

# BREXIT AND THE ROMANIAN PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION – LEGAL ASPECTS AND POSSIBILITIES

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## Abstract

*The first half of 2019 finds the European Union facing two challenges: the rotating Presidency of the Council of the European Union is held by Romania, one of the newest members of the organisation, while the United Kingdom prepares to withdraw, after being the first state to invoke, in March 2017, Article 50 of the Treaty on European Union.*

*Romania assumes this position of great responsibility for the first time since its accession to the EU and finds itself confronted with a task that has raised problems even for other, more experienced, states that have held the Presidency of the Council after the UK notified the EU of its intention to leave. Moreover, March 2019 marks the end of the two-year term provided by Article 50 of the Treaty on European Union for the enforcement of a withdrawal agreement, placing Romania as President of the Council of the EU at the moment when the UK would be expected to officially lose its status as a Member State, unless an extension is agreed upon by the European Council and the UK.*

*In this context, it is important to take note of the progress made in the matter of the UK's withdrawal from the EU, to identify the legal means the Presidency of the Council has at its disposal to ensure that a satisfying solution is reached and to analyse the role that the Romanian Presidency, specifically, plays in this process.*

**Keywords:** Rotating Presidency – Withdrawal Agreement – Article 50 TEU – Article 218 TFEU – United Kingdom

## 1. Introduction

The Presidency of the Council of the European Union has been the subject of several debates aimed at improving and adapting it to the ever-changing realities of the intricate international organisation that is the European Union. In recent years, this position has gained considerable importance,<sup>1</sup> with reasons cited for such a development being the necessity for a more robust central administration in the EU and a strong leadership in the Council, the growing complexity of the EU's decisional structure, and the increase of its power, which makes cooperation between institutions even more significant for the Union's well-being.<sup>2</sup>

During the first half of 2019 Romania chairs the Council of the European Union for the first time since its accession in 2007. At the same time, the UK prepares to depart from the EU – the first Member State to do so<sup>3</sup> since the formation of the European Communities in the 1950s. The fact that the projected date of the UK's departure from the EU coincides with the Romanian Presidency of the Council is particularly important for the Member State: Romania has the opportunity to prove its ability and its commitment to advancing the EU's interests by ensuring that the process of withdrawal moves forward as swiftly and as

efficiently as possible, in order to limit the negative effects that the uncertainty of the situation has on the Union and on the other Member States. Furthermore, a post-Brexit context could favour the development of a stronger relationship between the two European states in matters of foreign policy and defence. It has been argued that a potential "deep and special partnership" would be beneficial for them, especially considering the fact that both the UK and Romania prioritise the preservation of European security and are supporters of the transatlantic alliance.<sup>4</sup> Romania could help the UK express its interests in front of EU authorities (seeing as the UK would no longer be able to directly vote on matters regarding the EU's Common Foreign and Security Policy) while increasing its own role in the "making of foreign, security and defence policies in the EU and in the politics of NATO"<sup>5</sup>.

In this context, it is important to identify the exact role that the Council of the European Union plays, according to the Treaties, in the process of a Member State's withdrawal from the EU, to follow the way this procedure has been put into practice after the UK's decision to invoke Article 50 of the Treaty on European Union and leave the organisation, and to analyse Romania's role as President of the Council during the expected finalisation of the Brexit process.

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<sup>1</sup> Augustin Fuerea, *Manualul Uniunii Europene*, Sixth Edition, Universul Juridic, Bucharest, 2016, p. 138. The Presidency of the General Affairs Council is mentioned as being of particular importance, considering the issues this formation decides upon.

<sup>2</sup> Paul Craig, Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, Sixth Edition, Oxford University Press, 2015, p. 42.

<sup>3</sup> Greenland joined the European Communities in 1973, as a county of Denmark, but gained autonomy in 1979 and left the Communities in 1985, due to disagreements regarding the Common Fisheries Policy, becoming one of the Overseas Countries and Territories.

