

# BREXIT: A STORY OF A DOUBTFUL DIVORCE – WAS IT THAT IMPORTANT AT LAST?

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## I. INTRODUCTION

Our human history is linked to evolution<sup>1</sup>. Ever since its creation, our world is changing, developing, becoming greater, abandoning in the past every obsolete idea. From revolutions that costed human blood, such as the French Revolution, to other more silent revolutions, such as the artistic revolution of the Renaissance, the truth is that human ideas and commonly shared values that determined our social, financial and political history were born to be rejected in the name of change and differentiation, with or without meeting resistance. This progress and evolution led us to the world as we know it today: a rather democratic, liberal, progressive world of science, freedom, democracy and interests, of all kinds.

Speaking about present, 2020 is a rather interesting year of mostly unpleasant changes. It seems to be a year that leads to the “death” of our familiar *modus vivendi* in various levels: the death of the illusion that we hold scientific perfection having no natural enemies, the suspension of our economic development that re-starts an economic crisis, the death of relationships that used to be considered as *sine qua non*, such as the relationship between the UK and the European Union. Britain, that was thought to be one of the most prestigious partners in the European idea, ends up this year its European Union history with a “*Christmas gift to the nation*” Brexit agreement<sup>2</sup>, no matter if in the past British were considering themselves as “*much heirs to the legacy of European culture as any other nation*”<sup>3</sup>.

Until the very end of 2019, Brexit was thought to be the most important upcoming topic of next year, together with the challenging 2020 USA presidential elections, a double challenge from a historically tied couple, Britain and USA. However, as of an irony, the importance of the death of the relationship between Britain and the EU was set apart by the fear of real death that COVID-19 introduced to our world. This modern pandemic that still shakes the foundations of our economic, social and political world raises questions about the substance, the foundations and the solidarity in the EU itself. People are seeking for actual help, countries are seeking for financial assistance, EU Member States demand actions and sustainable support from the strongest EU Member States in order to exit the crisis. Inevitably, after Brexit, another (wealthy) Member State will have to replace the always skeptical and often negative partner in order to have the expression of a different opinion, or, otherwise said, the different opinion will now have to be expressed directly by the Member States without the support of the UK. As of an irony, the importance of Britain’s exit, that left a Gordian knot to the hands of Germany and France since the cut of the bonds, was temporarily supplanted by the reality of life, but it rises again from the ashes as Britons managed to attract the attention to the importance of this exit literally the very last moment, with a combination of rather competitive and impressive actions related to the pandemic and the Brexit agreement – bringing again into force the question of the importance of Brexit and how much this could affect our lives, our democracy, our freedom, or our future choices.

## II. A BRIEF HISTORY FROM INTEGRATION TO SEPARATION

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<sup>1</sup>. According to Darwin’s theory about human evolution.

<sup>2</sup>. PM Boris Johnson’s message to the British people, 24.12.2020.

<sup>3</sup>. M. THATCHER, Speech to the College of Europe, “the Bruges speech”, 20.09.1988, available at: [margaretthatcher.org](http://margaretthatcher.org).

Europe, an area of security, peace and intercultural discussion, is not anymore enough for the Britons, as they clearly stated with their referendum. European integrity is neither anymore an event of “*excitement for the new generation of Britons*”, nor a “*field of action that in their phlegmatic and pragmatic way people are waiting for*”, nor of course European unity is nowadays something “*for which people have longed for centuries*”<sup>4</sup>. Since 1961 Britain’s first attempt to join the European Economic Community, Britain has changed – a lot. There are no more the conditions and experiences that led to the Union<sup>5</sup>. The EU is no more the remedy to the fear in the aftermath of the Second World War, and EU is mostly considered to be an economic union with a rather unstable and unprofitable character. On the other hand, external factors, such as immigration flows and the enlargement of the European family, with a number of economically weak countries seeking for solidarity (and funds) rather worsen than strengthen the UK’s profile and defense of interests, no matter if “*the greatest task today is the consolidation of the whole free world around values not just interests*”<sup>6</sup>. All those details brought Britain back to 1951 and the intense dislike for many of the supranational and technocratic elements in the Treaties, common agricultural policy and budget policies<sup>7</sup>. Also, USA seem to be more than ever willing to cooperate in a financial and strategic level with the UK and will support Britain to maintain the international influencer role of the global developments. Thus, either seen as an irony, or as an emblematic proof of the British perfection, strength, stability and uniqueness – their undoubtful characteristic that was proven even after the 1st WW when the UK was the only “*empire*” that remained untouched and solid – the only common element between 1973<sup>8</sup> and today is the person that officially opened and closed this historic circle, Her Royal Majesty the Queen.

Practically speaking, it seems that Europe was trapped in its own democratic provisions, being forced to accept the farewell of one of its most emblematic partners. Suddenly, Article 50 TEU, the only legal mechanism for an EU Member State to withdraw from the EU, was put in force in a less than a decade since the Lisbon Treaty recognized this right. The decision to terminate the Member State’s ties with the EU is a matter solely for the Member State concerned, does not need to be reasoned and is not subject to any conditions of EU law<sup>9</sup>. Therefore, Europe has to face a change without resistance, as a matter of respect of rights and free will, an expression of democracy. Seen from another point of view, the EU cannot force a Member State to share its common values.

Historically, this was not the first experience of separation in the EC, but a much bitter one, comparing to Greenland’s independence from Denmark that took place in 1985, resulting in the exit from the Community, setting an international treaty in force<sup>10</sup>. However, Brexit was an out of the blue, rather impossible scenario for our generation that was born in a Europe in which Britain was as a *sine qua non* powerful and prestigious partner of our community. Brexit was the “*third bad thing to happen*” as Greeks use to say, following the unrealized scenarios of Grexit or Italy’s exit<sup>11</sup>. However, history is a continuous line of repeating events that can determine the future. Britain was not always very welcomed to the EU. Twice in 1961 and 1967 Britain’s attempts were vetoed by France<sup>12</sup> because of the country’s close

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4. British PM Edward Heath’s statements about Britain’s acceptance to the Common Market in a radio interview in Ottawa as mentioned in “*Britain Joins EU in 1973*”, Associated Press 24.06.2016 and online dailymail.co.uk.

