goods, services, persons and capital. In addition to, cancellation of customs duties on manufactured goods and establishment of a common agricultural and foreign trade policy. The EEC was established under the Treaty of Rome, which took into force in January 1958.<sup>10</sup>

### **1.1 Accession of UK to European Community**

After the founding of the European Community in 1957, the Conservative government led by Anthony Hayden discussed joining the European Community. However, they eventually dropped out of joining because they played down the importance of the group and its ability to achieve its goals. Developments have proved the wrong vision of the British government. Economic Community countries have flourished economically while UK has suffered economic decline. These developments encouraged the conservative government led by Harold Macmillan to join the European Community. Nevertheless, French President Charles de Gaulle used veto on Britain's accession because of the strong relationship between UK and the United States

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<sup>8</sup> Bojana Perisic, Britain and Europe: a History of Difficult Relations( Institute for Cultural Diplomacy, 2010)

<sup>9</sup> Fontaine, Europe \_A fresh start: the Schuman declaration 1950-90 (first edition, EC Official publication, 1990)

<sup>10</sup> Rome treaty, Article 2, 1958

would prevent UK to work for succession of the European Community.<sup>11</sup>

In 1967, the British government led by Harold Wilson made another request. However, President De Gaulle vetoed again, French President George Pompidou withdrew the veto and UK was accepted under the government of conservative Prime Minister Edward Heath. In 1973, UK, Denmark and the Republic of Ireland joined to the European Community, The three countries were given a transitional period until 1977 in order to meet their requirements for joining the European Community.<sup>12</sup>

## **1 .2 The 1975 Referendum and the Continuation of Crises**

After UK joined the European Community, The membership of the United Kingdom has divided the British society. Opponents of UK's membership argued that accession to the European Community led to lost sovereignty of UK, while the customary constitution regarded sovereignty as the high authority in the state. The economic situation in UK continued to deteriorate, particularly in the 1973 oil crisis.<sup>13</sup>

Labor leader Harold Wilson pledged to hold a referendum on British membership in the European Community. After his victory, the British government organized the referendum, with 67.23% of voters supporting Britain's survival in the European Community while 32.77% voted against survival. The result of referendum lead to continue of Britain's membership in the European Community.<sup>14</sup>

Disputes over the erosion of Britain's sovereignty and the transition a decision-making center to Brussels reemerged under Prime Minister Margaret Thatcher in 1979, when Thatcher stood up against a policy of full political, economic and social integration. Her era was marked by the growing isolation of Britain in Europe. There was another dispute in 1984 about the European budget, where

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<sup>11</sup> Sarah Pickard, *Civilisation Britannique-British Civilisation* (10th Edition, Collection Langues pour tous, 2015)

<sup>12</sup> Stephen Weatherill& Paul Beaumont, *EU Law*(3rd edition, London: penguin,1999) 6

<sup>13</sup> Grzegorz Ronek, *Britain's membership in the European communities and the European union*(POLISH POLITICAL SCIENCE,2013) 231

<sup>14</sup> *ibid* 13

the British government saw it contribute more to the European budget compared with the size of Britain's benefits. This can be attributed to the fact that a significant part of the European budget was spent on agriculture while agriculture is not a major sector in UK.<sup>15</sup>

### **1.3 Establishment of the European Union**

The European Council, held in Maastricht in December 1991, agreed to establish the European Union. The Treaty was signed on 7 February 1992 and entered into force in November 1993. According to the Maastricht Treaty, the Union consists of three bodies: the European Community, the Common Foreign and Security Policy, Justice and Home Affairs.

The British government ratified the agreement under Prime Minister John Major in 1993, but the Major government preferred not to join the Common Social Policy and the Economic and Monetary Union. Consequently, Britain did not join to the common currency and continued to use the British pound.<sup>16</sup>

After the Labor Party came to power, Tony Blair's government adopted a new approach by working to find a British leadership for the EU and sought to strengthen Britain's role in the Union and find a balance between British interests and EU common policy.<sup>17</sup>

On June 27, 2007, Gordon Brown assumed the post of prime minister in succession to Tony Blair. During Brown's term, Britain signed the treaty of Lisbon on December 13, 2007 and entered into force on December 1, 2009. The treaty of Lisbon amended the Rome Convention 1957 and the Maastricht Treaty 1993, for first time, Member States have the right to leave the Union in accordance with Article 50 of the treaty.<sup>18</sup>

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<sup>15</sup> R. Leach, B. Coxall, L. Robins, British Politics (First Edition, Palgrave Macmillan, Basingstoke & New York, 2006)

<sup>16</sup> Anthony Forster, Euroscepticism in Contemporary British Politics: Opposition to Europe in the British Conservative and Labour Parties since 1945 (first edition, Routledge, 2002) 361-363

<sup>17</sup> Chris Gifford, the Making of Eurosceptic Britain: Identity and Economy in a Post-Imperial (second edition, Ashgate, 2008)

<sup>18</sup> The treaty of Lisbon, Article 50, 2009



Despite the policy of openness towards Europe, adopted by Blair and followed by his predecessor, Gold Brown, the long-standing conflicts between Britain and the Union remained unresolved.

#### **1.4 David Cameron's Governments**

The 2010 election came in favor of the Conservative Party after winning 35 percent of the vote. Golden Brown resigned and David Cameron formed the new government. Cameron allied himself with the Liberal Democrats to form the government. The difference in the positions of the two parties on the EU before the elections was clear. The Conservative Party stood up against the strengthening of the EU's powers because the broad powers of the Union's institutions posed a threat to internal sovereignty. The party considered that the exemptions obtained by the Labor Party from the Treaty of Lisbon were insufficient; Liberal Democrats were seen as supporters of the European Union and supporters of Britain's accession to the single currency euro through a referendum. The two parties sought to form a common vision of the relationship of the Union. This vision is to negotiate for reforms in the Union and achieve balance in the relationship with the Union to ensure the achievement of British interests and the implementation of the common policy of the Union.<sup>19</sup>

During the reign of the Conservatives, the demands for a referendum for the exit from the European Union increased. These claims led by the British Independence Party (UKIP), Cameron refused in 2012 to hold a referendum on the exit from the Union.<sup>20</sup>

In 2012, the term "brexit" appeared for the first time and it was widely used in the media and social media pages. The term refers to Britain's exit from the European Union and was derived from the term Grexit, which was used to

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<sup>19</sup> Philip Lynch, *The Cameron-Clegg Government: Coalition Politics in an Age of Austerity*(first edition, Palgrave Macmillan UK,2011)

<sup>20</sup> Irina Kruhmalova, *Analysis of British relations with the European Union during the last three decades*(University of West Bohemia in Pilsen,2014)

express Greece's potential exit from EU due to the debt crisis.<sup>21</sup>

On January 23, 2013, David Cameron, in a speech in Bloomberg, promised to hold a referendum on Britain's membership in the European Union if the Conservative Party won the 2015 general election. Cameron tried to win supporters of exit from the European Union, especially in the Conservative Party.<sup>22</sup>

Campaigning focused on economic and living issues such as health, education, distribution of government spending and debt relief as well as the relationship with the European Union. The campaigns showed a lot of divergence in party views, especially between the Conservative party led by David Cameron and the labor party led by Ed Miliband as well as the Scottish National Party, Liberal Democrats and United Kingdom Independence Party.

The general elections were held on May 7, 2015, with 66.1% participation. The Conservative Party won 37% of the vote, allowing it to occupy 331 seats in the House of Commons, while Labor won 30% or 232 seats in the House of Commons. Scottish Nationalists get 56 seats, Liberal Democrats' seats dropped to eight seats after winning 57 seats in the 2010 elections, and .the UK Independence Party won one seat despite winning 12% of the vote.<sup>23</sup>

The election led to the resignation of the Labor Party leader Miliband, Nick Clegg leader of the Liberal Democrats Party, and Nigel Farage leader of the UK Independence Party (UKIP). On May 11, David Cameron formed a majority government from Conservative included 21 ministers.

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<sup>21</sup> Ikram Moussaoui, the United kingdom Euroscepticism and The Brexit' Referendum 1973/2016 (University of Tlemcen, 2017)

<sup>22</sup> David Cameron, EU speech at Bloomberg (UK government web site, 23 January 2013) <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> >accessed in 11 October 2018

<sup>23</sup> 2015 General election results summary (UK political info,7 May 2015) [www.ukpolitical.info/2015.htm](http://www.ukpolitical.info/2015.htm) >accessed in 11 October 2018

## 1.5 Brexit Referendum

After winning the election, David Cameron had to hold a referendum on Britain's membership in the European Union. On May 27, 2015, the British government submitted a bill to parliament detailing the mechanisms of the referendum. The House of Commons discussed the bill and approved it with 458 to 53 on June 10, 2015. The Act specifies the question to be answered by the voters in the referendum: Should the UK remain a member of the EU.<sup>24</sup>

David Cameron outlined his government's vision of the EU, which is based on competitiveness and the decision-making mechanism in both directions – from member states to the EU so that national the authorities are the true source of democracy and accountability in the Union. <sup>25</sup>

He also said that the British people would decide whether they wanted to remain in EU or leave and that the European Union should carry out reforms that persuade British voters to stay and rebalance the relationship between UK and EU, Cameron's reforms included four points:

First, to protect the non-Eurozone countries from the EU's common fiscal policy and not to incur additional costs for this policy.

Second, ending the routine in the EU institutions and removing the regulatory burdens of the industry, increasing the competitiveness of the Union towards the countries of the world.

Thirdly, Cameron called on the EU to have a binding and clear agreement to exempt Britain from joining a more close union to preserve Britain's internal sovereignty.

Fourthly, restricting social assistance to migrants from EU Eastern European countries and proposing suspension of such assistance for a period of four years.<sup>26</sup>

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<sup>24</sup> European Union Referendum Act 2015

<sup>25</sup> David Cameron, statement at Lisbon (UK government web site, 4 September 2015) <[www.gov.uk/government/speeches/migration-and-eu-reform-pm-statement-in-lisbon](http://www.gov.uk/government/speeches/migration-and-eu-reform-pm-statement-in-lisbon) >accessed in 11 October 2018

<sup>26</sup> ibid 25

The British government negotiated with the European Union to ratify Cameron's reform demands. On February 20, 2016, the two sides reached agreement on several points including:

First, UK obtained guarantees from the EU not to discriminate against British companies operating in the euro-zone countries and allowed UK to express concern about the common fiscal policy if British interests were harmed.

Secondly, Cameron's demand to reduce red tape and increase the EU's competitiveness towards the world's countries was the easiest requirement because it was the consensus of all EU Member states.

Thirdly, the EU agreed to grant UK an exemption from entry into the closest union. Britain pledged not to disrupt the entry of other countries so that it could withdraw. National parliaments were given the ability to suspend the Union's decisions if 55% of the Union's parliaments voted against the resolution.