<sup>4</sup> Cristian Nițoiu, Tim Oliver, Florin Păsăoiu, Nicola Chelotti, *Romania and the United Kingdom. The Special Relationship after Brexit*, Loughborough University London and the Center for Foreign Policy and Security Studies, report presented at the Carol I National Defence University, Bucharest, 18 March 2019, p. 8.

<sup>5</sup> *Ibidem*, p. 32.

## 2. The rotating Presidency of the Council

During the drafting of the Treaty of Lisbon<sup>6</sup>, the following rules were established regarding the Council's Presidency: the Council meets in various configurations, depending on the subject being discussed, with the list of these configurations and their presidencies determined by the European Council, acting by a qualified majority<sup>7</sup>. The General Affairs Council and the Foreign Affairs Council are exempt from these rules, their existence being mandatory and the latter's Presidency always being held by the High Representative of the Union for Foreign Affairs and Security Policy.

The Council Decision 2009/937/EU adopting the Council's Rules of Procedure established that the Presidency of the Council is to be held by pre-established groups of three Member States, for a period of eighteen months. When deciding upon the composition of these groups, the European Council must respect the principle of equal rotation among Member States and must take into account their diversity and geographical balance<sup>8</sup>. Each of the three states holds the presidency of the Council for a period of six months, with the other two offering support and assistance according to a common programme previously drafted in consultation with the High Representative of the Union, the Commission, and the President of the European Council. The draft programme, which lays out their activities and must be approved by the General Affairs Council<sup>9</sup>, covers the upcoming eighteen-month period of their Presidencies and serves as a starting point for each of the state's own six-month programme. It is also possible for the members of the team to decide alternative arrangements among themselves.<sup>10</sup>

The future President of the Council, after consulting with the other two member states that are part of its group, sets the dates for the Council meetings seven months before the beginning of its Presidency<sup>11</sup> and establishes, a week before taking office, the indicative provisional agendas for the next six months. Furthermore, during its term, the Member State that holds the Presidency is responsible for setting the provisional agenda for each Council meeting.<sup>12</sup> The provisional agenda is formally adopted during the meeting of the Council. It is divided into two sections, legislative deliberations and non-legislative activities, with each of these sections being further divided into

matters that can be decided upon without being discussed, and matters that require debate.

During its six-month term, the President is responsible for convening, on his own initiative or at the request of one of the other Members or of the Commission, the Council<sup>13</sup> and is allowed to develop policy initiatives that interest either the Council in its entirety or the Member State in office. It has been noted that policies which are too narrow in scope, concern strictly the Member State holding the Presidency or go against the interests of most Council members are likely to be criticised and rejected.<sup>14</sup>

The Presidency must plan and chair meetings in all Council formations and preparatory bodies (with the exception of the Foreign Affairs Council), it must ensure that the rules of procedure are respected during these meetings, and it represents the Council in its relations with other institutions of the European Union, with the aim of reaching agreements on legislative projects. In certain circumstances, the President of the Council may be asked to represent or even chair the Foreign Affairs Council, replacing the High Representative, when matters of a commercial nature are being discussed.<sup>15</sup>

One of many important changes brought about by the Treaty of Lisbon is the separation of the President of the Council from the person Chairing the European Council. The latter institution now has its own President, elected for a two-and-a-half-year term, which can be renewed only once. This complicates the task of the President of the Council, who must ensure that its policies and initiatives respect and are aligned with the general strategy set out by the President of the European Council.<sup>16</sup>

## 3. The Romanian Presidency of the Council

The trio of Member States set to chair the Council during the 2018-2019 period is comprised of Romania, Finland and Croatia, with Romania taking over the position during the first half of 2019. This is the first time that the Member State has held the Presidency of the Council since its accession in 2007. The inherent challenges of the Presidency are further added to by the fact that March 2019 marks the end of the two-year period provided by Article 50 of the Treaty on European Union for the negotiation, signing and

<sup>6</sup> The Treaty of Lisbon was signed on 13 December 2007 and entered into force on 1 December 2009.

<sup>7</sup> Art. 16 para. 6 and 9 of the Treaty on European Union and Art. 236 of the Treaty on the Functioning of the European Union.