5. When did Britain decide to join the European Union?, available at: ukandeu.ac.uk / fact-figures.

6. D. TUSK, 25.05.2017, and also S. MORGAN, Loss of trust in EU has social and economic consequences, 25.06.2017, available at: eoroactiv.com.

7. Why did the United Kingdom not join the European Union when it started?, available at: ukandeu.ac.uk/fact-figures.

8. The year that Britain officially joined the Common Market.

9. E. SACHPEKIDOU, European Law, 2nd ed., Sakkoulas, 2013, p. 173.

10. Ibid.

11. However, Grexit and Italy’s exit were about exiting the Eurozone, not the European Union itself.

12. J. BAZZINOTTI, Why did Charles de Gaulle veto British Membership in 1963, available at: quora.com · K. CONOLLY, How French Non blocked UK in Europe, 02.12.2017, available at: bbc news, bbc.com.

relationships to the USA, as Charles de Gaulle widely supported, setting the bases of this “rocky relationship”<sup>13</sup>. Finally, Charles de Gaulle’s fears seem to return and be more realistic than ever. Britain is looking across the ocean, reheating the traditional alliance<sup>14</sup>.

This rocky relationship between EC and Britain started in 1973, continued with 1975’s Margaret Thatcher’s support to “Keep Britain in Europe” for the referendum on EEC membership of Britain, was soon transformed to her Euroscepticism under the phrase “*a European super-state exercising a new dominance from Brussels*”<sup>15</sup>, led to the Black Wednesday currency crisis of 1992 to conclude with David Cameron’s “*Brits must have their own say*” that resulted a referendum and the beginning of the end of this relationship in 2016<sup>16</sup>, that was completed by Boris Johnson’s “*Christmas gift to the nation*” with the completion of the Brexit commercial agreement. Over the past 47 years Britain has clearly stated that above the EU and its strategic goals are its own strategic plans, red lines and interests that were in danger since the 2007 financial crisis. Additionally, Britain was never a part of the Eurozone, as British governments were initially worried about damaging links with the Commonwealth and wished to pursue an “one world economic system” policy in which sterling was a central currency<sup>17</sup>. Defending with discretion its national sovereignty<sup>18</sup>, Britain was always setting obstacles to the so-called European integration in areas, such as social security, common foreign policy, military cooperation, agriculture and European economic crisis, by the use of veto<sup>19</sup>.

Unfortunately, Brexit set the base for more future exits, harms the EU’s interests that may lead to an EU “spillover” economic crisis and demolishes the “federalism” idea in the EU. The EU seems now, more than ever, to be functioning like an international organization rather than a united family. Even though the trust on the EU itself seems to remain stable across the continent if not boosted, the trust to the institutions faces a major crisis<sup>20</sup>. Brexit may however have far-reaching and highly asymmetric consequences not only in the EU, but also in the UK, as this withdrawal could destabilize the territorial configuration of the UK, taking into consideration that in the British territory coexist different national entities that expressed their disagreement about Brexit<sup>21</sup>, such as the Scottish that balance between their UK’s and EU’s identity.

Therefore, we would rather face Brexit as a civilized civil partnership split (if not an open relationship split, a relationship in which USA was always the secret partner) than a mutual consent divorce following a normal marriage. Taking into consideration the impact of this split, the way both parties behaved to this relationship, the recalcitrance of Britain and the unpredictable twists of the history, we would say that it would be rather hypocritical to pretend that Brexit was important because it was unpredicted. It is important because it matters and it affects our lives. The ex-partner has now become a competitor with deep knowledge of our system’s weaknesses.

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<sup>13</sup>. A. GIBBS, The UK’s rocky relationship with the EU, available at: [cnbc.com](http://cnbc.com).

<sup>14</sup>. EU exit: Great Britain and US want robust trade deal after Brexit, Zeit, 06.01.2019, available at: [tellereport.com](http://tellereport.com).

<sup>15</sup>. M. THATCHER, Speech to the College of Europe, op.cit.

<sup>16</sup>. A. GIBBS, op.cit.

<sup>17</sup>. Why did the United Kingdom not join the European Union when it started?, available at: [ukandeu.ac.uk/fact-figures](http://ukandeu.ac.uk/fact-figures).

<sup>18</sup>. M. Thatcher in her Speech to the College of Europe (“the Bruges speech”) clearly stated that: “*My first guiding principle is this: willing and active cooperation between independent sovereign states is the best way to build a successful European Community*”, 1988.

<sup>19</sup>. S. MORGAN, The Brief: De Gaulle was right about Britain all long, 23.06.2017, available at: [euroactiv.com](http://euroactiv.com).

<sup>20</sup>. S. MORGAN, Loss of trust in EU has social and economic consequences, 25.06.2017, available at: [euroactiv.com](http://euroactiv.com).

<sup>21</sup>. Consequences of Brexit: Pros and Cons. Can it lead to the end of the UK?, available at: [netivist.org](http://netivist.org).