Fourthly, the EU granted UK the right to use emergency brakes, which would allow for the suspension of aid to immigrants from the EU countries for seven years, and allowed UK to reduce child allowances from social assistance starting in 2020.<sup>27</sup>

After determining the date of the referendum, the pro-stay and exit campaigns were launched. Britain witnessed a sharp political split during that period, as this division was reflected on the British Society, in the media and social media. "remain" campaigns focused on the potential economic damage to Brexit from the EU and it introduced to convince the public many of politicians, economists, analysts and journalists from Britain and Europe. While "leave" campaigns considered economic damage merely intimidation of the people, and described the figures who organize "remain" campaigns that they are non-patriotic and dishonest.<sup>28</sup>

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<sup>27</sup> David Cameron strikes a European Union deal (the economist, 20 February 2016) <[www.economist.com/britain/2016/02/20/david-cameron-strikes-a-european-union-deal](http://www.economist.com/britain/2016/02/20/david-cameron-strikes-a-european-union-deal)> accessed in 12 October 2018

<sup>28</sup> Martin Moore and Gordon Ramsay, UK media coverage of the 2016 EU Referendum campaign (King's college London, 2017) 164-165

On the other hand, the “leave” campaigns focused on issue of disadvantages of immigration and the costs borne by Britain from social assistance to immigrants, Campaign leaders such as Boris Johnson and Nigel Farage have seen emigrants cause a devastating impact on Britain. Major British newspapers such as Daily Telegraph and Daily Mail have participated in the campaign against immigrant and immigration campaign. Considering that, immigration and migrants are responsible for many of the political and economic problems in Britain, while the “remain” campaign denied these allegations, and accused leaders of “leave” Campaign intolerance and discrimination against immigrants. The factors of economy, Immigration and health care have been the most important in the remain and leave campaigns, while other factors, such as sovereignty, the environment and foreign policy, have been addressed in a secondary way.<sup>29</sup>

On June 16, 2016, the split in the British Society culminated in the killing of Labor MP Joe Cox in town of Birstall northern of England as she headed for a constituency meeting. Thomas Mir, a 52-year-old Briton, was convicted of murder for her pro-immigration and pro-Britain membership positions in the EU. This incident was a shock to the British Society and the campaign of remain and leave was halted a week before the date of the referendum.

On the morning of June 23, 2016, the British choose between “remain” and “leave” in the European Union. In the referendum, 72.2% of the eligible voters voted and 51.89% chose to “leave” while 48.11% chose “remain.”<sup>30</sup>

The results of the referendum were a shock to Britain, Europe and world, The British decided to leave the EU after 43 years of entry into the European Community. Prime Minister David Cameron announced his intention to resign and called for a new prime minister to lead the exit negotiations from the European Union. On July 23, Cameron resigned and Theresa May formed the new Government to take over the process of tough negotiations with the European Union.

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<sup>29</sup> ibid 28

<sup>30</sup> EU referendum (BBC news, 23 June 2016) < [www.bbc.com/news/politics/eu\\_referendum/results](http://www.bbc.com/news/politics/eu_referendum/results) > accessed in 13 October 2018

## CHAPTER 2

### THE PREPARATIONS OF BREXIT NEGOTIATION

Queen Elizabeth II appointed Theresa May as prime minister after accepting the resignation of her predecessor, David Cameron, according to which the majority leader in the House of Commons would form the government.

Boris Johnson, the pro-departure of the Union, was appointed Foreign Minister, while Philip Hammond was named finance minister, Michael Fallon has served as a defense minister and David Davies was appointed secretary of state for exit from the European Union.

Theresa May said she was in favor of remaining in the union but would respect the will of the British people and there would be no attempts to remain in the EU, she also said: "We are living through an important moment in our country's history. Following the referendum we face a time of great national change and I know because we are Great Britain that we will rise to the challenge, as we leave the European Union, we will forge a new, bold, positive role for ourselves in the world."<sup>31</sup>

Theresa May decided that negotiations with the European Union would not be before 2017, in order to complete the preparations for the start of the negotiation process. The British government worked in the subsequent period with the European Union to set a time frame for the British exit from the Union. So that the exit negotiations coincide with legislative work to pass an act for amending EU laws, and its introduction into British legislation. This amendment

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<sup>31</sup>Caitlin Doherty, Theresa May's first speech to the nation as prime minister - in full ( the independent,13 July 2016) < [www.independent.co.uk/news/uk/politics/theresa-mays-first-speech-to-the-nation-as-prime-minister-in-full-a7135301.html](http://www.independent.co.uk/news/uk/politics/theresa-mays-first-speech-to-the-nation-as-prime-minister-in-full-a7135301.html) >accessed in 13 October 2018

aims to fill the legislative vacuum caused by the repeal of EU laws at the withdrawal.<sup>32</sup>

## **2.1 The expected time frame for Brexit**

The UK government has agreed with the European Union to start the process of Brexit from the Union on March 29, 2017 and ends On 29 March 2019 and continuing for two years with many rounds of negotiations, the expected time frame for the exit process as follows:

March 29, 2017: UK activates Article 50 of the Treaty of Lisbon

March 31, 2017: European Council President Donald Tusk announces the guidelines of the negotiations

April 29, 2017: European leaders meet to adopt negotiating guidelines

June 2017: The beginning of direct negotiations

December 2017: According to the expectations of The EU's chief negotiator Michel Barnier, the preliminary negotiations are over

September 30, 2018: The EU's chief negotiator wants a final deal

End of 2018: The UK Parliament and the European Parliament vote on agreement

March 29, 2019: UK withdraw from European Union.<sup>33</sup>

## **2.2 Activation of article 50 of the Lisbon treaty**

In accordance with the agreed time frame between Britain and the European Union, Prime Minister Teresa May signed on March 29, 2017 a letter to Donald Tusk, President of the European Council, requesting the activation of article 50 of the Treaty of Lisbon. This article contains the legal mechanism for the withdrawal of any member state of the Union. For first time in EU treaties, the

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<sup>32</sup> Nigel Walker, Brexit timeline: events leading to the UK's exit from the European Union(House of Commons, 2018)

<sup>33</sup> ibid 32

Treaty of Lisbon contained a legal article allowing the withdrawal of any Member State.<sup>34</sup>

Article 50 allows any Member State to withdraw from the European Union in accordance with its constitutional requirements. Namely, any State has the legal right in voluntarily withdraw from the Union without interference in its sovereign decision by another Member State or institution of the Union.<sup>35</sup>

Article 50, in item 2, requires that the State wishing to withdraw notify the European Council of its intention.<sup>36</sup> The state may hold informal discussions with the EU-member States and the EU institutions with a view to determining the date of notification and arrangements.<sup>37</sup>

The European Council shall develop guidelines for negotiations and negotiating for an agreement on withdrawal arrangements and forms the future relationship between the withdrawing state and the EU. Where the European Commission is making recommendations for concluding agreements with the withdrawing countries and the Council can ask the Commission to conduct negotiations or choose another negotiator.<sup>38</sup>

In accordance with article 50, item 3, the application of all EU treaties and laws in the withdrawing State shall cease after the approval of the withdrawal agreement or two years after the date of the notification. However, the two-year term may be extended by unanimous vote of the members of the European Union. Which would require the withdrawing state to work to fill the legislative shortfall caused by the suspension of EU laws.<sup>39</sup>

The European Council shall approve the withdrawal agreement by a majority of 72% of the members of the Council and at least 65% of the population of the

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<sup>34</sup>Adam Payne, Theresa May signs the Article 50 letter (Business Insider, 28 March 2016) <[uk.businessinsider.com/theresa-may-signs-the-article-50-letter-brexite-picture-2017-3](http://uk.businessinsider.com/theresa-may-signs-the-article-50-letter-brexite-picture-2017-3)> accessed in 14 October 2018

<sup>35</sup> Treaty of Lisbon 2009, Article 50, Item 1

<sup>36</sup> Treaty of Lisbon 2009, Article 50, Item 2

<sup>37</sup> Eva-Maria Poptcheva, Article 50 TEU: Withdrawal of a Member State from the EU (European Parliamentary Research Service, 2016)

<sup>38</sup> Treaty of Lisbon 2009, Article 218, Item 3

<sup>39</sup> Treaty of Lisbon 2009, Article 50, Item 3



Member States, except for the withdrawing State.<sup>40</sup> Where the representatives of the withdrawing State may not participate in all discussions and meetings nor in the adoption of the Agreement.<sup>41</sup> European Parliamentarians who elected from the Member State can share in the discussions and vote on the approval of the withdrawal agreement because they represent all EU Citizens.<sup>42</sup>

If the withdrawing State wishes to rejoin the union, it is subject to new accession procedures in accordance with article 49 of the Treaty of Lisbon.<sup>43</sup>

### **2.3 The Negotiations Guidelines of Brexit**

After Donald Tusk received the letter of Theresa May on activation of Article 50, he presented a draft of the guidelines for negotiations to be endorsed by the European leaders during their summit on April 29, 2017.

The document was based on the European leaders' statement on June 29, 2016. It stressed that UK is a close partner in the future and that any agreement must be based on a balance between rights and duties. Any country that joins the single market has the same rights and obligations. The integrity of the single market requires that the four market freedoms be indivisible. That is, The UK's acceptance of the free movement of goods, services and capital assumes its acceptance of the free movement of persons. The European offer consists of a single package. Either a full agreement or no agreement, and there would be no unilateral negotiations between UK and any member state.<sup>44</sup>

The draft outlines the objective of the first phase of the negotiations, which is to resolve the entanglement of the rights and obligations that Britain derives from its membership in the Union. The financial settlement must cover all the obligations that were committed before the withdrawal, including the budget commitments and the contingency obligations. The direct effects of Brexit on

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<sup>40</sup> *ibid* 39, Article 238, Item3 (B)

<sup>41</sup> *ibid* 39 Article 50, Item4

<sup>42</sup> *ibid* 39

<sup>43</sup> *ibid* 39, Article 50, Item5

<sup>44</sup> European council, Guidelines following the United Kingdom's notification under Article 50 TEU( EUCO XT 20004/17, 2017) paragraph 1

the work of EU companies in the UK as well as British companies operating in the EU countries should be clarified. Negotiations should seek to provide the legal environment necessary for the continuation of existing business between the United Kingdom and EU Member States. As well as the status of persons involved in EU-funded programs or persons who have entered into commercial contracts on the basis of the continued membership of Britain in the European Union.<sup>45</sup>

The relationship between the United Kingdom and the European Union can be discussed in the second phase of the negotiations and after sufficient progress has been made in the first phase. No agreement on the future relationship can be concluded until after the Kingdom becomes a third party. Negotiations can define transitional arrangements to provide bridges for transition to future relationships, but arrangements must be clear and timely and linked to operational mechanisms.<sup>46</sup>