<sup>8</sup> Council Decision 2009/937/EU adopting the Council's Rules of Procedure, OJ L 325, 11 December 2009, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009D0937> (accessed on 20 March 2019), Art. 1 para. 4.

<sup>9</sup> *Ibidem*, Art. 2 para. 6.

<sup>10</sup> *Ibidem*, Art. 1 para. 4.

<sup>11</sup> *Ibidem*, Art. 1 para. 2.

<sup>12</sup> Paul Craig, Gráinne de Búrca, *op. cit.*, p. 42.

<sup>13</sup> Art. 237 of the Treaty on the Functioning of the European Union.

<sup>14</sup> Paul Craig, Gráinne de Búrca, *op. cit.*, p. 42.

<sup>15</sup> More details can be found on the official site of the Council of the European Union: <https://www.consilium.europa.eu/en/council-eu/presidency-council-eu/> (accessed on 20 March 2019).

<sup>16</sup> Paul Craig, Gráinne de Búrca, *op. cit.*, p. 42.

ratifying of a withdrawal agreement between the United Kingdom and the EU.

According to its 6-month programme, the Romanian Presidency's main objective regarding Brexit is to maintain the remaining Member State's unity, to ensure that the UK's withdrawal from the organisation takes place in an orderly fashion and that European citizens and companies are prepared for a „smooth transition towards an EU of 27 Member States”. Particular importance is placed on „ensuring clarity and transparency” during the process of withdrawal and on the close cooperation between the Romanian Presidency, the EU's institutions and the other Member States „in order to follow all the institutional procedures arising from such developments, including those related to the implementation of the agreement after 29 March 2019”. The programme also mentions that the Romanian Presidency aims to contribute to a strong future partnership between the EU and the UK, after the latter's departure from the organisation.<sup>17</sup>

The brevity of this passage, despite the topic's importance for the European Union, and the rather general terms used can be explained by the fact that, at the moment of the programme's elaboration, there had been little progress made towards the finalisation of the UK's withdrawal process. The mentioned agreement, which was expected to be implemented after 29 March 2019, was approved by the EU, but not by the UK Parliament. Consequently, the future President of the Council was faced with the task of preparing for a situation that could have evolved in multiple, vastly different ways. The provisional agendas for Council meetings covering the term of the Romanian Presidency did not mention the United Kingdom's withdrawal specifically.

The 18-month Programme of the Council, corresponding with Romania's, Finland's and Croatia's Presidencies, mentioned Brexit only in passing, noting that the three Member States, when chairing, in turn, the Council, will „devote all efforts to ensure the effective and timely handling of all work required by the Brexit process, fostering the unity of the 27 Member States”.<sup>18</sup>

#### **4. The Council's role in the process of negotiation and conclusion of the withdrawal agreement**

While leaving the European Union has always been possible,<sup>19</sup> the Treaties did not provide a specific procedure for a Member State's withdrawal from the

Union – likely due to a lack of interest in such a mechanism. Article 50 of the Treaty on European Union was introduced by the Treaty of Lisbon specifically to address this omission and states that the conclusion of a withdrawal agreement will take place according to the provisions of Article 218 of the Treaty on the Functioning of the European Union, which governs the process of negotiating, signing and ratifying international treaties between the EU and other organisations or states. Negotiations must follow the guidelines provided by the European Council, with the aforementioned agreement being concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.<sup>20</sup>

Article 218 of the Treaty on the Functioning of the European Union regulates the negotiation and conclusion of agreements between the European Union and third countries or international organisations, establishing that the EU institution with the most authority in this matter is the Council, acting by a qualified majority. The Council is the institution with the power to “authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them”<sup>21</sup>. After receiving recommendations from the Commission or the High Representative, depending on the subject of the agreement, the Council is the one to nominate the Union negotiator, to whom it can address directives, and may also designate a special committee meant to provide consultation during the negotiations. Based on the proposals of the negotiator thusly named, the Council will adopt a decision authorising the signing of the agreement and a decision concluding it. Depending on the subject of the Agreement, the Council must either seek the approval of the European Parliament or simply consult it, before adopting the decision concluding the agreement. While Article 218 does not mention withdrawal agreements specifically, Article 50 of the Treaty on European Union provides that, for this particular type of agreement, the consent of the European Parliament is necessary.