### III. THE TRANSFORMATION OF THE RELATIONSHIP OF EU-UK AND THE FUTURE OF IT

Practically speaking, UK is not an EU Member State since 31 January 2020. However, the EU/UK Withdrawal Agreement 2020 (EUWAA), which amended the European Union (Withdrawal) Act of 2018 (EUWA), is now in force, recognizing a transition period of 11 months for Great Britain. During this period, EU law continues to apply into the UK and Britain keeps its right to be a part of the EU Single Market and Customs Union. These months were considered to be a quiet sufficient period for adjustment, new agreements, pro-active measures and development of new business strategies. Unfortunately, historical facts shrunk the negotiation period, mainly because of COVID-19, and we were brought closer to the 31st December 2020, which is considered to be the end of the implementation/transition period (IP Completion Day). After that date, Britain will cease any relationship as we know it, with or without extra agreements; direct EU legislation (already in force) will continue to apply in UK domestic law unless and until it is amended or revoked by UK regulations. Therefore, a model of trade agreement had to be chosen with fast-track procedures, the applicability of which will affect the economic stability of a great number of relationships depending on the type of these (trade) agreements/relationships. Either this would be a Swiss model (with negotiated bilateral agreements), or a Norwegian model, or a customs union model, or a free trade agreement model, or a WTO membership<sup>22</sup>, the only widely accepted truth is that obstacles will be raised.

This led to the announcement of the 2.000 pages Brexit agreement on the 24th December 2020, an agreement that includes commercial terms and conditions regulating this relationship, but excludes the main core of the British economy, the financial transactions of the City of London, an exemption that could influence the stability of the European financial system in various ways. However, either seen as a result of the demonstration of power from the side of the EU, that a few days before Christmas shut the borders with Britain and led to a commercial “stroke” in the public eye, or as a result of the British arrogant response of power with the use of vaccines (medical products) coming from Belgium before their use in the EU, the fact is that both parties ended to a controversial agreement of thousands of pages, that regulates key issues, but excludes key financial poles. Taking into consideration that uncertainty is a currency trader’s worst enemy, the British pound could be in a “flash crash” and devaluation<sup>23</sup>, but no one can estimate for how long. Aviation, commercial relations, technology and communications, education, public procurement, corporate law, product compliance and liability issues, legal process and future relationships, employment law, life sciences and healthcare, energy and environment, media, trade, taxation, automotive, data protection and cyber security, intellectual property, franchising, but also trade relationships with third-country preferential partners of the EU, are only some of the domains that will be affected by Brexit. During this transition period, the UK and the EU were supposed to negotiate and bring in force this trade agreement, mainly to protect the active economic interests that will be left alone, after Britain’s exit from the Single Market and the Customs Union<sup>24</sup>.

If there was no trade agreement by the Completion Day, EU law would cease automatically to apply in the UK as if in every active EU Member State and by virtue of the EUWAA and EUWA (with certain specific arrangements including the protection of UK and EU citizens residing within the other’s borders, the financial settlements between the UK and the EU and the Protocol on Ireland/Northern Ireland<sup>25</sup>) all EU law that applies in the UK at that point will be incorporated as the “retained EU law”, a new body of law that will neither be subject to the

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<sup>22</sup>. S. WITTY / D. POLK / WARDWELL LLP, The legal consequences of Brexit, Harvard Law school forum on Corporate Governance, available at: [corpgov.law.harvard.edu](http://corpgov.law.harvard.edu).

<sup>23</sup>. Brexit and its strong impact on currency exchange rates, 31.07.2020, available at: [Expatica.com](http://Expatica.com).

<sup>24</sup>. Available at: [twobirds.com/en/in-focus/brexit](http://twobirds.com/en/in-focus/brexit).

<sup>25</sup>. Available at: [brexitcompliance.com](http://brexitcompliance.com).

decisions of the CJEU, nor will be renewed by EU legislation. Under this uncertain surrounding, businesses would be prudent to plan for a no-deal scenario. Thanks to the achieved agreement, it seems that both ex-partners managed to bridge the gap between the two sides of the English Channel; Britons “*have taken back control of their laws and their destiny, the control of every jot and tittle of their regulation in a way that is complete and unfettered*”<sup>26</sup>, while Europeans have managed to achieve a series of agreements, such as a temporary maintenance of the fishery rights in the Channel for a sufficient period of time, but also achieved a commitment for the respect of established and future competition law, protection of the environmental laws and public financing laws, that could lead to destabilization of the markets and the environment, and finally to the implementation of dumping and antidumping taxes as a first step to an undeclared war that could affect both parties, but mostly Europe that is already applying similar measures to major markets, such as the Russian market.

No matter if we are examining this agreement from the optimistic point of view, there are still grey lines that will make every agreement more “shady” and every commercial transaction more risky, especially without the common European framework of Directives and Regulations and the protective net of the CJEU; taking into consideration the major differences between the continental law and the common/equity law we have a first field of controversy. Seen from a comparative point of view, the different perspectives about profit, *bonne foi*, interest, equity, consideration etc. in combination with the huge differences that characterize those legal systems in the interpretation of the law and the power of the judge may shrink the commercial transactions while increasing the feeling of uncertainty. Additionally, the exemption from this agreement of the City of London financial transactions creates a very fragile environment. It is accepted from both parties that there will be transparency in taxation, but the lack of a clear regulatory environment will definitely create a field of direct competition. France, after the recent changes of the Macron law in income flat tax from investment activities and the “lifting” in the French corporate taxation, seems to be taking very seriously into consideration this kind of competition, while trying to limit the bleeding of French funds. Paris and Frankfurt can now arise as business centers (for banking or insurance markets) while the EU, in order to attract investors, may impose stricter regulations for capital flows towards London. City may lose, because of Brexit, its character as a business attraction center or as a restructuring and insolvency hub. This gap will benefit either the USA or Singapore that will try to step in as the new competitive powers or the EU itself if a Pan-European scheme of arrangement will be introduced<sup>27</sup> as regards the restructuring and insolvency proceedings that the UK could refuse to recognize. By leaving the Single Market and the Customs Union unconditionally, the UK may also lose all the benefits of the Regulations and the Directives, a reality that will activate alternative models of law<sup>28</sup>, returning the UK back to 2002, when the English insolvency proceedings were not sufficiently recognized in Europe and parallel proceedings were taking place<sup>29</sup>. Considering that the UK is a third country from the perspective of the EU, the access to the Single Market will also influence the financial transactions, the financial market law and the British issuers, credit institutions, insurance companies, securities firms, asset and fund managers. Even after Brexit, companies will have to respect European laws so as to access the European market and the future lawmakers will have to coordinate with the EU in order to avoid post-Brexit barriers to the provision of these services, a very general provision though, as we know that even though British autonomy is a quiet ambivalent theory<sup>30</sup> it is not of little importance.