The European Union citizen's right to live, work and study in any of the EU countries is one of the basic principles of the Union. Britain's withdrawal from the European Union affects the lives of millions of people. The EU stresses the need to reach agreement according to mutual guarantees for the settlement of EU citizens in Britain, as well as Britons in the Union.<sup>47</sup>

The EU expressed its support for the peace and reconciliation process on the island of Ireland. The EU also affirmed the need to preserve the achievements and benefits of the Good Friday Agreement and to find flexible and innovative solutions to the border issue between the Republic of Ireland and Northern Ireland.<sup>48</sup>

The European Union must also agree with the United Kingdom on the arrangements of its sovereign base in Cyprus, recognizing the bilateral

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<sup>45</sup> ibid 44, paragraph 8-9

<sup>46</sup> ibid 44, paragraph 5

<sup>47</sup> In full: The EU's draft guidelines for Brexit negotiations, (telegraph, 31 March 2017) <  
[www.telegraph.co.uk/news/2017/03/31/full-eus-draft-guidelines-brexit-negotiations/](http://www.telegraph.co.uk/news/2017/03/31/full-eus-draft-guidelines-brexit-negotiations/)

>accessed in 16 October 2018

<sup>48</sup> ibid44, paragraph 11

agreements between the UK and the Republic of Cyprus, which are in conformity with the laws of the European Union, in particular with respect to EU nationals residing or working in sovereign base areas.<sup>49</sup>

The United Kingdom is not a member of international agreements signed by the European Union after withdrawal. The European Council expects the UK to respect agreements signed by the EU during its membership. A constructive dialogue with the UK can be conducted to achieve a common approach to international organizations and countries around the world.

The withdrawal agreement should include appropriate mechanisms for the settlement of disputes. The agreement should also create operational mechanisms allow for the resolution of disputes that may arise over the interpretation or application of the agreement. Institutional arrangements should be established to allow appropriate measures to deal with unexpected cases. The European Court of Justice would remain competent to adjudicate all proceedings and issues or natural and legal persons are parties thereto, and legal certainty and equal treatment should be ensured before the Court.<sup>50</sup>

The European Council welcomed the establishment of a close partnership between the European Union and the United Kingdom after its withdrawal and stressed that strong relations would remain in the interests of the two parties and should include more than trade. The Council is ready to reach a trade agreement to be concluded after the UK withdrawal from the Union. Free trade is balanced, ambitious and wide-ranging, and any future framework must ensure the financial stability of the Union. The EU also expressed its readiness to establish Partnerships in the field of combating terrorism, organized crime, foreign policy, defense and security.<sup>51</sup>

The European Council affirmed in the negotiating guidelines that the United Kingdom would remain a full member until its withdrawal. The UK would enjoy full rights and comply with the full obligations set out in the treaties and laws of

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<sup>49</sup> *ibid* 44, paragraph 12

<sup>50</sup> *ibid* 44, paragraph 17

<sup>51</sup> *ibid* 44, paragraph 18

the European Union. The Kingdom should participate in all the ongoing work of the Union, Except for those relating to the exit negotiations of the United Kingdom where attendance and decision-making is limited to States<sup>27</sup>.<sup>52</sup>

## 2.4 European Union (Withdrawal) Act

After the activation of article 50 from the Treaty of Lisbon, the British government worked on drafting the European Union withdrawal Act. The Act aims to avoid the legislative vacuum resulting from the UK withdrawal from the European Union. On July 13, 2017, David Davis the secretary of State for Exiting the European Union presented the bill to the House of Commons. The discussion of the Act continued in British Parliament for about a year. The act was amended several times until passed by the House of Commons and the Lords and received Royal Assent on 26 June 2018.<sup>53</sup>

The Act specifies the date of the UK's withdrawal from the European Union at 11 pm GMT on 29 March 2019. The Act set January 21, 2019 as a deadline for the government to reach a withdrawal agreement with the European Union and its adoption in the House of Commons. If the government does not reach an agreement with the EU or fails to pass the draft agreement in the House of Commons, the government should submit a statement to the House of Commons explaining the course of the Brexit negotiations.<sup>54</sup>

The EU (withdrawal) Act 2018 repealed the European Communities Act 1972 (ECA 1972) .ECA 1972 is the legal basis for EU treaties as well as the laws and decisions of the EU institutions, and gives sovereignty to EU laws over British legislation. According to part 1 of the EU (withdrawal) Act 2018, the laws of European Union do not enjoy supremacy over British legislation after the day of withdrawal. The Charter of Fundamental Rights of the European Union also will not be part of British legislation when the UK leaves the EU. However, the

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<sup>52</sup> ibid 44, paragraph 25

<sup>53</sup> Richard Eccles, The European Union (Withdrawal) Act 2018 (Bird and Bird,1 July 2018) <[www.twobirds.com/en/news/articles/2018/uk/european-union-withdrawal-act-2018](http://www.twobirds.com/en/news/articles/2018/uk/european-union-withdrawal-act-2018) >accessed in 18 October 2018

<sup>54</sup> ibid 53

rights, obligations and compensations recognized prior to the date of exit under the ECA 1972 will continue recognized.<sup>55</sup>

The European Union (Withdrawal) Act 2018 grants ministers the power to make secondary amendments to the laws of the European Union and to convert them into British legislation. According to Section 8 of the Act, the repeal of all references to the European Union or the Union's institutions in the laws and the transfer of powers granted to these institutions to British institutions from the date of withdrawal to make the necessary adjustments. The Act limited the powers of ministers to make technical amendments, either substantive amendments, which would be the competence of the parliament.<sup>56</sup> Amending the EU's laws and converting them into British legislation is a huge and complex task because of the large number of laws adopted by the EU during UK membership.

The European Union (Withdrawal) Act 2018 states that the judgments of the European Court of Justice are binding on British courts until day of exit and these judgments has the same binding force as those of the Supreme Court in UK. The judgments issued after the date of the withdrawal are not binding on British courts. However, the law gave British judges the discretionary power to use the judgments of the European Court of Justice in interpreting domestic law, as it still resembles European law in its content.<sup>57</sup>

This Act will provide certainty to companies operating in the UK because it allows the amendment of EU laws and their incorporation into British legislation. The ministers will be responsible for making the necessary amendments to the laws efficiently and effectively within the period specified in the Act.

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<sup>55</sup> European Union (Withdrawal) Act 2018, section4

<sup>56</sup> *ibid* 55, section8

<sup>57</sup> *ibid* 55, section9

## CHAPTER 3

### THE FIRST PHASE OF THE BREXIT NEGOTIATIONS

The first round of Brexit negotiations between the UK and the EU began on June 19, 2017. The EU's chief negotiator, Michel Barnier, received David Davis the Secretary of State Department for Exiting the European Union. Before the meeting Barnier said "our goal is clear: we must first dispel the suspicion created by Brexit, I hope we can set priorities and schedule".<sup>58</sup> While Davis said "We are starting these negotiations in a positive and constructive manner, and we are determined to build a strong and special partnership with the EU after Brexit".<sup>59</sup>

In this round, preliminary agreement was reached on the holding of four rounds within the first phase of the negotiations at the rate of one round per month. The first phase will end in the fifth round scheduled for October 9, and the duration of each round is four days. It was agreed also that the negotiations in the first phase would include three issues: the rights of EU citizens in UK and the rights of British citizens in EU countries, the financial settlement and the border between the Republic of Ireland and Northern Ireland. It must make significant progress on these issues before moving to the second phase, which is considering the future relationship between the United Kingdom and the European Union and the possibility of signing a trade agreement.<sup>60</sup>

#### 3.1 Citizens' Rights

The European Union and the United Kingdom fought long and arduous negotiations that began in the second round in July and ended in the fifth round, which took place between 9-13 Octobers. The two sides reached an agreement based on mutual guarantees for EU citizens residing in UK and British citizens residing in EU countries. Based on EU law and previous place of residence, it

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<sup>58</sup> Michel Barnier statement (daily mail, 20 June 2017) < [www.dailymail.co.uk/news/article-4617284/Johnson-hails-opportunities-Brexit-talks-start.html](http://www.dailymail.co.uk/news/article-4617284/Johnson-hails-opportunities-Brexit-talks-start.html) >accessed in 23 October 2018

<sup>59</sup> ibid 58

<sup>60</sup> The Brexit Negotiations: Issues for the First Phase (European Parliamentary Research Service Blog,23 June 2017) < [epthinktank.eu/2017/06/23/the-brexit-negotiations-issues-for-the-first-phase/](http://epthinktank.eu/2017/06/23/the-brexit-negotiations-issues-for-the-first-phase/) >accessed in 23 October 2018

refers to those persons who used freedom of movement and lived in the territory of the other member state in a date prior to the UK withdrawal from the European Union.<sup>61</sup>

Equal treatment of citizens should be applied to social security, health care, labor rights, self-employment, organizing and managing the undertaking, education, training and social and tax benefits. The agreement Urged to ensure equality of opportunity between citizens of the host country and those legally residing in accordance with the withdrawal agreement.<sup>62</sup>

### **3.1.1 The Right of Legal Residence**

In accordance with the agreement, the United Kingdom and the States 27 shall grant legal residency rights to citizens who had legal residence prior to the scheduled date of withdrawal. Any discrimination based on nationality in the host country or the State of employment between British citizens and EU citizens and their families shall be prohibited by both parties. The United Kingdom and 27 States should facilitate the entry of persons with legal residence prior to withdrawal to the territory of host States if they do not reside in the host State upon withdrawal.<sup>63</sup> Holders of residence in accordance with the withdrawal agreement may be absent from the host country for five years without loss of the right to permanent residence.<sup>64</sup>

### **3.1.2 Family Reunification**

The agreement grants non-resident family members the right to join an EU citizen or a British citizen had legally resident in the host country in accordance with the conditions set forth in the law of the Union. The right also includes children who are born or legally adopted after the date of withdrawal.<sup>65</sup>

Article 4 of Directive 2004/38 / EC defines family members covered by this right as four categories. First, spouse. Second, partner if the partnership is registered

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<sup>61</sup> 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, joint report ( TF50 (2017) 19 – Commission to EU 27, 2017) paragraph 7

<sup>62</sup> *ibid* 61, paragraph 28-29-31.

