

## **BREXIT. IN MARCH WE WILL GET GOING. ARTICLE 50 OF THE TREATY ON EUROPEAN UNION AND THE REPORT OF THE HOUSE OF LORDS**

The question of the Brexit referendum got a clear answer that raised several other questions. When will the separation process begin? What is the real scope of such separation? How is the relationship between the United Kingdom and the EU going to be? What economic and social consequences will arise from separation?

At the time of writing this blog, the first doubt has been cleared up. The process will start in March 2017, as announced by Prime Minister Theresa May.

It seems that there is only one certain thing in this situation of great of uncertainty: the process will be carried out pursuant to Article 50 of the Treaty on European Union. Article 50 lays down that:

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

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.”

Again, the law seems to be the necessary framework for political processes, giving them order and security. We do not know what the separation is going to be like, but at least we know how to address it. Or we know it partly, because Article 50 raises doubts about its interpretation. For this reason, the Report of the Select Committee on the Constitution of the House of Lords (4th Report of Session 2016-17), of 13 September 2016, is of particular importance.

The Report, concise and clear, has been drafted by some members of the House of Lords. Two university professors have been the legal advisers to the Committee. The conclusions drawn by the Report are the following:

- Article 50 of the Treaty on European Union is the only way of withdrawing from the EU. The suggestion that the UK could leave the EU by simply repealing the European Communities Act 1972 (the instrument whereby the UK was able to join the European Union) is dismissed.
- When a Member State notifies the EU of its intention to withdraw from the EU, a two year period commences in which arrangements must be negotiated. If no agreement is reached, the Member State ceases to be a member of the EU at the end of the period unless all EU Member States agree to an extension.
- In accordance with the authors of the Report, it is not clear whether an EU Member State can, after having notified its will to quit the EU, unilaterally choose to withdraw its notification and stop the process. As a consequence, they advise to be prudent and assume that the triggering of Article 50 is an action that cannot be unilaterally reversed and that the notification of the intention to withdraw from the EU should be made once the will to go until the end is fully assumed.
- The decision to trigger Article 50 is a prerogative power of the Government. However, the House of Lords maintains that, according to the UK uncodified constitution and taking into account the effects of resorting to Article 50, Parliament should be involved in this decision.
- The 23 June referendum was only advisory and there did not exist any previous legal provision laying down the consequences of the results. Following the principle of parliamentary sovereignty (core principle of the UK constitution), Parliament could now disregard these results. Facing this unacceptable situation, Parliament proposes to ensure, in future, that detailed consideration is given to how the result of any referendum will be implemented. In addition, Parliament should be consulted by the Government about the way of implementing the popular mandate directly expressed through a referendum.
- Parliamentary approval should be required for each of the three stages of the formal withdrawal process: the triggering of Article 50, the negotiation process and the adoption of the final agreement between the UK and the EU. What is not mentioned in the Report is what should happen if Parliament does not ratify the Government's decisions.
- The decision to trigger Article 50 should require the assent of both Houses of Parliament and be laid down by law.
- The time taken to launch the process should not be construed as a refusal of the referendum results. Article 50 should only be triggered when the most appropriate conditions for the interests of the UK are met.

This Report is interesting indeed, as well as that of the European Union Committee of the House of Lords (11th Report of Session 2015-16). Prime Minister Theresa May must have taken it into account when she announced the date of the launch of the withdrawal process. Likewise, it will help the UK Government to decide on how to proceed during the whole process.

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