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<sup>26</sup>. PM Boris Johnson’s message to the British people, 24.12.2020.

<sup>27</sup>. Then the CJEU will be competent, creating a problem to the British governments that clearly stated that they do not want the interference of the Court.

<sup>28</sup>. Such as UNCITRAL (United Nations Commission on International Trade Law) or Common Law.

<sup>29</sup>. Cross-border Insolvencies after Brexit: Views from the United Kingdom and Continental Europe. H.P. MORRIS ... [et al.], BICL, Brexit: The International Legal Implications, Paper No. 17, March 2018.

<sup>30</sup>. M. LEHMANN, How Does It Feel to Be a Third Country? The Consequences of Brexit for Financial Market Law, Dirk Zetzsche, BICL, 15.02.2018.

Furthermore, the Divorce Bill or Brexit Financial Settlement<sup>31</sup> that refers to the sum of money due to the EU from the UK to settle the UK's share of the financing of all the obligations undertaken while it was an EU Member State, will be easily balanced with other sources of income: Britain will be no longer "bleeding" because of immigration, high cost of social benefits, solidarity for the poorest EU countries and common economic strategies. To balance any loss, when the question comes to profit, wealth, financial interests and taxation, the UK will be free to create its own empire. The rather unpleasant recent EU Regulations for money laundering<sup>32</sup> will be no more be an obstacle to the British Overseas Territories, making them more attractive to investors. Automatically, the British legal system will be antagonistic to the EU's legal system, being a more attractive environment for companies, trusts, foundations and any other legal arrangement similar to trust, without the control of the Central Europe. British authorities will be free to strengthen their legal system of offshore jurisdictions that will seriously harm the interests of some of the EU Member States, such as Cyprus, Bulgaria or Malta, that are making a great profit as tax heaven paradises and are under the existing Directive called to reveal all the possessed data for their companies' ultimate beneficial owners<sup>33</sup>. British Overseas Territories, such as the Isle of Man, Gibraltar, BVI, Cayman islands, Bermudas, Turks and Caicos, that are not part of the UK, but jurisdictions that maintain a constitutional link with the UK, may be "grey zone areas" or tax heaven paradises, hold a great percentage of our world's wealth, a wealth that will easier end up in British banking system after Brexit offering cash flow. It is of no importance for the British economy if the EU will choose to include those jurisdictions to the blacklist of tax heaven jurisdictions<sup>34</sup>, since the actual damage (financial and legal) to many EU Member States might be irreversible, a consequence of great importance that should be taken into consideration before the Completion Day.

No matter what kind of Brexit deal we have now, Britain will also in the future negotiate with the USA a common strategic axis that could ban the EU market. This means that, if the UK will not guarantee the respect of the EU common policy, agricultural, trade and related legal commitments, Britain will be excluded from this market, as seen a few days before Christmas Eve, in Dover UK, in the name of the protection of public health, a rather "intelligent" and "diplomatic" way of pressure. Brexit with or without deal could profoundly affect "Europeanized" areas of trademark, design laws, intellectual property and competition law, as EU legislation will cease to be renewed and the UK may significantly diverge from the harmonization of its national laws to the European standards, adopting more liberal models that might be considered as breach of rights. Britain may also jeopardize the European standards of environmental law, in areas such as the air quality protection, the agriculture policy and other principles related to the protection of human health and the right to life, giving to Britain a dangerous but also competitive advantage<sup>35</sup>. Nonetheless, if the UK will keep trading with the EU, common legislation and market mechanisms will have to be adopted in or on time, a factor that reduces the Brexit impact.

In reality, the British legal system never ceases to influence the European legal system through Common Law. England will keep being a member of the Council of Europe, a member of NATO, a major influence on a number of EU Member State legal systems, such as the Cypriot. There is also no doubt that when the question comes to commercial or international law and diplomacy, Britain will be holding the reins of evolution. Besides, the major victory of Britain over the EU is the dominance of the British language in Europe, even though our

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<sup>31</sup>. According to EUWA.

<sup>32</sup>. 4th Anti Money Laundering Directive.

<sup>33</sup>. U.b.o. is any person holding more than 25% of a company, trust, foundation or other legal arrangement similar to trust.

<sup>34</sup>. D. BOFFEY, In wake of brexit, EU to put Cayman Islands on tax heaven blacklist, 13.02.2020, Guardian.

<sup>35</sup>. M. GEHRING / F.-K. PHILLIPS, Brexit and Environmental Law: The Rocky Road Ahead, BICL, 20.02.2018.

continent was never a part of the British Empire. English is the most widely spoken language by the majority of European nationals and it now seems more ironic than ever that we will keep using English as an official language, when Britain has turned its back to the EU. On the other hand, it would be of a great cost and extremely difficult to agree on another “dominant” language and educate millions of Europeans this language instead.