<sup>63</sup> *ibid* 61, paragraph 13

<sup>64</sup> *ibid* 61, paragraph 25

<sup>65</sup> *ibid* 61, paragraph 12

and the legislation of the host country treats the partner as the spouse. Third, Direct descendants under the age of 21 or have been supporting husband or partner. Fourth, Direct relatives in the upward line of spouse or partner.<sup>66</sup>

### **3.1.3 Simplified Administrative Procedures**

The United Kingdom and EU countries may request the persons concerned to apply for legal residency .The United Kingdom and 27 States should apply simple, smooth and transparent procedures, spare citizens from complex administrative procedures and only request documents necessary to establish their right to residence, and the authorities Concerned to avoid making mistakes or omissions while studying applications. In case of error, the applicant shall be given the right to review the authorities for the necessary rectification.<sup>67</sup>

The citizens of the United Kingdom and the 27 States concerned should be given sufficient time to submit their applications and at least two years from the date of withdrawal, and persons who missed the deadline could be considered and given good reason to delay their application.<sup>68</sup>

### **3.1.4 Social Security and Health Care**

British citizens of EU countries 27 and citizens of EU countries in the UK will continue to have access to health care services following the withdrawal as provided for under EU law.

The social security coordination rules will be used to cover the conditions of citizens of EU member states who have been subject to British legislation and British citizens who have been subject to EU law to ensure that they continue to receive old-age pensions, and will use coordination rules to collect social security periods.

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<sup>66</sup> Directive 2004/38/EC of the European parliament and of the council 2004, Article 2

<sup>67</sup> *ibid*61, paragraph1 7

<sup>68</sup> *ibid* 61



### 3.1.5 Recognition of Qualifications

It was agreed that the United Kingdom and the 27 States would recognize the professional qualifications accorded to persons covered by the withdrawal agreement. The persons concerned had previously obtained recognition of their qualifications under EU law, they will be able to renew recognition of their qualifications. The agreement included border workers, employers and self-employed workers.<sup>69</sup>

Law and would be able to renew recognition of their qualifications. The agreement included frontier workers, employers and Self-employed.<sup>70</sup>

### 3.2 Financial Settlement

The financial settlement one of the most important and most complex negotiating files between the EU and the UK. Because of the multiple areas of financial interrelations between the two sides such as EU budget and the financial arrangements of the European Investment Bank. As well as the European Central Bank, the European Credit Fund ,the European Development Fund and contribution of the United Kingdom in EU commitments to other countries. The two sides have engaged in several rounds of negotiations. At the end of the first phase of the negotiations, the United Kingdom and the European Union announced the agreement on a methodology for the financial settlement.<sup>71</sup>

The methodology specifies the components of the financial settlement, the principles of the financial settlement account and the method of payment. The methodology also includes a set of arrangements for the continued participation of the United Kingdom in the current Multiannual Financial Framework (MFF) until its closure. As well as financial arrangements for the European Investment

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<sup>69</sup> David Davis statement ( UK government web site,12 October 2017) <[www.gov.uk/government/news/david-davis-closing-remarks-at-the-end-of-the-fifth-round-of-eu-exit-negotiations-in-brussels](http://www.gov.uk/government/news/david-davis-closing-remarks-at-the-end-of-the-fifth-round-of-eu-exit-negotiations-in-brussels) >accessed in 24 October 2018

<sup>70</sup> David Davis statement ( UK government web site, 12 October 2017) <[www.gov.uk/government/news/david-davis-closing-remarks-at-the-end-of-the-fifth-round-of-eu-exit-negotiations-in-brussels](http://www.gov.uk/government/news/david-davis-closing-remarks-at-the-end-of-the-fifth-round-of-eu-exit-negotiations-in-brussels) >accessed in 24 October 2018

<sup>71</sup> Anouk Berthier and Iain McIver, Brexit: The Financial Settlement and the Withdrawal Agreement (The information center of Scottish parliament, 2017)

Bank, the European Central Bank, European Union trust funds, the Facility for Refugees in Turkey, Council agencies and the European Development Fund.<sup>72</sup>

### **3.2.1 UK's Contribution in the EU Budget**

The UK's contribution to the EU's budget is the most important component of the financial settlement. The budget is based on the Multiannual Financial Framework (MFF) and the annual framework. The EU Budget for the period 2014-2020 was approved on 19 November 2013 and the financial year begins on 1 January and ends on 31 December.<sup>73</sup>

According to the agreement, the United Kingdom will continue to pay its contribution to the annual budget for the years 2019-2020, until 31 December 2020. The amounts to be returned to, or returned by the UK will be calculated As if the United Kingdom were in the Union. The UK will also participate in the surplus exercise until 2020. However, any adjustment to the multiannual financial framework will not apply to the United Kingdom after its withdrawal.<sup>74</sup>

The agreement also provides that the United Kingdom will contribute to the financing of the budgetary commitments outstanding until 31 December 2020, but the UK will be committed to financing contingent liabilities until the date of its withdrawal only. The amounts paid by the United Kingdom will be reimbursed as collateral to finance contingent liabilities if they are not used to finance the losses of core financial operations. All the amounts required from the UK shall be paid at the time of their due date and the Kingdom shall not be required to pay its obligation at the time of its immediate withdrawal.<sup>75</sup>

### **3.2.2 UK Participation in Programs of the MFF 2014-2020**

In accordance with the agreement, the United Kingdom is committed to contributing to the funding of programs within the Multiannual financial framework 2014-2020. To close these programs, except for participation in

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<sup>72</sup> *ibid* 61, paragraph 58

<sup>73</sup> *Ibid* 71

<sup>74</sup> *ibid* 61, paragraph 59-60

<sup>75</sup> National audit office in UK, *Exiting the EU: The financial settlement* ( HC 946, 2018)

financial operations that lead to casual liability where the United Kingdom stops funding at the time of withdrawal. In the second phase of the negotiations.<sup>76</sup>

The United Kingdom and the EU can agree on simplified procedures to manage the UK's program financing commitments. These procedures aimed at avoiding unnecessary administrative burdens and achieving the interests of both parties in compliance with European Union .The United Kingdom has expressed its wish to participate in some programs within MFF as a non-member after withdrawal from the European Union.<sup>77</sup>

### **3.2.3 UK's Contribution in European Investment Bank (EIB)**

The EIB is the European Union's bank, it provides expertise and funding for sustainable development projects to achieve the objectives of EU policy, it work closely with other EU institutions to implement EU policy.

The European Union and the United Kingdom agreed that the financial settlement would not disrupt the European Investment Bank's operational performance. Accordingly, the UK would be committed to providing guarantee for an amount equal the callable capital amounting € 35.7 billion. While the EIB would pay the UK's share in the paid-capital amounting 3.5 Billion euros, and repayments in the form of 12 annual installments starting in end of 2019. The UK has expressed its desire to continue its relationship with the European Investment Bank after its withdrawal from the European Union. The details of the future relationship between the UK and the Bank have been left to the second phase of negotiations.<sup>78</sup>

### **3.2.4 UK's Contribution in European Development Fund**

The European Development Fund (EDF) is the main instrument of the European Union for Development Assistance for African, Caribbean and Pacific States (ACP) and External States and Regions (OCTs). It is financed through direct contributions from EU Member States in accordance with their own financial rules. Where 11th EDF was approved under a separate international

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<sup>76</sup> Department for business, energy, industrial strategy in UK , UK participation in Horizon 2020: government overview (2018)

<sup>77</sup> ibid61, paragraph73

<sup>78</sup>The European Investment Bank, financial report (2017) 7

agreement and outside the EU budget, the total financial resources of the 11th (EDF) are approximately € 30.5 billion for the period 2014-2020. Given EDF funding from outside the EU budget, the EU has agreed with the UK to continue its participation in the Eleventh European Development Fund until it is closed in 2020. The UK will commit to paying the full obligations of the Eleventh European Development Fund, in addition to the ongoing financial commitments to meet previous EDFs. It was also agreed to re-share the UK's investment facility when the investment matures, either the UK's share in the capital for the 11th EDF will not be returned before its end.<sup>79</sup>

### **3.3 The Border Between the Republic of Ireland and Northern Ireland**

The Ireland-Northern Ireland border issue is the most sensitive issue of the negotiations, given Ireland's long civil war and its conflict with the Republic of Ireland. The Good Friday Agreement of 10 April 1998 ended this war and established peace and reconciliation among the Irish people.

Eight parties in Northern Ireland as well as the British and Irish governments signed the agreement.<sup>80</sup> In accordance with the Good Friday Agreement, the United Kingdom has committed itself to protecting the operation of the Agreement and the continued implementation of agreements and arrangements resulting therefrom, including the avoidance of the hard border between Northern Ireland and the Republic of Ireland. The Brexit from the European Union and hence the Customs Union and the Common Market will result in a imposed border between the United Kingdom and the Republic of Ireland. Which means Between Northern Ireland and the Republic of Ireland, undermining the Good Friday agreement.

During the first phase of the negotiations, the United Kingdom and the European Union sought an agreement that would preserve the achievements of the Good Friday Agreement and respect the borders of the European Union. In spite of the efforts made, the two parties failed during the first phase to reach an agreement in the common interest. However, But a set of principles and

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<sup>79</sup> *ibid*61, paragraph 84-85

<sup>80</sup> Good Friday agreement 1998

commitments that will form the basis for negotiations in the second phase have been adopted.<sup>81</sup>

The EU and UK emphasized the importance of the achievements of the Good Friday Agreement, the need to maintain peace and stability on the island of Ireland, to ensure the effective implementation of the 1998 Agreement and to maintain the existing relations between Ireland and the Republic of Ireland. The United Kingdom stated its commitment to protect the agreements and arrangements annexed thereto, And to ensure the operation of the institutions and bodies established thereunder, including avoiding the hard border between Northern Ireland and the Republic of Ireland.<sup>82</sup>

The EU and UK affirmed their respect for the constitutional situation in Northern Ireland and the principle of consent produced by the 1998 Agreement. The principle of consent means the right of the people to self-determination and without external interference, based on the consent of the people of the Republic of Ireland and Northern Ireland. The United Kingdom affirmed that it still supports Northern Ireland as an integral part of it. It also supports the maintenance of the integrity of its internal market and considers Northern Ireland as part of this market.<sup>83</sup>

The EU and UK affirmed the importance of continued cooperation between the Republic of Ireland and Northern Ireland to normalize relations on the island of Ireland. The cooperation of the two sides within the legal and political framework of the European Union led to the mapping exercise. The United Kingdom expressed its support for cooperation between the Republic of Ireland and Northern Ireland in all fields Political and economic and in agricultural and community frameworks. The two Parties recalled the constructive role played by the institutions established by the 1998 Agreement, such as the Northern

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<sup>81</sup> Policy department for citizens' rights and constitutional affairs in European parliament UK Withdrawal ('Brexit') and the Good Friday Agreement, (PE 596.826, 2017)