#### **5. Timeline of the negotiation and conclusion of the Agreement on the withdrawal of the United Kingdom from the European Union and Euratom**

In June 2016, the United Kingdom held a referendum regarding its possible withdrawal from the European Union, with the result of the vote being in favour of leaving the organisation. Immediately after

<sup>17</sup> Programme of the Romanian Presidency of the Council of the European Union, 1 January – 30 June 2019, p. 15, available at <https://www.consilium.europa.eu/media/37974/romanian-presidency-programme.pdf> (accessed on 20 March 2019).

<sup>18</sup> 18-month Programme of the Council (1 January 2019 – 30 June 2020), Brussels, 30 November 2018, <http://data.consilium.europa.eu/doc/document/ST-14518-2018-INIT/en/pdf> (accessed on 20 March 2019).

<sup>19</sup> Lee McGowan, *Preparing for Brexit. Actors, Negotiations and Consequences*, Palgrave Macmillan, 2018, p. 50. Prior to the introduction of the withdrawal procedure, it was always possible for a Member State to denounce the Treaties according to public international law rules.

<sup>20</sup> Art. 50 para. 2 of the Treaty on European Union.

<sup>21</sup> Art. 218 para. 2 of the Treaty on the Functioning of the European Union.

the outcome of the referendum was announced, the President of the European Parliament, Martin Schulz, the President of the Commission, Jean-Claude Juncker, the acting President of the Council, Mark Rutte, and the President of the European Council, Donald Tusk, released a joint statement,<sup>22</sup> saying that they respected the UK's decision, which represented the result of a democratic process, and that they were ready to launch negotiations with the UK as soon as possible in order to settle the terms of withdrawal agreement. However, the UK officially invoked Article 50 of the Treaty on European Union on 29 March 2017, which effectively gave the state another year, in addition to the two-year period provided by the Treaty, to prepare for its withdrawal from the EU.

The Council did not wait for the UK's official notification in order to start preparing for Brexit and, in 2016, created a task force dedicated to the issue of the UK's withdrawal from the EU, its main responsibilities consisting of overseeing the negotiations carried out between the Commission and the UK, keeping the Member States informed about these negotiations and providing an overview of the envisioned future of the UK-EU relations. The Commission's own task force and negotiators were put in charge of carrying out the negotiations and working out the technical aspects of this process.<sup>23</sup> The Commission's working procedure and detailed mandate for negotiations were established based on the European Council's guidelines, after consulting with the Council and with its approval.<sup>24</sup>

Upon deciding to leave the EU, the United Kingdom had to give up its place in the rotating Presidency of the Council (the UK was due to occupy the position in the second half of 2017). This led to the adoption of a new list by the European Council, which no longer mentioned the UK, with its place being taken over by Estonia, who was supposed to chair the Council in 2018, instead. Consequently, Romania (like all other countries on the list) had to assume the Presidency of the Council six months earlier than it had been

anticipating, a significant change considering the fact that taking on a role of such importance necessitates adequate preparation, especially for a state that has recently become a Member State and has never before held the Presidency of the Council<sup>25</sup>. It must be noted that the UK lost the opportunity to hold the Presidency of the Council despite not having officially notified the EU of its decision to trigger Article 50 of the Treaty on European Union. The fact that the UK had held a referendum on this matter and had publicly announced that it intended to put its result into practice was considered sufficient reason to modify the list of the Member States who were to take over the Presidency of the Council.<sup>26</sup>

On 22 May 2017, the Council, following the rules set out in Article 218 of the Treaty on the Functioning of the European Union and the guidelines established by the European Council<sup>27</sup>, authorised the Commission to open negotiations with the UK regarding a withdrawal agreement. At that time, it was expected that the negotiations would focus on issues regarding the freedom of movement, social benefits and competition regulations,<sup>28</sup> and that reaching an understanding on these issues would result in the conclusion of an agreement, but the reality would prove different.<sup>29</sup> Negotiations were officially launched on 19 June.