Overall, either Brexit ends up this transition period with a Brexit deal or not, the British governments seem to be keeping their secret weapons very well-hidden, being rather optimistic about the Albion’s economic stability out of the EU. Therefore, we would rather be very skeptical about the real impact of Brexit on financial relations and profit, keeping in mind that wealthy investors will be always looking for the next more profitable partner for their interests, transferring without hesitation their wealth over various jurisdictions.

#### IV. ARE OUR SOCIETY, FREEDOM, SECURITY AND JUSTICE IN A REAL DANGER?

From another point of view, Britain was never a full member of the so-called “Area of Freedom, Security and Justice (AFSJ)”<sup>36</sup>, so the importance of Brexit is doubtful. Of course, the EU is losing one of its alliances, but this divorce means that the most conservative and rather “negative” to changes partner is finally not postponing the common policies of the EU.

Starting from the common Schengen Area with the supposed abolition of border controls between the countries, the plan for the common AFSJ was an ambitious plan to ensure the free movement of persons and the highest level of their protection and security. It was extended to the exchange of information, criminal justice, police cooperation and of course the common policy for third-country nationals and asylum seekers, as interpreted in the highest level by the CJEU, a common protection otherwise said with asylum and immigration policies and extended cooperation in the fight against crime (terrorism, organized crime, cybercrime, sexual exploitation of children, trafficking in human beings, illegal drugs, etc.)<sup>37</sup>. All those fields are now in question; every part of this agreement can defend independently its own interests, apply its own legislation and finally disregard the CJEU’s case-law.

Britain kept, for the sake of its interests, the role of the key player in the negotiations and policy making, restraining for its land the privilege of pick and choose, known as opt-in and opt-out. This policy of fragmentation of the applied policies in the EU and the differentiation in the application of the policies was always creating delays in the cooperation between the authorities, delays that will be now increased and can lead to a dead end in a number of cooperation areas.

More specifically, as regards the Schengen Area, Britain was never a great fond of the Schengen *acquis*. The latter, also known as “*acquis communautaire*”, refers to the set of rules and legislations<sup>38</sup> that make possible the proper functioning of the Schengen Area<sup>39</sup>. Since 1985, when UK entered this area, the policies were applied only in favor of the British citizens, meaning that they were free to move within the European territory without any further border control, but when EU citizens were reaching the British territory the border control was a part of the exercise of Britain’s discretion, a discretion that was actually transformed into an official opt-out from the Schengen *acquis* after the Amsterdam Treaty. The UK Border Agency has immigration and customs powers, but also the power to remove from the borders any foreign national that attempts to enter the UK illegally<sup>40</sup>. However, the

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<sup>36</sup>. Article 3 para. 2 TEU and Articles 67-89 (Title V) TFEU.

<sup>37</sup>. Available at: [https://eurlex.europa.eu/summary/chapter/justice\\_freedom\\_security.html?root\\_default=SUM\\_1\\_CODED%3D23](https://eurlex.europa.eu/summary/chapter/justice_freedom_security.html?root_default=SUM_1_CODED%3D23).

<sup>38</sup>. The Treaties, Regulations, Directives, Decisions, Delegated Acts, Implementing Acts and the case-law of the CJEU.

<sup>39</sup>. Available at: [www.schengenvisainfo.com/schengen-acquis](http://www.schengenvisainfo.com/schengen-acquis).

<sup>40</sup>. Available at: [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control) and [wikipedia.com](http://wikipedia.com).

status of extra-territorial (police) control points will be maintained, to facilitate the protection of both parties – a practice that for every European that has used Eurostar is considered a standard procedure, therefore in everyday life there will be no actual changes.

As a result of this reject of the *acquis* protection<sup>41</sup>, except from border controls, the UK was rather unwilling to contribute and participate actually<sup>42</sup> in any related to the common borders protection activity. The past 20 years Britain made clear that there were more red lines and opt-outs than the expected ones. UK never accepted the common measures on immigration of third-country nationals<sup>43</sup> as in the rest Europe. GB defended its right to regulate its own system of rules and conditions for entry and residence of EU's third-country nationals rejecting, in fact, all the fundamental EU legislation and the control of the CJEU, accepting only the control of the ECtHR. Britain selected only some of the administrative measures, such as the format of residence documents<sup>44</sup> that would allow for easier exchange of information among the countries (actual opt-in), a practice that could now be terminated. Thereupon, British governments were always having the border and migration control of the UK, thus Britain's withdrawal from the EU will little affect the above-mentioned practices and areas.

However, Brexit will influence Europe as regards the asylum seekers' protection<sup>45</sup>. Britain has adopted different asylum policies to the rest of the EU Member States (opt-out)<sup>46</sup>, the last 8 years, because for British, asylum seekers were considered to be a social problem, with the media speaking about a "*migrant invasion*"<sup>47</sup>. In real terms, the UK was neither willing to participate in the temporary relocation system of asylum seekers from Greece and Italy, nor was willing to accept those provisional measures<sup>48</sup>, accepting a very low percentage of relocations, a practice that enhanced other European countries, such as Poland, to try to apply similar practices, but led to their condemnations from the courts. In real life terms, the British government implemented strict measures, including the limitation of the financial support to the minimum and aimed to reduce the number of asylum applications for the UK, measures that had a very negative impact on the asylum seekers' lives. They met difficulties in accessing basic public services, such as health care or education, they were not allowed to work during their application process and the evidence show that a growing number of asylum seekers is vulnerable to poverty and destitution, discrimination and social exclusion<sup>49</sup>. Therefore, Britain, in order to protect its sovereignty, was fragmentizing the EU legislation and was applying different or previous legislations because of its right to opt-out – a practice that complicated the procedures and created a chaos in the system with human lives cost<sup>50</sup>. As

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41. ECJ C-77/05, *United Kingdom/Council*, 18.12.2007, ECLI:EU:C:2007:803.