<sup>82</sup> *ibid* 81,36

<sup>83</sup> *ibid* 61, paragraph 44

Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council.<sup>84</sup>

The United Kingdom has confirmed that any future consensual arrangements must ensure that the solid borders between the Republic of Ireland and Northern Ireland are avoided and that the Kingdom will offer specific solutions to address this unique situation if it cannot be reached within the overall relationship with the European Union. The United Kingdom will ensure that there are no new regulatory obstacles on the island of Ireland Except in accordance with the 1988 Agreement and the arrangements approve by the Northern Ireland Executive and Assembly.<sup>85</sup>

The United Kingdom has confirmed that any future consensual arrangements should ensure the avoidance of the hard border between the Republic of Ireland and Northern Ireland. The Kingdom will offer specific solutions to address this unique situation if it cannot be reached within the overall relationship with the EU. In the absence of agreed solutions, The Kingdom will maintain full compatibility between the rules of the internal market and the EU Customs Union to enhance North-South Ireland cooperation. The United Kingdom will ensure that there are no new regulatory obstacles on the island of Ireland except in accordance with the 1988 Agreement and arrangements approved by the Northern Ireland Executive Council and will continue to allow Northern Ireland companies access to the UK internal market.<sup>86</sup>

The United Kingdom and the European Union have recognized the right of citizens of Northern Ireland to obtain Irish or British citizenship or both in accordance with the 1998 Agreement. The treatment of Northern Ireland citizens will continue to be treated as European citizens and enjoy full rights and privileges recognized by European Union law.<sup>87</sup>

The application and practice of EU law to citizens in Northern Ireland ensured that all rights, guarantees and equal opportunities under the 1998 Agreement

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<sup>84</sup> European Parliamentary Research Service, The EU-UK withdrawal agreement Progress to date and remaining difficulties, (PE 625.110, 2018) 24

<sup>85</sup>ibid 84

<sup>86</sup>ibid 81, 7

<sup>87</sup> Vaughne Miller, Brexit and European Citizenship (house of commons library 2018) 208

,The United Kingdom committed that Northern Ireland citizens will enjoy the same guarantees after the UK leaves the EU, including protection from all forms of discrimination. The United Kingdom also committed to support human rights and equality institutions in Northern Ireland in accordance with the 1998 Agreement. The both Parties will continue to fund the PEACE and INTERREG programs within the MFF. These programs aim at consolidating peace and reconciliation in Ireland, supporting marginalized children and youth, and promoting projects that build positive relationships in communities. EU and UK will consider future support for these programs.<sup>88</sup>

Individuals should be able to travel between the Republic of Ireland and the United Kingdom without any impediments or restrictions within the so-called Common Travel Area. The EU and UK confirmed that this area might continue to operate while respecting the obligations of the Republic of Ireland under the laws of the European Union.<sup>89</sup>

The European Union and the United Kingdom in the first phase established a distinct framework for the continuation of negotiations during the second phase about the border issue between the Republic of Ireland and Northern Ireland and other issues relating to the unique situation on the island of Ireland. This situation requires the continuation of negotiations in the second phase, In accordance with this framework and the guidelines adopted by European Council on 29 April 2017 to reach certain arrangements in which solid borders are avoided and at the same time protect the borders of the European Union. The priority of the United Kingdom in the second phase is to find a solution to the issue of border in the context of the future relationship with the European Union. If that is not possible, UK Will resort to offering specific solutions to address this situation as a second option or try to achieve full compatibility between the protection of the internal market of the Kingdom and the EU Customs Union as a last option.

Despite the progress made in the three issues in the negotiations, a sixth round was held on 10 November 2017 to reach an initial agreement and to ensure

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<sup>88</sup> Policy department for citizens' rights and constitutional affairs of European parliament, Brexit and Ireland Legal, Political and Economic Considerations (PE 596.825, 2017) 13

<sup>89</sup> *ibid* 88, 15

that progress is sufficient for the transition to the second phase. The negotiations in this round were oral and lasted two days and did not produce decisive results.

On December 8, 2017 the seventh round took place, European Commission President Jean-Claude Juncker and British Prime Minister Theresa May have agreed on the initial agreement on issues discussed in the first phase – the rights of citizens, the financial settlement and the border between Northern Ireland and the Republic of Ireland. The two sides adopted a joint report defining progress in the phase First, with discussions to be completed in second phase. On 15 December, the European Council of recognized that progress in the first phase was sufficient for the transition to the second phase of the negotiations.<sup>90</sup>

## **CHAPTER 4**

### **THE SECOND PHASE OF THE BREXIT NEGOTIATIONS**

The European Council adopted at their meeting on 15 December 2017 the guidelines for the transition to the second phase of the negotiations.

The European Council called for the negotiations in the second phase to include all issues of withdrawal, including those that were not discuss in the first phase accordance with the guidelines adopted by the European Council on April 29, 2017. The council also called to begin formulating the withdrawal agreement on the issues agreed upon in the first phase, as well as the implementation of all agreed commitments to contribute to progress in the second phase.<sup>91</sup>

The European Council approved the UK proposal to negotiate a two-year transition period following the withdrawal date, in which the United Kingdom considers a third country, i.e., UK won't participate in all EU institutions, including voting, election and decision-making activities. The negotiations will

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<sup>90</sup> European Parliamentary Research Service, The Brexit process: Moving to the second phase of negotiations, (PE 614.645, 2017) 7

<sup>91</sup> European Council, the guidelines for the transition to the second phase of the negotiations, (EUCO XT 20011/17, 2017) paragraph 1-2



focus in the second phase on the transition period arrangements as well as the framework of the future relationship between the parties. The Council renewed its desire to establish a close partnership with the United Kingdom, but negotiations on this partnership would not begin until the Kingdom became a third party and the current negotiations would be confined to the framework of the future relationship.<sup>92</sup>

The first round of the second phase negotiations was officially launched in Brussels from 6 to 9 February. The two sides focused on three main issues: the transitional period, the border in Ireland, the drafting of the withdrawal agreement. They will also discuss the impact of Brexit on Gibraltar and the sovereign bases areas in Cyprus.

It is worth mentioning the European Council has allowed three member states to hold separate talks with the United Kingdom, which are the Republic of Ireland, Spain and Cyprus.

#### **4.1 The Sovereign Base Areas in Cyprus**

In 1960, the United Kingdom and Cyprus signed a treaty establishing the Republic of Cyprus. In accordance with this treaty, the United Kingdom has maintained two sovereign base areas (SBAs). The bases area is 245 square kilometers and includes small towns, schools, factories and agricultural fields with 7,700 inhabitants. The SBAs are from British Overseas Territories, they are outside the EU, but they apply some European Union laws in accordance with the Protocol annexed to the Act of Accession in 2004, under which Cyprus accessed the European Union.<sup>93</sup>

The SBAs had not raised any problems before the Brexit referendum because the United Kingdom and the Republic of Cyprus are members of the European Union. In addition, the SBAs are part of the Customs Union in three areas: VAT, Agriculture and Fisheries. But, after the 2016 referendum many issues were raised concerning the legal status of the SBAs after the Brexit and freedom of Workers in movement and the right to resident therein, where

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<sup>92</sup> ibid 90, paragraph 3.

<sup>93</sup> Robin vanholme, [Brexit's obscure impacts: the borders of Cyprus](https://eyes-on-europe.eu/brexit-impacts-cyprus/), (eyes on Europe, 1 April 2018) <[eyes-on-europe.eu/brexit-impacts-cyprus/](https://eyes-on-europe.eu/brexit-impacts-cyprus/)> accessed in 24 November 2018

15000 Cypriots work in The SBAs, As well as the the farmers' access to support from the Common Agricultural Policy.<sup>94</sup>

The Cypriot government has offered to the European Union and the United Kingdom its concerns about the impact of Brexit on the legal status of the SBAs. The European Council has adopted in the guidelines for negotiations an item concerning the need to agree with the UK on arrangements on the SBAs. After the start of the negotiations, many talks were held between the two sides. In March 2018, a protocol was agreed upon in the draft of the withdrawal agreement stipulating the necessary arrangements for the continuation of the SBAs under European Union law in accordance with Protocol 3 of the Cyprus Entry into Union Law in 2004.<sup>95</sup>

On 19 July 2018, the parties announced their commitment to the establishment of arrangements to protect the interests of Cypriot citizens and to enjoy the freedom of residence and employment in the SBAs, as well as the continued flow of goods between the Republic of Cyprus and the SBAs. It was also agreed to form a ministerial committee from the European Union and the United Kingdom overseeing the application of the Protocol on Cyprus after the approval of the withdrawal agreement.<sup>96</sup>

## **4.2 Gibraltar**

Spain abandoned Gibraltar in 1714, where Gibraltar became a British colony and in 1981 granted autonomy under the British Crown. The results of the 2016 referendum raised Spanish claims to restore sovereignty over Gibraltar. However, the United Kingdom and the Government of Gibraltar confirmed British sovereignty over the region; thousands of Spanish workers work in Gibraltar and they can move freely as Gibraltar is part of the European common market. Several sessions of negotiations between the European Union and the United Kingdom held to discuss the status of Gibraltar after the Brexit and the rights of workers. On October 18, 2018, the two parties agreed on a protocol to

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<sup>94</sup> Foreign and Commonwealth Office in House of Commons, Cyprus: Brexit and UK Sovereign Base Areas, (39931, 10435/18, COM (18) 488, 2018)

<sup>95</sup> European commission, Protocol relating to the Sovereign Base Areas in Cyprus( TF50 (2018) 35, 2018)

<sup>96</sup>ibid 94

be included in the withdrawal agreement. The Protocol protects the rights of Spanish workers, allows them to work in Gibraltar, and it will form a ministerial committee from the European Union and the United Kingdom to follow up the implementation of the Protocol. After the agreement, Spain declared that Gibraltar would not be an obstacle to the Brexit.<sup>97</sup>

### **4.3 The Transitional Period**

The European Council approved on December 15, 2017 the proposal of the United Kingdom to negotiate a two-year transition period following the date of withdrawal. The Council has set out in its guidelines a vision for the transitional period. The General Affairs Council gave a mandate to the European Commission to negotiate with the United Kingdom over the transitional period.<sup>98</sup>

The first round of negotiations began between 6 and 9 February 2018, negotiations were held in accordance with the guidelines adopted by the European Council on 15 December 2017, the parties agreed to the transitional period to begin from the date of the withdrawal of the United Kingdom on March 29, 2018 and ending on December 31 2020.<sup>99</sup>

The parties agreed that EU laws in the United Kingdom would apply during the transitional period as would the rest of the EU Member States and that the UK would comply with all the obligations arising from the agreements entered into by the Union. However, the Kingdom does not participate in the bodies established under these agreements. In accordance with the agreement, UK will continue to participate in the Common Market and the Customs Union and committee to the four freedoms during the transitional period, And to seek compliance with EU trade policy. The United Kingdom is subject to all supervisory, regulatory and judicial procedures carried out By Union institutions in accordance with the laws of the European Union, including the jurisdiction

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<sup>97</sup> Luis Ayllón, Spain agrees with United Kingdom 95% of Protocol on Gibraltar (the diplomat in Spain, 6 October 2018) < [thediplomatinspain.com/en/2018/10/spain-agrees-with-united-kingdom-95-of-protocol-on-gibraltar/](http://thediplomatinspain.com/en/2018/10/spain-agrees-with-united-kingdom-95-of-protocol-on-gibraltar/) >accessed in 24 November 2018

<sup>98</sup> The European Council, Supplementary directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union, (XT 21004/18 ADD 1 REV 2, 2018) paragraph 10

<sup>99</sup> *ibid* 98, paragraph 22

of the European Court of Justice. but the United Kingdom will not participate in meetings and discussions in the institutions of the Union or in the decision-making process, The United Kingdom may be invited to attend certain meetings and decide on a case-by-case basis and do not have the right to vote.<sup>100</sup>

#### **4.4 Framework of the Future Relationship between the EU and the UK**

On 23 March 2018, the European Council adopted the guidelines for the EU's relationship with the UK after the Brexit. In its guidelines, the European Council renewed its pursuit of the greatest possible partnership with the UK in the future. The partnership includes cooperation in the trade and economic fields as well as security, defense, foreign policy, Organized crime. Nevertheless, the European Council takes into account the desire of the United Kingdom to exit the Common Market and the Customs Union. This leads to differing external tariffs and internal rules of the market and requires the establishment of trade partnership controls between the two parties to maintain the integrity of the domestic market of the EU and the UK.