More than a year later, on 14 November 2018, the negotiators of the EU presented the draft withdrawal agreement that they had agreed on with the negotiators of the UK. They also presented an outline for a political declaration on future EU-UK relations. The next day, on 15 November, the EU's chief negotiator, Michel Barnier, handed the draft of the withdrawal agreement to the President of the European Council, who proposed the deal be finalised during the extraordinary meeting of the European Council scheduled on the 25

<sup>22</sup> Available at <http://www.europarl.europa.eu/news/en/press-room/20160624IPR33834/joint-statement-by-schulz-tusk-rutte-and-juncker-on-uk-referendum-outcome> (accessed on 20 March 2019).

<sup>23</sup> Lee McGowan, *op. cit.*, p. 80. The leader of the Council's task force was chosen to be the Belgian diplomat Didier Seeuws, former advisor and Chief of Staff to the first European Council President, Herman Van Rompuy (2011-2014), and Director of Transport, Telecommunications and Energy in the General Secretariat of the Council during Donald Tusk's Presidency of the European Council (2014-onwards). The Commission chose as its European Chief Negotiator Michel Barnier, former European Commissioner for Regional Policy (1999-2004) and European Commissioner for Internal Market and Services (2010-2014): European Commission Press release IP/16/2652 available at [http://europa.eu/rapid/press-release\\_IP-16-2652\\_en.htm?locale=EN](http://europa.eu/rapid/press-release_IP-16-2652_en.htm?locale=EN) (accessed on 20 March 2019).

<sup>24</sup> *Ibidem*, p. 76

<sup>25</sup> Augustin Fuerea, "The exercise of the presidency within the European Union", *Probleme actuale ale spațiului politico-juridic al UE* International Conference, 27 October 2016, Wolters Kluwer Romania, p. 67.

<sup>26</sup> Christophe Hillion, "Le retrait de l'Union européenne, une analyse juridique", *Revue trimestrielle de droit européen*, Dalloz, octobre-décembre 2016. The European Council also decided, in 2016, that a new arrangement regarding the rotating presidencies, including the UK, would be made in case the state announced its decision to remain in the EU.

<sup>27</sup> Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 471, 19 February 2019, available at <https://eur-lex.europa.eu/eli/dec/2019/274/oj> (accessed on 20 March 2019). "The negotiations were conducted in light of the guidelines of 29 April and 15 December 2017 and of 23 March 2018 provided by the European Council with the overall objective of ensuring an orderly withdrawal of the United Kingdom from the Union and Euratom."

<sup>28</sup> Augustin Fuerea, "Brexit - limitele negocierilor dintre România și Marea Britanie", *Revista de Drept Public*, nr. 4/2016, Universul Juridic, Bucharest, p. 108.

<sup>29</sup> A particularly difficult issue is that of the border between Northern Ireland and the Republic of Ireland. A hard border – necessary between a state that is a member of the EU and one that is not – would break the Good Friday Agreement, which prohibits the creation of such a border. The Agreement is available at <https://peacemaker.un.org/uk-ireland-good-friday98> (accessed on 20 March 2019).

November 2018.<sup>30</sup> On that day, the European Council endorsed the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and approved the Political Declaration on future EU-UK relations.

During the General Affairs Council held on 19 November 2018, in Brussels, the participating ministers discussed the draft withdrawal agreement that had been presented by the negotiators on 14 November and advised the chief negotiator on the elaboration of the political declaration. Three days later, on 22 November, the President of the European Council sent the Member States the negotiated draft political declaration regarding the future relationship between the EU and the UK.

In December 2018, the Commission began the procedure for the signing and the conclusion of the Agreement on the withdrawal of the United Kingdom from the European Union, adopting a proposal for a Council decision on the signing of the Agreement and one for a Council decision on the conclusion of the Agreement.