42. There is a specific way of cooperation as states B. RYAN, *The EU's Borders: Schengen, Frontex and the UK*, Free movement immigration blog, Garden Court Chambers, London, 2016, available at: [www.freemovement.org.uk/brexit-and-borders-schengen-frontex-and-the-uk/#\\_edn38](http://www.freemovement.org.uk/brexit-and-borders-schengen-frontex-and-the-uk/#_edn38). See also S. CARRERA / E. GUILD / N. CHUN LUK, *What does Brexit mean for the EU's Area of Freedom, Security and Justice?*, available at: <https://www.ceps.eu/ceps-publications/what-does-brexit-mean-eus-area-freedom-security-and-justice/>.

43. Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, Lisbon Treaty, Articles 3 and 4.

44. As predicted by the Council Regulation (EC) No 1030/2002 of 13 June 2002.

45. E. GUILD, *The UK Referendum on the EU and the Common European Asylum System*, Free movement immigration blog, Garden Court Chambers, London, 2016, available at: [www.freemovement.org.uk/brexit-and-the-common-european-asylum-system/](http://www.freemovement.org.uk/brexit-and-the-common-european-asylum-system/). See also S. CARRERA / E. GUILD / N. CHUN LUK, *What does Brexit ...*, op.cit.

46. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

47. D. TRILLING, *Don't be fooled by the myth of migrant invasion*, 11.08.2020, *Guardian*.

48. Council Decision (EU) 2015/1601 of 22 September 2015.

49. *Asylum seekers and refugees as a social problem in the UK*, 27.05.2020, available at: <https://phdessay.com/asylum-seekers-and-refugees-as-a-social-problem-in-the-uk/>.

50. S. CARRERA / E. GUILD / N. CHUN LUK, *What does Brexit ...*, op.cit.



aforsaid, the minimum requirements set by the common EU policies on immigration, asylum and migrant rights, although at times problematic from a human-rights perspective, were aiming to protect the vulnerability and strengthen the respect for the right to privacy, home and family life, a scope that could be watered down or eroded<sup>51</sup>.

Consequently, this practice of application of different criteria and mechanisms for a third-country national or a stateless person was actually an irritant in the system, which will shortly come to an end. That is a change of great importance. Additionally, Britain, because of its location, will be no longer accessible to these people, a very important change for the interests of the British, but still a hot stone for the EU. Brexit, however, rather facilitates than incommodes the application of common asylum policies.

In the field of criminal justice, the UK has a series of opt-ins, opt-outs and opt-backs<sup>52</sup>. The most important loss from Britain's withdrawal will be the damage caused to the immediate application of the European Arrest Warrant (EAW) system. The EAW is a simplified cross-border judicial surrender procedure for the purpose of prosecuting or executing a custodial sentence or a detention order. A warrant issued by the judicial authority of one EU Member State is valid within the entire territory of the EU<sup>53</sup> and the cooperation scheme includes extradition and surrender procedures<sup>54</sup> among all the Member States. Withdrawal from the Union means that the application of a EAW is impossible, transforming the UK to a possible temporarily safe shelter for the European citizens that wish to avoid a fast track extradition – but also a paradise for the “shady” (not condemned yet) wealthy economical criminals or precious investors, depending on which side of the river we are standing at. This political choice that can influence our security and justice however, will be based in Britain's earlier opt-out from the adoption of the EU Passenger Name Record (PRN)<sup>55</sup>, which allows a large systematic collection, use and retention of data on air passengers, for the prevention, investigation, detection and prosecution of terrorist offences and serious crimes, that obliges airlines to hand national authorities passenger's data for all flights from third countries to the EU and vice versa, with the option to maintain the same data for intra-EU flights<sup>56</sup>.

Further problems may also be caused to Europol, Eurojust<sup>57</sup> meaning that a number of exchanges of information/databases could be influenced, as both EU and UK are taking advantage of the common databases and information exchange lists. Britain, that influenced Europol<sup>58</sup>, the development of the EU policy on police cooperation and data access and had full access to the police and criminal justice-related information components<sup>59</sup>, will now keep

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51. C. O'CONNOR, *Brexit: The International Legal Implications – Brexit and Human Rights*, BICL, Paper No. 16, February 2018.

52. COUNCIL OF THE EUROPEAN UNION, UK's block opt-out and partial re-opt-in to the ex-third pillar acquis, available at: [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/145981.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145981.pdf). See also V. MITSILEGAS / S. CARRERA / K. EISELE, *The End of the Transitional Period for Police and Criminal Justice Measures Adopted before the Lisbon Treaty: Who Monitors Trust in the European Criminal Justice Area?*, CEPS Paper in Liberty and Security in Europe, 2014, CEPS, Brussels. S. CARRERA / E. GUILD / N. CHUN LUK, *What does Brexit ...*, op.cit.

53. Available at: [https://e-justice.europa.eu/content\\_european\\_arrest\\_warrant-90-en.do](https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do).

54. Council Framework Decision 2002/584/JHA of 13 June 2002, available at: [researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07016](http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07016).

55. Directive (EU) 2016/681 of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

56. Available at: <https://www.europarl.europa.eu/news/en/headlines/priorities/pnr/20160407IPR21775/parliament-backs-eu-directive-on-use-of-passenger-name-records-pnr>.

57. Available at: [www.eurojust.europa.eu/Pages/home.aspx](http://www.eurojust.europa.eu/Pages/home.aspx).

58. Sir Robert Mark Wainwright KCMG, a British citizen, was the Director of Europol for nearly 10 years (2009-2018); therefore a common field of cooperation would be expected.