The European Council affirmed its readiness to negotiate a balanced, ambitious and broad-based free trade agreement. The Convention should be based on a balance of rights and duties. The Council stated that the United Kingdom could be accorded the same rights as Member States only if it had assumed the same obligations in accordance with the principle of equal opportunities.<sup>101</sup>

The European Council defined the concepts that will be regulated by the FTA, which are trade in goods in all areas, access to fishing waters and preservation of the resources of the parties. The agreement should also regulate trade in services with a view to providing access by companies to the provision of services in accordance with the laws of the host country, as well as access to markets for procurement, investment, and protect of intellectual property rights. The agreement also includes customs cooperation between the two parties

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<sup>100</sup> ibid 98, paragraph 16-18

<sup>101</sup> European Council, guidelines on the framework for a future relationship with the UK after Brexit, (EUCO XT 20001/18, 2018) paragraph6-7

while maintaining the independence and integrity of their respective customs regulations.<sup>102</sup>

In addition to the FTA, the European Council noted the need for cooperation with the United Kingdom in the areas of foreign policy, security and defense to respect the independence of the EU decision, considering the seriousness of common challenges such as terrorism and organized crime. That future partnership should include cooperation in facing global challenges such as climate change, pollution control and sustainable development.

The European Council noted the need for judicial cooperation with the United Kingdom, in areas such as marriage and parental responsibility as well as law enforcement in criminal areas and the development of effective enforcement and enforcement mechanisms to combat cross-border crime.

The European Council also hopes that the partnership will also include the field of transport services in order to maintain communication between the two parties. There is a need to sign an agreement in the field of air transport, safety and security of aviation, as well as cooperation in the fields of maritime and land transport.

The European Council expressed its desire to cooperate with the United Kingdom in the areas of social security coordination and recognition of professional qualifications and hoped that the United Kingdom would participate in EU programs on innovation, education, research and culture in accordance with the appropriate conditions for third country participation.<sup>103</sup>

The United Kingdom has presented its vision of the future framework of relations with the European Union within the so-called "white paper" that confirmed that the British people made their decision on June 23, 2016 to leave the EU And restore control of the laws, money and borders of the United Kingdom. The British Government will implement the People's Decision in

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<sup>102</sup>ibid 101, paragraph 8

<sup>103</sup>ibid 101, paragraph 12-13-14-15

accordance with UK policy and implementation will be in five key areas.

On the economic front, the United Kingdom, after withdrawing from the Common Market and the Customs Union, will seek to develop a broad and deep relationship that will promote future prosperity, maintain jobs and livelihoods and benefit from business opportunities around the world. The British government believes that this relationship can be broader than any other EU relationship with a third country due to its deep historical ties and based on the real and lasting benefits of both sides and the balance of rights and duties. This is achieved in accordance with the British Government's vision through a new free trade agreement between the two parties. The agreement allows for the continuous flow of goods and services between the two sides within the existing value and supply chains and avoiding new customs and regulatory controls.<sup>104</sup>

At the community level, the UK will end freedom of movement, develop a new immigration regime, adopt new policies to support fishing and agriculture communities, and safeguard citizens' safety. In this context, the UK proposes a new security partnership with the EU to maintain close cooperation and counter common security threats such as terrorism and organized crime.

For the Unit, the United Kingdom affirmed its commitment to the peace process, its support for stability and reconciliation in Ireland, the need to avoid the difficult border between the Republic of Ireland and Northern Ireland, and stressed the protection of the constitutional and economic integrity of the United Kingdom.

In the area of democracy, the White Paper considered that the United Kingdom's withdrawal from the European Union would allow the restoration of the sovereignty of the United Kingdom, where the British people would decide to choose their representatives and pass the laws they represent and implement them in the courts of the United Kingdom.

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<sup>104</sup> UK government, the future relationship between the United Kingdom and the European Union, (Cm 9593, 2018)

With regard to the United Kingdom's position in the world, the White Paper emphasized the independence of the UK's foreign policy and the need to launch new initiatives to strengthen the kingdom's standing in the world while working together with the EU to promote common European values such as democracy, openness and freedom.<sup>105</sup>

Many commonalities can be seen between UK and EU vision .Several rounds of negotiations were held between the two parties, most recently in October 2018. The negotiations witnessed significant progress as the two parties seek a political declaration of the framework for future relations after the withdrawal of the United Kingdom from the European Union.

#### **4.5 Irish Border Dilemma**

23000 people a day cross the border between Northern Ireland and the Republic of Ireland, where many Irish live on one side and work on the other. There are more than 200 crossing points along the 500-km border, passing through 3.1 million passengers per month, 170,000 trucks for cargo and 250,000 vehicles. Trade volume is estimated at 2.5 billion euros, and many Irish depend on this amount for their income.<sup>106</sup>

With the Brexit, the land border between Northern Ireland and the Republic of Ireland will become an external border of the EU. This is supposed to establish checkpoints and inspection of passengers and goods, which affects people's lives and businesses. In addition, is an obstacle to the continued implementation of the Good Friday Agreement which Established peace and stability on the island of Ireland.

The European Union and the United Kingdom agreed in the joint report to avoid the hard borders on the island of Ireland. However, the dilemma remained to find a practical solution that would ensure the avoidance of solid borders and the protection of the legal borders of the EU.

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<sup>105</sup>ibid 104

<sup>106</sup>policy department for citizens' rights and constitutional affairs, Smart Border 2.0 Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons,( PE 596.828,2017) 9

In the White Paper, the United Kingdom proposed to resolve the Irish border dilemma by signing a free trade agreement with the EU to remove tariffs and border controls for goods, as well as "common rules" of standards and regulatory requirements. So that the goods between the parties will move according to easy customs arrangements. EU negotiators have rejected the basic rules of the white paper including the facilitated customs arrangement.<sup>107</sup>

Several other proposals, such as the Smart borders, were first introduced in 2001 at the border between America and Canada. The EU adopted the Smart Border Program in 2013 to facilitate the movement of people across the Schengen border. The idea of smart borders is to use modern technology, risk management, and local and international cooperation to create safe, low-cost borders.<sup>108</sup>

Smart borders can be applied between the Republic of Ireland and Northern Ireland. It ensures the avoidance of difficult borders and the free movement of people in accordance with the Good Friday Agreement and the principles endorsed by the European Union and the United Kingdom in the joint report. Smart borders also ensure customs control through the introduction of customs duties and border government procedures in an innovative and constructive manner. This mechanism provides the elements to be covered from a customs perspective. which are the exchange of security information, risk assessment, access notification, supply of goods, demarcation of goods and persons, and customs clearance for export and import.<sup>109</sup>

EU negotiators have also suggested that mobile goods can be traced between the two sides using a barcode on freight containers under the Trusted Trader program run by registered companies. Such a solution would allow to avoid expanding the border infrastructure between Republic of Ireland and Northern Ireland.

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<sup>107</sup> Michael Johnson, the Irish border problem in brexit: the search for alternative solutions(trade knowledge exchange ,21 Sepetmber2018 ) < [trade-knowledge.net/commentary/the-irish-border-problem-in-brexit-the-search-for-alternative-solutions/](https://trade-knowledge.net/commentary/the-irish-border-problem-in-brexit-the-search-for-alternative-solutions/) >accessed in 24 November 2018

<sup>108</sup>ibid 106, 21-22.

<sup>109</sup> ibid 106,24-25



Despite the multiplicity of proposals, the approaches remained far apart. Three EU leaders' summits were agreed upon in September, October and November 2018 to resolve the fate of the negotiations. The September and October summits did not yield any progress in the negotiations. On November 14, 2018, EU and UK negotiators agreed on Protocol to resolve the Irish border issue. The protocol was included in the draft withdrawal agreement. It provides for a temporary solution to the Irish border issue called "backstop". The backstop is an arrangement that will be applied if the transition period ends without a final solution under a new EU-UK trade agreement.<sup>110</sup>

These arrangements establish a Single customs territory consisting of the United Kingdom and the European Union. Northern Ireland will be part of Single customs territory, but no customs tariffs, restrictions or examination on rules of origin will be applied between Northern Ireland and Great Britain. The United Kingdom should apply the same EU external tariffs to the goods and apply rules of origin. There will be no checks of goods on the border between Northern Ireland and the Republic of Ireland. Some checks will be conducted on goods shipped from Great Britain to Northern Ireland. These checks can be conducted on the market by the UK authorities. EU representatives have the right to attend these checks.<sup>111</sup>

According to the protocol, Northern Ireland will apply the rules of the Customs Union. Northern Ireland will comply with European Union laws on value added tax, production taxes and health, veterinary and agricultural controls. Which will allow goods of Northern Ireland to enter the single market. While the UK will abide by EU laws on state aid, the environment, competition and taxes. The inspections of farm and animal products shipped between Great Britain and Northern Ireland will be increased. For fisheries will not be part of Single customs territory and the subject of access to fishing waters will be left to negotiations between the European Union and the United Kingdom on a new free trade agreement.<sup>112</sup>

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<sup>110</sup> European commission, protocol on Ireland/northern Ireland of draft of withdrawal agreement (TF50 (2018) 55, 2018) Article 1