On 11 January 2019, with Romania holding the Presidency, the Council adopted Decision 2019/274 regarding the signing of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.<sup>31</sup> The Decision authorised the President of the European Council and the President of the Commission to sign the Agreement on behalf of the EU and of Euratom.<sup>32</sup> At the same time, the Council adopted a draft decision on the conclusion of said Agreement, sending it to the European Parliament for approval.<sup>33</sup>

The Agreement mandates the creation of a Joint Committee,<sup>34</sup> comprised of representatives of the EU

and of the UK and co-chaired by the two, as well as the establishment of several specialised committees on issues such as citizens' rights or Northern Ireland.<sup>35</sup> The Joint Committee will be responsible "for the implementation and application" of the Agreement and will have the power to make recommendations to the EU and the UK and to adopt, by mutual consent, legally binding decisions that must be implemented by the two.<sup>36</sup> According to the draft Council Decision on the conclusion of the Agreement on the withdrawal of the UK, the Commission will be the institution representing the EU in the Joint and specialised committees and expressing its positions,<sup>37</sup> while the Council will be the one establishing these positions as an exercise of its policy-making, decision-making and coordinating functions.<sup>38</sup> The Commission will also play a major role in direct interactions with the UK, being responsible for providing the state with the information and notifications required in the Agreement, consulting the UK on specific matters and inviting its representatives to attend international consultation or negotiation meetings. All these tasks must be fulfilled after consulting the Council and taking into account its advice.

The United Kingdom is authorised to negotiate, sign and ratify international agreements regarding matters that are part of the exclusive competences of the Union, but these treaties can only enter into force after the end of the transition period, when the UK is no longer be a member of the EU. In exceptional circumstances, the Council can, by means of implementing acts, provide an authorisation for the treaties to enter into force during the transition period.<sup>39</sup> The Council can also authorise Ireland the Republic of Cyprus and Spain to negotiate and conclude bilateral agreements with the UK in matters that are otherwise

<sup>30</sup> The draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November is available at [https://ec.europa.eu/commission/files/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018\\_en](https://ec.europa.eu/commission/files/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en) (accessed on 20 March 2019).

<sup>31</sup> Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 47I, 19 February 2019, available at <https://eur-lex.europa.eu/eli/dec/2019/274/oj> (accessed on 20 March 2019).

<sup>32</sup> The text of the Agreement was attached to Council Decision (EU) 2019/274. A particularly interesting provision is the one regarding the transition period, during which "notwithstanding all consequences of the United Kingdom's withdrawal from the Union as regards the United Kingdom's participation in the institutions, bodies, offices and agencies of the Union – Union law, including international agreements, will be applicable to and in the United Kingdom". Consequently, the United Kingdom must be treated as a Member State for the purposes of the withdrawal agreement during the transition period. Should the transition period be prolonged, the Council would have to act in accordance with the guidelines established by the European Council. This opens the possibility for the United Kingdom to try and protract the process of withdrawal in order to keep its status of Member State (albeit one not represented in the institutions of the Union).

<sup>33</sup> The draft Council Decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community is available at <https://data.consilium.europa.eu/doc/document/XT-21105-2018-REV-1/en/pdf> (accessed on 20 March 2019).

<sup>34</sup> Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Art. 164.

<sup>35</sup> *Ibidem*, Art. 165.

<sup>36</sup> *Ibidem*, Art. 166.

<sup>37</sup> Draft Council Decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Art. 2 para. 1.

<sup>38</sup> *Ibidem*, Art. 2 para. 2. In order to fulfil this aim, the Commission must keep the Council informed on everything related to the meetings of the Joint and the specialized committees.