59. And held in the second generation of the Schengen Information System (SIS II) – see V. MITSILEGAS, *Free Movement and Criminal Law*, Free movement immigration blog, Garden Court Chambers, London, 2016, available at: [www.freemovement.org.uk/brexit-briefing-eu-free-movement-and-criminal-law/](http://www.freemovement.org.uk/brexit-briefing-eu-free-movement-and-criminal-law/). See also Council

distances from the core of the Prüm framework<sup>60</sup>, under which EU Member States grant each other access to their automated DNA analysis files, automated fingerprint identification systems and vehicle registration data<sup>61</sup>, a real operational police cooperation introducing procedures for fast and efficient data exchange, that made our life safer.

Additionally, Eurojust, the European Union agency dealing with judicial cooperation in criminal matters and assisting Member States to combat terrorism and serious organized crime, will be influenced as aforesaid by Brexit. Coordinating investigations and prosecutions, assisting to resolve conflicts of jurisdiction and facilitating the drafting and implementation of EU legal instruments, such as EAWs and confiscation and freezing orders<sup>62</sup>, will concern only the EU territory, a withdrawal that is rather important for the future of the AFSJ. However, Britain will still have to cooperate with Interpol, as it recently was the case with the alleged arrest of Xavier Dupont de Ligonnes<sup>63</sup>.

Taking into consideration all the above, Brexit could overall harm our lives in both ways: firstly, with the devaluation of the importance of the ASFJ, mainly because of bureaucracy and the obstacles that will be borne, and secondly, with the adoption of controversial policies that could harm the Member States' interests, especially in areas that include frauds, money laundering and tax crimes. Nonetheless, it would be naive to assume that, after Brexit, Britain is left alone without the support of the USA's secret agencies and databases. Consequently, while for the British we could assume that Brexit was of less importance as regards these areas, mainly because Britain is an insular country and Brexit is a rather comfortable way to skip the quiet problematic opt-in and opt-out procedures, for us, the residents of the European continent, Brexit is of great importance and will influence our societies, our freedom and our security, as the very well-organized British authorities will no longer share their data, knowledge and experience, a farewell that demands a strong European cooperation to avoid its negative impact, a rather risky challenge for ourselves.

## V. BREXIT AND THE EVERYDAY LIFE CONSEQUENCES

Except from the aforementioned currency crisis that will temporarily influence our consuming habits, Brexit also creates a number of implications to our everyday lives, including employment, driving licenses, travelling, vehicle and property owning, social security, health care and pension scheme.

The loss of the European citizenship privileges and rights will be automatically lost for the Britons residing in European countries, such as Spain, Italy or Cyprus, but also for the millions of tourists that visit the EU and were legally staying up to certain months with full rights and protection. Thereon, all of them will be considered as third-country nationals, in the same way they are considered in Turkey, a competitive market to the Greek market. British citizens will lose the health benefits when traveling within the EU, especially on vacation, an implication that may have an economic impact on the national economies of many EU Member States. British citizens will now either have to return to the Albion, or register as permanent residents of the country where they live, as the temporary increase in applications

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Implementing Decision (EU) 2015/215 of 10 February 2015, and S. CARRERA / E. GUILD / N. CHUN LUK, What does Brexit ..., op.cit.

<sup>60</sup>. Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime of 23 June 2008. Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (available at: [www.publications.parliament.uk/pa/ld201516/ldselect/ldcom/66/66.pdf](http://www.publications.parliament.uk/pa/ld201516/ldselect/ldcom/66/66.pdf)). See also S. CARRERA / E. GUILD / N. CHUN LUK, What does Brexit ..., op.cit.

<sup>61</sup>. Available at: [ec.europa.eu/home-affairs/e-library/](http://ec.europa.eu/home-affairs/e-library/).

<sup>62</sup>. Available at: [https://europa.eu/european-union/about-eu/agencies/eurojust\\_en](https://europa.eu/european-union/about-eu/agencies/eurojust_en).

<sup>63</sup>. The arrested person was supposed to be the wanted killer of the Dupont family. His flight from Paris to Glasgow ended with the arrest of the suspect, after Interpol had informed the French authorities according to the advanced passenger information system, which informed the British authorities immediately.

by British nationals for Belgian<sup>64</sup> passports has shown, or accept to be treated as third-country nationals under the provisions of the EU immigration legislation.

Conversely, a great number of European citizens residing in the UK have to make an early choice of residence: The loss of the rights of the European citizenship in Britain led the wealthier EU citizens – UK residents to apply for a British passport, while the poorest layers will either have to comply with the strict British immigration legislation, or leave the country. This radical change will influence thousands of EU residents, but will benefit the British economy and will undoubtedly help the British society to reduce its social crisis.

However, Member States are now free to choose and negotiate independently with the UK in fields, such as family law, inheritance law (even though Britain had an opt-out from the common EU inheritance policies) and property taxation, which from the one side facilitates the lives of the people, but from the other side can favor certain EU countries than others – creating that way an internal EU countries antagonism.

Even if we could suppose that in the future there will be a “free movement” of citizens and goods (because some kind of services are already excluded from the Brexit agreement as aforementioned), there are some “grey areas” in the European continent, such as the Gibraltar, that British consider it as their terra, but Spanish consider it as a part of their peninsula, that may be a field of intense conflict and diplomatic brawl, now that UK is no longer an EU Member State.

Overall, citizens will have to choose the legal system to which they will be subject. Article 50 TEU opened up a new challenging chapter of separation and autonomy in the European history. As regards the human rights field, Brexit may pose a risk, as primary and secondary EU legislation may be diluted, amended or repealed by subsequent UK primary or secondary legislation and the adoption of an opposite legislation; a risk that may never be materialized. However, the rights-negative background context against which Brexit is unfolding, and the limits of the non-EU forms of legal rights protection that currently exist in UK law, cannot be ignored<sup>65</sup>.