<sup>111</sup> *ibid* 110, Article 6

<sup>112</sup> European commission, Annex 2 of protocol on Ireland/northern Ireland(TF50 (2018) 55,2018)

The EU and the UK can agree to extend the transition period. However, the UK should request an extension before July 1, 2020. In the event of extension, the UK will continue in the Customs Union and the Common Market for two additional years. The backstop will only be implemented if the transition period ends without a final agreement on the Border between Northern Ireland and the Republic of Ireland.<sup>113</sup>

#### **4.6 Draft of Withdrawal Agreement**

On 28 February 2018, the European Commission published a draft withdrawal agreement. The European Commission has worked to transform the joint report of EU and UK negotiators into legal drafting. The draft adopted the provisions contained in the guidelines for negotiations on non-agreed issues. The draft of the withdrawal agreement was sent to the European Council for discussion and negotiation with the United Kingdom. The negotiators from the two sides reached a partial agreement following the round of negotiations, which took place between 13 and 19 March 2018. The partial agreement covered several issues: citizens' rights, financial settlement and the transitional period. On July 20, 2018, foreign ministers finalized the draft of the withdrawal agreement. The European Council is supposed to approve the draft after agreement on outstanding issues.<sup>114</sup>

On November 14, 2018, EU and UK negotiators reached a final draft of the withdrawal agreement. The draft consists of six parts in addition to a protocol on the Irish case and ten annexes. The first part is the common provisions; it contains definitions of the basic concepts of the Agreement. In addition to the legal references to the agreement. This part also identifies the issues covered by the Agreement. The second part is the rights of citizens. This section deals with the rights of EU citizens and the Kingdom residing in the territory of the other party at the date of withdrawal. Third Part is separate provisions, which include regulatory mechanisms for the relationship between EU institutions and

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<sup>113</sup> *ibid* 112, Article 3

<sup>114</sup> European Commission, Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, (TF50 (2018) 33,2018)

UK institutions in various areas such as economic, judicial and administrative.<sup>115</sup>

Fourth Part is the transition, this section deals with the mechanisms and provisions of the transitional period. Fifth Part is the Financial Provisions. This part deals with the contribution of the United Kingdom to the EU budget and its institutions and programs. In addition, it shows the mechanisms for resolving financial interconnection between the parties. Sixth Part is institutional and final provisions. This part deals with the mechanisms for implementing the withdrawal agreement as well as the legal mechanisms for resolving the disputes over the implementation of the agreement.<sup>116</sup>

Theresa May presented the draft of withdrawal agreement for the UK's withdrawal from the EU to the British cabinet. May announced that the cabinet supported the draft after lengthy discussions. However, four ministers resigned from the government of Theresa May, including Dominic Raab Secretary of State for Exiting the European Union. On November 25, 2018, the European Council approved the withdrawal agreement. Theresa May should pass the withdrawal agreement in the House of Commons where she faces strong opposition.

#### **4.7 Possible Scenarios for Brexit**

After the approval of the withdrawal agreement from the European council, the agreement must also be approved in the European Parliament and the House of Commons. It would be expected to approve the withdrawal agreement in the European Parliament. However, passing the agreement in the House of Commons is uncertain. Two parties oppose the agreement. The first part is the opponents of the Brexit , who reject the UK's exit from the EU. The second part is brexit supporters, who consider the withdrawal agreement, will make the UK hostage to the EU. Based on the House of Commons vote on the withdrawal agreement will determine possible scenarios for Brexit.

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<sup>115</sup> ibid 114

<sup>116</sup> ibid 114

#### **4.7.1 First Scenario**

If the House of Commons approves the withdrawal agreement, the UK will leave all EU political institutions on March 29, 2019, but EU laws will remain in force in the UK until the end of the transition period. The future relationship and a new FTA are negotiated in the transition period. This scenario is considered to be smoother.<sup>117</sup>

#### **4.7.2 Second Scenario**

If the British Parliament rejects the agreement reached by the two parties. The prime minister will not be able to pass the Brexit deal. According to the EU withdrawal Act 2018, the government must issue a statement within 21 days of rejection explaining how to manage UK's withdrawal from the EU. The government should submit a neutral motion to parliament after seven days from the statement. The motion would include one of two options. First option, to renegotiate with the EU to amend the agreement. Second option, try to persuade parliament again to ratify the agreement. In any event, if Parliament does not approve any agreement until January 21, 2019, the government must provide a statement specifying the course of Brexit accompanied by a neutral request within five days. Here the government will accept that the parliament will not agree to the Brexit Agreement.<sup>118</sup> The UK will withdraw from the EU without an agreement, and may enter into a political crisis.

#### **4.7.3 Third Scenario**

If the parliament rejects the Brexit agreement and asks the government to renegotiate with the EU. The government will try to renegotiate with the EU to amend the withdrawal agreement. Here we return to the first scenario if there is a new agreement approved by parliament, or the second scenario is not to reach an agreement or reject it again from parliament, which mean Brexit without agreement.<sup>119</sup>

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<sup>117</sup> European Union (Withdrawal) Act 2018

<sup>118</sup> Ibid 116

<sup>119</sup> Jill Rutter and Joe Owen, Autumn surprises: possible scenarios for the next phase of Brexit (Institute for Government, 2018)<sup>2</sup>

## 5.8 Dispute Settlement Mechanism in the Withdrawal Agreement

The European Union and the United Kingdom agreed on a mechanism to resolve disputes arising out of the application or interpretation of the withdrawal agreement. The mechanism consists of several procedures, the parties can resort to these procedures exclusively to resolve any dispute.<sup>120</sup>

The European Union and the United Kingdom should resolve any dispute over the withdrawal agreement through consultations within the Joint Commission. The Joint Committee consists of an equal number of representatives from both the European Union and the United Kingdom. The task of the Committee supervises the application of the withdrawal agreement. The Parties have the right to request the consideration of the consultations by written notification. The parties should seek in good faith to find an agreed solution within three months after the written notification.<sup>121</sup>

The parties may request the establishment of an arbitration panel in case of failure to resolve the dispute. The request shall be made after the written notification of the joint committee by three months. However, if the parties agree, the composition of the arbitration panel may be requested before the end of three months. The request shall be submitted to the other party and International Bureau of the Permanent Court of Arbitration. The Joint Commission shall select a list of 25 candidates for the arbitration panel. The European Union proposes 10 candidates and the United Kingdom proposes 10 candidates. The European Union and the United Kingdom are involved in the proposal of five candidates. Within 15 days from the date of the request, five candidates will be selected from the list to be members of the arbitration panel.<sup>122</sup>

The arbitration panel shall inform the European Union, the United Kingdom and the Joint Commission of its ruling in the dispute within 12 months from the date of its formation. The European Union and the United Kingdom can make a reasoned request from the arbitration panel to consider the case as urgent within 10 days of the formation of the arbitration panel. If the arbitration panel approves

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<sup>120</sup> *ibid* 114, Article 168

<sup>121</sup> *ibid* 114, Article 169

<sup>122</sup> *ibid* 114, Article 170

the request, it shall render its ruling in six months. The arbitration panel's ruling shall be binding and it shall be implemented within a reasonable period agreed between the United Kingdom and the European Union. The party to whom the ruling was handed down must do so in good faith.<sup>123</sup>

The Court of Justice of the European Union (CJEU) has jurisdiction to adjudicate disputes relating to the interpretation of European Union law. The Court shall also be competent with disputes concerning the United Kingdom's failure to meet obligations arising from European Union treaties or the withdrawal agreement. The European Union and the United Kingdom may also request the arbitration panel to refer the dispute to the CJEU, if it is within its jurisdiction. The judgment of the Court shall be binding on the arbitration panel.<sup>124</sup>

## **CHAPTER 5**

### **UK'S TRADE RELATIONS AFTER THE BREXIT**

Brexit will have a significant impact on the UK's external relations. This impact will include UK relations with the EU and non-EU member states. On March 29, 2019, the UK will leave all European Union institutions and will have to negotiate a new trade agreement with the EU in preparation for its exit from the Common Market and the Customs Union by the end of 2020. The United Kingdom will re-draft its relationship with the non-EU member states taking into consideration its new status and the stature of the United Kingdom in the world. The United Kingdom should renegotiate on new trade agreements with its non-EU member states as a United Kingdom will not bound by Previous agreements.

#### **5.1 The Negotiation on New Trade Agreement between EU and UK**

The United Kingdom announced that it would exit the Customs Union and the Common Market by the end of 2020. Freedom of movement of persons was one of the main reasons for the UK's exit from the European Union. Therefore,

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<sup>123</sup> ibid 114, Article 173

<sup>124</sup> ibid 114, Article 175

The United Kingdom should negotiate with the European Union a new trade agreement imposing different terms and conditions. The United Kingdom will assume new commitments and costs. Many models can be used when negotiating a new trade agreement such as the Norwegian model and the Swiss model. The rules of the World Trade Organization can also be relied upon in the relationship between the UK and the EU in the event that a new trade agreement cannot be reached.<sup>125</sup>

### **5.1.1 The Norway Model**

The Norwegian model is one of the most important models that the UK can use in negotiations with the EU. Norway is not a member of the European Union after the rejection of voters for membership in 1994. Nevertheless, Norway is a member of the European Free Trade Association (EFTA). EFTA is a regional trade organization and free trade area consisting of four European states: Iceland, Liechtenstein, Norway, and Switzerland. It operates in parallel with the European Union. Norway is also a member of the European Economic Area (EEA). The European Economic Area includes the member States of the European Union, Norway, Liechtenstein and Iceland and provides for the free movement of goods, services, capital and persons with special rules in the fields of agricultural products and fish.<sup>126</sup>

Norway's membership in the European Economic Area provides great access to the single market, with the exception of agriculture and fisheries. The United Kingdom favors full access to the common market. The EU is the main destination for British fish and vegetable exports. Union members import 64% of fish exports and 73% of vegetable exports. Application of the Norwegian model will lead to restrictions on British exports in these areas.