<sup>39</sup> *Ibidem*, Art. 3. "Given the political significance of decisions granting such authorisations, it is appropriate to confer on the Council the power to adopt such authorisations by means of implementing acts, acting on a proposal from the Commission."

of exclusive EU competence,<sup>40</sup> given the “very specific situations” these countries find themselves in with regard to the UK.<sup>41</sup>

The agreement must be concluded by the Council, acting on a qualified majority, after having obtained the European Parliament’s approval. As opposed to the case of modifying treaties or mixed agreements,<sup>42</sup> Article 50 of the Treaty on European Union does not mandate the presence of the other Member States during the signing and the ratifying of the withdrawal agreement.<sup>43</sup> The President of the Council is the one to officially give written notification, on behalf of the EU, regarding the completion of the internal procedure necessary for the entry into force of the Agreement.<sup>44</sup>

In order to enter into force, the Agreement must be signed by the representative of the UK, by the President of the European Council and the President of the Commission. On 14 January 2019, the latter two exchanged letters with the Prime Minister of the United Kingdom, expressing their intention to do just that as soon as the Agreement is approved in the UK’s Parliament. After that moment, the process of the UK’s withdrawal began to stall – arguably not for the first time since its beginning. Several votes were held in the national Parliament, but the Agreement, in the form negotiated by the EU and the UK, did not gather the necessary support, leaving the EU waiting for a decision, one way or the other, to be taken by the UK.

On 19 March 2019, the Speaker of the UK Parliament blocked the possibility of holding a new vote on the existing Agreement. While negotiating a new deal would be possible in theory, if the EU agreed to it, 29 March 2019 marks the expiry of the two-year term provided by Article 50 of the Treaty on European Union, and various representatives of the EU and of the Member States have already stated that they will not grant the UK an extension without being presented with a serious and precise proposal regarding future actions. On 20 March, the Prime Minister of the UK sent a letter to the President of the European Council, asking for an extension period until 30 June 2019.<sup>45</sup> The answer came that same day, stating that, while a short extension could be possible, it would be conditional on a positive vote on the Withdrawal Agreement in the UK Parliament.<sup>46</sup> On 21 March, the European Union offered the United Kingdom an extension until 22 May 2019, on the condition that the UK Parliament vote the negotiated Agreement. Upon the failure to meet that

requirement, a shorter extension, until 12 April, would be offered.

## Conclusions

At the start of the negotiations, it was noted that the two-year time frame provided by Article 50 is rather a short one for an undertaking of such scope, especially since the withdrawal agreement should, ideally, be finalised well before the expiry of said period, in order to allow for the fulfilment of the necessary formalities regarding its approval and ratification by the EU and the Member States. In the beginning of the process, the EU’s chief negotiator in the matter of the UK’s withdrawal suggested that the agreement should be decided upon in a period of 18 months, with the following 6 months being allocated for its ratification<sup>47</sup>. Over time, it has become clear that those estimations were optimistic: at the end of the two-year period, a withdrawal agreement has been drawn up, but its signing and ratification are held up by the disagreements taking place in the UK Parliament.

The fact that both the negotiations between the EU and the UK and the debates held in the UK’s Parliament have been mired by numerous difficulties suggests that the consequences of the UK’s withdrawal had not been seriously analysed before the Brexit referendum, and neither had the positives of such a move been properly weighed against the negatives by those who endorsed it.<sup>48</sup> A possible way of preventing such a situation in the future, were another Member State to decide it wants to withdraw from the EU, would be to provide an obligation for that state to prepare a proposal for a withdrawal agreement before being allowed to trigger the application of Article 50 of the Treaty on European Union. While a term longer than the current two-year one might help by allowing more time for negotiations and preparations, it could also prove an unnecessary delay if the Member State does not fully take advantage of it. Considering how intricate the relations between the EU and its members are, and how each Member State has its own set of challenges and special circumstances, it is difficult to envision a single procedure that could be adequately applied to all Member States.

As evidenced by the provisions of the Treaties, of the draft Agreement on the withdrawal of the UK from

<sup>40</sup> As a rule, Member States cannot negotiate agreements – or, indeed, adopt any sort of legislative acts – in matters regarding the EU’s exclusive competences.

<sup>41</sup> *Ibidem*, Art. 4.

<sup>42</sup> Mixed agreements are international agreements concluded in matters that do not fall under the exclusive competence of the European Union. Consequently, they must be signed by both the EU and the Member States.