This risk is higher in fields, such as personal privacy, workers’ rights<sup>66</sup>, retirement rules and intra-national cooperation for social security, non-discrimination, environmental law<sup>67</sup>, data protection and migrant rights, as the national legislator overcomes the obstacle of the supremacy/direct effect of EU law, having the opportunity to shrink the rights of vulnerable groups under the pressure of more conservative opinions or nationalism. This policy could be justified as the reflection of the British ideas and qualities in human rights, when parliamentary sovereignty will again take full effect. The quasi-constitutional status of non-discrimination laws is clearly in danger, while the lack of competence of the CJEU creates concern for the protection of civil liberties and fundamental rights in the post-Brexit era. CJEU is so far interpreting these standards under a specific perspective that may be rejected by Britain’s courts in the future, posing a potential threat to all the EU standards, embedded forms of legal protection of human rights and general principles that underpin the EU legal order, as part of the common constitutional tradition of EU Member States<sup>68</sup>. To some extent,

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<sup>64</sup>. Brexit: de des dizaines de Britanniques prêts à demander la nationalité belge, RTBF, 27.06-2016, available at: [www.rtf.be/info/regions/detail\\_brexit-des-dizaines-de-britanniques-prets-a-demander-la-nationalite-belge?id=9338668](http://www.rtf.be/info/regions/detail_brexit-des-dizaines-de-britanniques-prets-a-demander-la-nationalite-belge?id=9338668). Brexit: des ressortissants britanniques de Bruxelles se renseignent sur la naturalisation, 27.06.2016, La Libre Belgique, available at: [www.lalibre.be/actu/belgique/brexit-des-ressortissants-britanniques-de-bruxelles-se-renseignent-sur-la-naturalisation-5771347135708dcfedb86c65](http://www.lalibre.be/actu/belgique/brexit-des-ressortissants-britanniques-de-bruxelles-se-renseignent-sur-la-naturalisation-5771347135708dcfedb86c65). See also S. CARRERA / E. GUILD / N. CHUN LUK, What does Brexit ..., op.cit.

<sup>65</sup>. C. O’CINNEIDE, Brexit: The International Legal Implications ..., op.cit.

<sup>66</sup>. A security to core labour rights was achieved with Directives, such as Directive 2003/88/EC and Directive 97/81/EC.

<sup>67</sup>. For example, see the alleged authorization of continue of use of glyphosate. See, Post- Brexit Agrochemical Apocalypse for the UK?, 28.07.2020, Guardian.

<sup>68</sup>. C. O’CINNEIDE, Brexit: The International Legal Implications ..., op.cit.

this risk could be reduced by a stricter control from the ECtHR, in terms of control of respect of the minimum standards of human rights in Europe, under the precondition that the UK is a part of the CoE family. The agreed plan for international arbitration for the differences that may be born is an indication that none of the two partners wishes to adopt hostile measures and penalties in case of serious breaches, but how this arbitration will influence our lives and how efficient it will be remains an enigma.

Seeing Brexit from distance, this will influence some millions of British citizens that wish to continue their activities and lives in Europe, but it will also force some millions of Europeans that have not managed to establish an everyday life of a certain standard (and income) to take some serious decisions and probably return to their home countries. Our everyday lives will be influenced, even if we do not have an immediate bond with the Great Albion, because EU will have to react to every British positive/negative action, while some EU countries that are directly influenced by the UK (ex. in the island of Cyprus there are still parts of the land exclusively controlled by the UK) will experience a greater impact of the Brexit.

## VI. CONCLUSION

The current pandemic crisis was the twist in the history that, until now, has shown that Brexit was a quite budget-wise decision of an ambivalent importance. For the time being, Britons seem to be winning the bet of their independence, but history has managed to overcome Brexit by setting new more challenging obstacles.

Trying to estimate the importance of Brexit, we have to take into consideration the actual applicable practices before Brexit, our differences, the bonds that connect our legal systems, but also the changes that Brexit will bring to our world. Before hurrying to judge the importance of Brexit, we have to take equal distances from both sides, since Brexit might not be finally the end of the world as we know it, but the end in a chronicle of a pro-announced death, depending on which side of the river we are standing at.

At last, the question whether Brexit is that important or not will be definitely shown in the future. Nevertheless, no matter how much the media do (or do not anymore) speak about this inevitable event of this “civilized split”, Brexit is a historical event that will characterize our era and influence our world in areas, such as diplomacy, science, investments and human rights. By 31st December 2020, Britons cut every bond. Even if COVID-19 sanitary crisis sidelined Brexit discussions, its real impact will be judged by the future generations, while the domino effect consequences that cannot be predicted in any withdrawal agreements today will be judged as historical events.

To conclude, it is interesting to recall the famous speech of Margaret Thatcher stating that determined Britain’s history with the EU: *“Our links to the rest of Europe, the continent of Europe, have been the dominant factor in our history...But we British have in a very special way contributed to Europe...Over the centuries we have fought to prevent Europe from falling under the dominance of a single power”*<sup>69</sup>.

Therefore, since any death in our civilization is followed by a new idea, as a part of its evolution, the only thing we have to wait for is the coveted change that will follow Brexit. Either thinking that *“parting is a sweet sorrow”*<sup>70</sup>, or a *“Christmas gift”* to the nation, the only thing we can definitely recognize is the evolution of this rocky relationship – an evolution that through this mutual consent split led to a change that, eitherlike phoenix will refresh our world, leaving behind every obsolete idea, or like the Pandora box will lead to a labyrinth of problems that will point out the importance of our past choices. One way or another, Brexit is the most important event of 2020 for the EU’s history, with an impact that will seen in the future, as it happens in every divorce, consensual or not.

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<sup>69</sup>. M. THATCHER, Speech to the College of Europe ..., op.cit.

<sup>70</sup>. Romeo and Juliet W. Shakespeare and U. von der Leyen.