Norway is not a member of the Customs Union; Norwegian companies are subject to customs procedures. Norwegian companies should provide documentation proving the manufacture of products in the EEA or compliance

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<sup>125</sup> Policy Department for citizens' rights and constitutional affairs of European parliament, Brexit and the European Union: General Institutional and Legal Considerations (PE 571.404, 2017) 24

<sup>126</sup> Michael Emerson, Which model for Brexit? (Centre for European Policy Studies, 2016)

with 500 product bases. For Norway, these measures are not a major impediment, with oil and gas accounting for 60% of Norway's exports to the EU. Unlike Norway, UK exports to the EU are more diversified. British companies will incur additional administrative costs to prove the origin of the goods until they receive preferential tariffs. This means an increase in the prices of exported goods and lower competitiveness.<sup>127</sup>

Norway should conclude its own trade agreement with non-EU countries. However, Norway relies on the European Free Trade Association to access markets outside the European Union. Norway signed 36 free trade agreements (FTAs) through the European Free Trade Association (EFTA).while EU countries have 53 markets outside the European Union. After the brexit, the UK will not be able to reach 53 markets. Like Norway, the UK should renegotiate new FTAs. The United Kingdom will have long and arduous negotiations, as it must negotiate with many countries as well as its negotiations with the EU.<sup>128</sup>

The Norway contributes to EU funding and pays grants to the poorest members of the Union. The nature and size of Norway's contribution is renegotiated periodically. Norway also contributes to the financing of EU programs in which it participates. The British government says the Brexit will restore the United Kingdom's sovereignty over its funds. The United Kingdom's contribution to EU funding will stop after 2020. Like Norway, the United Kingdom can fund EU programs in which it participates.<sup>129</sup>

The UK can take advantage of the Norwegian model in negotiations on a new trade agreement with the EU. However, UK will not seek to take it fully. The UK will try to achieve greater access to single market, including the fishing and agriculture sectors. The United Kingdom will seek to ease customs procedures on its exports to the EU because of the large diversification of its economy. The Norwegian model involves the application of most common market rules and

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<sup>127</sup> Government of the UK, Alternatives to membership: possible models for the United Kingdom outside the European Union(ID 25021603 03/16 54539 19585, 2016) 5-6

<sup>128</sup> Ibid 126, 30

<sup>129</sup> Ibid 127, 19



the United Kingdom will not accept the application of these rules in any new agreement.

### **5.1.2 The Swiss Model**

Switzerland is a member of the European Free Trade Association (EFTA) since its founding in 1960. The EFTA sought to establish the European Economic Area, but Swiss voters rejected Switzerland's accession to the EEA in 1992. They also refused to start accession negotiations with the European Union in 2001. Switzerland adopted a different approach, and negotiated with the EU to conclude bilateral agreements. Switzerland currently has more than 100 agreements with the EU; these agreements allow partial access to the single market.<sup>130</sup>

Switzerland has partial access, which includes the most of the single market in the area of goods with restrictions on the exchange of agricultural products. While bilateral agreements provide limited access to the services market in the areas of public procurement and insurance. Bilateral agreements do not include banking and professional services. In the UK, the service sector accounts for 80% of the national economy. The United Kingdom has a surplus in the exchange of services with the European Union over £ 10 billion. The United Kingdom will therefore seek in any free trade agreement to have full access to the common market in services as well as in the field of agricultural products.<sup>131</sup>

Switzerland and the European Union signed a mutual recognition agreement. The agreement allowed Swiss companies to export their products to the single market without any technical obstacles. It is sufficient for the exported products to be approved by a Swiss standards-matching body and without further evaluation by the EU. The agreement provided Swiss companies with a lot of cost and time. It was able to market its products and compete with companies in the EU. The UK could seek a similar agreement with the EU. Especially in the rules of origin requirements, where 23% of UK exports consist of foreign

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<sup>130</sup> federal department of foreign affairs, Switzerland and the European Union (201.335.E,2016) 21

<sup>131</sup> *ibid* 127, 27

components. Like this agreement allows British companies to avoid technical barriers when exporting their products to the single market.<sup>132</sup>

Switzerland does not participate in the drafting of European Union laws and is not bound by EU law. Although Switzerland often choose to harmonize their national legislation with the EU laws, with a view to continuing access to the common market. The United Kingdom is unlikely to accept the harmonization of its domestic legislation with the laws of the European Union. The United Kingdom will not participate in the process of drafting EU laws and will not be able to object on the bad decisions for British companies, which may put these companies in a noncompetitive position.<sup>133</sup>

Similar to the Norwegian model, the UK can benefit from the Swiss model. However, the UK will try to reach the largest possible access to the common market in goods and services. The United Kingdom will also seek an agreement to reduce customs procedures and rules of origin requirements. Negotiations between the European Union and the United Kingdom on a free trade agreement will be difficult and complex. The United Kingdom aims to strike a balance between the full access of the common market and the least tariff barriers and the maintenance of sovereignty over the UK's borders, laws and funds.

If a free trade agreement cannot be reached, The World Trade Organization rules will govern the trade relationship between the two parties. These rules do not provide the United Kingdom any preferential access to the single market. Customs tariffs will be imposed on trade between the two parties. The British economy will be hit by an economic shock whose effects will be reflected on consumers, jobs and prices, and companies will suffer heavy losses. In order to avoid this, the European Commission proposed that in the absence of an agreement until 2020, the transitional period would be extended until 2022. The United Kingdom would remain in the transitional period in the single market and customs union and EU laws would applied. However, UK would not participate in EU institutions or in decision-making and voting.

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<sup>132</sup> ibid 130,30

<sup>133</sup> ibid 127,27

## 5.2 UK Negotiations with Non-EU member states on new Free Trade Agreements

Since 1973, the United Kingdom has relied on the EU to negotiate commercial deals. During the UK's membership, the EU signed 36 free trade agreements. These agreements give the UK preferential access to 53 markets outside the European Union. At the end of the transitional period, the UK will leave the Common Market and the Customs Union. The United Kingdom will therefore lose preferential access to overseas markets 53. British companies will face Customs tariff and Customs procedures when exporting goods to these markets. The United Kingdom will have to impose customs duties on imports from these countries, thereby increasing prices on consumers. The UK will also lose preferential access to the services market in 14 countries. The United Kingdom will work on two parallel tracks to deal with this situation.<sup>134</sup>

First track, the British government wants to continue with free trade agreements signed during its membership in the European Union. This track requires the consent of the European Union and the state concerned. The agreement should be redrafted and added the UK as a third party. It is also possible to amend certain details regarding the quantities specified by agreement and institutional arrangements for conflict resolution. The UK may request that components coming from EU countries and exported to the country concerned be considered as local components. In this track, the UK avoids losing important overseas markets and prohibits the imposition of Customs Tariff and customs procedures on British goods. In addition, it protects the British consumer from increasing the prices of imported goods from these countries. Switzerland and South Korea are among the most important countries that the United Kingdom seeks to maintain the relationship in accordance with EU free trade.<sup>135</sup>

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<sup>134</sup> Robert Hine, Sink or Swim? UK Trade Arrangements after Brexit (2017) coleurope <<https://www.coleurope.eu/research-paper/sink-or-swim-uk-trade-arrangements-after-brexite>> accessed in 30 November 2018

<sup>135</sup> ibid 134, 24

The second track, the UK wants to adopt an independent trade policy. This Trade policy is based on exploring business opportunities around the world and increasing the competitiveness of the British economy. The UK will negotiate on new FTAs, especially with the US, China and India. Australia and New Zealand have also indicated their willingness to negotiate with the United Kingdom. The United Kingdom may also seek economic partnerships within the Commonwealth of Nations. The Ministry of State for International Trade has started forming negotiating teams and preparing the necessary mechanisms for negotiations.<sup>136</sup>

## **Conclusion**

On June 23, 2016, the UK's relationship with the EU entered a new phase. The majority of voters chose to leave the UK from the EU. The results of the referendum were shocking in the UK, the EU and the world. Prime Minister David Cameron resigned, Theresa May was commissioned to form a new government. The May's government prepared to launch the negotiation process and form the negotiating teams. The legal framework for the UK's withdrawal from the EU included many important aspects. The Brexit will also have legal implications for the future relationship with EU Member States and with non-EU Member States.

The first legal aspect raised by Brexit is the activation of article 50 of the Lisbon Treaty. Article 50 contains a mechanism for the voluntary withdrawal of EU Member States from the European Union. This mechanism was appeared into the EU treaties for the first time in the Treaty of Lisbon 2009. The activation of Article 50 led to the start of the Brexit negotiations between the EU and the UK.

The European Union (Withdrawal) Act 2018 repeals EU treaties and EU laws after the UK's withdrawal from the EU. The Act allows ministers to make minor amendments to the EU laws to incorporate them into British legislation. The amendments include the transfer of powers granted to European Union

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<sup>136</sup> ibid 134,26

institutions in EU laws to British institutions. The Act requires the government to submit any withdrawal agreement with the EU to the British Parliament for approval. The enactment of this Act will bring about a legislative revolution in the UK in the long term. The British legislator will make changes in British legislation to suit the new status of the United Kingdom after the withdrawal and its role in the world.

Following the activation of Article 50, the European Council adopted the guidelines for negotiations between the European Union and the United Kingdom. The two parties had long and arduous negotiations to agree on several issues. The first cases were the rights of EU citizens residing in the UK as well as UK citizens residing in EU countries. The two sides agreed to provide mutual guarantees to citizens who have legal residence upon withdrawal. Citizens of both sides will enjoy all the rights they enjoyed in accordance with their previous residency.

The European Union agreed with the United Kingdom to pay 44 billion euros as the United Kingdom's contribution to the EU budget until 2020. It was also agreed that the United Kingdom would continue to contribute to the EU budget after 2020 if the transition period was extended. The UK will also continue to finance EU programs within the MFF until they close.

The border between the Republic of Ireland and Northern Ireland was the most complex issue of negotiations. Although the European Union and the United Kingdom have agreed to preserve the achievements of the Good Friday Agreement and to avoid hard borders. However, the mechanism of avoiding hard borders after the United Kingdom emerged from the customs union and the common market remained a difficult dilemma. After arduous negotiations, the European Union and the United Kingdom agreed to negotiate during the interim period to find a solution to the Irish border issue under a new free trade agreement. If a new FTA is not reached at the end of the transition period, a backstop mechanism will be applied. The (backstop) means that goods are checked in the Northern Ireland market by UK authorities and in the presence of EU representatives. This will avoid any checks of goods on the border between Northern Ireland and the Republic of Ireland.

The British government will try to ensure a smooth EU withdrawal through the British Parliament's approval of the withdrawal agreement. UK membership in the Customs Union and the Common Market will continue during the transitional period. The United Kingdom will apply EU laws and abide by its Treaties. However, the United Kingdom will not participate during the transitional period in EU institutions or in decision-making or voting. The transition period will be a preparation for the government and British companies to implement a new regime in the relationship with the EU. In contrast, the British parliament's rejection of the withdrawal agreement would put the British government in a bind, the UK would face a tough withdrawal from the European Union.

In any case, the UK will enter a new phase after Brexit internally and externally. The legislative and executive Authorities will need a comprehensive review of British legislation to suit the new situation of the United Kingdom. The United Kingdom will seek a new relationship with the EU based on cooperation and common interests. The new relationship should take into account the balance between the sovereignty of the United Kingdom and the privileged relationship with the European Union. The United Kingdom has to renegotiate with a number of countries new FTAs after they have left the Customs Union. The United Kingdom will use its new status to explore business opportunities around the world.

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