<sup>43</sup> This has been considered in accordance with the use of the qualified majority in the Council, as opposed to an unanimous vote, and with the will of the treaties’ authors, whose intention was “to create a simple and efficient procedure in order to limit the duration of the withdrawal process” (unofficial translation). See Christophe Hillion, *op.cit.*, p. 728.

<sup>44</sup> *Ibidem*, Art. 8.

<sup>45</sup> The letter is available at [https://www.consilium.europa.eu/media/38668/20190320\\_may\\_letter\\_tusk\\_extension.pdf](https://www.consilium.europa.eu/media/38668/20190320_may_letter_tusk_extension.pdf) (accessed on 20 March 2019)

<sup>46</sup> The answer of the European Council’s President is available at <https://www.consilium.europa.eu/en/press/press-releases/2019/03/20/statement-by-president-donald-tusk-on-brexite/> (accessed on 20 March 2019).

<sup>47</sup> Lee McGowan, *op. cit.*, p. 51

<sup>48</sup> Augustin Fuerea, „BREXIT – trecut, prezent, viitor”, *Curierul judiciar*, nr. 12/2016, C.H.Beck, Bucharest, p. 632.

the EU and the draft Council Decision on the conclusion of the Agreement, the role of the Council in this process is an essential one and the Member State chairing the institution at such a time has a particularly difficult task. If Romania manages to successfully

navigate this challenge, proving its capability and its dedication to the well-being of the EU and of the other Member States, it could use this experience to strengthen its relationship with both the European Union and the United Kingdom.

### References

- Craig, Paul; de Búrca, Gráinne, *EU Law: Text, Cases, and Materials*, Sixth Edition, Oxford University Press, 2015.
- Fuerea, Augustin, “Brexit - limitele negocierilor dintre România și Marea Britanie”, *Revista de Drept Public*, nr. 4/2016, Universul Juridic, Bucharest.
- Fuerea, Augustin, „BREXIT – trecut, prezent, viitor”, *Curierul judiciar*, nr. 12/2016, C.H.Beck, Bucharest.
- Fuerea, Augustin, *Manualul Uniunii Europene*, Editia a VI-a, Universul Juridic, Bucharest, 2016.
- Fuerea, Augustin, “The exercise of the presidency within the European Union”, *Probleme actuale ale spațiului politico-juridic al UE* International Conference, 27 October 2016, Wolters Kluwer Romania.
- Hillion, Christophe, “Le retrait de l’Union européenne, une analyse juridique”, *Revue trimestrielle de droit européen*, Dalloz, octobre-décembre 2016.
- McGowan, Lee, *Preparing for Brexit. Actors, Negotiations and Consequences*, Palgrave Macmillan, 2018.
- Nițoiu, Cristian; Oliver, Tim; Păsătoiu, Florin; Chelotti, Nicola, *Romania and the United Kingdom. The Special Relationship after Brexit*, Loughborough University London and the Center for Foreign Policy and Security Studies, report presented at the Carol I National Defence University, Bucharest, 18 March 2019.
- Council Decision 2009/937/EU adopting the Council's Rules of Procedure, OJ L 325, 11 December 2009, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009D0937> (accessed on 20 March 2019).
- Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 47I, 19 February 2019, available at <https://eur-lex.europa.eu/eli/dec/2019/274/oj> (accessed on 20 March 2019).
- 18-month Programme of the Council (1 January 2019 – 30 June 2020), Brussels, 30 November 2018, <http://data.consilium.europa.eu/doc/document/ST-14518-2018-INIT/en/pdf> (accessed on 20 March 2019).
- Programme of the Romanian Presidency of the Council of the European Union, 1 January – 30 June 2019, available at <https://www.consilium.europa.eu/media/37974/romanian-presidency-programme.pdf> (accessed on 20 March 2019).
- Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November, available at [https://ec.europa.eu/commission/files/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018\\_en](https://ec.europa.eu/commission/files/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en) (accessed on 20 March 2019).